

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF DARRYL ARTHUR PARKER

VSB Docket No.: 15-032-102633

MEMORANDUM ORDER

This matter came to be heard on August 28, 2015, before a panel of the Virginia State Bar Disciplinary Board (the “Board”) comprised of Michael A. Beverly, Stephen A. Wannall, Jeffrey L. Marks, Lisa A. Wilson, and William H. Atwill, Jr., First Vice Chair (presiding).

The Virginia State Bar (“the Bar”) was represented by Renu M. Brennan, Assistant Bar Counsel (“Bar Counsel”). Darryl Arthur Parker (the “Respondent”) failed to appear in person or by counsel. Jennifer L. Hairfield, Registered Professional Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804-730-1222), having been duly sworn, reported the hearing.

The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent’s name three times in the adjacent hall. The Respondent did not answer or appear. The Chair inquired of the members of the panel whether any of them had a personal or financial interest, or any bias, which would preclude, or could be perceived to preclude, their hearing the matter fairly and impartially. Each member of the panel answered the inquiry in the negative.

The matter came before the Board on a Petition for Expedited Hearing pursuant to Part 6, Section IV, Paragraph 13-18.D. of the Rules of the Supreme Court of Virginia. All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (Clerk) in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-20 of the Rules of Court. In the misconduct phase the Bar’s exhibits 1-40 were admitted without objection. After being sworn to faithfully and accurately translate the

testimony of the witness, Manuela G. Crisp, acted as the translator for the Complainant and Bar witness, Martha Ventura. Valerie Harris, Nathaly Ventura, Alan B. Knapp, attorney for the Richmond School Board, and Cam Moffett, Investigator for the Bar, all testified as witnesses for the Bar.

The Petition charged a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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 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.

(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:

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

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(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.

(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.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(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 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law;

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;
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;
- (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; or
- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times referenced herein Respondent, Darryl Arthur Parker, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On May 8, 2013, Jesus Irizarry, then a minor child age 16, was injured while attending Amelia Street School, a Richmond City School.

3. According to a Special Needs Trust made for the benefit of Jesus Irizarry, he is a disabled person as defined in the Social Security Act Section 1614(a)(3), 42 U.S.C. section 1382(c)(a)(3). According to medical documentation, Jesus Irizarry is autistic.

4. Jesus Irizarry has Dandy-Walker syndrome, which is defined as a congenital brain malformation involving the cerebellum, marked by complete absence of the part of the brain between the two cerebellar hemispheres.

5. Jesus Irizarry's mother, Martha Ventura, does not speak English.

6. On May 10, 2013, Martha Ventura retained Respondent for legal representation arising out of the assault and battery of her son, Jesus Irizarry. Respondent charged a 1/3 contingency fee of any amount recovered.

7. On behalf of Jesus Irizarry, a minor by his next friend, Respondent filed an action against the Richmond School Board in the Circuit Court of the City of Richmond.

8. The case was settled for the sum of \$60,000.00.

9. By letter dated June 6, 2014, counsel for the Richmond School Board requested information from Respondent to complete the settlement documents, and counsel advised Respondent that the settlement would require court approval and further that his clients required a release of all claims and indemnification agreement. Counsel also asked Respondent whether Respondent believed a guardian ad litem (GAL) should be retained and whether a Special Needs Trust was needed.

10. On June 24, 2014, Respondent filed a Petition in the Circuit Court of the City of Richmond requesting that the Court approve the parties' settlement of \$60,000.00, which

included reimbursement of Jesus Irizarry's medical expenses in the amount of \$3,457.70 as well as \$20,000.00 for Respondent's legal fee, and \$46.14 for legal costs.

11. Counsel for the Richmond School Board filed an Answer to the Petition joining the Respondent's request to approve the settlement.

12. On July 14, 2014, Respondent noticed a hearing on this Petition for August 1, 2014. Respondent did not serve the GAL for Jesus Irizarry.

13. Because the GAL was not served with and could not attend the August 1, 2014, hearing, counsel for the Richmond School Board re-noticed the hearing for October 10, 2014.

14. By letter dated August 29, 2014, Respondent advised counsel for the Richmond School Board as follows:

Please be advised that in accordance to our telephone conversation on August 28, 2014, I am confirming the fact that Jesus Irizarry will be 18 Years old on August 29, 2014 and a Special Needs trust has been drafted on his behalf by Attorney Rajendra Raval.

