

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
DARRYL ARTHUR PARKER**

**VS. Docket Nos. 14-032-098463 and
14-032-099511**

MEMORANDUM ORDER

These matters were heard on May 20, 2015, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board") on the matters listed above. The Board impaneled for these matters consisted of Tyler E. Williams, III, Chair, Peter A. Dingman, John A. C. Keith, Bretta Marie Zimmer Lewis, and Sandra W. Montgomery, Lay Member. The Virginia State Bar (the "Bar") was represented by Renu M. Brennan, Assistant Bar Counsel. The Respondent, Darryl Arthur Parker, ("Respondent") appeared in person, *pro se*. The Chair polled the members of the Board as to whether any of them had any personal or financial interest or bias which would prevent any of them from fairly hearing these matters and serving on the panel, and each member responded that the member had no such interest or conflict. Tracy J. Stroh, a certified court reporter, Chandler & Halasz, PO Box 9349, Richmond, Virginia 23227 (804) 730-1222, after duly being sworn, reported the hearing and transcribed the proceedings.

After the hearing was opened, the Bar announced that the Bar and Respondent had reached certain stipulations and would like to present a joint recommendation as to disposition. Assistant Bar Counsel presented a document entitled "Stipulation of Facts and Rule Violations and Agreement not to Appeal and Joint Recommendation as to Disposition" that was admitted as Joint Exhibit A. The Chair and Panel Members inquired of the parties about Joint Exhibit A and suggested certain additions and corrections thereto.

The Bar introduced its Exhibits 1 - 41 as Virginia State Bar Exhibit A and the Respondent's Disciplinary Record as Virginia State Bar Exhibit B. Both Exhibits were received in evidence without objection. The Bar outlined the Joint Recommendation as to Disposition as being a six month suspension of Respondent's license with terms and an alternative sanction of a one year and one day suspension. The Panel retired to deliberate, and having considered all the evidence before it, accepted the stipulation of facts and rule violations as follows:

I. FINDINGS OF FACT

The Board accepts the stipulations of the parties and finds the following facts by clear and convincing evidence:

1. Since September 30, 1991, and at all times referenced herein, Respondent Darryl Arthur Parker (Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

A. Complainant Iesha Armstrong/VSB No. 14-032-098463

2. By representation agreement dated October 7, 2013, Respondent agreed to represent Ms. Iesha Armstrong (Complainant) in a “probation violation and capious (sic) before the Arlington Circuit Court” for a fixed fee of \$3,500.00.
3. By letter dated November 1, 2013, from Respondent to Ms. Armstrong’s mother, Ms. Betty Briggs, Respondent enclosed the Representation Agreement and stated, “(p)ursuant to our agreement I will represent your daughter, Iesha Armstrong before the Arlington Circuit Court on her charges of probation violation and failure to appear in court. I will file on her behalf a Motion with the court in an attempt to have Ms. Armstrong terminated from probation and outstanding warrant quashed. If you are in agreement with the above mentioned I look forward to receiving the executed contract back from you.”
4. According to Respondent, Ms. Briggs advised him that Ms. Armstrong had previously hired another lawyer to file a motion to terminate probation, and the motion was denied. Respondent asserts the Arlington County Circuit Court had no record of the motion.
5. Respondent’s file, produced in response to the Bar’s subpoena, contained little work product or legal or factual research regarding whether the relief Ms. Armstrong sought was viable.

6. By check dated September 25, 2013, Ms. Briggs paid Respondent \$1,750.00 towards his legal fee.
7. By check dated October 25, 2013, and received by Respondent by letter date stamped November 7, 2013, Ms. Briggs paid Respondent an additional \$875.00.
8. By check dated November 24, 2013, Ms. Briggs paid Respondent the final \$875.00 of his fee.
9. Respondent did not deposit any of the sums received from Ms. Briggs in his trust account.
10. Respondent did not maintain a subsidiary ledger regarding funds received from Ms. Briggs on Ms. Armstrong's behalf.
11. Respondent did not file any motion nor did he take any action on Ms. Armstrong's behalf.
12. Respondent did not communicate with Ms. Armstrong after he was retained.
13. Unable to communicate with Respondent, in January 2014, Ms. Briggs requested a refund, and Ms. Armstrong filed a bar complaint.
14. By letter dated February 18, 2014, to Ms. Armstrong, with a copy to the Bar's Intake Counsel, Respondent enclosed a draft motion, and Respondent asked whether Ms. Armstrong wanted him to withdraw and return any unearned fees.
15. By letter dated February 24, 2014, Ms. Armstrong requested a refund of the attorneys' fees and stated that the draft motion submitted in response to her bar complaint appeared to be something Respondent hurriedly assembled in response to the Bar's inquiry.
16. By letter dated February 27, 2014, Ms. Briggs requested a refund of the fees she paid Respondent.
17. By letter dated March 26, 2014, to Ms. Armstrong, with copies to Ms. Briggs and Assistant Bar Counsel, Respondent represented that he was in receipt of Ms. Armstrong's letter terminating his services and that he would therefore return the attorneys' fees to Ms. Briggs.
18. By letter dated April 22, 2014, Ms. Armstrong again requested Respondent return her mother's money, and she referenced several unsuccessful attempts to contact Respondent.

