

VIRGINIA:

BEFORE THE FOURTH DISTRICT COMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
BIBI BAHIZI MUSAFIRI

VS. Docket No. 12-041-092366

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On October 9 and October 31, 2013, a hearing in this matter was held before a duly convened Fourth District Committee, Section I panel consisting of David A. Bell (Lay Member), Robert C. McCarthy (Lay Member), Leo R. Andrews, Jr., Esquire, Sudeep Bose, Esquire, Shane N. Cralle, Esquire, Paul H. Melnick, Esquire, and Matthew T. Foley, Esquire, Chair, presiding. Jonathan S. Gelber, Esquire was present on October 9, 2013, but he was not present October 31, 2013.

Respondent Bibi Bahizi Musafiri appeared in person *pro se*. Renu Brennan, assistant bar counsel, appeared as counsel for the Virginia State Bar.

The matter proceeded upon the Charge of Misconduct, dated June 4, 2013, setting forth allegations that the Respondent violated Rules of Professional Conduct 1.3 (a), *Diligence*; 1.4(a) *Communication*; 1.15(a)(1)(2)(3)(i)(ii) and 1.15(b)(3)(4), *Safekeeping Property*; and 1.16(d) *Declining or Terminating Representation*.

At the commencement of the proceedings, the Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

Pursuant to Part Six, Section IV, Paragraph 13-16.D of the Rules of the Supreme Court of Virginia, on September 3, 2013, the Chair entered a Pre-Hearing Order setting forth deadlines to file exhibits and witness designations as well as objections to exhibits. The Bar timely filed Bar Exhibits 1-67, and the Bar timely filed its witness list. Respondent did not submit any exhibits nor did Respondent identify any witnesses. Respondent did not object to any of the Bar's exhibits by the deadline to object to exhibits. As set forth in the Pre-Hearing Order, a pre-hearing conference call was held on October 7, 2013, at 10:30 a.m., during which the Chair considered the parties' compliance with the Pre-Hearing Order. Respondent did not participate in the pre-hearing conference call.

On October 7, 2013, upon correspondence from Respondent, the Chair convened a conference call to determine whether to continue the October 9 hearing. After receiving testimony of a witness on behalf of Respondent, and after hearing argument from the parties, the Chair denied the Motion to Continue without Prejudice and allowed Respondent to renew the Motion to Continue with medical evidence.

On October 9, 2013, Respondent renewed her Motion to Continue the hearing based on a diagnosis of Addison's Disease and a letter from Ulrich B. Prinz, M.D. stating that she suffers from Addison's Disease (Adrenal Insufficiency) which can decrease her ability to effectively deal with stressful situations. The documentation submitted by Respondent in support of her Motion to Continue were received into the record as Respondent's Exhibit 1 in support of Respondent's Motion to Continue. The parties argued the Motion to Continue. Thereafter the panel retired to deliberate, and the panel unanimously denied the Motion to Continue.

The parties then made opening statements, and the panel received the Bar's Exhibits 1-67 into evidence, as well as Respondent's Exhibit 1, all without objection. The panel also received

the testimony of Chonphimthicha Johnson, through a duly sworn translator, and Tien Duc Pham, Esq. After a lengthy cross-examination of Ms. Johnson, Respondent requested the panel adjourn the hearing at approximately 4:30 p.m. due to fatigue and illness. The hearing was thus adjourned.

The hearing was continued to October 31, 2013. With the exception of Jonathan Gelber, Esquire, all members of the panel reconvened on October 31, 2013. The Chair reminded the parties of the hearing procedures. The panel received Bar Exhibit 68, the Affidavit of Oti W. Nwosu, into evidence over Respondent's Motion to Strike the Affidavit. The Panel also received into evidence the testimony of Thomas Tousley, Esq., as an expert witness, and David G. Fennessey.

