

VIRGINIA:

**BEFORE THE FOURTH DISTRICT SUBCOMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF
KATHERINE MARTELL**

VS B Docket Nos. 11-041-086630 and 11-041-086807

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On November 9, 2011, a meeting in this matter was held before a duly convened Fourth District Subcommittee, Section I consisting of Jason S. Rucker, Esq., Elizabeth L. Tuomey, Esq., and David A. Bell, Lay Member.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Fourth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. Complainant Elin M. Mastrangelo, VSB Docket No. 11-041-086630

A. STIPULATIONS OF FACT

1. At all times referenced herein, Respondent Katherine Martell (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On July 27, 2010, Complainant Elin M. Mastrangelo hired Respondent to represent her in her chapter 7 bankruptcy. Respondent's representation agreement, signed by both parties, provided that for a flat fee of \$1,500.00, Respondent would represent Ms. Mastrangelo in a chapter 7 bankruptcy, including drafting all appropriate paperwork and schedules, appearing with Ms. Mastrangelo at the 341(a) meeting of creditors, and in any court litigation.
3. On July 28, 2010, Ms. Mastrangelo faxed to Respondent documentation which Respondent requested Ms. Mastrangelo provide regarding her bankruptcy.
4. On July 29, 2010, Ms. Mastrangelo paid Respondent \$750.00.
5. From August to October 16, 2010, Ms. Mastrangelo had difficulty communicating with Respondent.
6. On October 16, 2010, Ms. Mastrangelo requested Respondent refund her fee.

7. On October 17, 2010, Respondent provided a status update to Ms. Mastrangelo.
8. On October 18, 2010, Respondent advised Ms. Mastrangelo she would file the bankruptcy petition within the next week.
9. On October 19, 2010, Ms. Mastrangelo paid Respondent the balance of Respondent's fee (\$750.00).
10. On November 15, 2010, Respondent filed a chapter 13 bankruptcy petition on Ms. Mastrangelo's behalf. Respondent did not provide the petition to Ms. Mastrangelo before she filed it. Ms. Mastrangelo thus did not review or sign the petition prior to Respondent's filing the petition.
11. On November 18, 2010, a notice of the 341(a) meeting of creditors was sent to Respondent and to Ms. Mastrangelo. The meeting was scheduled for December 28, 2010.
12. On December 23, 2010, Ms. Mastrangelo e-mailed Respondent and inquired whether she needed to do anything to prepare for the 341(a) meeting of creditors.
13. Respondent did not respond to Ms. Mastrangelo's December 23, 2010 e-mail.
14. Respondent failed to appear at the 341(a) meeting of creditors on December 28, 2010.
15. At the 341(a) meeting of creditors, the acting chapter 13 trustee asked another attorney present, Joseph M. Goldberg, Esq., to sit in, as Respondent was not present and to contact Ms. Mastrangelo after the meeting. The trustee noted that the chapter 13 plan had to be modified.
16. After the meeting, Ms. Mastrangelo e-mailed Respondent and advised that she was upset.
17. On December 29, 2010, Ms. Mastrangelo hired Mr. Goldberg to represent her in her bankruptcy.
18. By e-mail dated December 29, 2010, Ms. Mastrangelo advised Respondent that she would hire Mr. Goldberg, and Ms. Mastrangelo requested a refund of 50% of the fee paid (\$750.00) from Respondent.
19. By e-mail dated December 29, 2010, Respondent refused to issue a refund, asserting that "all work on your case is complete. There is nothing left but plan approval."
20. By letter dated January 7, 2011, Respondent terminated her representation of Ms. Mastrangelo.
21. Respondent did not withdraw as counsel with the bankruptcy court. The termination of her representation without order of the bankruptcy court violated Local Bankruptcy

Rule 2090-1(G) of the Rules of the Bankruptcy Court for the Eastern District of Virginia.

