

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ANNE MARSTON LYNCH (WILBUR)

VS. DOCKET No. 17-000-108403

ORDER OF RECOMMENDATION

This matter came on to be heard on December 8, 2017, upon the petition for reinstatement of Anne Marston Lynch (hereinafter “Lynch”) to practice law in the Commonwealth of Virginia. A duly convened panel of the board consisting of Sandra L. Havrilak, Chair, Richard J. Colten, Donita M. King, Michael J. Sobey, and Anderson W. Douthat, IV, lay member, heard the matter. Deputy Bar Counsel, Kathryn R. Montgomery, appeared as counsel for the Virginia State Bar. The Petitioner, Anne Marston Lynch, appeared in person and was represented by Michael L. Rigby. The Chair swore in the court reporter for the proceeding, Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227; telephone number (804) 730-1222.¹ The Chair then polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would interfere with or influence that member’s determination of the matter and from fairly hearing this matter. Each member, including the Chair, responded in the negative.

The Clerk of the Disciplinary System timely sent all legal notices of the date and place in the manner prescribed by the Virginia Rules of Professional Conduct (hereinafter “Rules”) Section IV, Paragraph 13-25.

The Chair advised the parties on how the hearing would proceed. Lynch was advised that she had the burden of proving by clear and convincing evidence that she is a person of honest

¹ Hearing transcript (hereinafter “TR”) refers to the transcript dated December 8, 2017.

demeanor, good moral character, and possesses the requisite fitness to practice law. Both Lynch and her counsel, as well as Bar counsel stated that they understood the proceedings.

Prior to the Board hearing, the Clerk of the Disciplinary System provided notice to all interested parties by mail and press release as required in Section IV, Paragraph 13-25(G)(4) of the Rules. In response to that notice, the Board received six (6) letters in support of Lynch's reinstatement and ten (10) letters in opposition to reinstatement. It was stipulated that Lynch had complied with all of the requirements for reinstatement after revocation as outlined in paragraph 13-25(F) of the Rules. Lynch testified on her own behalf at the hearing. Additionally, the Board heard from Alana Hollings, John Rowe, Krista McAninley, Anna Irvine, and Benjamin P. Lynch, Jr. Those witnesses were offered as Lynch's character witnesses.

The Bar presented the testimony of the Bar investigator, Ronald Pohrivchak.

In accordance with the Rules, the Bar received a request by James E. Lauck, who wished to be heard.

The panel considered Lynch's Petition for Reinstatement with exhibits A, A-1, A-2, A-3, B, C, and D attached, Lynch's exhibit 1, and the Bar's exhibits 1-11, all admitted into evidence without objection. Lynch's exhibit 1 included six (6) letters in favor of Lynch's reinstatement. Lynch's exhibits A, A-1, A-2, A-3, B, C, and D included: a letter to the Virginia State Bar Disciplinary Board; the May 15, 2009 Order of Suspension; the Affidavit of Lynch declaring consent to revocation of her license; the Trial Order and Plea Agreement; the list of Continuing Legal Education (CLE) courses Lynch attended; the Multistate Professional Responsibility Exam (MPRE) results; and, the Termination of Costs Order of Suspension. The Bar's exhibits included: Lynch's Petition for Reinstatement filed on February 9, 2017; the certification of Lynch's disciplinary record; the Affidavit of Gale M. Cartwright, Director of Member

Compliance of the Virginia State Bar, dated November 28, 2017 (regarding Lynch's current membership status, her address of record, and prior cause suspension); Affidavit of DaVida M. Davis, Clerk of the Disciplinary System, dated November 21, 2017 (listing docket numbers of bar complaints pending at the time of Lynch's revocation); record from the Circuit Court for the City of Suffolk in *Commonwealth v. Lynch* (including the grand jury indictment, plea agreement, trial order, and sentencing order); Lynch's response to the Bar's request for Bill of Particulars, filed April 3, 2017, without attachments; e-mail from Lynch and her counsel to the Bar regarding Lynch's Sale of Stock in June 2007 to repay funds Lynch embezzled in October 2006, with attached brokerage statements (account numbers redacted); memorandum of Lynch describing her community involvement prior to 2009; report of investigation dated June 12, 2017, prepared by Ronald Pohrivchak, Virginia State Bar Investigator, with exhibits; the Court of Appeals' certificate and Order of February 3, 2009, suspending Lynch from appearing before that court; and letters in opposition to Lynch being reinstated.

I. BACKGROUND

1. Lynch graduated from the University of Richmond in 1997 with a double major in Leadership Studies and Latin. She received a Juris Doctorate degree from Wake Forest School of Law in 2000 and was admitted to practice law in 2000.²

2. Lynch was employed at Harris, Fears, Davis, Lynch, and McDaniel from October 2000 to February 2001, where she worked as a legal assistant and was supervised by Benjamin P. Lynch, Jr.

3. From February 2001 until February 2003, Lynch worked for the City of Chesapeake Treasurer's Office as Counsel to the Treasurer and was supervised by Treasurer Barbara O. Carraway.

²TR, page 67-68.

4. From March 2003 until February 2009, when she was fired, Lynch worked for Pretlow & Pretlow, PC as an associate attorney. She was supervised by Joshua Pretlow, Jr.