15. Accordingly, and in response to Respondent, by letter that same day counsel for the Richmond School Board left for the Respondent to pick up that same day, the settlement check, a release, Medicare forms and a letter stating as follows: "This will follow up on your request to proceed with the settlement with a Release of All Claims and a Dismissal Order, without a court approval hearing, whereas you informed that Jesus Irizarry turns eighteen years old on August 29, 2014 (or August 28, 2014) and has not been declared as an 'incapacitated person' by a Court. You also informed that subject to the settlement that a trust has been created for the proceeds/funds from the settlement for the benefit of Jesus Irizarry. Therefore, pursuant to your request and our discussion of August 28, 2014, and the terms of the settlement as confirmed in my correspondence of June 6, 2014, I enclose a settlement check for and on behalf of Jesus Irizarry in the amount of \$60,000 as made payable to 'Martha Ventura as mother and

next friend of Jesus Irizarry a minor and her attorney Darryl A. Parker, Esquire.'...As also discussed, please hold the enclosed settlement check in escrow until the enclosed Release of All Claims has been forwarded to the Court with a request for attested copies of the Dismissal Order to be forwarded to all counsel of record upon entry.”

16. On August 29, 2014, Respondent collected the check and then called Martha Ventura and requested that she endorse the check. Respondent represented to Mrs. Ventura that he was going to deposit the check in his bank account after which it would take 10-13 days for him to pay to her the amount to which her son was entitled.

17. On September 2, 2014, Respondent deposited the \$60,000 in his trust account. Prior to the deposit of the \$60,000 Respondent had a balance of \$20.02. In July and August 2014, Respondent’s trust account was overdrawn on various occasions. The overdrafts were not reported to the Bar as required by Rule 1.15.

18. Despite his representations to Mrs. Ventura and his obligation to provide settlement funds to her, and notwithstanding the instructions from counsel for the Richmond School Board, Respondent did not provide any funds to Mrs. Ventura.

19. When Respondent failed to tender the settlement funds to Mrs. Ventura within the 10-13 days, the Venturas contacted Respondent who stated that they had to wait until a Special Needs Trust was created.

20. An audit of Respondent’s trust account revealed that he spent the \$60,000 on personal and other expenses from September 2, 2014, to January 20, 2015, at which time the trust account balance was \$203.29.

21. According to the Petition Respondent filed on June 24, 2014, his fee was \$20,000; legal costs were \$46.15; and Jesus Irizarry’s medical expenses were \$3,457.70. An unexecuted

settlement disbursement statement in Respondent's file added \$1,500 to the costs for the expense of preparing the Special Needs Trust. According to this Settlement Statement, Jesus Irizarry was entitled to at least \$34,996.16. As of September 22, 2014, less than one month after Respondent deposited the settlement funds in his trust account, the trust account balance was below the amount owed to Jesus Irizarry.

22. By letter dated October 2, 2014, counsel for the Richmond School Board asked Respondent to advise as to the status of the settlement documents and as to whether the parties needed to proceed with the October 10, 2014 settlement hearing.

23. The Special Needs Trust was not created until December 2014, and it was not executed until February 6, 2015. Respondent's representations to counsel for the Richmond School Board that the Trust had been created as of August 2014 were thus false.

24. After the Special Needs Trust was executed, Respondent represented to the Venturas that a court hearing was scheduled for April 1, 2015, at which time they would get the settlement check.

25. The night before the hearing Respondent contacted Mrs. Ventura at 10 p.m. and stated that she did not need to appear in Court. Respondent instructed Mrs. Ventura to meet him at his office at 10 a.m., at which time he would give her the check. Mrs. Ventura took off work and appeared at Respondent's office at 10 a.m. Respondent was not there. He then communicated to the Venturas that he would provide the money later that day, but he did not return their subsequent phone calls.

26. Mrs. Ventura filed a bar complaint which was received on April 28, 2015.

27. In his May 21, 2015, response to the bar complaint, Respondent advised that it took a significant amount of time for the Special Needs Trust to be created, and that the Trust

was not yet approved by the Department of Social Services. Respondent further represented that “(d)espite Social Services lack of approval, I have advised Mrs. Ventura that we can disburse the settlement proceeds now that Jesus Irizarry is now over the age of 18 years old. Mrs. Ventura after numerous telephone messages has refused to sign the necessary documents and come to the office to pick up the settlement proceeds.”

