VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

VIRGINIA STATE BAR, EX REL
THIRD DISTRICT COMMITTEE
VSB Docket No. 14-032-097791

Complainant

v.

Case No. 14-~~2778~~-2668-6

KENNETH WAYNE PACIOCCO

Respondent

MEMORANDUM ORDER OF SUSPENSION

On August 29, 2014, this matter came before a Three-Judge Court sitting by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia 1950, as amended, consisting of the Honorable Charles E. Poston, Retired Judge of the Fourth Judicial Circuit, the Honorable Charles J. Strauss, Retired Judge of the Twenty-Second Judicial Circuit, and the Honorable Cheryl V. Higgins, Judge of the Sixteenth Judicial Circuit, designated Chief Judge. Renu M. Brennan, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and Respondent Kenneth Wayne Paciocco (hereafter "Respondent") appeared in person and through his counsel, Michael L. Rigsby.

WHEREUPON, a hearing was conducted on whether Respondent violated the Rules of Professional Conduct as alleged in the Complaint and Petition for Expedited Relief.

The Chief Judge swore the Court Reporter and polled the members of the Court to determine whether any member had a personal or financial interest that might affect or

reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chief Judge, verified that he/she had no such interest.

In accordance with the Prehearing Order, the Court admitted into evidence, without objection, the Bar's pre-filed Exhibits 2-6. 9-15. 17, 20-70, and 72-89. At the pretrial conference, the Bar withdrew its Exhibit 1. The Court marked for identification and subsequently admitted into evidence, without objection, the Bar's pre-filed Exhibits 7, 8, 16, 18, and 19. Bar Exh. 16 was a recording of a voicemail from Respondent. Ms. Garnett played the actual voicemail from her phone during her direct examination, and the voicemail was admitted without objection.

Respondent filed an Answer to the Petition for Expedited Relief and Complaint. The Petition for Expedited Relief and Complaint and Respondent's Answer are part of the record in this matter. Respondent did not introduce any exhibits.

Respondent admitted that he has not maintained his trust account consistent with Virginia Rule of Professional Conduct 1.15. (Answer, ¶32).

Prior to the Bar's presentation of its case, Respondent stipulated that from February 6, 2012, to January 15, 2013. Respondent deposited personal funds into his trust account in violation of Va. Rule of Prof. Resp. 1.15(a)(3). Respondent further stipulated that between September 20, 2011. and February 14. 2014. Respondent did not reconcile his trust account in violation of Va. Rule of Prof. Resp. 1.15(d)(3). Finally, Respondent stipulated that Respondent failed to notify his client Complainant Ashli Garnett of the receipt of medical pay funds due Ms. Garnett in the amount of $15,000.00 in violation of Va. Rule of Prof. Resp. 1.15(b)(4).

The Bar called the following witnesses: Leila Garnett, Robert Garnett, Ashli

Garnett, Shelia Richardson, and Cam Moffatt. Respondent testified in his case.

Upon the evidence presented and arguments of counsel and the stipulations of Respondent, the Court unanimously finds the Virginia State Bar has proved by clear and convincing evidence the following facts:

I. FINDINGS OF FACT

1. At all times referenced herein Respondent Kenneth Wayne Paciocco (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia. Respondent has practiced law for thirty-one years.

ASHLI GARNETT

2. In October 2010 Ashli Garnett (Ms. Garnett) sustained injuries when struck by a vehicle while crossing the street. (Admitted in Answer, ¶1).

3. In October 2010 Ms. Garnett's mother, Leila Garnett, learned from her automobile insurance carrier that Ms. Garnett had $15,000 in Medical Expense Benefits (MEB) coverage, referred to herein as "med pay," and the carrier forwarded to her information and the form to file a claim. (Admitted in Answer, ¶2).

