

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
SARA DAVIS HARMAN

VSJ Docket No. 10-032-080215

MEMORANDUM ORDER

This matter came on to be heard on December 3, 2010 by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Paul M. Black, Thaddeus Crump, Lay Member, Peter A. Dingman, Tyler E. Williams, III, and Pleasant S. Brodnax, III, (Chair), presiding (the Panel).

Kathryn R. Montgomery, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent appeared in person *pro se*.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having

considered all the evidence before it, the Panel unanimously accepted the Agreed Disposition.

## I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. At all times relevant to this matter, the respondent, Sara Davis Harman (“Respondent”) was licensed to practice law in the Commonwealth of Virginia.
2. On or about December 8, 2003, the complainant, Sheila Hughes, (“Complainant”) was involved in an automobile accident in Henrico County, Virginia. According to Complainant, she suffered property damage and bodily injury arising out of the accident. The other car involved was driven by Shannon Fisher.
3. Complainant retained Respondent to represent her in a lawsuit against Ms. Fisher arising from the accident. At the time, Respondent practiced with the law firm of David P. Baugh, P.C. Respondent agreed to waive her normal contingency fee and charge Complainant only for costs associated with the lawsuit.
4. On or about February 9, 2004, Respondent received a check from State Farm Insurance Companies, Shannon Fisher’s insurer, in the amount of \$8458.00 in settlement of Complainant’s claim for property damage.
5. On or about June 11, 2004, Respondent sent State Farm Insurance Companies a letter demanding \$50,000 to settle Complainant’s personal injury claim.
6. On or about October 11, 2004, Respondent filed a personal injury suit on Complainant’s behalf against Shannon Fisher in Henrico County Circuit Court.
7. Attorney Janet Palmer represented Ms. Fisher. Ms. Palmer practiced with the law firm of Harrell & Chambliss. At some point prior to April 2008, Ms. Palmer left the firm and attorney Rondelle D. Herman of Harrell & Chambliss took over the representation of Shannon Fisher.
8. Depositions were taken in or about December 2005 and trial was set for April 18, 2006.
9. On or about April 4, 2006, Respondent filed a Motion for Nonsuit of Complainant’s case, and on or about May 11, 2006, the Court granted the motion and dismissed Complainant’s case without prejudice.
10. According to Complainant, Respondent did not inform Complainant that she had filed the Motion for Nonsuit or that it had been granted. Complainant did not learn of the nonsuit until 2009 when she retained attorney Rick A. Friedman, II to represent her interests.

11. By letter dated May 16, 2006, Respondent advised Complainant that her case would be set for trial at the June docket call. As of May 16, 2006, however, Respondent had not refiled Complainant's case.
12. By letter dated July 11, 2006, Respondent advised Complainant that her case had been set for a jury trial on November 16, 2006 at 10:00 AM. As of July 11, 2006, however, Respondent had not refiled Complainant's case.
13. On or about October 6, 2006, Respondent refiled Complainant's suit against Shannon Fisher in the Circuit Court for Henrico County.
14. According to Complainant, throughout 2006 and 2007, she repeatedly told Respondent that she wanted the case over with because it was very stressful to her. On several occasions, Respondent told Complainant that the case was set for trial, but as the date approached, Respondent would have an excuse for why the trial had to be continued.
15. Respondent failed to serve Shannon Fisher with Complainant's lawsuit within 12 months of filing.
16. Respondent did not inform Complainant that she had failed to serve Shannon Fisher with Complainant's lawsuit within 12 months of filing. Complainant did not learn this until 2009 when she retained attorney Rick A. Friedman, II to represent her interests.
17. On or about April 21, 2008, on behalf of Shannon Fisher, attorney Rondelle D. Herman filed a Motion to Dismiss Complainant's lawsuit on the basis that it had not been served within twelve months of filing.
18. According to Respondent, before Ms. Herman filed the Motion to Dismiss, Respondent and Ms. Herman discussed settlement of Complainant's case against Shannon Fisher.
19. On or about April 23, 2008, Ms. Herman filed a Notice of Hearing on the Motion to Dismiss for June 6, 2008.
20. On or about June 6, 2008, Ms. Herman filed an Amended Notice of Hearing on the Motion to Dismiss for August 8, 2008. Upon information and belief, this hearing was not held.
21. In or about the spring or summer of 2008, Respondent left the employ of David P. Baugh and started her own firm, Sara Davis Harman & Associates, P.C. Soon thereafter, Rondelle D. Herman left Harrell & Chambliss and joined Respondent's firm. At that point, attorney Godfrey T. Pinn, Jr. of Harrell & Chambliss took over the representation of Shannon Fisher.

