

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JANE KAREN ESHAGPOOR

VSB DOCKET NO. 15-031-102631

ORDER OF SUSPENSION

THIS MATTER came to be heard on May 20, 2016, before a duly convened panel of the Virginia State Disciplinary Board consisting of Esther J. Windmueller, Chair, Richard J. Colten, R. Lucas Hobbs, Samuel R. Walker, and Anderson W. Douthat, IV, Lay Member. The Virginia State Bar (“Bar” or “VSB”) was represented by Kathryn R. Montgomery, Deputy Bar Counsel. The Respondent, Jane Karen Eshagpoor, appeared in person and was represented by her counsel, Neil Kuchinsky. Tracy J. Stroh, Certified Court Reporter, of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone 804/730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

The matter came before the Board on the Subcommittee Determination (Certification) from the Third District Subcommittee of the Virginia State Bar which met on November 12, 2015, and which Certification was served on the Respondent on January 8, 2016.

All required legal notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by the Rules of the Supreme Court of Virginia, Part 6, §IV, ¶ 13-18 of the Rules of Court.

The Respondent’s pre-hearing Motion requesting a three-judge panel was denied, as was the motion to send this matter and a separate Show Cause together to a three-judge panel.

The Respondent’s objection to the denial of the motions was noted.

I. FINDINGS OF FACT

VSB Exhibits 1, 2, 4 - 11, 13 - 19, Respondent's Exhibits A - E, Respondent's Exhibits 1 - 3 and the Stipulations of Fact were admitted into evidence without objection.

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. Respondent was licensed to practice law in Virginia on June 23, 2008.
2. On or about October 19, 2012, Kathleen St. John ("Complainant") hired Respondent to represent her in a divorce involving support and custody matters. The parties entered into a representation agreement calling for a \$5,000.00 advanced legal fee.
3. On or about October 19, 2012, Complainant paid Respondent an advanced legal fee of \$3,000.00. The remaining amount of the agreed upon advanced legal fee was never paid.
4. On or about October 22, 2012, Respondent deposited the \$3,000.00 advanced legal fee into her operating account. On this same day, Respondent transferred \$2,500.00 to her trust account. The Respondent testified she deposited the fee into her operating account because she did not have an escrow account deposit slip available and that she promptly transferred all but \$500.00 from the operating account into the escrow account.
5. According to her own billing records, Respondent paid herself a portion of Complainant's advanced legal fee before it was earned. On October 23, 2012, Respondent transferred \$750.00 back to her operating account, and on October 25, 2012, Respondent transferred an additional \$715.00 back to her operating account. Respondent's billing records reflect that as of October 25, 2012, she had earned only \$562.50 of the advanced legal fee paid by Complainant.
6. On or about November 13, 2012, Respondent filed a Complaint for Divorce, discovery, and a Motion for *Pendente Lite* Relief on Complainant's behalf in Chesterfield County Circuit Court.
7. Respondent represented Complainant throughout 2012 and into September 2013 without incident.
8. On September 16, 2013, a hearing was held in the Chesterfield County Circuit Court on support issues. Respondent represented Complainant at the hearing.
9. Following the September 16, 2013 hearing, Respondent failed to provide Complainant with reasonable communication. Respondent failed to return numerous calls and emails from Complainant.

10. Following the September 16, 2013 hearing, Respondent failed to exercise reasonable diligence in her representation of Complainant. Respondent took no action on Complainant's case, failed to appear at status conferences set by the Court, failed to communicate with opposing counsel, and failed to provide Complainant with reasonable communication.
11. Despite Respondent's failure to communicate, lack of diligence, and abandonment of Complainant, on a monthly basis between October 1, 2013 and April 3, 2014, Complainant sent Respondent 7 checks for \$200.00 each totaling \$1,400.00 to pay Respondent's outstanding legal fees, representing the attorney fees the Complainant's spouse had been ordered to pay as a result of the court hearing.
12. On October 1, 2013, Respondent's Virginia law license was suspended pursuant to an Interim Suspension Order entered by the Virginia State Bar Disciplinary Board ("Board") for Respondent's failure to comply with a bar subpoena in another matter. In the Interim Suspension Order, the Board ordered that Respondent comply with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, which requires that lawyers under a suspension or revocation notify clients, courts, and opposing counsel of the suspension or revocation.
13. On October 10, 2013, the Board lifted the interim suspension based on Respondent's compliance with the bar subpoena.
14. Respondent failed to notify Complainant, opposing counsel in Complainant's case, or the Chesterfield County Circuit Court of the suspension of her law license from October 1-10, 2013.
15. On May 16, 2014, Respondent's Virginia law license was suspended for ninety (90) days by the Board for misconduct in five cases. The suspension order was agreed to by Respondent. In suspending Respondent's license, the Board ordered that Respondent notify clients, courts, and opposing counsel of her suspension as required by Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia.
16. Respondent failed to notify Complainant, opposing counsel in Complainant's case, or the Chesterfield County Circuit Court of the ninety (90) day suspension of her law license imposed on May 16, 2014. The Respondent contended in her Answer to the Certification that, notwithstanding she was still counsel of record for the Complainant, she was not "currently handling matters" for the Complainant as the case has been put on "indefinite hold." At the hearing before the Board, she stated that it was an "oversight" not to have notified the Complainant.
17. On or about August 4, 2014, Respondent filed a false affidavit with the bar swearing that on August 1, 2014, she had notified all clients for whom she was handling matters, courts, and opposing counsel of her ninety (90) day suspension. Again, the

Respondent relied on the same argument that the client's case was on "indefinite hold" and that was why the required notices were not given. Respondent provided copies of the proper notices sent to other clients, judges and opposing counsel.