Upon the conclusion of the bar's case, the Respondent moved to disqualify assistant bar counsel. The Chair denied this motion. The Respondent moved to strike the bar's evidence, and the panel unanimously overruled the motion. Thereafter, the panel heard from the Respondent, who testified on her own behalf. At the conclusion of all of the evidence, the parties presented closing arguments, and the panel adjourned to deliberate the Charge of Misconduct. The panel unanimously found, as set forth below, that Respondent violated Rules 1.3(a), 1.4(a), 1.15(a)(1)(2)(3)(i)(ii) and 1.15(b)(3)(4), and 1.16(d).

Pursuant to Part 6, Section IV, Paragraph 13-16.Z of the Rules of the Virginia Supreme Court, the Fourth District Committee, Section I of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. Respondent Bibi Musafiri (Respondent) has never been licensed to practice law in the Commonwealth of Virginia.
2. In 2006, Respondent was licensed to practice law in the state of New York.

3. Respondent has practiced immigration law in Virginia.
4. Respondent has practiced law in Fredericksburg, Virginia and with the Law Office of Oti W. Nwosu in Arlington, Virginia.
5. In October 2011, Respondent opened her own law office. On her business card, she held herself out as Bibi Musafiri, Attorney, Counselor at Law, Licensed – NY State Bar, Admitted – Federal Court, SD NY, license en Droit, French civil law. At the time of these facts, Respondent's law office address was located at 3705 S. George Mason Drive, Suite CIS, Falls Church, VA 22041.
6. From October 2011 to the present, Respondent did not and does not have any form of a trust account.
7. From September 2011 to March 2012, Respondent represented Ms. Chonphimthicha Johnson in Virginia in an immigration matter.
8. As set forth in detail, in June 2012, Ms. Johnson filed a bar complaint against Respondent alleging that Respondent abandoned Ms. Johnson's immigration case by failing to file an immigration form which Respondent was retained to file and which Respondent assured Ms. Johnson she would file, and for which Respondent accepted her full legal fee and filing fees. The complaint further alleged that Respondent failed to communicate with Ms. Johnson regarding the status of the case and filing fees.
9. Rule 8.5 of the Virginia Rules of Professional Conduct provides as follows:

RULE 8.5 Disciplinary Authority; Choice Of Law

- (a) **Disciplinary Authority.** A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Virginia is also subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia. By doing so, such lawyer consents to the appointment of the Clerk of the Supreme Court of Virginia as his or her agent for purposes of notices of any disciplinary action by the Virginia State Bar. A lawyer may be subject for the same conduct to the disciplinary authority of Virginia and any other jurisdiction where the lawyer is admitted.

Ethical Misconduct in Representation of Chonphimthicha Johnson

10. On September 30, 2011, while Respondent worked at the Law Office of Oti W. Nwosu, Chonphimthicha Johnson retained Respondent and Oti Nwosu to file with U.S. Citizenship and Immigration Services (USCIS) the Form I-751, Petition to Remove Conditions on Residence, in order to lift restrictions on the renewal of her conditional permanent residence card (green card).

11. The fee for the representation was \$3,000.00.
12. On September 30, 2011, Ms. Johnson paid the sum of \$500.00 to Oti Nwosu. At Ms. Johnson's request, Ms. Nwosu provided the \$500.00 to Respondent. Respondent did not deposit the \$500.00 received from Ms. Nwosu on behalf of Ms. Johnson in a trust account.
13. In October 2011, Ms. Musafiri opened her own law firm, and she continued to represent Ms. Johnson in her immigration matter.
14. Ms. Nwosu withdrew from her representation of Ms. Johnson in the immigration matter by letter dated November 7, 2011.
15. Respondent never opened a trust account.
16. By December 2011, Ms. Johnson paid Ms. Musafiri the remaining \$2,500.00 in three separate payments.
17. Respondent failed to deposit Ms. Johnson's funds into a trust account, a safe deposit box or other place of safekeeping.
18. As Ms. Johnson discussed with Respondent, Ms. Johnson understood that she had a three-month window from December 17, 2011 to March 17, 2012 to file the Form I-751. Additionally, Ms. Johnson's driver's license also expired on March 17, 2012.
19. By e-mail dated December 8, 2011, Respondent advised a friend/translator for Ms. Johnson that the Form I-751 filing would be ready to file by December 16. All e-mails referenced herein were exchanged between Respondent and the friend/translator who communicated and received communications on behalf of Ms. Johnson.
20. By e-mail dated December 20, 2011, Respondent advised Ms. Johnson that she would mail the Form I-751 on or before December 23.
21. By e-mail dated December 29, 2011, Ms. Johnson requested that Respondent file the Form I-751.
22. Thereafter, Ms. Johnson tried to contact Respondent several times to inquire whether Respondent had filed the Form I-751. Ms. Johnson did not reach Respondent.
23. By e-mail dated January 20, 2012, Respondent advised Ms. Johnson that she had traveled to Africa due to her father's passing and that she would return to work January 31, 2012, at which time she would contact Ms. Johnson.
24. By e-mail dated February 1, 2012, Ms. Johnson requested an update from Respondent regarding the status of the filing of the Form I-751.