4. On December 15, 2010 Ms. Garnett and her parents, Robert and Leila Garnett, met with Respondent, and Ms. Garnett retained Respondent to represent her in her personal injury claims. Respondent and Ms. Garnett entered into a Representation Agreement. (Admitted in Answer, ¶2; Bar Exhs. 4, 10, and 11).

5. In the December 15, 2010 meeting, the Garnetts provided Respondent with the information from their carrier regarding med pay coverage. Respondent told the Garnetts that he would send the carrier a letter of representation. (Testimony of Robert and Leila Garnett. Admitted in Answer, ¶2, however Respondent testified at hearing that he did not receive this information in the first meeting.).

6. By letter dated August 16, 2011, Respondent advised the Garnetts' carrier of his representation of Ashli Garnett, and he requested that the carrier process Ms. Garnett's claim under the med pay provisions of the Garnetts' auto insurance policy and forward the check to him. (Admitted in Answer, ¶2; Bar Exhs. 4 and 12).

7. The carrier mailed Respondent a check dated September 27, 2011 in the amount of $15,000 payable to Respondent and Ms. Garnett. (Admitted in Answer, ¶2; Bar Exhs. 4 and 13).

8. Although Respondent had a duty to notify Ms. Garnett upon receipt of the funds, at no time did he notify Ms. Garnett or her parents that he received the check. Respondent admitted that he did not inform Ms. Garnett of the receipt of the funds, and he so stipulated at the hearing. (Answer, ¶3; Bar Exh. 4; Testimony of Robert, Leila, and Ashli Garnett).

9. There was no Power of Attorney by which Ashli Garnett authorized Respondent to endorse the med pay check or any funds or checks received on her behalf and to deposit the funds into his trust account. The Representation Agreement between Respondent and Ms. Garnett, admitted without objection as Exhibit 10, did not contain any provision allowing Respondent to endorse checks on Ms. Garnett's behalf. Ashli Garnett, Leila Garnett, and Robert Garnett testified that Ashli Garnett did not authorize Respondent to endorse checks on her behalf. (Bar Exhs. 3, 5, 7, 10).

10. In responses to the Bar complaint, Respondent admitted he had no independent recollection of requesting and receiving authorization to sign the check from Ms. Garnett, but he stated that he was certain he did so in accordance with his practice. Respondent testified that it was his practice and custom to sign his and his client's names to checks he received and to then photocopy the checks so that his clients could pick up the proceeds. (Bar Exhs. 4, 6).

11. On September 30, 2011, without Ms. Garnett's knowledge or express authorization, Respondent negotiated the settlement check, signing both his name and Ms. Garnett's name to the check, and deposited the $15,000 in his trust account. (Answer, ¶5. Stipulated by Respondent that he did not inform the Garnetts of the deposit of Ms. Garnett's med pay funds into his trust account. Bar Exhs. 4, 13, 14, 17, 18, 19, 29).

12. Ms. Garnett testified that on September 30. 2011, the date Respondent deposited the $15,000 in med pay funds in her account, Ms. Garnett had a baby. Respondent conceded in testimony that his notes reflect that he was aware that on September 30. 2011, Ms. Garnett had a baby. (Bar Exh. 11, "Sept 30, 2011 had a Baby Girl Avianna").

13. After Respondent deposited the $15,000 into his trust account on September 30, 2011, the balance in his trust account was $35,291.10. (Bar Exh. 18).

14. By October 14, 2011, just two weeks after Respondent deposited Ms. Garnett's med pay funds in his trust account, Respondent's trust account balance dropped to $2,960.78. (Bar Exh. 18. Bar Exh. 17, Respondent's trust

account ledger, reflects that between October 5, 2011. and October 19, 2011, the balance dipped to $2,960.78).