5. The disciplinary record of Lynch reflects the following:

A. On May 15, 2009, the Virginia State Bar Disciplinary Board suspended Lynch's license for one (1) year with terms for her on-going medical and psychological care and treatment and with an alternative discipline of a suspension for three (3) years. Lynch was ordered to provide the Clerk of the Disciplinary System a written statement that, within fourteen (14) days of the Summary Order, she gave 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 was currently handling matters and to all opposing attorneys and presiding judges in pending litigation. She was also ordered to make appropriate arrangements for the disposition of matters, then in her care, in conformity with the wishes of her clients. In addition, the Bar assessed costs against Lynch in the amount of four thousand one hundred and seventy-three dollars and forty-eight cents (\$4,173.48).³

At the time of the hearing that resulted in the suspension of her license, Lynch's prior disciplinary record (received into evidence by the Disciplinary Board at the May 15, 2009 hearing) included: three (3) cases involving a failure to respond to Assistant Bar Counsel's complaint letters, two (2) cases involving a failure to respond to Intake Counsel's complaint letters, three (3) cases involving incorrect filings, one (1) case involving a failure to respond to the Court of Appeals, five (5) cases involving lack of communication to her clients, one (1) case where Lynch agreed to provide the Bar's investigator certain documentation, but failed to provide it and respond to the investigator's follow-up requests, and five (5) cases where Lynch

³ Lynch Petition Ex. A-1.

failed to properly communicate with her client.⁴In addition, the Board found that Lynch violated Rule 1.3 Diligence, Rule 1.4 Communication, and Rule 8.1 Bar Admission and Disciplinary Matters of the Rules.⁵ The cases and Lynch's violations in those cases that led the Board to suspend Lynch are explained herein below.

i. The Healey Matter 08-010-071408

In 2003, Healey hired Lynch to assist in removing liens on real property he wished to purchase. In 2006, Lynch stopped responding to attempts to communicate by Healey and stopped working on Healey's case altogether. Lynch received an initial inquiry letter from Intake Counsel dated July 24, 2007. The Assistant Bar Counsel sent Lynch a complaint letter dated August 13, 2007, whereas Lynch failed to respond to either letter. Lynch agreed to provide the Bar's investigator with certain documentation, but failed to provide anything or to respond to the investigator's follow-up requests for that documentation.

ii. The Terry Appeal 08-010-071625

On November 8, 2006, Lynch was appointed to represent Terry on a direct appeal to the Court of Appeals. On December 22, 2006, the Court of Appeals denied Terry's appeal; however, Lynch never informed Terry of the denied appeal nor advised Terry to file a further appeal to the Virginia Supreme Court. Lynch received a complaint letter from Intake Counsel dated August 8, 2007, but failed to respond to it.

iii. The Brewer Appeal 08-010-072683

On May 29, 2007, Lynch filed a Notice of Appeal to the Court of Appeals for Brewer. Lynch claimed she never received the Notice of the filing of the record in the Brewer appeal, and once she realized the record had been filed, she sought an extension in which to file

⁴ VSB Ex. 9.

⁵ Lynch Petition Ex. A-1.

the Petition for Appeal; however, neither was timely and the Court of Appeals dismissed Brewer's appeal. Lynch then failed to advise Brewer of the appeal dismissal and failed to advise him of seeking a delayed appeal. Lynch received a complaint letter from the Assistant Bar Counsel dated November 13, 2007, but failed to respond to it.

iv. The Jordan Appeal 08-010-072684

On March 2, 2007, Lynch was appointed to represent Jordan in a criminal case. On August 30, 2007, Jordan lost his case and Lynch filed a Notice of Appeal to the Court of Appeals; however, Lynch's filed Notice of Appeal did not indicate that she was court appointed and she never paid for the filing fee. The Deputy Clerk called and wrote to Lynch requesting the filing fee or proof that Jordan was exempt from said fee. Lynch failed to respond and the Court of Appeals dismissed the appeal for failure to pay the filing fee. In addition, Lynch failed to advise Jordan of the dismissal or of the possibility of seeking a delayed appeal. Lynch received a complaint letter from the Assistant Bar Counsel dated November 13 2007, but failed to respond to it.

v. The Budd Appeal 08-010-074537

On July 10, 2007, Lynch was appointed to represent Budd in a criminal case. Budd lost his case and Lynch filed a Notice of Appeal to the Court of Appeals; however, Lynch failed to file a Petition for Appeal and the Court of Appeals dismissed the appeal. Lynch then failed to advise Budd of the dismissal or of the possibility of seeking a delayed appeal. Lynch failed to respond to a complaint letter from the Assistant Bar Counsel dated April 10, 2008, or any attempts to return communication with the Bar's investigator.

B. On January 13, 2009, Lynch appeared in the Court of Appeals pursuant to an Order to Show Cause why she should not be held in contempt of court. The transgressions for Lynch's appearance in the Court of Appeals are discussed herein below.⁶

i. On March 14, 2008, Lynch timely filed a petition for appeal in a criminal case as the attorney for Johnson. The petition asked the court for leave to withdraw as counsel, because she believed that Johnson's appeal was without merit. On March 18, 2008, the Court of Appeals issued an order denying Lynch's motion to withdraw as counsel. The order explained that the petition for appeal failed to satisfy certain requirements that the appointed counsel conduct a "diligent and thorough search of the record for any arguable claim that might support the client's appeal."⁷ The order directed Lynch to file an amended petition for appeal within fifteen (15) days. Lynch failed to comply with this order and on April 11, 2008, the Court of Appeals issued another order, which noted that Lynch failed to respond to the first order and ordered her to file an amended petition pursuant to the previous order. Again, Lynch failed to respond. On August 13, 2008, the Court entered a new order removing Lynch as Johnson's attorney and directed Lynch to Show Cause. Lynch was personally served with the Show Cause Order.⁸

ii. On January 13, 2009, Lynch appeared before the Court of Appeals. Lynch apologized for her lack of professionalism, but offered no explanation for her actions other than her caseload was heavy and that she failed to pay proper attention to the Court of Appeals' three (3) orders.⁹

iii. The Court found that Lynch was in contempt of court. In the Court's order, it stated,

⁶ VSB Ex. 10.