25. By e-mail dated February 3, 2012, Respondent advised Ms. Johnson that she was still in Africa, and Ms. Johnson's file was ready to be sent out. Respondent stated that Ms. Johnson had to come to the office for a signature on a form. Respondent advised Ms. Johnson that her due date was March 17, 2012, which was in approximately six weeks; that time was of no consequence; that Respondent liked to file early; and that Respondent would be back ahead of time for Ms. Johnson's filing.
26. By e-mail sent in February 2012, Ms. Johnson expressed her concern to Respondent that her driver's license expired on the date of the conditional green card and that she would no longer be able to drive.
27. By e-mail dated February 8, Respondent advised that if Ms. Johnson's driver's license were to expire soon that she could renew the license on the basis of her I-751 filing. Respondent further advised that, "The regulation provide the she stays legal as long as her filing is sent by March 17 and that no letter of illegal presence have not been triggered. Such letter cannot be triggered any time soon even after March 17. I will hope that this information make IDD (Ms. Johnson) feel better. Until I return, I am not suppose to be working on my US clients. I will appreciate that she reserve some consideration and understanding of the much needed retreat I am taking after the passing of both my parents."
28. By e-mail dated March 8, 2012, Ms. Johnson advised Respondent that she unsuccessfully sought to renew her driver's license. The DMV instructed Ms. Johnson to obtain a copy of her green card and the documents Respondent prepared on Ms. Johnson's behalf. Ms. Johnson advised Respondent that she needed the documents from Respondent, and she asked for advice on how to proceed.
29. By subsequent e-mail, Respondent advised Ms. Johnson that Ms. Johnson was filing under the battered women exception and thus could file the Form I-751 after the three month window if the USCIS had not sent Ms. Johnson a Notice to Appear. Respondent advised Ms. Johnson that it was not her intent to exceed the three-month period because the information Ms. Johnson had provided Respondent was more than sufficient for a successful filing. At most according to Respondent, some of Ms. Johnson's friends' affidavits in support of the filing may have required clarification. Respondent advised she could meet with Ms. Johnson on March 16.
30. Respondent and Ms. Johnson met on March 17, 2012, and Respondent and Ms. Johnson signed the Form I-751. Respondent advised Ms. Johnson that she would mail the Form I-751.
31. Ms. Johnson also provided Respondent with a check or checks in the total amount of \$590.00 made payable to the USCIS for the filing fees.
32. Respondent never mailed the Form I-751, nor did she contact Ms. Johnson to advise her that she did not file the form I-751.