22. Mr. Goldberg tried unsuccessfully to contact Respondent in order to have her execute a substitution of counsel. Respondent did not respond to Mr. Goldberg.
23. By letter dated January 18, 2011, Mr. Goldberg served Respondent with a motion to substitute as counsel and an amended chapter 13 plan. In his letter, Mr. Goldberg advised Respondent of his numerous unsuccessful attempts to contact Respondent, as well as Respondent's failure to comply with local rules by failing to withdraw as counsel, and he reiterated Ms. Mastrangelo's request for a refund.
24. Respondent agreed to reimburse Ms. Mastrangelo \$308.82 as compensation for missing work and parking expenses for the 341(a) meeting of creditors which Respondent failed to attend.
25. By letter dated January 20, 2011, Ms. Mastrangelo complained to the Office of the Chapter 13 Trustee about Respondent's actions.
26. On February 9, 2011, the bankruptcy court granted Mr. Goldberg's motion to substitute in as counsel for Ms. Mastrangelo.
27. On February 10, 2011, the United States trustee filed a rule to show cause against Respondent and her firm to show cause why they should not be held in civil contempt and sanctioned, including disgorgement of compensation, for their professional conduct. The rule to show cause was based on (1) Respondent's submission of an unsigned petition on Ms. Mastrangelo's behalf, and Respondent's failure to provide the petition to her client for review or signature; (2) Respondent's failure to attend the 341(a) meeting of creditors, despite the fact that notice was issued to Respondent; and (3) Respondent's failure to withdraw as Ms. Mastrangelo's counsel in the pending bankruptcy matter.
28. By order dated March 14, 2011, and entered on the docket March 15, 2011, the bankruptcy court continued the hearing on the show cause to April 13, 2011, and ordered Respondent to pay Mr. Goldberg the sum of \$1,500.00, within 10 days of the entry of the order, and to prepare a written statement regarding her office procedures for handling bankruptcy cases and to provide the statement to the chapter 13 trustee by April 4, 2011.
29. Respondent complied with the bankruptcy court's order.
30. On April 14, 2011, the Court dismissed the rule to show cause against Respondent.
31. On April 15, 2011, Ms. Mastrangelo's bankruptcy plan was approved.
32. Respondent asserts that her failure to communicate with Ms. Mastrangelo and her failure to attend the 341(a) meeting of creditors stemmed from her assistant's refusal

or failure to provide her with the messages or notice. She further asserts that she believed that Ms. Mastrangelo had signed the petition prior to its being filed. Respondent asserted that the assistant threw her messages away and failed to calendar appointments. Respondent terminated her assistant because of these issues.

B. NATURE OF MISCONDUCT

Such conduct by Katherine Martell constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

II. Complainant Louise Carlisle Yeoh, VSB Docket No. 11-041-086807

A. STIPULATIONS OF FACT

1. At all times relevant, Respondent Katherine Martell (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On May 12, 2010, Complainant Louise Carlisle Yeoh hired Respondent to represent her in her divorce. The divorce was uncontested. Ms. Yeoh had received a property settlement agreement from her husband, which she submitted to Respondent for her review.
3. On October 29, 2010, a property settlement agreement was finalized and signed.
4. In November 2010, Ms. Yeoh received two settlement checks.
5. From November 2010 to January 2011, Ms. Yeoh could not reach Respondent. Ms. Yeoh called Respondent several times a day, and at different times. Ms. Yeoh also sent Respondent e-mails requesting status updates and with questions. Respondent did not respond to Ms. Yeoh.
6. In December 2010, Ms. Yeoh contacted Fairfax County Circuit Court to determine whether Respondent had filed suit on her behalf. Respondent had not.
7. On January 6 and January 17, 2011, Ms. Yeoh's insurer, who referred Respondent to Ms. Yeoh, sent e-mails to Respondent. Respondent did not respond to the insurer.