15. As there were no disbursements to or on behalf of Ms. Garnett as of October 14, 2011, Respondent was required to preserve the entire $15.000.00 in trust. As stated above, Respondent did not preserve the $15,000 in trust. Rather, within two weeks of receipt of Ms. Garnett's funds, Respondent's trust account balance dipped to $2,960.78. (Answer, ¶7, Respondent admits he did not disburse any funds to Ms. Garnett as of October 14, 2011; Answer, ¶18, Respondent admits only disbursement to Ms. Garnett was in December 2013, after she filed the Bar complaint: Bar Exh. 4, Response to Bar Complaint, "The undisputed facts are as follows. I received the medpay money on or about September 27, 2011, and I disbursed the medpay money to my client on or about December 17. 2013." Bar Exhs. 17-19).

16. Respondent's trust account balance dipped below $15.000 several times between September 30, 2011. and December 17, 2013. The trust account balance was below $15,000 from October 25, 2011 to November 14, 2011: November 30, 2011 to December 22, 2011; May 14, 2012 to June 6, 2012: July 17, 2012 to August 3, 2012; August 8, 2012 to August 17, 2012; December 20, 2012 to December 28, 2012; February 1, 2013 to May 20, 2013: and June 5, 2013 to July 1, 2013. (Bar Exh. 18).

17. The Garnetts testified that throughout the representation they repeatedly asked Respondent about the status of the med pay claim, and Respondent stated that he would look into the matter.

18. In July 2013 Ashli Garnett's personal injury claim was arbitrated, and Ms. Garnett was denied recovery due to contributory negligence. (Admitted in Answer, ¶ 9).

19. After the arbitration Leila Garnett testified that she left Respondent messages regarding the status of the med pay claim, but Respondent did not return her calls. (Bar Exh. 4, Response to Bar Complaint, Respondent admits Mrs. Garnett called him shortly after the arbitration to inquire about the med pay claim.)

20. On September 3, 2013, Leila Garnett testified that she contacted her carrier about the med pay claim at which time she learned, contrary to Respondent's representations, that almost two years prior the carrier had mailed Respondent a $15,000 check payable to Respondent and Ms. Garnett, and the check had cleared October 3, 2011. (Bar Exhs. 3 & 15).

21. The Garnetts subsequently requested and obtained their daughter's file from Respondent. (Admitted in Answer, ¶ 12; Testimony of Robert and Leila Garnett).

22. On October 16, 2013, the Garnetts' carrier sent the Garnetts a copy of Respondent's August 16, 2011 letter of representation and the September 27, 2011 check. (Bar Exhs. 12 & 13).

23. In late October 2013, Mr. Garnett met with Respondent and told him he was aware the carrier sent Respondent the med pay in September 2011, and the check cleared October 3, 2011. (Admitted in Answer, ¶ 14; Testimony of Robert Garnett).

24. Robert Garnett testified that in the October 2013 meeting Respondent conceded to Mr. Garnett that he did not have a Power of Attorney nor did he have any authority to endorse checks on behalf of Ms. Garnett.

25. Respondent denied receiving the check stating that he would have remembered receiving the med pay. (Admitted in Answer, ¶ 16; Testimony of Robert Garnett).

26. Respondent advised Mr. Garnett that he would follow up with the carrier and contact Mr. Garnett. This was Mr. Garnett's last communication with Respondent. (Admitted in Answer, ¶ 16; Testimony of Robert Garnett).

27. On November 8, 2013, Respondent left Ms. Garnett a voicemail stating that he had a check for her. (Admitted in Answer, ¶ 17; Bar Exh. 16).

28. On December 17, 2013, the date Respondent responded to the Bar complaint, Respondent mailed Ms. Garnett a check for the $15,000, which she received December 20, 2013, over two years after Respondent received the funds from the carrier. (Admitted in Answer, ¶ 18).

29. In his response to the Bar complaint, Respondent conceded that he "signed her name and (his) name to the check, and deposited it in (his) trust account. The money sat there until (he) recently forwarded it to Ashli Garnett." (Bar Exh. 4).