33. By emails to Respondent in April 2012, Ms. Johnson tried in vain to contact Respondent regarding the status of her filing. Respondent did not respond to any of Ms. Johnson's inquiries.
34. Respondent asserts her computer crashed on April 12, 2012.
35. In May 2012, Ms. Johnson hired successor counsel to file the Form I-751. Ms. Johnson paid successor counsel \$2,000.00. Successor counsel successfully petitioned USCIS to remove the conditions on Ms. Johnson's residence.
36. By letter dated May 24, 2012 to Respondent, Ms. Johnson asked Respondent to return the checks to the USCIS to her.
37. Respondent did not respond to Ms. Johnson.
38. In June 2012, Ms. Johnson filed this bar complaint against Respondent.
39. Respondent asserts that she did not file the Form I-751 or communicate with Ms. Johnson regarding the status because Respondent determined that Ms. Johnson participated in a sham marriage. Ms. Johnson was married from May 2009 to 2011, when she separated from her husband. Respondent concedes that she never communicated her belief that the marriage was a sham to Ms. Johnson, nor did she advise Ms. Johnson that she decided to withdraw as her counsel and thus would not file the Form I-751. Respondent also concedes that she did not communicate with Ms. Johnson after March 17, 2012.
40. Respondent never returned any portion of the \$3,000.00 fee to Ms. Johnson, despite the fact that Respondent did not file the Form I-751 she was retained to file.
41. Respondent never returned Ms. Johnson's checks to the USCIS to Ms. Johnson. Respondent did not cash the checks, but she does not know where the checks are.

II. NATURE OF MISCONDUCT

Such conduct by Bibi Bahizi Musafiri 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.

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. 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 accountings to the client regarding them;

(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 that 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).

III. PUBLIC REPRIMAND WITH TERMS

Thereafter, the panel heard argument from the parties regarding the appropriate sanction and adjourned to deliberate an appropriate sanction.

Accordingly, it is the decision of the committee 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. On or before October 31, 2014, Respondent shall pay, by certified, cashier's, or treasurer's check made payable to the order of Chonphimthicha Johnson the principal sum of \$3,000.00. The payment shall be made by delivery of a certified, cashier's, or treasurer's check to Assistant Bar Counsel Renu M. Brennan, or her designee, at Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.
2. On or before October 31, 2014, Respondent shall complete thirty hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matters of ethics, trust accounts, and immigration law. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward her Mandatory Continuing Legal Education Requirement in New York or in any jurisdiction in which Respondent is licensed to practice law. Respondent shall certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form to Assistant Bar Counsel, Renu M. Brennan, or her designee, promptly following Respondent's attendance of each such CLE program and no later than October 31, 2014.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified, the alternative disposition for this Public Reprimand with Terms shall be a Certification for Sanction

Determination pursuant to Part Six, Section IV, Paragraph 13-16.CC of the Rules of the Virginia Supreme Court. The District Committee recommends as a sanction a three-year suspension for any failure by Respondent to comply with the Terms of this District Committee Determination.

Any Proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Paragraph 13-9.E of the Rules of Court.

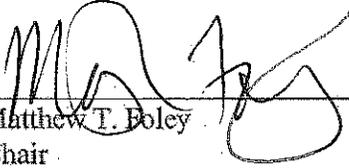
Respondent has stated that she cannot provide a physical mailing address or other contact information at this time to the Virginia State Bar, and she has agreed to update her contact information, including her physical address and phone number, when she is able. Until such time as Respondent provides contact information to the Virginia State Bar, Respondent agrees to accept service of all process and communications from the Virginia State Bar at her e-mail address of musafiribibi@gmail.com.

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

The Court Reporter who transcribed the proceedings on October 9, 2013 is Bryan Young of Capital Reporting Company, 1821 Jefferson Place, NW, 3rd Floor, Washington, DC 20036, (202) 857-3376. The Court Reporter who transcribed the proceedings on October 31, 2013 is Blaire Benefield of Capital Reporting Company, 1821 Jefferson Place, NW, 3rd Floor, Washington, DC 20036, (202) 857-3376.

**FOURTH DISTRICT COMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR**

By


Matthew T. Boley
Chair

CERTIFICATE OF SERVICE

I certify that on November 25, 2013, a true copy of the Fourth District Committee, Section I Determination (Public Reprimand with Terms) was sent by e-mail to musafiribibi@gmail.com, the address at which Respondent has agreed to accept service of any and all communications from the Virginia State Bar.

Renu M. Brennan

Renu M. Brennan
Assistant Bar Counsel