8. On January 27, 2011, Ms. Yeoh e-mailed Respondent requesting a copy of the signed property settlement agreement and any other documents new counsel would require.
9. On January 28, 2011, Respondent stated that she sent Ms. Yeoh two copies of the property settlement agreement; however, Ms. Yeoh never received the agreement.
10. Opposing counsel also had difficulty communicating with Respondent, which necessitated his serving the divorce complaint on Ms. Yeoh. He stated that after the property settlement agreement was signed October 29, 2010, Respondent disappeared, and he could not locate Respondent to serve a courtesy copy of the divorce suit on her.
11. On February 28, 2011, Ms. Yeoh was served with a divorce complaint.
12. In March 2011, Ms. Yeoh hired Jamie A. Mastandrea, Esq., to represent her.
13. In order to respond to the divorce complaint and complete the divorce, Ms. Mastandrea needed a copy of Ms. Yeoh's file, including the property settlement agreement.
14. Accordingly, Ms. Mastandrea requested Respondent provide Ms. Yeoh's file to her. Ms. Mastandrea called and wrote to Respondent. Ms. Mastandrea sent Respondent a letter, which was returned, and she e-mailed Respondent.
15. By e-mail dated March 21, 2011, Respondent responded to Ms. Mastandrea's e-mail. The two agreed that Ms. Mastandrea would arrange for the file to be picked up when Respondent advised it was ready, which Respondent did on April 4, 2011. The file, however, was not ready for pick up on April 4, 2011. By e-mail dated April 5, 2011, Respondent apologized and stated she would have the file delivered to Ms. Mastandrea. Respondent subsequently mailed the file to Ms. Mastandrea.
16. As a result of the delays, the divorce was not finalized until April 29, 2011. Ms. Yeoh thus had to pay additional sums for insurance.

B. NATURE OF MISCONDUCT

Such conduct by Katherine Martell constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions are:

1. No later than February 1, 2012, Respondent shall promptly inform Assistant Bar Counsel in writing that she has engaged either a mentor or a law office management consultant, approved by Assistant Bar Counsel, to review and make recommendations to Respondent regarding her law practice policies, systems, and procedures.
2. Respondent shall institute and thereafter follow with consistency any and all recommendations made to her by the mentor or law office management consultant following his/her evaluation of Respondent's practice. Respondent shall grant the attorney or consultant access to her law practice both to review her policies and procedures and to ensure that Respondent has instituted and is complying with his/her recommendations. Assistant Bar Counsel shall have access, by telephone conferences and/or written reports, to the mentor or consultant's findings and recommendations and assessment of Respondent's level of compliance with the recommendations.
3. Respondent shall be obligated to pay, when due, the consultant's legal fees and costs for services. The consultant shall provide information regarding the services performed and the bill to the Bar and Respondent.
4. Not later than March 1, 2012, Respondent shall ensure that either the mentor or the law office management consultant has reported his/her findings and recommendations regarding Respondent's law practice to Assistant Bar Counsel.
5. Not later than May 1, 2012, Respondent shall ensure that the consultant has certified in writing to Assistant Bar Counsel and Respondent either that Respondent has instituted the recommended measures or that Respondent has failed to do so. Respondent's failure to conform her law office management practices and procedures to the consultant's recommendations by May 1, 2012, shall constitute a violation of these Terms.
6. By February 1, 2012, Respondent shall certify in writing to Assistant Bar Counsel that Respondent has installed adequate docketing procedures for the prompt return of clients' calls and for a prompt letter or e-mail to those clients Respondent cannot reach by phone.

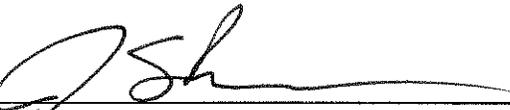
7. Respondent shall read in their entirety Rules 1.3, 1.4, 1.15, 1.16, and 5.3 and shall certify compliance in writing to Assistant Bar Counsel not later than February 1, 2012.
8. On or before May 1, 2012, Respondent shall complete six (6) hours of MCLE-approved Continuing Legal Education in the area of bankruptcy law by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form(s) to Assistant Bar Counsel by May 1, 2012. These six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement, and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by the specified dates, the alternative disposition shall be a Certification for Sanction Determination pursuant to Part Six, Section IV, Paragraph 13-15.G. of the Rules of Court.

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

FOURTH DISTRICT SUBCOMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR

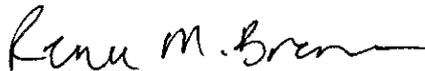
By



Jason S. Rucker
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on December 12, 2011, I mailed by certified mail a true and correct copy of the Subcommittee Determination (PUBLIC Reprimand with Terms) to Katherine Martell, Esquire, Respondent, at K and M Law Group LLP, Suite 301, 10615 Judicial Drive, Fairfax, VA 22030, Respondent's last address of record with the Virginia State Bar.



Renu M. Brennan, Esq.
Assistant Bar Counsel