SHELIA RICHARDSON

30. As part of the Bar's investigation of Ms. Garnett's complaint, the Bar audited Respondent's trust account for the time period of September 2011 to February 2014. (Admitted in Answer, ¶ 21 that Bar investigator reviewed Respondent's financial records; Testimony of Cam Moffatt; Bar Exhs. 17-58).

31. In reviewing Respondent's trust account records and associated files, the Bar's investigator discovered that in November 2011 Respondent received a $2,000.00 check for med pay funds on behalf of his then client in a personal

injury matter, Shelia Richardson. (Testimony of Cam Moffatt; Bar Exhs. 17-19, 31, 66-67).

32. The check, admitted without objection as Exhibit 66 of the Bar's exhibits, and dated November 8, 2011, was issued by GEICO General Insurance Co. and was made payable to the order of Sheila Richardson in the amount of $2,000.00.

33. Although Respondent had a duty to notify Ms. Richardson upon receipt of the funds, he did not notify Ms. Richardson that he received the check. (Testimony of Shelia Richardson).

34. Without Ms. Richardson's knowledge or express authorization, Respondent signed Ms. Richardson's name on the back of the check and deposited the $2.000.00 into his trust account on November 10, 2011. (Testimony of Shelia Richardson and Cam Moffatt; Bar Exhs. 17-19, 31, 66-67).

35. As of the date of the Bar investigator's audit in April 2014, there was no record that Respondent had ever disbursed the $2.000.00 to Ms. Richardson. (Testimony of Cam Moffatt; Bar Exhs. 17-19, 31, 66-67).

36. On or about May 12, 2014, the Bar's investigator requested Respondent provide her with Ms. Richardson's contact information. (Testimony of Cam Moffatt).

37. On May 14, 2014, Respondent contacted Ms. Richardson and advised her that he had $2,000 in funds for her. (Testimony of Shelia Richardson).

38. On May 15, 2014, Ms. Richardson received a check for $2,000.00 from Respondent. (Testimony of Shelia Richardson).

39. On May 15, 2014, Respondent provided the Bar's investigator with Ms. Richardson's contact information. (Testimony of Cam Moffatt).

40. Ms. Richardson testified that Respondent represented her in 2011 for injuries she sustained in a car accident on December 28, 2010. Ms. Richardson further testified that Respondent advised Ms. Richardson that he would seek med pay benefits on her behalf from the insurer.

41. Ms. Richardson's matter settled in the fall of 2011, and by check dated October 3, 2011, Respondent disbursed the net settlement proceeds to Ms. Richardson. as reflected on the check admitted as part of Exhibit 30. (Testimony of Shelia Richardson; Exh. 17-19, 30).

42. Respondent did not contact Ms. Richardson after disbursing her settlement proceeds to her in October 2011. (Testimony of Shelia Richardson).

43. On November 10, 2011 within one month of settling Ms. Richardson's case, Respondent deposited into his trust account the $2,000 in med pay funds made payable to Ms. Richardson. (Testimony of Cam Moffatt; Bar Exhs. 17-19, 31, 66-67).

44. Respondent did not notify Ms. Richardson of the receipt of the med pay funds and did not contact Ms. Richardson from October 2011 to May 2014. (Testimony of Shelia Richardson).

45. Ms. Richardson did not authorize Respondent to sign her name to any checks. (Testimony of Shelia Richardson).

46. Respondent did not present as an exhibit any written authorization to endorse Ms. Richardson's name to her med pay check and to deposit the funds in his trust account.

47. As set forth, Respondent testified that it was his custom and practice to sign his client's names to their checks and deposit their funds in his trust account and to then photocopy the checks so that they could come pick up the proceeds.

