

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KRISTINA MARIE K. FITZGERALD

VSB Docket No. 06-032-3112

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On October 17, 2008, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Coral C. Gills, Lay Member; Martin D. Wegbreit, Esq.; and Cliona M. Robb, Esq., Secretary and Acting Chair.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Kristina Marie K. Fitzgerald ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about September 16, 2004, Complainant Richard Rossen [Rossen] signed a fee agreement for legal services in domestic relations matters, to be provided by Fitzgerald.
3. Rossen paid Fitzgerald a check, #1278, dated September 16, 2004, in the amount of \$1,000.00, for legal services pertaining to the domestic relations matter.
4. During the course of Fitzgerald's representation in the domestic relations matter, Sandra C. Rosson v. Richard N. Rosson, Case No. CH 03-1037-02, in the Circuit Court of Chesterfield County, Virginia, [case], the following, *inter alia*, occurred:
 - a. A settlement conference was held on July 7, 2005, which Fitzgerald failed to attend;
 - b. A hearing occurred on December 16, 2005, on the issues of spousal support, child support, equitable distribution and attorney's fees. Neither Fitzgerald nor Rosson appeared at the hearing; the judge refused to bifurcate the case and since no

separation agreement was in place, he indicated he would hear evidence regarding distribution of the marital assets at the January 11, 2006, hearing;

- c. A hearing occurred on January 11, 2006, on the issue of equitable distribution. Neither Fitzgerald nor Rosson appeared at the hearing. The court took evidence, ruled on marital assets and granted divorce;
- d. Fitzgerald filed a motion to rehear on or about January 25, 2006, in which she made the following statements, *inter alia*, at Paragraphs 3 and 4:

Paragraph 3: "It was the understanding of both Defendant and Counsel that all property matters were resolved and that the parties had entered into an agreement in which Defendant would purchase wife's interest in the marital property for and [sic] agreed sum."

Paragraph 4: "Defendant was under the understanding that the parties [sic] agreement was final."

At the time of the filing, no separation agreement had been executed although opposing counsel had unsuccessfully attempted to get an agreement signed months earlier.

- e. Fitzgerald filed a motion to rehear on or about January 25, 2006, in which she made the following statement, *inter alia*, at Paragraph 5 (first):

At Paragraph 5 (first). "Defendant's counsel received a telephone call instructing her that an agreement had been reached and her services were no longer necessary."

At the time of the filing, not only had no separation agreement been executed, but the telephone call to which Paragraph 5 refers was a call from Rosson's mother who had no authority to terminate Fitzgerald's services.

- f. Fitzgerald filed a motion to rehear on or about January 25, 2006, in which she made the following statement, *inter alia*, at Paragraph 8 (first):

At Paragraph 8 (first). "Due to Defendant's counsel [sic] belief that this matter had been resolved in a manner satisfactory to Defendant, Counsel did not appear before this honorable Court."

On January 11, 2006, at 12:28 p.m., Fitzgerald had sent opposing counsel an e-mail in which she stated that Rosson's mother had called saying Rosson had retained another attorney, "...so I dropped the ball on this one. I spoke with Mr. Rosson today and discovered that I was not fired. I've reviewed the sep agree [sic] and advised Mr. Rosson to sign it. he and I will endorse the final decree [sic]. sorry for the confusion [sic]."

5. In the motion to rehear filed by Fitzgerald on or about January 25, 2006, she also made the following statement, *inter alia*, in Paragraph 7 (first):

"Once Defendant was advised by Plaintiff of the results of the January 11, 2006 he contacted counsel and questioned why he was not advised of the hearing."[sic].

6. The hearings at which Fitzgerald failed to appear resulted in rulings by the Circuit Court on issues in the case.

7. In addition to failing to appear at the proceedings noted above, Fitzgerald failed to file a motion to withdraw from the case.

8. Opposing counsel filed a response to Fitzgerald's motion to rehear. However, before doing so, he sent Fitzgerald an e-mail dated January 31, 2006, in which he pointed out the inaccuracies in the motion, the instances in which Fitzgerald had previously failed to appear and indicated that he was going to wait a few days before filing his response. In the last sentence of his e-mail, opposing counsel said, "If you decide to withdraw your motion, let me know."

II. NATURE OF MISCONDUCT

Such conduct by Kristina Marie K. Fitzgerald constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.

RULE 1.16 Declining Or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

RULE 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal;

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 lawyers fitness to practice law;

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions, compliance with which is a predicate for the disposition, shall be met by November 17, 2008.

The terms with which the Respondent must comply are as follows:

Term One: Respondent shall:

(a) attend and complete the Virginia Continuing Legal Education program entitled, “27th Family Law Seminar: Family Practitioner’s Guide to Trial Advocacy” [6.0 hours];

(b) complete the Virginia Continuing Legal Education online seminar entitled, “Victory or Virtue: What Makes an Ethical Lawyer” [2.0 hours];

(c) complete the Virginia Continuing Legal Education online seminar entitled, “What Every Virginia Lawyer Needs to Know About Family Law” [3.0 hours]; and

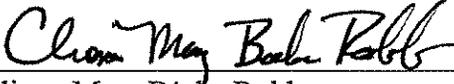
(d) not apply any of the completed hours required herein toward Respondent’s Mandatory Continuing Legal Education requirement in Virginia or any other jurisdiction(s) in which she may be licensed to practice law.

Term Two: Respondent shall certify under oath her compliance with the terms set forth herein by submitting her written certification to the Office of Bar Counsel of the Virginia State Bar.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by November 17, 2008, the District Committee shall impose a Certification for Sanction Determination pursuant to Part Six, Section IV, Paragraph 13.G.5.b. of the Rules of Court.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of Court, the Clerk of the Disciplinary System shall assess an administrative fee.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
Cliona Mary Burke Robb
Secretary and Acting Chair

CERTIFICATE OF SERVICE

I certify that on October 24, 2008, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Kristina Marie K. Fitzgerald, Esquire, Respondent, at The Law Office of Kristina M. K. Fitzgerald, PO Box 1177, King George, VA 22485, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to John E. McIntosh, Jr., Esq., Respondent's Counsel, at 4118 Leonard Drive, Fairfax, VA 22030.

