

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
DONALD JEROME GEE

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VSB DOCKET NOS.: 11-032-085015
11-032-085775

MEMORANDUM ORDER

THIS MATTER came on to be heard on June 22, 2012 before a panel of the Virginia State Bar Disciplinary Board consisting of Pleasant S. Brodnax, III, First Vice Chair, presiding, Nancy Dickenson, J. Casey Forrester, Michael S. Mulkey, and Jody D. Katz, lay member. The Virginia State Bar was represented by Renu Mago Brennan, Assistant Bar Counsel. The Respondent, Donald Jerome Gee, appeared in person and was represented by counsel, Michael L. Rigsby. The Chair polled the members of the Board as to whether any of them had any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, and each member responded that there were no such conflicts. The court reporter for the proceeding, Angela N. Sidener of Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, telephone: (804) 730-1222, after duly being sworn, reported the hearing and transcribed the proceedings.

A. VSB Docket No. 11-032-085775: This matter came before the Board on the Subcommittee Determination for Certification by a Subcommittee of the Third District, Section II, of the Virginia State Bar.

I. FINDINGS OF FACT

The exhibits of the Virginia State Bar were admitted without objection. The parties entered into stipulations of fact which were admitted as Bar Exhibit 2. Based on the stipulations, the Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times referenced herein, the respondent, Donald Jerome Gee, (Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent represented Client in a personal injury case for injuries Client sustained in an automobile accident which occurred on June 8, 2009.

3. From June 10, 2009 to August 18, 2009, Client sought and received treatment for his injuries from Complainant David deBarros, DC and the deBarros Chiropractic Clinic (deBarros). Client did not have any health insurance coverage.

4. Among other documents, on June 10, 2009, Client executed a document entitled, "Assignment of Cause of Action, Assignment of Proceeds, Contractual Lien and Treatment Agreement" (Assignment Agreement) in which, *inter alia*, Client directed any attorney hired to collect proceeds on his behalf to promptly pay deBarros in full out of such proceeds.

5. Client was released from deBarros's care on August 18, 2009.

6. By letter dated August 20, 2009, Respondent's office requested Client's medical records from deBarros.

7. In September 2009, deBarros provided the medical records to Respondent.

8. In November 2009, deBarros notified Respondent of his lien in the amount of \$5,250.00, by certified mail.

9. In February 2010, Respondent advised deBarros that he had submitted deBarros's bill of \$5,250.00 for settlement purposes; however, the matter did not settle and would be tried. Respondent enclosed an affidavit for deBarros's signature. The affidavit provided that Client sought treatment from deBarros from June 10, 2009 to August 18, 2009, and that deBarros's bill for such services was \$5,250.00.

10. Respondent acknowledges that he received deBarros's notification of his lien.

11. In March 2010, deBarros again sent Respondent his lien.

12. By Order to Withhold - Insurance Assets from the Commonwealth of Virginia, Department of Social Services, Division of Child Support Enforcement, dated May 6, 2010, Respondent was notified that Client owed child support in the amount of \$27,078.66, and Respondent was directed to withhold from access by the debtor any property, assets, or money to Client, up to the value of the amount of the debt of \$27,078.66. The Order dated May 6, 2010, requested Respondent grant the Order priority over all other debts with the exception of certain debts, including health care providers who treated the injured person.

13. By Order to Deliver dated July 27, 2010, from the Commonwealth of Virginia, Department of Social Services, Division of Child Support Enforcement, Respondent was directed to deliver to the Treasurer of Virginia all property, assets, or money being withheld pursuant to Order to Withhold - Insurance Assets dated May 6, 2010.

14. On September 24, 2010, Client's personal injury case was tried in Richmond General District Court, and Client received a judgment of \$12,000.00.

15. Client requested that Respondent apply as much of the judgment as possible to the delinquent child support.

16. The Judgment Statement prepared by Respondent, revised October 6, 2010, and signed by Client October 21, 2010, reflects that Respondent's firm either received or was to receive its fee of \$4,800.00 (40% of the \$12,000 judgment), leaving \$7,200.00. \$3,980.95 of the remaining \$7,200.00 was to be disbursed to a legal finance provider and to medical providers, including deBarros, who was only to receive \$750.00 of his \$5,250.00 lien. \$241.62 was to be paid as reimbursement to Respondent's firm for expenses, and \$2,977.43 was to be paid towards Client's child support lien.