22. Respondent did not obtain Complainant's consent to continue the representation after Ms. Herman joined Respondent's practice.
23. Complainant expressed concern to Respondent regarding Ms. Herman joining Respondent's practice. Complainant told Respondent that she did not want Ms. Herman working on her case. Respondent advised Complainant that there was no conflict of interest.
24. According to attorney Godfrey Pinn, Respondent agreed to endorse an order dismissing Complainant's case with prejudice because it had not been served within a year of refiling. Mr. Pinn did not engage in settlement negotiations with Respondent regarding Complainant's lawsuit.
25. In June 2008, Respondent told Complainant that she was discussing settlement of Complainant's case with opposing counsel. On or about June 12, 2008, Respondent and Complainant had an email exchange about settlement of Complainant's case.
26. According to Complainant, in July 2008, Respondent called her and said that she had a \$7,000 offer to settle Complainant's case. Complainant rejected the offer. Later that morning, Respondent called back and said she now had a \$20,000 offer to settle the case. Complainant rejected the offer. Respondent called twice more that same morning to report offers of \$40,000 and \$60,000, which Complainant rejected. Finally, Respondent told Complainant she would get back to her about settlement.
27. On or about August 7 and 8, 2008, Respondent and Complainant engaged in an email exchange about settlement of Complainant's case.
28. On or about August 15, 2008, Respondent sent Complainant an email about settlement of Complainant's case.
29. According to Complainant, following this email Respondent visited Complainant at her home and said the defendant had offered a \$96,000 settlement, but that the settlement would have to be made in structured payments. Complainant rejected the offer. Complainant then told Respondent she would accept a lump sum settlement of \$120,000.
30. On or about September 8, 2008, Respondent sent Complainant an email about settlement of Complainant's case.
31. On or about September 19, 2008, Respondent sent Complainant an email about settlement of Complainant's case.

32. On or about October 12, 2008, Complainant sent Respondent an email asking about the "paperwork to be signed and the settlement check to be released." On or about October 13, 2008, Respondent answered the email and said that she expected the paperwork to be hand delivered that week.
33. According to Complainant, on or about October 24, 2008, Respondent visited Complainant at her home and presented a document entitled "Settlement Agreement and General Release" ("settlement agreement"). Respondent told Complainant that her case had been settled for \$120,000. Complainant signed the document. Respondent told Complainant that she would deliver the settlement agreement to the Court for approval, and that a settlement check would be issued after the judge approved the settlement.
34. According to Complainant, she later went to Respondent's office to obtain a copy of the settlement agreement. The copy provided to her was missing several paragraphs and did not contain a notary seal. Respondent's secretary told Complainant she would send her another copy of the settlement agreement, but Complainant never received it.
35. On or about December 1, 2008, Respondent sent Complainant an email about settlement of Complainant's case.
36. According to Complainant, following this email she talked with Respondent about the delay in getting the settlement check. Respondent told Complainant that the defendant's attorney was delaying the settlement.
37. On or about December 16, 2008, Respondent sent Complainant an email about settlement of Complainant's case.
38. According to Complainant, in January 2009, Complainant was hospitalized and called Respondent and said that she "wanted this over with." Respondent said she expected a check soon.
39. On or about January 9 and 10, 2009, Complainant and Respondent engaged in an email exchange about settlement. Complainant expressed frustration about the settlement funds not being disbursed.
40. Complainant then left Respondent several voicemails seeking information about when the settlement funds would be disbursed.
41. On or about January 13, 2009, Respondent sent Complainant an email that said she would talk to her soon about the status of the settlement.
42. Following receipt of this email, Complainant hired attorney Rick A. Friedman, II to determine the status of her case and the settlement.