⁷ *Id. See McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429 (1988).

⁸ VSB Ex. 10.

⁹ *Id.*

As punishment for her contemptuous disregard for the order of this Court, Lynch shall pay a fine in the amount of [one thousand dollars] \$1,000.00 and is disbarred indefinitely from practice before this Court.¹⁰ Three years from the date of this order, Lynch may petition for reinstatement to practice in the Court of Appeals of Virginia, provided that she presents evidence satisfactory to this Court that she has completed continuing legal education courses in the areas of professionalism, appellate practice and time management, sufficient, in the judgment of this Court, to address the problems identified.¹¹

C. On December 3, 2009, Lynch came and presented to the Board of the Virginia State Bar an Affidavit Declaring Consent to Revocation of her license to practice law in the courts of the Commonwealth.¹² By tendering her Consent to Revocation at a time when criminal charges were pending, Lynch admitted that the criminal charges referenced in the Affidavit Declaring Consent to Revocation and the Plea Agreement were true.¹³ The Board accepted Lynch's Consent to Revocation and assessed administrative costs against Lynch in the amount of one thousand twenty dollars and eighty-six cents (\$1,020.86). The events that preceded Lynch's Consent to Revocation are expressed herein below. Lynch was employed as an associate attorney at Pretlow & Pretlow and represented a client, McGaha, in a personal injury suit. The evidence presented showed the case itself probably had little to no value. During her representation, the client refused to go to his IME examination and was soon after forced to take a nonsuit.¹⁴ The client still wished to proceed with his case; however, Lynch failed to re-file the motion for judgment.¹⁵ The statute of limitations on the case had run and McGaha was not entitled to seek recovery for his damages. At no point did Lynch tell her employer, father, or attorney friends, that she failed to re-file her client's case or that she needed assistance. In fact, Lynch either ignored McGaha's numerous telephone calls or would lie to the client stating she

¹⁰See *In re Moseley*, 273 Va. 688, 643 S.E.2d 190 (2007).

¹¹VSb Ex.10.

¹²Lynch Petition Ex. A-2.

¹³VSb Ex. 5.

¹⁴TR. page 80-81.

¹⁵TR. page 83.

had not heard back from the insurance company. When McGaha became impatient and would contact Lynch nonstop, Lynch decided to give McGaha money to “go away”.¹⁶ She fabricated elaborate settlement negotiations between what McGaha thought was the insurance company and himself, but in fact, he was negotiating with Lynch’s wallet. When McGaha and Lynch settled on forty thousand dollars (\$40,000.00), Lynch drafted a settlement agreement that McGaha would sign when he got the money. All of this intricate planning and scheming occurred while Lynch claimed to be overwhelmed.

Lynch, instead of using her own money to fund the false settlement, intentionally, and willfully embezzled forty thousand dollars (\$40,000.00) from her church on October 16, 2006.¹⁷ Lynch went to the bank and requested a cashier’s check out of the capital account payable to McGaha.¹⁸ She met McGaha somewhere in Prince George County and had him sign the fake documents that she drafted to look like a real settlement and gave him the check.¹⁹ At the time of the embezzlement, Lynch was treasurer of her church and acting in a fiduciary capacity. Lynch also had one hundred thousand dollars (\$100,000.00) in stocks in her own name and account, so she could have easily paid the fabricated settlement with her own money instead of stealing from a church.

D. A couple of months later, Lynch went to the preacher of the church and resigned as treasurer of the church.²⁰ The church found a new treasurer who was eager to begin and wanted to review the church’s finances. Lynch knew the accounts were not in order, so Lynch began to deceive the new treasurer by stating that she needed to get the checkbook ready,

¹⁶TR. page 84.

¹⁷*Id.*

¹⁸TR. page 89.

¹⁹TR. page 89.

²⁰TR. page 89-90.

or there needed to be a transition meeting.²¹ The new treasurer did not wish to wait any longer for Lynch, and went to the bank and received the balances from the accounts and noticed the discrepancy. The preacher approached Lynch about the missing funds, and instead of admitting to her mistake, she lied to him.²² The second time the preacher approached Lynch, she finally admitted to her stealing. After the preacher approached Lynch twice and six (6) months later, Lynch finally made restitution to the church although throughout the entire scheme, Lynch had her own funds available both to pay the client for the alleged settlement and to make immediate restitution to the church; however, Lynch waited until after the theft was discovered to make restitution to the church. On March 18, 2016, the Clerk of the Disciplinary System, on behalf of the Disciplinary Board, entered a Termination of Cost Suspension Order when Lynch finally paid the fines, including interest, that resulted in the suspension matter in the amount of one thousand three hundred eighty-nine dollars and fifty-four cents (\$1,389.54), and the fines that resulted from the five (5) suspension matters in the amount of three thousand eight hundred fifty-one dollars and fifty-six cents (\$3,851.56).²³

E. On February 9, 2017, Lynch filed her Petition for Reinstatement of her Bar License.²⁴

II. FINDINGS

In accordance Paragraphs 13-25(F)(1-8) and (G)(5) of the Rules, after revocation, the petitioner's license to practice shall not be reinstated unless the petitioner proves, by clear and convincing evidence, as follows:

- That five (5) years have passed since the effective date of the Revocation;

²¹Tr. page 91.

²²*Id.*

²³VS B Docket Nos. 08-010-071408 et. al. Lynch Ex. D.

²⁴VS B Ex. 1.

