

VIRGINIA :

**BEFORE THE THIRD DISTRICT SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
RENAY MELITTA FARISS**

VS Docket No. 08-031-074387

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On May 27, 2009 a hearing in this matter was held before a duly convened quorum of Third District Section I Committee consisting of Joseph P. Rapisarda, Jr., Chair presiding, Nelson H.C. Fisher, Esquire, Graham C. Daniels, Esquire, Larry A. Pochucha, Esquire, Stephanie E. Grana, Esquire and Robert Argabright, lay person.

Respondent appeared in person and with her counsel, R. Paul Childress, Jr. Paulo E. Franco, Jr., Assistant Bar Counsel appeared as counsel for the Virginia State Bar as did the Complainant, Laura Walsh. The Chair polled the committee members to determine whether any of them had a personal or financial interest that would prohibit them from serving and each responded that they did not. Thereafter, the Chair swore in the court reporter, and the parties presented their opening statements. The Bar presented its case in chief and called as its witness Laura Walsh. The Bar moved into evidence, over Respondent's objection to Exhibits 12, 15 and 16, its Exhibits 1-18. During cross examination of Ms. Walsh, Respondent moved into evidence Respondent's Exhibits 1-3. At the conclusion of the Bar's evidence, Respondent moved to strike each of the charges of Misconduct contained in the Charge of Misconduct dated February 6, 2009 and the parties presented argument. At the conclusion of argument, the committee retired to

deliberate. After their deliberations, the committee Chair announced in open session the committee's decision to deny the Respondent's Motion to Strike.

The Respondent then announced that she did not intend to introduce any evidence in her case in chief and rested. The parties thereafter gave closing arguments and the committee retired to deliberate. After its deliberations, the committee Chair announced in open session its findings that the Bar had failed to prove by clear and convincing evidence alleged violations of Rules 1.9 and 8.4 (b) and dismissed those charges. The committee Chair then announced that the Bar had proved by clear and convincing evidence violations of Rules 1.6 (a), 3.4 (i) and 3.4 (j). With respect to the allegations relating to Rule 8.4 (a), the committee found that the Bar had proved by clear and convincing evidence violation of this rule with respect to Respondent's husband's disclosure in his affidavit before the Virginia Employment Commission, but that the Bar failed to prove by clear and convincing evidence that Respondent had attempted to violate section 40.1-29(E) of the Code of Virginia.

The committee then proceeded to a hearing to determine an appropriate sanction. The Bar presented the Respondent's prior disciplinary record as Exhibit 19. After closing arguments of the parties, the committee retired to deliberate to determine an appropriate sanction. At the conclusion of its deliberations, the committee Chair announced in open session that the committee voted to impose the sanction of a Public Reprimand without Terms.

Pursuant to Part 6, Section IV, Paragraph 13-16.Z. of the Rules of the Virginia Supreme Court, the Third District Section I Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, Renay Melitta Fariss ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Ms. Fariss was admitted to the practice of law in the Commonwealth of Virginia on April 19, 1989.
3. At all times relevant, Respondent had her law office at 10107 Krause Road, Suite 102, Chesterfield, Virginia 23832.
4. Laura V. Walsh was Respondent's assistant from 1993 until 2004, when she moved to Florida to be closer to her family after her husband Paul died in July, 2003.
5. In October of 2005, Respondent wrote to Ms. Walsh asking that she come back to work for her.
6. In early of 2006, Ms. Walsh returned to Virginia to work for Respondent. During her employment in 2000 and in August, 2003, Ms. Walsh sought out Respondent's advice and disclosed to Respondent that she had not been legally divorced to her prior husband prior to marrying Paul Walsh, even though they had been married and living together for at least 27 years. At the time Ms. Walsh made the disclosure to Respondent, she expected that information be kept confidential as it was embarrassing and potentially detrimental to her claims for VA benefits for which she had applied after Mr. Walsh passed away.
7. During 2007 Respondent experienced financial difficulties and by July of 2007 Ms. Walsh agreed to accept a temporary cut in salary to allow Respondent to catch up and be able to maintain her on payroll on a regular basis.
8. By February of 2008, Respondent owed Ms. Walsh approximately two months of back pay and Ms. Walsh had asked repeatedly when she could expect to be paid her wages.
9. Respondent repeatedly advised that Ms. Walsh would be paid once the refinancing of her condo was closed and the funds made available to her.
10. On February 20, 2008, Respondent advised Ms. Walsh that her employment was terminated.
11. Ms. Walsh prepared a memo before leaving the office outlining what she was owed in back wages and left it along with the keys on Respondent's desk.
12. Ms. Walsh sent Respondent an email dated February 25, 2008 asking for a date certain as to when she would be paid, which email was admitted as VSB Exhibit 3 without objection.