48. Respondent did not maintain Ms. Richardson's $2,000 in his trust account from September 30, 2011 to December 17, 2013. As reflected in Respondent's trust account ledger and the Bar's ledger, the balance in Respondent's trust account dipped below $2,000 on several occasions between November 10, 2011, the date Respondent deposited Ms. Richardson's $2,000 in his trust account and May 2014 when Respondent returned the $2,000 to Ms. Richardson. Respondent's trust account balance dipped below $2,000 on December 16, 2011; June 4, 2012; July 17, 2012; August 3, 2012; December 28, 2012; March 7, 2013; April 2, 2013; April 22, 2013; and June 13, 2013 to July 1, 2013. (Bar Exh. 18).

TRUST ACCOUNT AUDIT

49. Respondent conceded to the Bar's investigator that he does not reconcile his trust account. (Respondent stipulated that between September 20, 2011, and February 14, 2014, Respondent did not reconcile his trust account in violation of Va. Rule of Prof. Resp. 1.15(d)(3); Admitted in Answer, ¶ 22).

50. As part of the Bar's investigation, the Bar subpoenaed from Respondent his cash receipts journals, cash disbursements journals, and subsidiary ledgers.

51. Respondent produced, his trust account ledger for the time period of September 3, 2011, to December 30, 2013. Respondent's trust account ledger, Bar Exhibit 17, was admitted without objection.

52. Respondent did not maintain or produce cash receipts or cash disbursements journals. (Testimony of Cam Moffatt).

53. In order to audit Respondent's trust account. the Bar's investigator created a spreadsheet of Respondent's trust account records from September 2011 to February 2014. (Testimony of Cam Moffatt, Bar Exh. 18).

54. In order to audit Respondent's trust account, the Bar's investigator had to create subsidiary ledgers, as Respondent only maintained settlement disbursement statements. which did not always accurately reflect the receipts or disbursements. (Testimony of Cam Moffatt; Bar Exh 19).

55. Respondent also produced his bank statements with cancelled checks attached. These bank statements and the cancelled checks were admitted without objection as Bar Exhibits 30 to 58.

56. The investigator's analysis also included review of deposited items from BB&T where Respondent maintained his trust account. (Testimony of Cam Moffatt; Bar Exhs. 18-19).

57. A lawyer who receives client funds has a fiduciary duty to keep the client's funds separate from his own and to preserve and safeguard them for the benefit of the client. (Admitted in Answer, ¶ 24).

58. The audit revealed that Respondent commingled client and personal funds from September 2011 to February 2014, the entire 2 years and 4 months of the audit and that during that time period Respondent treated his trust account as his personal bank account, and that Respondent did not preserve or safeguard client funds. (Respondent stipulated that from February 6. 2012, to January 15, 2013, Respondent deposited personal funds into his trust account; Testimony of Cam Moffatt; Bar Exhs. 17-58).

59. Respondent used his trust account, which admittedly contained client funds, for his personal use. including repayments to his assistant for a personal loan, alimony payments to his ex-wife. payments to colleges for his children's tuition. rent payments. auto loan payments, advertising payments, and payments to a jewelry store, as well as his church and recreational club. (Bar Exhs. 17. 18, 29-58).

    a. During the time period of the bar's audit, Respondent paid himself $59,723.14 from his trust account. Respondent did not maintain records to reflect that these sums paid to him constituted earned fees or reimbursement of costs. The vast bulk of payments to Respondent were in round numbers. (Bar Exhs. 18. 19. 29-58).

b. During the time period of the bar's audit of Respondent's trust account, from September 2011 to February 2014, Respondent paid his firm $274,686.34. Respondent did not maintain records to reflect that these sums paid to his firm constituted earned fees or reimbursement for costs. The vast bulk of payments to Respondent were in round numbers. (Bar Exhs. 18,19, 29-58).

c. During the time period of the bar's audit of Respondent's trust account, from September 2011 to February 2014, Respondent paid his ex-wife at least $63,568.63 in monthly alimony and other payments from his trust account. (Bar Exhs. 18,19. 33-35. 39. 41-44. 47, 50. 51, 3, 54-58).

d. During the time period of the bar's audit of Respondent's trust account, from September 2011 to February 2014, Respondent paid his legal assistant/secretary $40,577.00 out of his trust account. (Bar Exhs. 18,19, 32, 33. 34, 36. 40. 42, 43, 44, 46. 48, 49, 50, 51, 54, 56, 57, 58).