- That she has paid the Bar all costs previously assessed against her, together with any interest due thereon at the judgment rate;
- That within five (5) years prior to filing the petition, she has attended sixty (60) hours of continuing legal education, of which at least ten (10) hours shall be in the area of legal ethics or professionalism;
- That she has taken the Multistate Professional Responsibility Examination and received a scaled score of eight-five (85) or higher;
- That she has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of petitioner's misconduct;
- That she has reimbursed the Bar for any sums of money paid as a result of a Receivership involving her law practice;
- That she has posted with her Petition for Reinstatement a five thousand dollar (\$5,000.00) cash bond for payment of costs resulting from the Reinstatement Proceedings; and,
- That she is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law.

In considering the final factors, the Board is guided by the factors set forth in Section IV, Paragraph 13-25(G)(6)(b) of the Rules, which was incorporated from the matter of *Alfred Lee Hiss*, Virginia Supreme Court, Docket No. 83-26, Opinion dated May 24, 1984.

- i. The severity of the Petitioner's Misconduct, including, but not limited to, the nature and circumstances of the Misconduct;
- ii. The Petitioner's character, maturity and experience at the time of his or her Revocation;
- iii. The time elapsed since the Petitioner's Revocation;
- iv. Restitution to the clients and/or the Bar;
- v. The Petitioner's activities since Revocation, including, but not limited to, his or her conduct and attitude during that period of time;
- vi. The Petitioner's present reputation and standing in the community;
- vii. The Petitioner's familiarity with the Virginia Rules of Professional Conduct and his or her current proficiency in the law;
- viii. The sufficiency of the punishment undergone by the Petitioner;
- ix. The Petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his or her Revocation and Reinstatement; and
- x. The impact upon public confidence in the administration of justice if the Petitioner's License is restored.

The evidence has shown that Lynch's license to practice law in the courts of this Commonwealth was revoked on December 4, 2009, more than eight (8) years ago; and, Lynch filed her Petition under oath, with a penalty of perjury. The evidence has also shown that Lynch has proven that within five (5) years prior to filing the petition that she had attended sixty (60) hours of continuing legal education, of which at least ten (10) hours was in the area of legal ethics and professionalism. At the time Lynch applied for reinstatement of her license she completed seventy (70) hours of continuing legal education, eighteen (18) of which were in the area of legal ethics and professionalism.²⁵ Therefore, at the time she filed her petition, she completed the requisite continuing legal education hours.

Lynch is required to have taken the Multistate Professional Responsibility Examination and receive a scaled score of eighty-five (85) or higher. The record produced by the National Conference of Bar Examiners/Multistate Professional Responsibility Examination showed Lynch took the examination on November 7, 2015 and received a scaled score of ninety-six (96).²⁶

Lynch was not required to reimburse the Bar's Clients' Protection Fund for any money it may have paid as a result of Lynch's misconduct, as no money was paid by the Clients' Protection Fund and no money was owed to the Clients' Protection Fund.

Lynch was required to prove that she paid the Bar all costs previously assessed against her together with any interest thereon. Prior to filing her application, Lynch met that requirement. On September 16, 2009, an Order of Administrative Suspension was imposed. Lynch paid three thousand eight hundred and fifty-one dollars and fifty-six cents (\$3,851.56) on March 18, 2016, and the Order was terminated.²⁷ In addition, Lynch owed over one thousand

²⁵ Lynch Petition Ex. B.

²⁶ Lynch Petition Ex. C.

²⁷ Lynch Petition Ex. D.

dollars (\$1,000.00) as a result of her Bar revocation.²⁸ Lynch finally paid off all of the debt owed to the Bar in 2016.²⁹ At the time of this hearing, all costs were paid.³⁰ The evidence was clear that Lynch had an ample amount of money in her brokerage account after the suspension in May 2009 and revocation in December 2009, which she could have used to pay the Bar.³¹

Lynch was not required to reimburse the Bar for any sums of money paid as a result of a Receivership involving her law practice as no Receivership was ever required.

Lynch posted a five thousand dollar (\$5,000.00) cash bond for payment of costs at the time she filed her Petition for Reinstatement.

In order to determine whether or not Lynch is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law, the Board considered the factors in Paragraph 13-25(G)(6)(b) the Rules, also known as the *Hiss* Factors.

III. ANALYSIS PURSUANT TO PARAGRAPH 13-25(G)(6)(b) OF THE RULES OF COURT

The Board considered the following factors in determining whether Lynch met her burden, by clear and convincing evidence of proof, as to her good character and fitness to practice law.

1. The severity of Lynch's misconduct, including, but not limited to, the nature and circumstances of misconduct.

The Board considered the nature and character of Lynch's violation of her fiduciary duty to her client and her employer, as well as, the church from which she embezzled forty thousand dollars (\$40,000.00). Although not dispositive, the Board took into consideration the finding of the Court of Appeals of Virginia's contempt and suspension order against Lynch. In addition, although not yet proven, the Board did take cognizance of the fact that there were eleven (11)

²⁸TR. page 141-142.

²⁹*d.*

³⁰*d.*

³¹TR. page 142.

additional disciplinary complaints held in abeyance at the time she consented to revocation.³²

The Board finds that the misconduct is severe and extreme. In addition, it is clear from the testimony that Lynch presented, her petition, and the disciplinary records set forth by the Bar that Lynch does not appreciate the severity of her own misconduct.

2. Lynch's character, maturity, and experience at the time of her revocation.

Lynch had been practicing law for nine (9) years at the time of her revocation. A psychologist testified that at the time of Lynch's embezzlement, Lynch showed no signs of depression or mental health issues, she was merely overwhelmed with professional responsibilities. Lynch's illegal and immoral behavior was not due, in any manner, to her inexperience or incapacity. Lynch chose to participate in community activities, rather than work on her clients' cases.

3. The time elapsed since Lynch's Revocation.

Lynch's license to practice law was revoked on December 4, 2009, and she has not practiced law since that time. Therefore, significant time has lapsed since Lynch's disbarment.