13. Respondent did not reply to the email and Ms. Walsh sent her another email on February 27, 2008 at which time Respondent replied on February 28, 2008, stating she would be paid when the refinancing closed, which email exchange was admitted as VSB Exhibit 4 without objection.

14. On March 3, 2008, Respondent sent Ms. Walsh two checks for less than the amount of the owed back wages, with a statement that she would be paid the balance less amounts paid to the new employee for job duties Ms. Walsh had allegedly neglected to do.

15. On March 3, 2008, Ms. Walsh filed a claim for unemployment benefits with the Virginia Employment Commission.

16. Ms. Walsh's complaint against Respondent was dated March 14, 2008 and was stamped received in the Virginia State Bar Intake Office on March 13, 2008.

17. On March 18, 2008, Respondent wrote to Ms. Walsh enclosing a check in the amount of \$6051.04, which represented payment in full without any deductions.

18. On March 21, 2008, the Virginia Employment Commission accepted Ms. Walsh's claim for unemployment benefits and awarded her benefits.

19. On April 5, 2008, Respondent wrote Ms. Walsh an email that stated as follows: "I am notifying the Veterans Administration that your marriage to Paul Walsh was not legal inasmuch as you were not legally divorced from the number three husband before him at the time of your marriage to him...therefore, your health benefits will stop, and you will not be eligible for the big 'bonus' that you think you will be getting..." which email was admitted as VSB Exhibit 11, without objection.

20. Respondent filed an appeal to the Virginia Employment Commission's decision to award Ms. Walsh unemployment benefits.

21. As part of the appeal, Respondent submitted an affidavit from her husband, dated June 23, 2008, which affidavit was admitted as VSB Exhibit 13, without objection.

22. In paragraph 7 of that affidavit, Respondent's husband stated under oath, among other things, "I understand that [Ms. Walsh] is being treated at the Veteran's Administration by perpetrating a fraudulent claim that she was legally married to her fourth husband when she was not."

23. On August 7, 2008, the Virginia Employment Commission denied Respondent's appeal and upheld the award of unemployment benefits, and a copy of the Commissioner's decision was admitted as VSB Exhibit 12 over Respondent's objection.

24. Respondent received a copy of the Appeals Examiner's written decision on August 8, 2008.

25. On August 8, 2008, Respondent sent Ms. Walsh another email advising that she had disclosed the status of her marriage to Paul Walsh to a United States Attorney. In that email, Respondent asserted that the report to the United States Attorney had nothing to do with her complaints, but would have a bearing on her ability to tell the truth, which email was admitted as VSB Exhibit 18, without objection.

26. Respondent appealed the Appeals Examiner's decision on September 8, 2008.

27. On December 16, 2008, the Virginia Employment Commission issued its written decision denying Respondent's appeal, which decision was admitted as VSB Exhibit 16, over Respondent's objection.

II. FINDINGS OF MISCONDUCT

Such conduct by Renay Melitta Fariss constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.6 Confidentiality Of Information

- (a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

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RULE 3.4 Fairness To Opposing Party and Counsel

A lawyer shall not:

- (i) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.
- (j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

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RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

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III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the Third District Section I Committee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded. In making its findings of fact and conclusions of law, the committee finds that it is not necessary to find that an attorney client relationship existed between Respondent and Ms. Walsh in order to trigger Respondent's obligations to Ms. Walsh under Rule 1.6. See LEOs 629 and 1794. The committee further found by clear and convincing evidence that Respondent filed her husband's affidavit not as an affirmative defense to the Virginia Employment Commission claim, but for improper purposes not related to her defenses.

Pursuant to Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

By Joseph P. Rapisarda, Jr.
Joseph P. Rapisarda, Jr.
Chair

CERTIFICATE OF SERVICE

I certify that on this 10th day of June, 2009, I caused to be mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Reprimand Without Terms) to Renay Melitta Fariss, Respondent, at Suite 102, 10107 Krause Road, P.O. Box 2079, Chesterfield, VA 23832, Respondent's last address of record with the Virginia State Bar, and to R. Paul Childress, Jr., Respondent's counsel at 11 South Twelfth Street, P. O. Box 1463, Richmond, Virginia 23218.



Paulo E. Franco, Jr.
Assistant Bar Counsel