60. Upon settlement of personal injury cases, and upon disbursement of funds to his clients, Respondent did not timely or contemporaneously disburse his attorneys' fees from his trust account to his operating account. Moreover, Respondent's bank records do not contain checks from trust to operating for the amounts identified as his legal fees on his disbursement statements. Rather, Respondent transferred sums in round amounts from his trust account to his operating account. During the time period of the audit, of the approximate 70 checks written by Respondent from his trust account to his operating account, all checks were in round numbers except for one (Bar Exhs. 17-19, 29-58, 63, 69. 72. 81. 84, 87, and 88).

61. Respondent deposited personal funds such as life insurance proceeds and proceeds from the sale of his marital home into his trust account at least in part to replenish client funds. (Bar Exhs. 17, 18, 20-58).

62. Respondent deposited personal funds into his trust account as follows:

a. On February 7, 2012, Respondent deposited in his trust account a check for $55,253.68, admitted as Bar Exhibit 20 without objection. Bar Exhibit 22 is the deposit slip into Respondent's trust account, also admitted without objection. These funds represented proceeds from the sale of Respondent's marital home. (Bar Exhs. 17, 18, 20, 22, 34).

b. On February 7, 2012, Respondent deposited in his trust account a check for $15,000 made payable to George Wills, admitted as Bar Exhibit 21 without objection. Bar Exhibit 22 is the deposit slip into

Respondent's trust account. According to Respondent, this check was for marital debt. (Bar Exhs. 17, 18. 21, 22, 34).

c. On April 13. 2012, Respondent deposited a check for $19,967.57 from Western Reserve Life Assurance Co. into his trust account. Bar Exhibits 23&24, the check and deposit slip, were admitted without objection. This sum represented Respondent's portion of IRA proceeds, and no portion of this sum constituted client funds. (Bar Exhs. 17. 18, 23, 24. 36).

d. On April 25, 2012, Respondent deposited $25,000 in "loan proceeds from George B. Wills" in his trust account. Bar Exhibits 25 & 26 are the debit from Mr. Wills' account and the credit to Respondent's trust account, both admitted without objection. (Bar Exhs. 17, 18. 25, 26, 36).

e. On January 15, 2013, Respondent deposited $52,911.18, which represented Respondent's life insurance proceeds, into his trust account. No portion of this sum constituted client funds. Bar Exhibits 27 & 28 are the check and deposit slip into Respondent's trust account, both admitted without objection. (Bar Exhs. 17, 18, 27, 28, 45).

f. The balance in Respondent's trust account on January 15, 2013, when he deposited the $52,911.18 of personal funds into his trust account, was $1.089.84. (Bar Exhs. 17-18). At this time, Respondent owed sums to at least two clients, Clients "A" and "B" as follows:

g. On September 18, 2012, Respondent deposited a $16,500 insurance check made payable to him and "Client A" in his trust account. Per Respondent's disbursements of settlement statement, Client A was entitled to $10,947.50 as of September 18, 2012. Respondent did not disburse any funds to Client A until January 15, 2013, when Respondent deposited his life insurance proceeds into his trust account. (Bar Exhs. 17-19, 41. 45, 59).

h. Likewise. on December 5, 2012, Respondent deposited an insurance check in the amount of $30,000 for "Client B" in his trust account; however, Respondent did not disburse any funds to "Client "B" until after he deposited his life insurance proceeds in his trust account. (Bar Exhs. 17-19, 44. 45, 60).

i. It was not until January 2013. after Respondent deposited his life insurance proceeds into his trust account, that Respondent was able to disburse $10,947.50 to "Client A" and $19,914.71 to "Client B". (Bar Exhs. 17-19, 41, 45, 59).