4. Restitution to the clients and/or the Bar.

No restitution was due to the client who received the church's forty thousand dollars (\$40,000.00). Lynch delayed reimbursing the Bar costs from a prior disciplinary disposition and order for approximately six (6) years. Lynch also failed to pay the monies owed to the church for a period of six (6) months. In addition, Lynch has yet to pay any monies owed to the Court of Appeals as a result of her contempt. Lynch claimed she did not know about the fines from the Court of Appeals. Furthermore, while the Bar is mindful that the Rules do not explicitly state when the costs imposed have to be paid back to the Bar, a person who is truly remorseful would pay the fines immediately, particularly one who has the ability to do so. The Board finds that the

³²TR, page 258.

delay in reimbursing the costs to the Bar is not demonstrative of good character or judgment.

The record revealed that Lynch had available to her more than sufficient funds to reimburse any and all costs.

5. Lynch's activities since revocation, including but not limited to, her conduct and attitude during that period.

The evidence is clear and convincing that Lynch is particularly active in the community, her church, civic affairs, and political activities since her revocation. Lynch has always been heavily involved in the community, which is what led to her ignoring clients and bar complaints and eventually led to her suspension and revocation of her license. Lynch is actively involved with the Portsmouth Service League, the Points of View fundraiser, the St. John's Church, the Suffolk Jaycees, the Elizabeth River Garden Club, the Alumni Association for Nansmond-Suffolk Academy, the lawyer hotline for the Suffolk Bar Association, the Suffolk Bar Association, and the I'Anson-Hoffman Inn of Court.³³ While it is notable that Lynch is so active in the community, it is with great apprehension that she continues to be so involved with the community and practice law, if she gets her license reinstated. She has been employed full-time as a paralegal in her father's law office and all evidence indicated that her conduct and attitude in the community are favorably viewed since her revocation. Lynch continues to be in therapy, although her psychologist, Alana Hollings, claims that she has no mental illness, but is diagnosed for insurance purposes as having a depressed mood and anxiety which, according to the psychologist, translated to an Adjustment Disorder. However, the Board does not give any weight to the diagnosis of Lynch nor does the Board find the testimony of Alana Hollings to be persuasive.

6. Lynch's present reputation and standing in the Community.

³³TR. page 133-136.

The Board heard testimony and received six (6) letters in support of Lynch's petition for reinstatement. On the other hand, there were approximately ten (10) letters in opposition to reinstatement from members of the Bar and community.

Following opening arguments, Lynch presented her case-in-chief in support of reinstatement of her Bar license which was revoked by Consent to Revocation effective December 4, 2009, a period of eight (8) years ago. Lynch presented the following witnesses in support of her petition for reinstatement:

A. Alana Hollings, a non-board certified, clinical psychologist, was qualified as an expert witness, without objection. She administered therapy to Lynch. Hollings testified that she began treatment of Lynch in April 2009 and sees Lynch approximately every other week.³⁴ She states that her patient was consistent and cooperative with treatment. In Hollings's initial consultation with Lynch, Hollings diagnosed Lynch with Adjustment Disorder. Hollings diagnosed Lynch without any tests nor any input other than Lynch.³⁵ Hollings stated "Adjustment Disorder is when the individual goes through a major stressor and then from that stressor, [he or she has] ongoing symptoms that could be either depression, anxiety, both, or some type of conduct problems."³⁶ Hollings further stated that "the difference [between Adjustment Disorder and regular stress] is that Adjustment Disorder is when the symptoms carry on beyond [a] six-month period of time."³⁷ Hollings noted that this disorder began after Lynch committed embezzlement and after she lied, cheated, and misled her clients.³⁸ According to Hollings, at the time of her misdeeds, Lynch did not have any mental illness nor disorders.

³⁴TR. page 13.

³⁵TR. page 37.

³⁶TR. page 36.

³⁷TR. page 39.

³⁸TR. page 18.

Lynch did not take any medications before or after her misdeeds, nor is she currently on medication.

Hollings testified that Lynch, from an early age would separate and distance herself from her emotions and behavior.³⁹ Hollings also noted that Lynch would be emotionally distant during her (Lynch's) criminal prosecutions and revocation.⁴⁰ When asked about Lynch's behavior during the Bar complaints, Hollings responded, "She, it was like she, she wasn't even fully aware that she was, she was just like in denial about it."⁴¹ In addition, when Hollings was asked for reassurances as to whether Lynch would not commit the same mistakes, meaning she would not steal, lie, or ignore the Bar, Hollings stated that Lynch is much more in-tune with her emotions, shows an increased capacity to deal with challenges and to confront adversity, and recognizes her support system.⁴²

Hollings further testified that Lynch took responsibility for her actions and took all the steps that she needed to do without having to be told to do so.⁴³ According to Hollings, Lynch initiated all of the repayment, CLE courses, and informing her friends and family on her own accord.⁴⁴ This testimony is based solely on self-reporting by Lynch, as Hollings did not seek outside affirmation as to whether Lynch was truthful or not.⁴⁵

The Board was not persuaded by Hollings's testimony. In fact, the Board noted that Lynch needed to be compliant with her therapy as it was made a condition to her 2009 suspension. If Lynch failed to attend therapy on a regular basis, then it would violate the terms of the Virginia Bar's Order of Suspension.⁴⁶ In addition, Hollings was not aware that Lynch did

³⁹TR. page 18.

⁴⁰TR. page 23.

⁴¹TR. page 23.

⁴²TR. page 35.

⁴³TR. page 33-34.

⁴⁴TR. page 34.

⁴⁵TR. page 21.

