

VIRGINIA

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF HEAJIN JUNG

VSB Docket Number: 11-051-085929

MEMORANDUM ORDER OF SUSPENSION WITH TERMS

This matter came to be heard on July 17, 2012 by a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Robert W. Carter (lay member), John Casey Forrester, Melissa W. Robinson, Samuel R. Walker and Martha JP McQuade, Chair, presiding, by teleconference.

The Bar was represented in this matter by Assistant Bar Counsel Kathleen Maureen Uston. Respondent, Heajin Jung was represented by Counsel Jerome Aquino, and also participated in the call herself. Terry S. Griffith, Certified Court Reporter, Chandler & Halasz, P.O. Box 939, Richmond, VA 23227, telephone no. (804) 730-1222, transcribed the proceedings.

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

The Chair polled the members of the Panel to determine whether any member had a personal or financial interest that might affect, or could reasonably be perceived to affect, his or her ability to be impartial in this matter. Each member, including the Chair, verified that they had no such interest or conflict.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record and thereafter retired to deliberate. After due deliberation, the Agreed Disposition was accepted as follows:

I. FINDINGS OF FACT

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

1. At all times relevant hereto, Heajin Jung, (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia. The Respondent was born and raised in South Korea. The Respondent graduated in 2001 from the John Marshall School of Law in Chicago, Illinois. Subsequent to graduation, she passed the Virginia Bar exam in 2002 and was then licensed to practice law in the Commonwealth. Immediately thereafter the Respondent returned to her native South Korea. She was then employed in South Korea between 2002 and 2007. In 2009 she returned to the United States and opened a law practice in Fairfax County as a solo practitioner. She practiced law without the assistance or guidance of experienced counsel.

The Lease Termination Matter:

2. On or around July 29, 2009, the Complainant herein, JumLae Yoon (hereinafter "Ms. Yoon"), executed a "Retaining Agreement" with the Respondent wherein Respondent agreed to represent Ms. Yoon, "regarding the termination of the lease at Korean Video & Gift Shop . . ." Ms. Yoon's place of business. The Agreement specifically articulated that Respondent would, "work on the negotiation with the landlord for termination of the lease before actual litigation". Respondent's agreement called for the payment of \$1,000.00, which was

deemed in the agreement to be "non-refundable." Ms. Yoon paid Respondent \$1,000.00 by check dated July 29, 2009.

3. Respondent did not deposit these funds into an approved IOLTA attorney trust account because at no time relevant hereto did Respondent maintain such an account. Instead, Respondent deposited these funds directly into her business operating account before she had earned the funds.

4. Ms. Yoon was referred to Respondent by Respondent's office manager, David Park, who is not an attorney. Mr. Park was also assisting Ms. Yoon with an unrelated loan modification matter.

5. On August 5, 2009, Ms. Yoon was contacted directly by her landlord's attorney who notified her that her failure to cure her default, within three (3) days of the letter, of the monthly rent due under her commercial lease for the premises occupied by the Korean Video & Gift Shop would result in legal action. Ms. Yoon gave this document to Respondent's Office Manager, David Park, who was her principal point of contact with Respondent's firm.

6. Subsequently, on September 10, 2009, suit was filed against Ms. Yoon, t/a Korean Video & Gift Shop, by her landlord seeking to recover rent due for June through September, 2009, as well as other charges and fees. The return date was set for October 2, 2009. Ms. Yoon gave this document to Respondent's Office Manager, David Park, who was her principal point of contact with Respondent's firm.

7. On December 16, 2009, Ms. Yoon's landlord wrote directly to her to make final demand for payment of the rent due, which now included rent due through December, 2009.

This letter was copied to the landlord's attorney. Handwritten notes were made on the face of this letter noting the landlord's attorney's name, telephone and facsimile numbers.

8. An Eviction Notice was subsequently served upon Ms. Yoon demanding that she vacate the premises on or before 12:30 p.m. on January 29, 2010.

