

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF
REBECCA LOUISE MARQUEZ

VS B Docket No. 06-051-3016

ORDER

This matter came on the 16th day of June, 2008 to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District Section I Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Paul M. Black, John W. Richardson, Rhysa Griffith South, Dr. Theodore Smith, lay member, and Robert E. Eicher, First Vice Chair, presiding.

Kathleen M. Uston, representing the Bar, and the Respondent, Rebecca Louise Marquez, by and through her attorney, Ralph Russo, presented an endorsed Agreed Disposition, dated June 16, 2008, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Rebecca Louise Marquez, (hereinafter the "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or around March 20, 2006, the Bar received a Notice of Paid/Returned Item from SunTrust Bank regarding Respondent's IOLTA account, Account #202982319. The notice

reflected an overdraft in the amount of \$895.26.

3. On May 1, 2007, Virginia State Bar Investigator David W. Jackson met with the Respondent at the Bar offices located in Northern Virginia. At that time, the Respondent was represented by counsel, Ralph Russo, who was present throughout the interview.

4. During this interview, the Respondent admitted to Investigator Jackson that she did not maintain subsidiary client ledger cards, cash receipts or disbursements journals. She also admitted that she did not perform either monthly or quarterly reconciliations of her trust account, and did not calculate a periodic trial balance of her subsidiary ledgers quarterly as required by applicable rules.

5. Shortly after this interview in May, 2007, Respondent contacted Candida De Luise, L.C.S.W. and began a course of treatment following her diagnosis with Post Traumatic Stress Disorder which resulted from a series of devastating personal events.

6. Since May, 2007, the Respondent has been participating in weekly individual therapy sessions with Ms. De Luise and Ms. De Luise has observed that, "Ms. Marquez has been very committed to her treatment and is currently quite motivated and responsive to the therapeutic process." Ms. De Luise also noted, "With continued support and treatment these individuals [PTSD sufferers] are able to fulfill their professional responsibilities . . ."

7. In addition, on May 31, 2007, Respondent met with Janean S. Johnston, a law office practice management consultant, to review her trust accounting procedures and systems. On June 3, 2007, Ms. Johnston issued a report to Assistant Bar Counsel Kathleen M. Uston and observed, following review with the Respondent of applicable rules and forms which can be used to ensure compliance with the Rules of Professional Conduct, that in her opinion the Respondent, "has a complete understanding of what is required in order to comply with the Virginia ethics

rules concerning trust accounting and record-keeping.”

8. The Respondent has retained the services of Ms. Johnston on an ongoing basis to “review [her] trust accounting records and compliance with Rule 1.15(e) of the Virginia Rules of Professional Conduct quarterly over the course of a year.” Ms. Johnston has agreed to provide quarterly reports to the Virginia State Bar for the next twelve (12) months.

In approving the Agreed Disposition, the Board gave due consideration to evidence furnished in support thereof on behalf of the Respondent, without objection by the Bar, from Respondent’s treating therapist, law office practice management consultant retained by the Respondent, and from the Respondent, herself. The Board finds as applicable mitigating factors recognized by the American Bar Association, as follows:

- a. absence of a dishonest or selfish motive;
- b. personal and emotional problems; and
- c. remorse.

The Board finds by clear and convincing evidence that Respondent’s aforesaid conduct constitutes a violation of the following provisions of the revised Virginia Code of Professional Responsibility and of the Rules of Professional Conduct:

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:
 - (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.
 - (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;
 - (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
 - (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.
 - (5) 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;
 - (iii) 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.

It is hereby ORDERED that the Respondent, Rebecca Louise Marquez, shall receive a Public Reprimand with Terms effective June 16, 2008 as representing an appropriate sanction if this matter were to be heard. The terms and conditions which shall be met by the Respondent are as follows:

1. The Respondent shall remain under the care of Candida De Luise, L.C.S.W (or, if Ms. De Luise becomes unavailable, such other mental health care provider as agreed upon by Respondent and the Virginia State Bar), and such other health care providers to whom Respondent might be referred by Ms. De Luise, until at least June 30, 2009, or such earlier time as the Respondent is discharged from Ms. De Luise's care with the concurrence of Bar Counsel. Respondent shall cooperate fully and comply with all treatment recommendations made by Ms. De Luise and such other health care providers during the said period. Such compliance shall include, but not be limited to, attending all further therapy, counseling, and evaluation sessions with Ms. De Luise and/or other health care providers to whom Respondent is referred by her, and submitting to such further testing, evaluation, and clinical assessments as may be required by Ms. De Luise and any health care providers to whom Respondent has been referred by Ms. De Luise.