⁴⁶ Lynch Petition Ex. A-1.

not repay the costs to the Bar until she (Lynch) filed for reinstatement and she (Lynch) was not forthcoming and completely truthful to her friends and family.

B. Lynch next testified on her own behalf. She stated that she graduated Wake Forest School of Law and passed the bar in October 2000.⁴⁷ She worked for various law firms and after six (6) years of practice, she had a workload consisting of criminal, civil, and bankruptcy cases.⁴⁸ She also had one or more personal injury cases assigned to her.

Concerning the main case that led to her revocation, Lynch testified that she failed to timely refile a civil action after a nonsuit, was dilatory, and lied to her client, McGaha. In particular, she never told anyone that she failed to refile the civil action and lied to her client about the case. Lynch testified that she was overwhelmed with her work, but took the time to create the elaborate false negotiations between her client and the insurance company. She even went so far as to draft a false settlement statement agreement that the client ultimately signed. Most importantly, she embezzled approximately forty thousand dollars (\$40,000.00) from her church and gave it to her client to satisfy the fabricated negotiations and the client's case.⁴⁹ Lynch, although she had funds of her own available to pay to the client, decided to steal the funds from her church as an alternative to dealing with capital gains had she cashed in on her own stock account. At that time, she had approximately one hundred thousand dollars (\$100,000.00) worth of stock available, that she elected not to use until the church discovered that she stole the money.⁵⁰ It is clear to the Board that Lynch could have easily used her own money to satisfy the fraudulent transaction and settlement, if she intended to do so prior to being caught.⁵¹ The Board finds that the reason why Lynch chose to steal from a church was because

⁴⁷TR. page 68.

⁴⁸TR. page 74-75.

⁴⁹TR. page 168-170.

⁵⁰TR. page 129-130.

⁵¹TR. page 130.

she did not want to use her own money and, but for being caught, might not have repaid the church. Lynch acknowledged that she also lied to the preacher at the church when the preacher first confronted Lynch about the church's treasury funds.⁵² After the second time the preacher confronted Lynch, she finally admitted to the theft and put the money back in the church's treasury, which occurred approximately six (6) months after the theft.⁵³ When questioned why she did not immediately repay the church, Lynch replied, "I froze. It was part of the compartmentalizing that I was doing . . . but it was uncomfortable and hard to face that I had done that and so I kept putting it off."⁵⁴

Lynch stated that in February 2009 she was fired from her then law firm and in her testimony appeared aggressively resentful regarding the manner by which she was discharged.⁵⁵ When questioned on why she had not apologized to her former boss, Pretlow, as Lynch put the firm's reputation at risk, she replied, "I hadn't thought that it was . . . something I should do."⁵⁶ "I don't feel like I wronged him."⁵⁷ It is clear to the Board that Lynch still has no appreciation for the severity of her actions, and, although an affirmative defense was not presented, it was clear to the Board that Lynch blames Pretlow for what occurred for his failure to supervise and mentor.

Lynch also revealed that she had not apologized to her client, McGaha, the one that received the forty thousand-dollar (\$40,000.00) check. In fact, Lynch had failed to notify the client of the fraudulent transaction altogether. The client had expressed surprise to the Bar Investigator that the money he received was not for his settlement.⁵⁸ The Bar asked Lynch why she never contacted the client, to which her response was, "I didn't have a manner to. I mean, I

⁵²TR. page 127.

⁵³TR. page 129.

⁵⁴TR. page 144-145.

⁵⁵TR. page 145.

⁵⁶ *Id.*

⁵⁷*Id.*

⁵⁸*Id.*

guess I could have really dug into it to find him.”⁵⁹ She noted, “He would deserve an apology from me for lying to him, but I haven’t given it to him.”⁶⁰ In addition, throughout her testimony concerning McGaha, Lynch constantly belittled her client and portrayed him in a negative light. The Board found that this tactic of Lynch’s was an attempt to deflect the blame onto McGaha, which the Board found to not represent a person of honest demeanor and good moral character.⁶¹

While she is currently a paralegal in her father’s office, Lynch aspires, should her license be restored, to practice as an attorney in her father’s firm. Her father is seventy-eight (78) and is a well-respected attorney in the community. Should he retire or pass, Lynch does not have any plans on how to continue her work as an attorney.⁶²

Lynch was and is actively involved in several community service projects and positions, such as: the Portsmouth Service League, the Points of View fundraiser, treasurer and youth director for St. John’s Church, the Suffolk Jaycees, the Elizabeth River Garden Club, the Alumni Association for Nansemond-Suffolk Academy, the lawyer hotline for the Suffolk Bar Association, member for the Suffolk Bar Association, and the I’Anson-Hoffman Inn of Court.⁶³ Lynch participated in all of these activities while she received her Bar complaints. The Board took note that Lynch was able to excel in all of her community service, albeit while neglecting her clients. Lynch claimed that the reason she was able to excel at community service activities was because the community service was not as intricate as it appeared and “to be a good lawyer, [you] have to be a well-rounded person.”

In sum, the Board heard testimony from Lynch that she was angry at her employer concerning the manner in which she was discharged, mystified that she was indicted

⁵⁹TR. page 145.

⁶⁰TR. page 149-150.

⁶¹ TR. Page 170-171.

⁶²TR. page 149-150.

⁶³TR. page 133-136.

inasmuch as the church had forgiven her regarding her embezzlement, and failed to offer an apology for putting her former firm's reputation at stake. In addition, Lynch failed to inform McGaha that she lied to him and gave him a false settlement with stolen money, all the while belittling him throughout her testimony. The Board notes that Lynch created and executed an elaborate scheme, even though she stated she was overwhelmed at work. She could have easily notified the malpractice insurer or asked for assistance from her employer, father, or attorney friends. Instead Lynch dedicated an inordinate amount of time to false negotiations and settlement agreements, going to a bank to take money from the church, and meeting McGaha to give him the money. The Board, who observed the demeanor of Lynch, unanimously finds that Lynch does not accept full responsibility for her behavior and was not completely candid in discussing her behavior with witnesses who testified on her behalf. Simply stated, Lynch did not believe she was solely responsible for her bar complaints and embezzlement charges.

