

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF FRANCIS ALLEN MINOR,
VSB Docket Nos. 09-053-078432 and 10-053-081956**

MEMORANDUM ORDER

This matter came on December 5, 2011, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Francis Allen Minor, based upon the Certification of a Fifth District—Section III Subcommittee of the Virginia State Bar. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Dr. Theodore Smith, lay member, William E. Glover, Paul M. Black, David R. Schultz, and Thomas R. Scott, Jr., presiding.

Seth M. Guggenheim, representing the Bar, and the Respondent, Francis Allen Minor, presented an endorsed Agreed Disposition, entered into on November 30, 2011, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Jennifer L. Hairfield, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it was the unanimous decision of the Board that the Agreed Disposition be accepted. Accordingly, the Board accepts the Agreed Disposition, and finds by clear and convincing evidence as follows:

1. At all relevant times hereto, Francis Allen Minor (hereinafter the “Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia, whose license was not at all times in good standing.

As to All Matters

2. On or around April 13, 2007, Respondent's license to practice law was suspended due to his failure to meet his annual Mandatory Continuing Legal Education obligation. Respondent's license remained suspended until March 31, 2009.

3. Incident to the investigation of the instant matters, Respondent was interviewed by Virginia State Bar Investigator Cam Moffatt on October 5th and 6th, 2010. At that time, Respondent indicated that he "assumed" that he had received the notices advising him of both a pending license suspension due to MCLE non-compliance, and the suspension itself following Respondent's failure to address the MCLE deficiency within the required time frame.

As to VSB Docket No. 09-053-078432 (Complainant Ada L. Smith)

4. In or around December, 2007, Complainant herein, Ada L. Smith, retained Respondent to defend her against a DUI charge pending in Prince William County, paying him \$500.00 to do so in two installments. At the time of her arrest, Complainant Smith was employed as a supervisor with the Department of Motor Vehicles and was concerned that, if convicted, her job could be at risk. She advised Respondent of her concerns at the time he was retained. Respondent advised Complainant Smith that, if she were convicted, he would appeal her case without requiring payment of any additional fees.

5. The matter went to trial on February 1, 2008. The Respondent represents that Complainant Smith knowingly, thoughtfully, and intelligently, accepted a plea offer, was convicted, and subsequently lost her job. At the direction of Smith, Respondent filed an appeal of Complainant's conviction, but failed to advise her of this fact. Respondent also failed to notify Complainant of the appeal trial date, which was set for July 17, 2008.

As a result, on July 17, 2008, Complainant failed to appear for trial and a *capias* was therefore issued for her arrest. Respondent contends that he did attempt to contact Smith but that she had changed her cell phone number. Complainant, who had relocated to South Carolina following her conviction, first learned of the outstanding warrant for her arrest in January, 2009, from her estranged husband who continued to reside at Complainant's Virginia residence.

6. Once Complainant Smith learned of the outstanding warrant, she attempted to reach Respondent and, after many unsuccessful attempts, was finally able to do so in or around February, 2009. At this time, Respondent promised Complainant that he would immediately file a motion seeking to have the bench warrant lifted. Shortly thereafter, Respondent represented to Complainant that he had filed the Motion and a hearing date of February 12, 2009, had been set. On that date, as Complainant Smith was driving to Virginia for the hearing, she telephoned Respondent and was advised by his staff that he was not available and that the hearing had been continued. Complainant Smith next contacted the Clerk of Court and learned that no motion had ever been filed, nor had any hearing date been set.

7. On or around February 27, 2009, Respondent finally filed a *Motion to Remove Bench Warrant* which was heard on March 13, 2009, at which time the warrant was lifted. A trial date for Complainant's appeal of her DUI conviction was then set for April 20, 2009, at which time Respondent successfully negotiated a reduction of the original DUI charge to reckless driving.

8. On or around February 12, 2009, Complainant Smith filed a complaint with the Virginia State Bar against Respondent. On or around February 17, 2009, a copy of this

complaint was sent to Respondent together with a letter from Senior Assistant Bar Counsel Seth M. Guggenheim demanding Respondent's written response thereto within twenty-one (21) days pursuant to Respondent's obligation under Rule of Professional Conduct 8.1(c). Respondent failed to file a response to the complaint despite his obligation under RPC 8.1(c) to respond to lawful requests for information from a disciplinary authority.

9. On March 18, 2009, due to Respondent's failure to respond to the complaint, this matter was referred for further investigation and Respondent was so advised by letter dated March 18, 2009.

10. Thereafter, Investigator Moffatt scheduled an interview with Respondent. Investigator Moffatt instructed Respondent to bring Complainant's file, as well as his written response to the complaint, to the interview. Respondent failed to bring either his file or his written response to the complaint to his interview with Investigator Moffatt.

11. During this interview, Respondent advised Investigator Moffatt that he had been unable to locate Complainant's file. Respondent also advised Investigator Moffatt that he "believed" he had utilized a written fee agreement in Complainant's case. Respondent presented Investigator Moffatt with an exemplar of his fee agreement which provided, "That fees paid to attorney are deemed earned upon receipt."

As to VSB Docket No. 10-053-081956 (Complainant Donna Lynn Holshey)

12. In or around May, 2009, Complainant Holshey retained Respondent regarding a domestic relations matter, paying him \$200.00 in cash.