19. Despite his representations to Ms. Armstrong, Ms. Briggs, and the Bar, Respondent did not return the \$3,500.00 or any portion thereof to Ms. Briggs or Ms. Armstrong until April 23, 2015.

B. Complainant Michael C. Carter/VSB No. 14-032-099511

1. By representation agreement dated April 19, 2013, Respondent agreed to represent Michael Carter on a contingency basis for injuries sustained by Mr. Carter in a February 12, 2013 dog bite incident.
2. Respondent requested and received Mr. Carter's medical records from his medical providers.
3. In June 2013 State Farm Fire and Casualty Company (State Farm), the defendant's insurer, took a recorded statement from Mr. Carter.
4. By letter dated June 24, 2013, to Respondent, State Farm declined to offer Mr. Carter payment under the liability portion of the insured's policy, but State Farm extended \$2,000.00 in its insured's Medical Payments Coverage ("med pay") to Mr. Carter and requested Respondent forward Mr. Carter's medical records and bills in order to process reimbursement to Mr. Carter under the insured's med pay coverage.
5. Respondent did not advise Mr. Carter that State Farm had offered Mr. Carter \$2,000.00 in med pay or that State Farm had requested Mr. Carter's medical records and bills.
6. Respondent did not provide State Farm with Mr. Carter's medical records and bills or otherwise respond to State Farm's June 24, 2013 letter.
7. By letter dated August 5, 2013, State Farm advised Respondent that State Farm had not received Mr. Carter's medical records and bills and was therefore closing their file.
8. Respondent did not respond to this August 5, 2013, or any, letter from State Farm, nor did Respondent provide State Farm with the requested records and bills, nor did Respondent advise Mr. Carter of the August 5, 2013, or any, communication from State Farm regarding the med pay benefits.
9. Respondent filed a Warrant in Debt on Mr. Carter's behalf in Goochland District Court. Trial was set for April 29, 2014.
10. In order for Respondent to submit medical records as evidence on Mr. Carter's behalf, and as set forth in Va. Code Section 16.1-88.2, including as evidence of costs of treatment, Respondent was required to exchange such medical reports with defense counsel 10 days in advance of trial.
11. Respondent did not exchange any medical reports or records with defense counsel 10 days in advance of trial.

12. Respondent did not advise Mr. Carter that he failed to exchange medical reports with defense counsel 10 days prior to trial, nor did Respondent advise Mr. Carter of the consequences of his failure to timely provide defense counsel with Mr. Carter's medical records.
13. Respondent did not appear at the April 29 trial, nor did Respondent contact Mr. Carter or the Court to advise in advance that he would not appear at trial. The Court recessed the trial to allow Mr. Carter to attempt to contact Respondent. Mr. Carter's attempts to contact Respondent were unsuccessful. The Court dismissed Mr. Carter's case without prejudice. Mr. Carter contacted Respondent's office and advised that the case was dismissed without prejudice. Respondent's office stated that Respondent would contact him.
14. Respondent did not contact Mr. Carter on April 29. Respondent contacted Mr. Carter and advised that he had car issues and health/blood sugar issues on his way to the trial. Respondent advised the Bar investigator that he felt ill on his way to the trial so he pulled over into a grocery store parking lot, where he passed out, and where he remained all day. Respondent asserts that he has Type II Diabetes. Respondent did not seek medical attention on the day of or after the incident. The Bar investigator requested Respondent provide a release so that the Bar could obtain Respondent's medical records or a letter from his physician regarding his medical condition. Respondent advised the Bar investigator that he would obtain a letter from his physician regarding his condition and provide it to her after a medical appointment on October 10. Respondent did not provide any documentation to the Bar as of October 10, 2014.
15. Mr. Carter terminated Respondent, and he retrieved his file. Respondent returned a \$65 filing fee to Mr. Carter on April 24, 2015.