17. By check dated October 21, 2010 drawn on Respondent's escrow account, Respondent disbursed \$750.00 to deBarros.

18. By phone conversation and by letter dated October 26, 2010, with attached documentation in support, deBarros advised Respondent that he was entitled to \$5,250.00, and he disputed Respondent's interpretation of Virginia law. Respondent asserted that deBarros was only entitled to \$750.00 pursuant to Va. Code Sections 8.01-66.2 and 8.01-66.9.

19. Respondent did not preserve \$5,250.00, the amount of the medical lien, in escrow, nor did he interplead the funds in court. Instead, he disbursed the funds as reflected in the Judgment Statement, as set forth above.

II. NATURE OF MISCONDUCT

The certification charged a violation of the following provision of the Virginia Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities or other properties in the possession of the lawyer which such person is entitled to receive.

B. VSB Docket No. 11-032-085015: This matter came before the Board on the Subcommittee Determination for Certification by a Subcommittee of the Third District, Section II, of the Virginia State Bar.

I. FINDINGS OF FACT

The exhibits of the Virginia State Bar were admitted without objection. The parties entered into stipulations of facts which were admitted as Bar Exhibit 2. Based on the stipulations, the Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times referenced herein, the respondent, Donald Jerome Gee, (Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Complainant Linda M. Monroe-Lewis retained Respondent and his firm to represent her in a personal injury case.
3. Other than the initial meeting with Ms. Monroe-Lewis, which Respondent handled, Respondent's law partner represented Ms. Monroe-Lewis in her personal

injury case. The case was tried in the Richmond General District Court and was resolved to Ms. Monroe-Lewis's satisfaction in September 2008.

4. Respondent engaged in sexual relations with Ms. Monroe-Lewis during and after the representation.

5. In 2010, over one year of after the representation terminated, Ms. Monroe-Lewis began calling Respondent's law partner. She advised Respondent's law partner that she and Respondent had engaged in sexual relations.

6. Respondent's law partner questioned Respondent about Ms. Monroe-Lewis's allegations. Respondent denied the relationship.

7. In August 2010, because of continued calls from Ms. Monroe-Lewis to the firm, Respondent's law partner prepared two statements. One statement was submitted to Ms. Monroe-Lewis for her signature and Respondent was to sign the other statement. The writing submitted to Ms. Monroe-Lewis contained a false statement in that she claimed in the writing that she "never had any form of sex with Donald J. Gee, Esquire".

II. NATURE OF MISCONDUCT

The certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

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;

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. DISPOSITION

After review of the foregoing findings of fact, the exhibits presented by Bar Counsel on behalf of the Virginia State Bar, and the exhibits presented by the Respondent, and the evidence from witnesses presented on behalf of the Bar and from the Respondent, the Board recessed to deliberate. In particular, the Board considered Virginia Legal Ethics Opinion 1747 (Attorney Breaching Contract to Pay Medical Bills Out of Settlement Proceeds) (Bar Exhibit 4) and the case of VSB v. Timothy Johnson, CL09-2034-4, (Bar Exhibit 3). After due deliberation, the Board reconvened and stated its findings as follows:

1. The Board determined that, in VSB Docket No. 11-032-085775, the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.15(c)(4).

2. The Board determined that, in VSB Docket No. 11-032-085015, the Bar did not prove by clear and convincing evidence that the Respondent was in violation of Rules 8.4(a)(b) or (c). Therefore, this case is dismissed.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and the Respondent, including Respondent's prior disciplinary record which included a prior public reprimand in 2009 for violation of Rule 1:15(c)(4). The Board recessed to determine what sanction to impose upon its finding of misconduct by

Respondent. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction as a PUBLIC REPRIMAND without terms, effective June 22, 2012.

It is further ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by certified mail to Donald Jerome Gee at his last address of record with the Virginia State Bar at McEachin & Gee, P.C., 4719 Nine Mile Road, Richmond, Virginia 23223; and by first-class mail to his counsel, Michael L. Rigsby, Esquire, P.O. Box 29328, Henrico, Virginia 23242; and shall hand-deliver a copy to Renu Mago Brennan, Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 2nd day of AUGUST, 2012.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Pleasant S. Brodnax, III, First Vice Chair