63. Respondent did not properly handle settlement funds received on behalf of clients. Respondent did not preserve settlement funds until he disbursed the funds to clients:

a. Client C

1. On October 4, 2012, Respondent deposited an insurance check in the amount of $76,500 made payable to Respondent and "Client C" in his trust account. (Bar Exhs. 17-19, 42, 64, 65).

2. In Respondent's disbursements of settlement statement, Respondent represented to "Client C" that Respondent would receive $25,500 as his fee and $328 for costs and that "Client C" was to receive $38,564.30. The remainder in excess of $10,000 was to be paid toward liens (e.g. Medicaid lien of $9,505.20), doctors' bills, and the arbitrator's fee ($330.00). (Bar Exh. 63).

3. On November 13, 2012 Respondent disbursed $38,564.30 to "Client C". (Bar Exhs. 17-19, 43, 63).

4. On November 27, 2012 Respondent paid the arbitrator's fee of $330.00. (Bar Exhs. 18-19, 43).

5. Notwithstanding his written representation in his disbursements of settlement statement as of the date of the bar investigator's review of Respondent's trust account, Respondent had not disbursed the balance of the monies on behalf of "Client C". (Bar Exhs. 17-19).

6. Respondent did not preserve the $9,505.20 in trust. Respondent's trust account balance dipped below $9,505.20 as of December 20, 2012, and to $1,089.84 by December 28, 2012. (Exhs. 17, 18).

b. Client D

1. On June 8, 2012, Respondent negotiated a check dated June 4, 2012, made payable to "Client D" and Respondent in the amount of $25,000. The $25,000 represented full and final settlement funds from "Client H's" carrier, USAA. Respondent deposited the $25,000 in his trust account. (Bar Exhs. 17-19, 38, 74, 75).

2. On June 19, 2012, Respondent deposited $15,000.00 in settlement funds for "Client D" in his trust account. (Bar Exhs. 17-19, 38, 76).

3. Thus, as of June 19, 2012, Respondent had deposited $40,000 of "Client D's" settlement funds in trust. (Bar Exhs. 17-19, 38, 74-76).

4. Respondent did not preserve "Client D's" settlement funds in trust. On July 3, 2012, Respondent withdrew $3,850.00 as an alimony payment bringing his trust account balance to $38,513.06, below the $40,000 in "Client D's" settlement funds which Respondent was obligated to preserve in trust until such funds were disbursed to "Client D." (Bar Exhs. 17-19, 39).

5. On July 10, 2012, Respondent deposited $423.00 on behalf of "Client D" in his trust account. (Bar Exhs. 17-19, 39, 77).

6. Accordingly, as of July 10, 2012, Respondent should have held $40,423.00 in trust on "Client D's" behalf. He did not. Respondent's trust account balance was $27,093.05 as of July 10, 2012 per the Bar's ledger, Bar Exh. 18, and $26,317.69 per Respondent's trust account ledger, Bar Exh. 17.

7. Respondent's final disbursement statement reflects that $26,181.92 was due "Client D;" Respondent's fee was $13,333.33; and the funds due lienholders were $23.00, $38.75, and $423.00 to the City of Fredericksburg. (Bar Exh. 72).

8. By check dated July 16, which cleared Respondent's trust account July 17, Respondent disbursed $26,181.92 to "Client D." (Bar Exh. 39).

9. Respondent did not preserve Client D's funds in trust from July 3 to July 17, 2012. (Bar Exhs. 17, 18).

64. Respondent's disbursements of settlement statements reflect that Respondent withheld funds from clients for payment of liens, which he did not pay, and Respondent did not return the funds to his clients. (Bar Exhs. 17-19, 29-58, 63, 72, 81, 84, 87, and 88).

a. Client E

On September 7, 2011, Respondent deposited $20,000 in funds received on behalf of "Client E" in his trust account. (Bar Exhs. 17-19, 29, 81).