2. The Respondent shall immediately provide Ms. De Luise and all health care providers to whom Respondent has been referred by Ms. De Luise with a copy of this Order of the Disciplinary Board and a release which authorizes and directs Ms. De Luise and such other health care providers to furnish to the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, written reports which

state whether, in the professional opinion of the health care provider writing the report, the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full time private practice of law. Such reports shall detail the basis for such opinions rendered, and shall further state whether, to the best of the health care provider's knowledge, the Respondent is in compliance with the terms enumerated herein. In the event a health care provider does not state that Respondent is in compliance with the terms hereof, such health care provider shall nonetheless present written facts (*e.g.*, missed appointments, failure to take medication, failure to provide information required for continued treatment/assessments, and failure to pay a provider's bills) to the Virginia State Bar sufficient to permit Bar Counsel's assessment of whether Respondent is in compliance with the terms hereof. At a minimum, during the period that these terms remain in effect, Ms. De Luise (or her approved successors) shall furnish the Bar with such reports at quarterly intervals, commencing September 1, 2008. Notwithstanding the reporting schedule set forth above, Ms. De Luise (or her approved successors) shall notify the Bar immediately upon her assessment that the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full time private practice of law.

3. The Respondent shall bear the cost and expense of compliance with the terms set forth herein, including, but not limited to, the cost of the assessments, therapy, counseling, medication, and all health care contemplated by the terms hereof, and the costs imposed, if any, by Ms. De Luise (or her approved successors) and all other health care providers in preparing and furnishing any and all reports submitted to the Virginia State Bar pursuant to the terms hereof.

4. The Respondent shall continue to utilize the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-

4421, (703) 567-0088, to oversee her trust accounting procedures and record keeping. The Respondent shall continue to follow with consistency all recommendations made to her by Ms. Johnston while such oversight is in progress. The Respondent shall grant Ms. Johnston access to her law practice from time to time, at her request, for purposes of ensuring that Respondent is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. The Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). The Respondent shall have discharged her obligations respecting the terms contained in this Paragraph 4 if she has fulfilled and remained in compliance with all of the terms contained in herein through June 30, 2009. Ms. Johnston shall report to the Virginia State Bar no less than every six (6) months, commencing on September 1, 2008, and in such reports advise the Bar in detail of Respondent's compliance, or lack thereof, with Ms. Johnston's recommendations. Notwithstanding the reporting schedule set forth herein, Ms. Johnston shall make immediate report to the Virginia State Bar any determination by her that the Respondent's trust accounting procedures and record keeping are not in compliance with the Rules of Professional Conduct. To implement the terms hereof, the Respondent shall immediately provide Ms. Johnston with a copy of this Order of the Disciplinary Board and a release which authorizes and directs Ms. Johnston to furnish to the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314 the information and reports referred to herein.

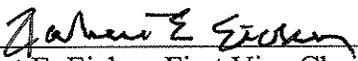
5. The Respondent shall commit no further violations of the Rules of Professional Conduct between June 30, 2008, and June 1, 2009. And it is further

ORDERED that if Respondent violates any of the Terms set forth herein, then, and in such event, the Board shall impose a six (6) month suspension of the Respondent's license to practice law in the Commonwealth of Virginia, which shall begin upon the finding of any such violation at the conclusion of a show cause hearing wherein the Respondent has failed to prove by clear and convincing evidence that she did not violate any of the terms set forth above; and it is further

ORDERED that pursuant to Part Six, Section IV, Paragraph 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that a copy *teste* of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, Rebecca Louise Marquez, P.O. Box 100984, Arlington, VA 22210, and by first class, regular mail, to Ralph Russo, Respondent's Counsel, 93 Dana Street, Wilkes-Barre, PA 18702, and to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, VA 22314-3133.

ENTERED this 19th day of June, 2008.



Robert E. Eicher, First Vice Chair
Virginia State Bar Disciplinary Board

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STATE OF VA

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