43. On January 21, 2009, defendant's counsel sent Respondent a letter enclosing an order dismissing the case with prejudice and requesting that Respondent sign and forward it to the Court for entry.
44. Around this time, Mr. Friedman left Respondent a message inquiring about the status of the case. Respondent did not return the call. On or about February 4, 2009, Mr. Friedman sent Respondent a letter asking that she contact him about the status of Complainant's case.
45. Respondent then called Mr. Friedman twice, once before and once after his office hours. On or about February 13, 2009, Mr. Friedman again wrote Respondent inquiring about the status of the case and asking for the client file by February 20, 2009.
46. Respondent responded to Mr. Friedman by letter dated February 16, 2009 and requested that he provide her with a release signed by Complainant for the client file.
47. On or about February 20, 2009, Mr. Friedman provided Respondent with a release for the client file and asked that the file be ready by February 23, 2009.
48. On or about February 23, 2009, Respondent emailed Mr. Friedman and said that she would courier the file to his office on February 25, 2009. Respondent did not provide the file.
49. On or about March 3, 2009, Mr. Friedman sent Respondent a letter demanding a copy of Complainant's file by March 6, 2009. Mr. Friedman stated that Complainant had authorized him to file a bar complaint if Respondent did not provide the file by the date specified.
50. On or about Wednesday March 4, 2009, Respondent emailed Mr. Friedman and said he could pick up the file at her office on Friday March 6, 2009. Mr. Friedman attempted to pick up the file on Friday, March 6, 2009, but Respondent's office was closed.
51. Sometime thereafter but before July 2009, Respondent produced portions of the client file to Mr. Friedman.
52. Respondent admitted in her response to the bar complaint that portions of Complainant's client file were lost when she moved from David Baugh's office to her own office.
53. Mr. Friedman did not know that Respondent had failed to send him Complainant's entire file or that portions of the client file had been lost until he read it in Respondent's answer to the bar complaint, which was submitted by Respondent on or about September 30, 2009.

54. On or about April 17, 2009, a hearing was held in Complainant's case in the Circuit Court of Henrico County. Mr. Friedman appeared and represented Complainant. The Court dismissed Complainant's lawsuit with prejudice for failure to effectuate service of process within twelve months of refiling the suit.
55. On or about April 29, 2009, Mr. Friedman advised Respondent by letter that he represented Complainant in a claim against Respondent for legal malpractice.
56. On or about July 2, 2009, Mr. Friedman forwarded to the Virginia State Bar Complainant's bar complaint against Respondent.

## II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Sara Davis Harman constitutes misconduct in violation of the following Rules of Professional Conduct:

### RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### RULE 1.3 Diligence

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

### 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 1.4 Communication

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### RULE 1.9 Conflict of Interest: Former Client

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter

represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

RULE 1.10 Imputed Disqualification: General Rule

- (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.6, 1.7, 1.9 or 2.10(e).

RULE 1.16 Declining Or Terminating Representation

- (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 1.16 Declining Or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by

furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

#### 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

### III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** a three year suspension as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. The suspension shall become effective as of the date of the scheduled hearing, December 10, 2010.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, 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. Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her client. 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. 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 Respondent is not handling any client matters on the effective date of the suspension, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. 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 Respondent makes a timely request for hearing before a three-judge court.

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 to Respondent Sara Davis Harman at her last address of record with the Virginia State Bar, Suite D, 4100 East Parham Road, Henrico, VA 23228, and by hand delivery to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Jennifer L. Hairfield with Chandler & Halasz, P.O. Box 9349, Richmond, Va 23227

(804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: December 6, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Pleasant S. Brodnax III

Pleasant S. Brodnax, III  
Presiding Chair