

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF CLIFTON CARLYLE HICKS
VSB DOCKET NO. 15-021-101486

OPINION AND ORDER

This matter came to be heard on April 22, 2016 before a duly-convened panel of the Virginia State Bar Disciplinary Board. The panel consisted of Whitney G. Saunders, Chair; R. Lucas Hobbs; James Banks; Richard J. Colten; and Andy Douthat, lay member.

The Virginia State Bar was represented by M. Brent Saunders, Assistant Bar Counsel. Respondent Clifton Carlyle Hicks was present, and proceeded *pro se*. Angela Sidener, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding.

The Chair polled members of the Panel regarding any personal or financial interest or conflict they might have which would preclude them from fairly hearing the matter before them. Each member, including the Chair, responded in the negative.

FINDINGS OF FACT

Shortly before the commencement of the hearing, the parties reached a written stipulation of facts and of Rule violations, together with a recommended disposition. The stipulation was presented to, and approved by, the Board, and contains the factual findings of the Board, to-wit:

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.
2. On October 27, 2014, Douglas K. Davis (“Mr. Davis”) and his son (the “Son”) (collectively “the Davises”) met with attorney Duncan R. St. Clair, III (“Mr. St. Clair”) for the purpose of retaining him to represent the Son on a criminal charge pending in the Norfolk General District Court. Unbeknownst to the Davises, at the time of the meeting, Mr. St. Clair’s license to practice law in the Commonwealth of Virginia was suspended on the basis of both impairment and ethical misconduct. Mr. St. Clair did not advise the Davises of his license suspensions, and in fact agreed to represent the Son for a fixed fee of \$750.00. The Davises hired Mr. St. Clair and paid him the \$750.00 fee in cash on October 27, 2014.
3. At that time, Respondent shared office space with and received client referrals from Mr. St. Clair whose law license Respondent knew was suspended.
4. Immediately following the October 27, 2014 meeting with the Davises, and without the authorization or knowledge of the Davises:
 - A. Mr. St. Clair delivered the \$750.00 advance fee monies and his notes from the meeting to Respondent; and
 - B. Respondent purported to undertake representation of the Son.
5. A hearing was scheduled in the criminal case in the Norfolk General District Court on November 18, 2014. Prior to that date, Respondent did not: i) confirm his representation with the Davises or communicate with them at all; or ii) notify the Norfolk General District Court of his purported representation of the Son. Respondent also did not appear in court on November 18, 2014. The Son did appear, and, without

the benefit of counsel, testified regarding the events underlying his criminal charge in a related criminal case brought against a co-defendant.

6. After the conclusion of the November 18, 2014 hearing, the Davises conducted an internet search and learned Mr. St. Clair's law license was suspended. They called Mr. St. Clair, who informed them for the first time that he had arranged for the Son's case to be handled by Respondent.

7. Based on Mr. St. Clair's referral of the son's case to Respondent without their consent or knowledge, and the fact that Respondent had not contacted them and did not appear in court on November 18, 2014, the Davises declined representation by Respondent and demanded a full refund. Approximately one month later, they received a \$750.00 check from Respondent dated December 17, 2014, drawn from Respondent's personal account at Suntrust.

8. At no time after receiving the \$750.00 advance fee monies belonging to the Davises on or about October 27, 2014, did Respondent deposit those monies into a trust account. In fact, Respondent did not have a trust account into which those monies could have been deposited until he opened one in January 2015.

9. In his answer to this complaint dated January 20, 2015, Respondent stated that he was unable to deposit the \$750.00 in trust because he was ill and that he issued the refund by personal check because "the cash he had paid me was not yet in my trust account [and] it would have been improper to use the funds of other clients to reimburse him."

Respondent made those statements without disclosing that he did not have a trust account into which he could have deposited the monies until after he issued the

refund, thereby falsely representing that he had a trust account during the almost two-month period between October 27, 2014 and December 17, 2014 and at the time he issued the refund, and that it contained funds belonging to other clients.

DISPOSITION

Upon consideration of the stipulations, the Board found 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.

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 1.15 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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

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 accepted the recommended disposition contained in the parties' stipulations, and hereby **ORDERS** and imposes a PUBLIC REPRIMAND WITH TERMS.

Specifically, the Board **ORDERS** that:

1. Respondent shall successfully complete and fully comply with all terms and conditions of his Rehabilitation/Monitoring Agreement with Lawyers Helping Lawyers;
2. Respondent shall fully review the Virginia State Bar publication Lawyers and Other People's Money, 5th Edition, available on the Virginia State Bar's website at www.vsb.org, and shall certify he has done so in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, no later than **June 1, 2016**.

3. Respondent shall fully review the Virginia CLE online seminar *Hanging a Shingle: How to Start a Successful Law Practice*, and shall provide written proof he has done so to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, no later than **June 1, 2016**; and
4. Respondent is placed on probation for a period of two (2) years commencing on **April 22, 2016**. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.

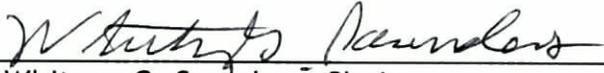
Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the dates specified, Respondent agrees that the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of two (2) years, pursuant to the Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

It is **ORDERED** that the Clerk impose costs in accordance with the Rules of Court, Part Six, Section IV, Paragraph 13-9.E and comply with the Public Notice requirements of the Rules of Court, Part Six, Section IV, Paragraph 13-9.G; and

ORDERED that an attested copy of this Order be mailed by certified mail, return receipt requested, to Respondent, Clifton Carlyle Hicks, at his Virginia State Bar address of record, 8040 Jerrylee Drive, Norfolk, Virginia 23518; and hand-delivered to M. Brent Saunders, Senior Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 15th DAY OF JUNE, 2016

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Whitney G. Saunders, Chair