13. In November, 2009, Complainant advised Respondent that she wanted a refund of the fees paid. On November 3, 2009, Respondent promised to return the funds, and by text message dated November 3, 2009, Respondent promised again that he would,

“have [Complainant’s] funds to [her] post haste.” By text message sent on November 12, 2009, Respondent promised again to send the funds. As of the date of his interview with Investigator Moffatt on August 20, 2010, Respondent had not refunded the Complainant’s money.

14. Throughout the duration of Respondent’s representation of Complainant, he failed to respond to her requests for information about the status of her case.

15. On or around December 1, 2009, Complainant Holshey filed a complaint with the Virginia State Bar against Respondent. On or around December 9, 2009, a copy of this complaint was sent to Respondent together with a letter from Senior Assistant Bar Counsel Seth M. Guggenheim demanding Respondent’s written response thereto within twenty-one (21) days pursuant to Respondent’s obligation under Rule of Professional Conduct 8.1(c). Respondent failed to file a written response to the complaint despite his obligation under RPC 8.1(c) to respond to lawful requests for information from a disciplinary authority.

16. On July 21, 2009, due to Respondent’s failure to respond to the complaint, this matter was referred for further investigation and Respondent was so advised by letter dated July 21, 2009.

17. On August 20, 2010, incident to that investigation, Investigator Moffatt interviewed Respondent at which time Respondent advised her that he never agreed to pursue an uncontested divorce for Complainant, only to prepare and deliver to her the documents she would need in order to do so herself. Respondent advised Investigator Moffatt that he prepared the necessary documents and dropped off a CD with Complainant Holshey containing the documents in computerized format in or around August, 2009.

Investigator Moffatt was advised by Complainant Holshey that Respondent never provided her with either any documents or a CD containing those documents in a computerized format.

18. Respondent also advised Investigator Moffatt that he never agreed to refund any fees to Complainant since he had earned the money she had paid to him. When shown the November 3, 2009, text message, Respondent stated he did not recall having agreed to any refund.

19. Finally, during his interview with Investigator Moffatt, Respondent acknowledged that he did not, but should have, responded to Complainant's bar complaint.

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

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

- (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.

RULE 5.5 Unauthorized Practice Of Law

- (a) A lawyer shall not:
 - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

RULE 8.1 Bar Admission And Disciplinary Matters

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

- (a) knowingly make a false statement of material fact;
- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]

Upon consideration whereof, it is hereby ORDERED that the Respondent receive a SUSPENSION, WITH TERMS, as follows:

The Respondent's license to practice law in the Commonwealth of Virginia is suspended for a period of one (1) year, effective December 9, 2011.

The Terms of discipline are as follows:

1. Prior to December 9, 2012, the Respondent shall enroll in and attend in person (and not online) one or more courses which aggregate at least six (6) credit hours of Virginia State Bar approved Continuing Legal Education in the field of legal ethics. The

Continuing Legal Education attendance obligation set forth in this paragraph, aggregating six (6) credit hours, shall *not* be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdictions in which he may be licensed to practice law. Respondent shall certify his compliance with the Terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Seth M. Guggenheim, Senior Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, promptly following his attendance of such CLE courses. Such prompt certification shall, itself, be deemed a Term of discipline.

2. The Respondent shall conform every written fee agreement which he uses in his practice of law to the requirements of Rules of Professional Conduct 1.5 and 1.15, and Legal Ethics Opinion 1606. On or before December 9, 2012, the Respondent must submit for his approval to Seth M. Guggenheim, Senior Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, one sample copy of every such written fee agreement.

3. On or before January 15, 2012, the Respondent shall deliver to Seth M. Guggenheim, Senior Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, a check in the sum of Five Hundred Dollars (\$500.00) made payable to the order of Ada L. Smith. (Note: Ms. Smith is not a party to this disciplinary action. Thus, payment to Ms. Smith in accordance with this disciplinary action does not establish or create civil liability of Respondent to Ms. Smith, operate to discharge and release the Respondent from claims of further liability, if any, to Ms. Smith, or impair the right of the Respondent to assert any defenses to such claims.)

4. On or before January 15, 2012, the Respondent shall deliver to Seth M. Guggenheim, Senior Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, a check in the sum of Two Hundred Dollars (\$200.00) made payable to the order of Donna Lynn Holshey. (Note: Ms. Holshey is not a party to this disciplinary action. Thus, payment to Ms. Holshey in accordance with this disciplinary action does not establish or create civil liability of Respondent to Ms. Holshey, operate to discharge and release the Respondent from claims of further liability, if any, to Ms. Holshey, or impair the right of the Respondent to assert any defenses to such claims.)

If the Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the alternative disposition of this matter shall be that the Respondent's license to practice law in Virginia shall be suspended for an *additional* period of one year, to take effect at the conclusion of the one (1) year license suspension provided for herein.

It is further ORDERED that, as directed in the Board's December 5, 2011, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 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 his license to practice law in the Commonwealth of Virginia, to all clients for whom he 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 his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such

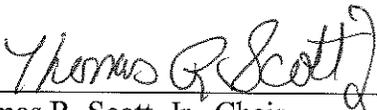
arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, Francis Allen Minor 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.

Pursuant to Part Six, Section IV, Paragraph 13-9E. 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 the Clerk via Certified Mail to the Respondent, Francis Allen Minor, at 7205 Halifax Place, Springfield, Virginia 22150, his last address of record with the Virginia State Bar, and by first class, regular mail to Seth M. Guggenheim, Senior Assistant Bar Counsel, at the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

ENTERED this 5th day of December, 2011.



Thomas R. Scott, Jr., Chair
Virginia State Bar Disciplinary Board