II. VIOLATIONS

The Respondent's Motion to Strike at the end of the Bar's presentation of its evidence was denied by the Board and the Respondent then commenced to put on her evidence. After hearing the case, the Board deliberated and found, or did not, by clear and convincing evidence the following determinations as to the violations of the Disciplinary Rules that were alleged in the Certification:

1. **RULE 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

The Board found there was a violation of this Rule because the Respondent did not clarify with the client whether the case should be prosecuted, non-suited or disposed of otherwise and, therefore, could not act on the client's wishes.

2. **RULE 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

The Board found there was a violation of this Rule as a result of the lack of diligence, as stated above, in that Respondent failed to keep her client reasonably informed of the status of the matter which continued to be pending on the Court's docket for which she was counsel of record.

3. **RULE 1.15 Safekeeping Property**

- (a) Depositing Funds.

- (1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

The Board did not find that a violation of this part of the Rule was proven by clear and convincing evidence.

- (b) Specific Duties. A lawyer shall:

- (5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

However, the Board did find a violation of 1.15(b)(5) because the evidence demonstrated that the Respondent drew down the trust account funds before the work was done and earned as indicated by the Respondent's invoices received as evidence.

4. RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the Rules of Professional Conduct or other law;

The Board found that the evidence of the Respondent's failure to withdraw as counsel for the Complainant did not provide proof by clear and convincing evidence of a violation of this Rule, as stated in the Certification.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

The Board found this Rule was violated based on the Respondent's Answers to the Subcommittee Certification in which she admitted she had not notified a particular client or the related Court of the ninety (90) day suspension of her law license imposed by the Virginia State Bar Disciplinary Board in the Agreed Disposition Memorandum Order, dated May 2nd, 2014, in which she was Ordered to comply with the notice requirements of Part Six, §IV, ¶13-29 of the Rule of the Supreme Court of Virginia.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

The Board found a violation was proven based on the Respondent's statement to the Bar that she had complied with the requirement to send notices of the prior suspension of her license to practice law to everyone as required in the Rules, when she had not sent such notice to the Complainant for whom she was counsel of record in a case pending before a Circuit Court.

Having announced its findings as to the violations of the Rules as stated above, the Respondent objected and her objections were noted for the Record. The Board then heard evidence from the Bar and the Respondent in aggravation and mitigation, including the Respondent's Disciplinary Record, which included (1) a Private Reprimand with terms issued by the Third District, Section II Subcommittee of the Virginia State Bar, effective December 28, 2011, and (2) a Ninety-Day Public Suspension imposed by the Virginia State Bar Disciplinary Board, effective May 16, 2014.

The Board then recessed to deliberate in private over its Disposition as to the founded violations of the Rules.

DISPOSITION

The Board then imposed the sanction of a TWO-YEAR SUSPENSION of the Respondent's license to practice law in the Commonwealth, effective May 27, 2016, at 9:00 A.M., and with the further Order that she not take any new cases or practice law in any case between May 20, 2016, and May 27, 2016, at 9:00 A.M., except for her representation in the *Shin v. Cates* pending in the Nelson County Juvenile and Domestic Relations General District Court.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is SUSPENDED for two years, effective May 27, 2016, at 9:00 A.M.

It is FURTHER ORDERED that the Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice, by certified mail, of the suspension of her license to practice law in the Commonwealth of Virginia to all clients for whom she is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her client(s). Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters. It is FURTHER ORDERED that if the Respondent is not handling any client matters as of the effective date of this suspension, she shall forthwith submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. It is FURTHER ORDERED that all issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing

before a three-judge court.

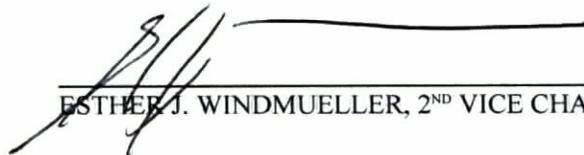
It is FURTHER ORDERED that pursuant to Part Six, Section IV, Paragraph 13-9.E, of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is FURTHER ORDERED that because the Respondent's license has been suspended for more than one year, the Respondent's license shall not be reinstated unless and until the Respondent fully complies with the provisions of Part 6, Section IV, Paragraph 13-25.D of the Rules of the Supreme Court of Virginia

Finally, it is FURTHER ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order and Opinion by certified mail, return receipt requested to the Respondent, Jane Karen Eshagpoor, at her address of record with the Virginia State Bar, being P. O. Box 71119, Richmond, VA 23255-1119, and by certified mail, return receipt requested to the Respondent's alternate address 2123 Dumbarton Road, Richmond, VA 23228, by regular mail to her counsel, Neil Kuchinsky, at Kuchinsky & Rosenstock, P.C, 200 Lakeview Avenue, Suite B, Colonial Heights, VA 23834, and a copy hand delivered to Kathryn R. Montgomery, Deputy Bar Counsel, 1111 East Main Street, Suite 700, Richmond, VA 23219.

Entered this 17th day of June, 2016.

VIRGINIA STATE DISCIPLINARY BOARD



ESTHER J. WINDMUELLER, 2ND VICE CHAIR