9. On January 28, 2010, Respondent wrote directly to Ms. Yoon's landlord, who she knew or should have known to be represented by counsel, apparently confirming a payment agreement reached between the parties. According to Respondent's billing records, the Respondent took action to examine the case, consult Ms. Yoon and then reached an agreement to resolve the eviction. Moreover, the Respondent would testify that she did work not reflected in the billing records. Unfortunately, Ms. Yoon later failed to perform the settlement agreement and the eviction proceeded. In sum, Respondent failed to timely and adequately communicate with Ms. Yoon about the action Respondent had taken on her behalf.

The Immigration Matter:

10. On or around October 2, 2009, Ms. Yoon signed a second "Retaining Agreement" with Respondent whereby she retained Respondent to represent her concerning an "immigration case for [Ms. Yoon's] husband to be and his daughter." Respondent's Agreement recited that the total charge for this representation would be \$4,000.00. By check dated October 2, 2009, Ms. Yoon paid Respondent \$3,000.00.

11. Ms. Yoon stated that Mr. Park, Respondent's aforementioned office manager, had recommended that Ms. Yoon hire Respondent to perform these legal services and that, in addition to the \$3,000.00 paid to Respondent by check, Ms. Yoon also paid Mr. Park \$1,000.00 in cash at his request. Ms. Yoon obtained these funds from a third party.

12. Respondent did not deposit the \$3,000.00 paid to her by Ms. Yoon into an approved IOLTA attorney trust account because at no time relevant hereto did Respondent maintain such an account. Instead, Respondent deposited the \$3,000.00 directly into her business operating account.

13. Shortly after entering into this second agreement with Respondent, in late October or early November, 2009, Ms. Yoon decided she no longer wished to pursue the case and she notified Mr. Park of this decision. Ms. Yoon asked that the funds paid to Respondent be refunded to the third party to whom they belonged.

14. Respondent admitted to Virginia State Bar Investigator Ronald H. McCall that she was advised that Ms. Yoon no longer wished to pursue the immigration petition, but stated that she learned of this through the third party who had paid her legal fees on Ms. Yoon's behalf. Respondent also admitted that Ms. Yoon contacted her about refunding the funds to the third party, but Respondent advised Investigator McCall that Ms. Yoon asked that the \$3,000.00 paid to Respondent be split between Ms. Yoon and the third party. Respondent represented to Investigator McCall that Ms. Yoon later asked that all \$3,000.00 be refunded to the third party, but she refused this request due to her concerns about a dispute over the funds. Respondent advised Investigator McCall that by check dated July 18, 2011, she ultimately did make a partial refund to the third party of \$2,300.00, after deducting \$700.00 for her time expended on the case. In sum, the Respondent failed to open and employ an approved IOLTA attorney trust account.

The Personal Injury Matter:

15. On or around December 3, 2009, Ms. Yoon signed a third "Retaining Agreement" with Respondent whereby she retained Respondent to represent her concerning a personal injury

claim that Ms. Yoon had asserted against a restaurant where she had fallen and sustained injuries in 2007. Respondent was successor counsel to Ms. Yoon's first attorney, Mr. Durkin. Ms. Yoon terminated Mr. Durkin's services due to a language and cultural barrier between them, and was otherwise unhappy with his services. This attorney asserted an attorneys' fee lien on the case after his termination.

16. By letter dated January 22, 2010, Respondent notified the restaurant's insurance company adjuster of her representation and provided additional medical records to him at that time. Thereafter, by letter dated May 13, 2010, Respondent terminated her representation of Ms. Yoon as to the personal injury matter and instructed her to come to her office to retrieve her file. Both parties agree that Ms. Yoon did retrieve her file, but they disagree as to why the representation was terminated.

17. Thereafter, on June 15, 2010, a newly assigned insurance company adjuster contacted Respondent by telephone to inquire about the status of Ms. Yoon's case. Respondent did not inform the adjuster that she was no longer Ms. Yoon's attorney. Instead, Respondent provided her with a status of the case and stated that she "was busy" and would contact the adjuster at a later time. Respondent then contacted Ms. Yoon and asked her to return the file and permit Respondent to resume the representation. The evidence would show that Mrs. Yoon agreed.