C. John L. Rowe, a longtime friend of the Lynch family and current mayor of Portsmouth Virginia, also testified on behalf of Lynch. He testified that Lynch had a good reputation, was a hard worker, well-liked, of good character, and was helpful in assisting him with his political campaign.⁶⁴ Rowe testified that Lynch had an outstanding reputation in the community as to her trustworthiness and opined that she was fit to practice law, and is an asset to the community.⁶⁵ However, his testimony also revealed that Lynch was not entirely truthful or forthcoming with him. Lynch never informed Rowe that she was asked to step down from the Board for the Portsmouth Service League due to her embezzlement charges.⁶⁶ He was aware of Lynch's embezzlement, but only because he discovered the report in the newspaper, not because

⁶⁴TR. page 194-195.

⁶⁵*Id.*

⁶⁶TR. page 203-204.

Lynch discussed the matter with Rowe.⁶⁷ Lynch also failed to disclose her previous suspension and Bar complaints to Rowe.⁶⁸ He only became aware of this information during the preparation for this hearing, as Lynch never formally discussed this matter with him.⁶⁹ The fact that Rowe only discovered that Lynch had previous suspensions and Bar complaints because he was being prepped for this hearing does not illustrate a person of good moral character. The Board finds that Lynch's lack of candor to Rowe are not the actions consistent with a person with a positive reputation and good standing within the community.

D. Lynch called her fourth witness, longtime friend, Krista McAninley. McAninley has been an attorney for approximately seventeen (17) years, and is currently working for the Norfolk Southern Railway.⁷⁰ She testified in support of Lynch's reinstatement, opined that Lynch was well respected, "knows what's right and what's wrong", competent, and an extremely hard worker.⁷¹ She also stated that there was "a complete lack of support" at Lynch's firm.⁷² McAninley's testimony demonstrated that rather than accepting responsibility for her actions, Lynch blamed her firm. Lynch informed McAninley about the embezzlement, yet fabricated to McAninley that the money was put back before anyone found out.⁷³ In addition, Lynch also did not inform McAninley that she (Lynch) was suspended by the Court of Appeals or about the list of Bar Complaints pending at the time she submitted her Consent to Revocation.⁷⁴ The Board finds McAninley's testimony was unpersuasive and if anything, proved that Lynch did not even tell the total truth to her closest friend.

⁶⁷TR. page 204.

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰TR. page 207-208.

⁷¹TR. page 211-212.

⁷²TR. page 210.

⁷³TR. page 216.

⁷⁴TR. page 217.

E. Anna Irvine, a friend of Lynch's since they were both approximately ten (10) years old, testified in support of reinstatement. Irvine is a government contractor specializing in weapons' systems and has a top security clearance.⁷⁵ Irvine's last security review was in 2009, and Lynch was on Irvine's list for people who knew Irvine well. Irvine testified that Lynch is one of the finest people she knows and is, in her opinion, beyond reproach and would refer clients to her should she be reinstated.⁷⁶

F. Benjamin Lynch, Lynch's father, testified in support of his daughter's reinstatement. He stated that he is a licensed attorney and Lynch currently works as a paralegal at his law firm.⁷⁷ He stated that, "[Ms. Lynch] has been a performer, a pleaser, one who has been highly thought of."⁷⁸ He noted he would provide employment for her should she be reinstated; however, he is seventy-eight (78) years old and did not propose a plan of what would happen to Lynch should he retire or pass away.⁷⁹ Mr. Lynch testified that he was made aware of the embezzlement charge, but only after it had been reimbursed, a period of two (2) years later.⁸⁰ At the time of Lynch's embezzlement charge, Mr. Lynch was renting a space in a building shared by Pretlow and his firm.⁸¹ Mr. Lynch expressed animosity, bewilderment, and aggression toward Pretlow and stated in effect that had the employer just come to him (Mr. Lynch), he would have "taken care of things" and resolved Lynch's embezzlement without any criminal charges.⁸² When questioned whether Mr. Lynch would comply with The Rules of Professional Conduct, Rule 8.3, Reporting Misconduct, Mr. Lynch did not affirmatively state he would have

⁷⁵TR. page 220.

⁷⁶TR. page 224.

⁷⁷TR. page 226.

⁷⁸TR. page 234.

⁷⁹TR. page 149.

⁸⁰TR. page 245.

⁸¹TR. page 230.

⁸²TR. page 231-234.

reported Lynch's conduct.⁸³ It is clear to the Board that Mr. Lynch is protecting his daughter, and as admirable as this may be, Lynch did not inform her father of the embezzlement as her father discovered the charges two (2) years later. Moreover, Lynch did not seek her father's assistance, while she was overloaded with cases, being sent numerous Bar complaint letters, or even when she contemplating stealing from a church. All of this occurred when Lynch and Mr. Lynch were working in the same building. While this Board has no doubt the love Mr. Lynch has for his daughter and would do anything to protect her; this Board is quite concerned that should Lynch become overwhelmed, she has no plan in place to protect the public.

Per the Rules, the Board allowed Mr. Lauck the opportunity to testify against Lynch.

G. Mr. Lauck, a former client of Lynch testified briefly. He stated that should Lynch be reinstated, he would hope for restitution from her. Lauck complained regarding Lynch's prior representation in that she abandoned his matter and caused him some unspecified damages.⁸⁴

The Bar called one (1) witness.