28. The Bar referred the matter for investigation and issued subpoenas to Respondent and the bank where he maintains his trust account to review the records.

29. Cam Moffett, the Bar’s investigator, testified on behalf of the Bar regarding her review of the Respondent’s trust account records.

30. Moffett also testified that on June 16, 2015, the Respondent failed to appear at a meeting at his office agreed upon between the two.

31. Notwithstanding the instruction to hold the settlement funds in his trust account pending execution of the release and his client’s requests and desires, Respondent converted the funds of the settlement for his personal use.

32. On July 16, 2015, a hearing was scheduled in Circuit Court for the City of Richmond for the entry of a final order. Respondent did not appear at the hearing.

33. As of the date of the hearing on the Petition for Expedited hearing that is the subject of this Order, the Respondent is under a four-month disciplinary suspension. His license was suspended effective May 20, 2015, because he failed to perform services, and he failed to return sums owing to a client until the eve of the disciplinary hearing, in violation of the rules regarding the safekeeping of funds (Rule 1.15, Rule 8.1 and Rule 8.4).

34. Pursuant to the Rules of the Supreme Court, Part Six, Section IV, Paragraph 13-29, Respondent was obligated to give notice to his clients, opposing counsel, and the Courts of

his suspension within 14 days of his suspension or by June 4, 2015, and he was to make arrangements for his clients' cases within 45 days of his suspension.

35. Respondent did not advise his clients or opposing counsel of his suspension in accordance with this requirement.

36. Respondent misrepresented facts to Mrs. Ventura and opposing counsel to obtain \$60,000 in settlement funds and converted the funds for his own use.

37. In sum, and in accordance with Rule 13-18(D), Bar Counsel has borne its burden of proving by clear and convincing evidence that Respondent is engaging in misconduct that is likely to result in injury to, or loss of property of, one or more of Respondent's clients and that the continued practice of law by the Respondent poses an imminent danger to the public.

MISCONDUCT

The following violations were withdrawn by Renu M. Brennan, Assistant Bar Counsel: Rules 1.15(a)(2), 1.15(b)(1), 1.15(b)(2), 1.15(d)(1), and 1.15(d)(2).

After due deliberation, the Board did not find by clear and convincing evidence a violation by the Respondent Darryl Arthur Parker of Rules 1.4(c), 1.5(a), 1.15(a)(1), and 1.15(a)(3)(i). The Board found by clear and convincing evidence violations by the Respondent Darryl Arthur Parker of the provisions of the following Rules of Professional Conduct, as charged by the Bar:

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.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.

RULE 1.15 Safekeeping Property

(a)(3)(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; 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.

RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after the compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(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 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law; or

RULE 8.1 Bar Admissions 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;

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;

(c) fail to respond to 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; or

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

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

SANCTION

Thereafter, the Board received evidence of aggravation and mitigation from the Bar, including the Respondent's prior disciplinary record. After due deliberation, the Board announced the appropriate sanction as REVOCATION.

Accordingly, by this Memorandum Order it is ORDERED that the license of the Respondent DARRYL ARTHUR PARKER is REVOKED effective August 28, 2015.

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 Revocation 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 Revocation, and make such arrangements as are required herein within 45 days of the effective date of the Revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Revocation 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 August 28, 2015, 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 court.

It is further ORDERED that, pursuant to Part 6, Section IV, Paragraph 13- 9(E) 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 the Clerk of the Disciplinary System shall send an attested copy of this Order, by certified mail, return receipt requested to Respondent at his last address of record with the Virginia State Bar, that being Darryl Arthur Parker, 3113 W. Marshall St., Suite 2A, Richmond, Virginia 23230, and a copy by hand-delivery to Renu M. Brennan, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026

ENTERED THIS 1ST DAY OF October, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

**William H.
Atwill, Jr.**

Digitally signed by William H. Atwill, Jr.
DN: cn=William H. Atwill, Jr.,
o=Atwill, Troxell & Leigh, PC, ou,
email=batwill@atandlpc.com, c=US
Date: 2015.10.01 17:18:15 -04'00'

William H. Atwill, Jr., 1st Vice Chair