18. Respondent entered into settlement negotiations with the insurance company adjuster, making at least four (4) different settlement offers directly to the adjuster. The evidence would show that these settlement negotiations culminated in an insurance company offer of settlement being made on September 14, 2010, in the amount of \$33,250.00, which

Respondent accepted on Ms. Yoon's behalf. The Respondent would testify that she was authorized by Ms. Yoon to settle the claim. This amount was larger than that negotiated by Ms. Yoon's prior counsel, Mr. Durkin. Further, the evidence would show that Ms. Yoon's alleged damages were soft, uncertain and ill-suited for proof at trial, e.g., approximately ten thousand dollars (\$10,000) in acupuncture bills.

19. The evidence would show that on September 14, 2010, Respondent was advised by the adjuster that the settlement check would be issued that day.

20. Respondent subsequently received the settlement check. Respondent signed Ms. Yoon's endorsement to the back of the settlement check and deposited it into her trust account on or around September 20, 2010.¹ Respondent would testify that she believed she was acting within the scope of her authority in signing the check.

21. The Respondent and Ms. Yoon discussed the fact that the Respondent settled her personal injury case.

22. The evidence would show that similar to her relationship with her first attorney, Mr. Durkin, Ms. Yoon became dissatisfied with the representation provided by the Respondent. She then retained another attorney, Donald Park, to assist her. On October 5, 2010, Attorney Park notified the insurance company adjuster that Respondent had settled Ms. Yoon's claim without her authorization. Attorney Park also telephoned Respondent directly and put her on notice of his representation of Ms. Yoon and of Ms. Yoon's position that Respondent had no authority to either settle her case or endorse the settlement check on Ms. Yoon's behalf.

¹ By this time, Respondent had opened an IOLTA attorney trust account.

23. On October 14, 2010, in apparent response, Respondent wrote directly to Ms. Yoon, who she knew or should have known was represented by Attorney Park, enclosing with this letter a check in the amount of \$8,423.79, noting, "If you still insist on my termination of legal representation, I have to claim one-third of the total settlement amount [which would equal fees] of \$11,083.33." Ms. Yoon did not deposit or otherwise accept this check.

24. On June 23, 2011, Respondent again wrote directly to Ms. Yoon, who she knew or should have known was represented by Attorney Park, this time notifying Ms. Yoon that Respondent, "ha[d] a check in the amount of \$11,058.77 for you." This letter also advised Ms. Yoon that, "To insure proper and legal closure you will be required to sign an agreement with a witness present."

25. The "agreement" which Respondent sought to require Ms. Yoon to sign came in the form of four (4) separate documents. The first was titled, "Acknowledgement/Pledge" and required that Ms. Yoon, "[A]dmit that Heajin Jung duly represented me in the settlement matter with Travelers in 2010." This document further required that Ms. Yoon acknowledge that, "I paid \$3000 for the immigration law matter. The statement of payment of \$4000 is not true," and that, "I will not make any claim against Lawyer regarding her representation."

26. The second document that Respondent required Ms. Yoon to sign before disbursing her settlement proceeds to her was titled, "Settlement Agreement between Heajin Jung ('Lawyer') and JumLae Yoon ('Client')." This document required that Ms. Yoon, among other things, "drop all the complaints pending at the Virginia State Bar," "waiv[e] and relinqui[sh] any future claims against Lawyer related to her settlement with Travelers," and pay liquidated damages in the event of a breach of the agreement. This document also required that

Ms. Yoon's daughter guarantee her "compliance" with the Agreement, and also be responsible for the payment of liquidated damages in the event of a breach.

27. The third document Respondent prepared for Ms. Yoon's signature stated, "Please be advised that I withdraw all the complaints filed at the State bar (*sic*) on Nov. 15, 2010. (*sic*) I made against my lawyer, Heajin Jung. Those allegations were made because of my misunderstandings. I no longer wish this complaint procedure to continue." Respondent required Ms. Yoon's signature to these documents as a condition for payment to her of her personal injury settlement proceeds.²

28. The evidence would show that the Respondent believed her actions to be lawful and consistent with her discussions with Ms. Yoon. Further, the Respondent sent attorney Donald Park a check made to the order of Ms. Yoon in the amount of \$11,058.77 concerning the settlement of Ms. Yoon's personal injury case. Ms. Yoon cashed the check. Ms. Yoon was represented by attorney Park. The Respondent now understands that it is not permissible to condition the disbursement of funds to which a client is entitled upon either a release of the attorney or withdrawal of a bar complaint.