II. NATURE OF MISCONDUCT

The Board accepts the stipulations of the parties and finds the following violations of the Rules of Professional Conduct by clear and convincing evidence:

In both the Armstrong VSB No. 14-032-098463 and Carter VSB No. 14-032-099511

matters:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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 filled as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not knowingly:

(a) make a false statement of material fact.

In the Armstrong VSB No. 14-032-098463 matter only:

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

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; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(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

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

(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.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

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 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;

Respondent has stipulated and agreed to the foregoing Stipulations of Fact and Misconduct, including all Rule violations alleged herein, and Respondent has agreed that he will not appeal any Findings of Fact and Misconduct arising out of the Board's acceptance of these Stipulations.

III. IMPOSITION OF SANCTION

Having considered all of the evidence before it and having accepted the Stipulations of Facts and Rule Violations and considered the Recommendation as to Disposition as to Sanction with terms and an alternative sanction, the Board **ORDERS** that Respondent's license to Practice

Law be suspended for a period of Four (4) Months with Terms, such suspension to begin on May 20, 2015; and

It is further **ORDERED** that Respondent shall perform the following terms:

1. No later than June 1, 2015, Respondent shall consult with a named lawyer or lawyers to serve as a mentor to Respondent for the purpose of reviewing and making recommendations concerning Respondent's law practice policies, systems, and procedures.
2. No later than July 1, 2015, Respondent shall submit the name or names of such lawyers, with their resumes or Curricula Vitae and any pertinent information supporting their selection, to Assistant Bar Counsel Brennan for approval. Respondent bears the burden of ensuring approval of the consultant on or before July 1, 2015, which approval shall not be unreasonably withheld.
3. No later than September 1, 2015, Respondent shall grant the attorney access to his law practice both to review his policies and procedures and to ensure that Respondent has taken steps to institute and to comply with his/her recommendations. Assistant Bar Counsel shall have access, by telephone conferences and/or written reports, to the findings and recommendations, as well as the attorney's assessment of Respondent's ability to comply with the recommendations.
4. On or before October 1, 2015, Respondent shall be responsible for:
 - a. Ensuring that the mentor has previously reported to Assistant Bar Counsel Renu M. Brennan his or her findings and recommendations regarding the Respondent's law practice.
 - b. Certifying in writing under oath to Assistant Bar Counsel Renu M. Brennan that the Respondent has fully complied with the mentor's findings and recommendations and provide written confirmation of same from the mentor.
5. On or before April 1, 2016, Respondent shall certify in writing under oath to Assistant Bar Counsel Renu M. Brennan that Respondent has installed and is consistently following and using adequate docketing procedures to ensure that he keeps his clients informed of the status of their cases and appeals, including procedures which ensure (1) the prompt return of clients' telephone calls and (2) the prompt sending of a letter to clients responding to them if Respondent is unable to reach them by telephone.

Upon satisfactory proof that these terms have been met, these matters shall be closed. If, however, Respondent does not comply with the Terms by the dates set forth above, the

Disciplinary Board shall **Revoke** Respondent's license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, ¶ 13-18.O.

It is further **ORDERED** that Respondent must 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 his license to practice law in the Commonwealth of Virginia to all clients for whom is he currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client(s). Respondent shall give such notice within fourteen (14) days of the effective date of suspension, and make such arrangements as required herein within forty-five (45) days of the effective date of suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of suspension if 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, he shall submit an Affidavit to that effect to the Clerk of the Disciplinary System of 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.

It is further **ORDERED** that pursuant to Part Six, §IV, ¶13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order by certified mail, return receipt requested, to Respondent, Darryl Arthur

Parker, at his address of record with the Virginia State Bar, being 3113 W. Marshall Street, Suite 2A, Richmond VA 23230; and shall hand-deliver a copy to Renu M. Brennan, Assistant Bar Counsel, at 1111 East Main Street, Suite 700, Richmond, Virginia 23219-3565.

ENTERED this 7th day of July, 2015.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:


Tyler E. Williams, III, Chair

4822-8615-3765, v. 3