H. The Bar called as its witness, the investigator, Ronald Pohrivchak. He testified that at the time of revocation, Lynch had eleven (11) pending bar complaints including, but not limited to, missing appeal deadlines, lying to clients, and failure to communicate with clients.⁸⁵ When Pohrivchak interviewed Lynch in 2009, "She agreed she might have made some mistakes, but she did not believe there was any misconduct."⁸⁶ Pohrivchak also interviewed Lynch's prior employer, Pretlow, who fired Lynch as a result of her embezzlement. Pretlow was upset that Lynch did not come to him if she felt pressured or had other problems and vehemently denied Lynch's claims that he failed to mentor her.⁸⁷ Pretlow further stated that he would not

⁸³TR. page 246-247.

⁸⁴TR. page 250-255.

⁸⁵TR. page 258.

⁸⁶TR. page 258.

⁸⁷TR. page 259.

trust or hire Lynch again.⁸⁸ Lastly, Pohrivchak testified that Lynch's wronged client, McGaha, was not made aware that the money was embezzled, nor did Lynch have any contact with him after the embezzled money was given to McGaha.⁸⁹

7. Lynch's familiarity with the Virginia Rules of Professional Conduct and her current proficiency of the law.

Lynch testified, with no contradictory evidence, that she has taken eight-two and one half (82.5) hours of continuing legal education.⁹⁰ There is credible evidence that she is proficient in the law especially in that she has been employed as a paralegal in her father's office since her revocation.

8. The sufficiency of punishment undergone by Lynch.

Lynch's license has been revoked for eight (8) years. Her criminal charges were dropped from a felony to a misdemeanor, and she served a twelve (12) month sentence with twelve (12) months suspended and was on probation for three (3) years.⁹¹ The Board found this to be a light sentence given all of Lynch's serious infractions and the grand larceny embezzlement.

9. Lynch's sincerity, frankness, and truthfulness in presenting and discussing factors related to her revocation and reinstatement.

It is apparent from her testimony and evidence presented, that Lynch is remorseful and embarrassed by her behavior leading to the discovery that she embezzled money from her church. However, the Board unanimously finds that Lynch does not fully accept blame for her illegal conduct, and, the actions she took to protect herself from what would have been a malpractice claim. In addition, Lynch apparently believes that since McGaha received forty thousand dollars (\$40,000.00) that he may not have been entitled to, he was not a victim, rather she believes the victim was her own money. The Board also unanimously finds that Lynch was

⁸⁸TR. page 260.

⁸⁹TR. page 260-261.

⁹⁰ Lynch Petition Ex. B.

⁹¹VSB Ex. 5.

selective in what she told others, much to her detriment. In particular, Lynch was not completely candid with her own witnesses regarding her history of bar complaints, her prior disciplinary record, and her suspension from the practice before the Court of Appeals of Virginia.

10. **The impact upon public confidence in the administration of justice if Lynch's license to practice law is restored.**

The Board gives much weight to this factor as the Rules do not require the factors be weighed equally or one such factor should be weighted more than another. The Board finds that the public's confidence in the administration of justice would be undermined and damaged should Lynch's license be restored. Not only was Lynch found guilty of a very serious crime, she also demonstrated a noteworthy lack of candor, professional responsibility, deceptiveness, and at least two (2) serious breaches of a fiduciary obligation and responsibility.

Lynch has a lengthy and significant history of bar complaints, there being eleven (11) pending when she consented to the revocation of her license in 2009.

The Board determines, after observing the demeanor and nature of Lynch's testimony, that Lynch does not fully accept the blame and responsibility for her dishonest behavior. Additionally, she was not completely candid in her disclosures to at least four (4) of the witnesses who appeared before the Board in support of recommending reinstatement, those being: Hollings, Rowe, McAninley, and Mr. Lynch.

With respect to the impact upon public confidence in the administration of justice if Lynch's license is restored, the Board, by unanimous vote, finds that the reinstatement would have an adverse effect given Lynch's severity of violations, the cover up of the embezzlement for a period of approximately six (6) months, the finding of contempt by the Court of Appeals, and the pending, yet unresolved eleven (11) additional complaints made against Lynch.

IV. RECOMMENDATION

Accordingly, the Board unanimously finds that Lynch has not proven, by clear and convincing evidence, that she is a person of honest demeanor and good moral character and that she possesses the requisite fitness to practice law in the Commonwealth of Virginia. Therefore, the Board respectfully recommends to the Supreme Court of Virginia that Lynch be denied reinstatement of her license.

As required by Part Six, Section IV, Paragraph 13-25(6)(e)(ii), of the Rules of the Supreme Court, the Board finds that the costs of these proceedings are as follows:

Court Reporter Fees:	\$1,751.75
Mailing Fees:	\$ 24.16
Legal Notice (Richmond Times-Dispatch)	\$1,092.02
Administrative Fee:	\$1,500.00
Medical Records	\$ 74.50
Total:	\$4,442.43

It is further **ORDERED** that the Clerk forward this Order of Recommendation and the record to the Supreme Court of Virginia for its consideration and disposition.

It is further **ORDERED** that the Clerk shall mail an attested copy of this Order to the Petitioner, Anne Marston Lynch (Wilbur), by certified mail, return receipt requested, at her address of record with the Virginia State Bar, 425 Sussex Drive, Portsmouth, Virginia 23707, and her counsel, Michael L. Rigsby, and hand deliver to Kathryn R. Montgomery, Deputy Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

This Order is final.

ENTERED THE 8th DAY OF FEBRUARY, 2018.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Sandra L. Havrilak Digitally signed by Sandra L. Havrilak
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Sandra L. Havrilak, Chair