29. The evidence would show that the Respondent, beginning in June 2012, entered into an agreement with a Korean pharmaceutical company. She will assist the company on a full time basis in the sale and licensing of its products in the United States. While she will render legal advice, the bulk of her work will not require legal training and will be in the nature of consulting, marketing and brokering.

² The fourth document was a Disbursement Statement reflecting Respondent's intended disbursement of the settlement proceeds.

30. In addition, during the pendency of this case Respondent sought and received counsel from her attorney concerning the ethical practice of law in the Commonwealth of Virginia. She has been proactive in seeking advice of more experienced counsel where necessary, she has reviewed the rules applicable to the proper handling of client funds and understands her obligations under those rules, and she has closed down her private practice to focus her work for the company discussed above.

31. Further, Respondent's trust account records and accounting methods were reviewed by the Virginia State Bar Investigator assigned to this matter who has confirmed that, following Respondent's opening of her trust account, she maintained that account and all required records in accordance with applicable rules.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Heajin Jung 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 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.8 Conflict of Interest: Prohibited Transactions

- (h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice, except that a lawyer may make such an agreement with a client of which the lawyer is an employee as long as the client is independently represented in making the agreement.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them[.]
- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;
 - (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
 - (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
- (1) Insufficient fund check reporting.
 - (i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified

account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

- (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
- (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (2) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;
 - (ii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 4.2 Communication With Persons Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, and consistent with the Summary Order entered July 17, 2012, the Disciplinary Board **ORDERS** that the Respondent's license to practice law shall be and hereby is **SUSPENDED** for fourteen (14) days, effective July 17, 2012;

IT IS FURTHER ORDERED that the following terms and conditions are imposed:

1. Ms. Jung shall, for the 2012 and 2013 MCLE reporting years, obtain an additional six (6) hours of ethics credits over and above her annual requirement of two (2) hours of ethics. Respondent shall not receive any credit towards her annual MCLE obligation for these six (6) hours for either the 2012 or 2013 reporting period.
2. In the event the Respondent returns to the active and general practice of law, she must provide thirty (30) days prior written notice to the Virginia State Bar. Prior to doing so, the Respondent, at her expense, must obtain the assistance of a law office practice management consultant prior to returning to the active general practice of law. The Virginia State Bar must approve the selection of such consultant. Such consultant will provide an assessment and guidance to the Respondent on how to operate a law practice. Following the initial set-up, said consultant will assess the Respondent within six (6) months so as to determine compliance with the Rules governing

attorneys and the practice of law in the Commonwealth of Virginia. At that time, the consultant shall issue a report to Assistant Bar Counsel Kathleen M. Uston advising as to whether or not Respondent has established an approved IOLTA account, and has put into place systems and procedures that will enable her to practice law in accordance with the Rules of Professional Conduct.

3. If, however, the Respondent shall fail to comply with the terms and conditions set forth above, then the alternative sanction of a Suspension for a period of six (6) months shall be imposed.

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. The 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. The Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her clients. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (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 the 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

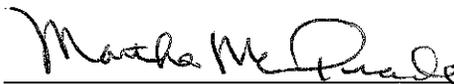
Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

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 copy of this order by certified mail to Heajin Jungat her last address of record with the Virginia State Bar, at 3800 Lyndhurst Drive, #303, Fairfax, VA22031, by regular mail to Respondent's counsel, Jerome Aquino, at 6225 Brandon Ave, #406, Springfield, VA 22150-2530, and by hand to Kathleen M. Uston, Assistant Bar Counsel for the Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219.

ENTERED on July 25, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD



Martha JP McQuade, Chair