1. Respondent's disbursements of settlement statement reflects that Respondent's fees were $6,666.67; his "power of attorney fee" was $75.00; and he advanced costs of $49.14. The settlement statement further reflects that there were five liens which totaled $4,781.41. "Client E" was to receive $8,427.78. (Bar Exh. 81).

2. By check dated September 26, 2011, Respondent disbursed $8,427.78 to "Client E." (Bar Exh. 29).

3. As of October 14, 2011, and prior to disbursing any money for liens, Respondent's trust account balance dipped below $4,781.41 to $2,960.78. (Bar Exhs. 17, 18).

65. Additionally, as Respondent admitted in his Answer at ¶ 30. Respondent is unaware of the nature of deposits into and checks written on his trust account as follows:

a. Gatestone

Respondent was unable to identify a September 4, 2013 payment in the amount of $10,000 to Gatestone, and he did not know to which client the payment was associated.

b. Credit Memo of $25,000 to Trust Account

Respondent could not identify a $25,000 credit memo. According to documents received from the bank the $25,000 credit memo references "Deposit of loan proceeds from George B. Wills."

II. NATURE OF MISCONDUCT

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.

(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:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(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; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly. a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty. fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

III. SANCTION

Following the announcement of its decision on the Rule violations, the Court received into evidence that Respondent had no prior disciplinary record. Respondent testified on his own behalf and presented character witnesses. The Bar and Respondent presented arguments on the type of sanction to be imposed.

The Court retired to deliberate, and thereafter, based on the evidence presented and the arguments of counsel. ORDERED that Respondent's license be SUSPENDED for a period of THREE YEARS, effective September 15, 2014

IT IS FURTHER ORDERED that, as directed in the Court's Summary Order entered August 29. 2014, and in the Amended Summary Order entered September 15, 2014, *nunc pro tunc* August 29, 2014, Respondent shall comply with the requirements of Part Six, Section IV, Paragraph 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 Respondent's license to practice law in the Commonwealth of Virginia, to

all clients for whom the Respondent 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 the Respondent's care in conformity with the wishes of his or her clients. 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 date of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters. If the Respondent is not handling any client matters on the effective date of the Suspension, he 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 Circuit Court.

IT IS FURTHER ORDERED that Respondent shall maintain professional malpractice insurance during the time for which he is licensed to practice law in the Commonwealth pursuant to Va. Code Section 54.1-3935(D). Respondent shall certify to the Virginia State Bar that he has the required insurance and shall provide the name of the insurance carrier and the policy number.

IT IS FURTHER ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to Paragraph 13-9.E. of the Rules.

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System shall comply with the public notice requirements of Paragraph 13-9.G. of the Rules.

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall mail a copy teste of this Order by certified mail to the Respondent, Kenneth Wayne Paciocco, at his last address of record with the Virginia State Bar, Kenneth W. Paciocco, P.C., Suite 301, 5905 West Broad Street, Richmond. Virginia 23230, and by regular mail to the counsel of record, and the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond. Virginia 23219-3565.

IT IS FURTHER ORDERED that upon the end of all proceedings in this matter, the Clerk of the Disciplinary System shall maintain the complete file of this matter in accordance with the Bar's file retention policies and requirements.

ENTERED: 10-20-14

Chief Judge Designate

SEEN AND AGREED:

Assistant Bar Counsel
Renu M. Brennan

SEEN:

Counsel for Respondent Kenneth W. Paciocco
Michael Rigsby, Esq.

OBJECTIONS: The evidence of record does not meet the evidentiary standard for a finding that Mr. Paciocco engaged in conduct in violation of Rule of Professional Conduct 8.4(c).

A Copy
Teste: EDWARD F. JEWETT, CLERK
BY: D.C.

EDWARD F. JEWETT, CLERK
Circuit Court of the City of Richmond
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