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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

DEC 11 2007

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VIRGINIA STATE BAR *EX REL.*
FIFTH DISTRICT—SECTION III COMMITTEE, :

Complainant, :

v. :

Case No. 2007-12572

ARLENE LAVINIA PRIPETON :

Respondent. :

ORDER OF SUSPENSION

This matter came before the Three-Judge Court empaneled on December 6, 2007, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the 1950 Code of Virginia, as amended. A written Agreed Disposition, dated December 18, 2007, was tendered by the parties to the Three-Judge Court, consisting of the Honorable James E. Kulp, retired Judge of the Fourteenth Judicial Circuit, the Honorable Stephen C. Mahan, Judge of the Second Judicial Circuit, and the Honorable Margaret Poles Spencer, Judge of the Thirteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

The Judges of the Three-Judge Court deliberated on December 19, 2007, and determined that the terms and provisions of the parties' Agreed Disposition should be accepted by the Court. Accordingly, the Court finds by clear and convincing evidence as follows:

1. At all times relevant to the matters set forth herein, Arlene Lavinia Pripeton, Esquire (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On behalf of herself and other members of her extended family, Ms. Diana D.

Taylor (hereafter "Complainant") consulted the Respondent in May of 2005 regarding a potential claim to set aside a court decree which quieted title to certain real property.

3. On or about June 23, 2005, the Complainant met with the Respondent, and retained her to file suit on behalf of the family members for the purpose of setting aside the court decree earlier entered respecting the real property in question. During the parties' meeting, the Complainant tendered to the Respondent, as payment for work performed and an advanced fee, twenty-two (22) checks totaling the sum of \$3,000.00 from the individual family members whom the Respondent was engaged to represent.

4. Of the \$3,000.00 received from the Complainant, the Respondent deposited the sum of \$1,000.00 into her operating account, and placed the remaining \$2,000.00 into her attorney trust account.

5. On July 1, 2005, the Respondent withdrew and applied to her own credit the entire sum of \$2,000.00 that she had deposited into her attorney trust account. The Bar does not contend that Respondent did not perform services (research, review of file or otherwise) such that she did not earn the fees she transferred from her escrow account to her operating account.

6. When the Complainant met with the Respondent on June 23, 2005, the Complainant inquired if the Respondent could file suit prior to a scheduled Fairfax County Planning Commission hearing scheduled for July 13, 2005. The Respondent advised the Complainant that she believed a suit could be filed within a couple of weeks.

7. The Complainant left numerous telephone messages for the Respondent as the July 13, 2005, date approached, with no response. On July 13th, the Complainant left an urgent message for the Respondent. The Respondent returned the call and advised the Complainant that no suit had been filed. The Respondent sent via e-mail the proposed text of a statement which

the Complainant could deliver to the Planning Commission as a registered speaker that same evening.

8. On July 14, 2005, the Complainant advised the Respondent that the Planning Commission decision was being postponed until September 29, 2005. During a phone conversation on or about August 5, 2005, the Complainant reminded the Respondent that suit must be filed before the September 29th Planning Commission decision. The Respondent identified a serious health issue confronting a family member, but nonetheless indicated that she thought she would be filing suit in mid-August. In point of fact, a close family member of Respondent was receiving hospice care at Respondent's home during this period of time. The Bar does not contend that filing suit to vacate before the date of the Planning Commission hearing was a legal prerequisite to the success of the suit.

9. On August 26, 2005, the Complainant learned from the Respondent that suit had yet to be filed. The Respondent never filed the promised suit. The Complainant engaged other counsel.

10. The Respondent retained the entire sum of \$3,000.00 that had been paid to her, and failed to furnish the Complainant and/or any of the other clients with any work product beyond the text of the proposed statement to be delivered to the Fairfax County Planning Commission. The Respondent provided no accounting to the Complainant, and/or any other client whose money the Respondent had retained, as to the manner in which such fees had been earned. The Complainant and her counsel never requested any accounting or any files.

11. On December 16, 2005, Bar Counsel mailed a copy of the Bar Complaint in this matter to the Respondent, with a letter containing the following text:

Pursuant to Rule of Professional Conduct 8.1(c), you have

a duty to comply with the bar's lawful demands for information not protected from disclosure by Rule 1.6. Failure to respond in a timely manner to this and other lawful demands from the bar for information about the complaint may result in the imposition of disciplinary sanctions.

This letter constitutes a demand that you submit a written answer to the complaint within twenty-one (21) days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits. [Emphasis in original.]

The Respondent failed to submit a written answer to the Bar Complaint within the twenty-one (21) day period referred to in the letter, or at any time thereafter.

12. A Virginia State Bar investigator interviewed the Respondent in her offices on January 12, 2006. In an effort to determine if the Respondent had, in fact, earned the sum of \$3,000.00 which had been paid to her, the investigator requested the Respondent's billing records in the instant matter. The Respondent advised the investigator that such records were with her accountant, but that she would obtain a copy of the records the following day, and that she would fax them to the investigator.

13. Having received no billing records from the Respondent, the investigator called her on January 17, 2006. The Respondent advised the investigator that her accountant had been out of town over the previous long weekend, but that the accountant would bring the billing records to the Respondent's office the next day, at which time the Respondent would fax them to the investigator.

14. The investigator received no records on the day promised, and he began calling the Respondent at least once per business day between January 19 and 31, 2006. At the times of such calls, the investigator was told either that the Respondent was busy and could not accept his call or that she was not in the office. The investigator left a message each time with the

Respondent's secretary.

15. The investigator alerted Bar Counsel to the Respondent's failure to produce the promised billing records, and on February 9, 2006, Bar Counsel placed a call to the Respondent. The Respondent stated that the records were in the hands of her bookkeeper. Bar Counsel asked the Respondent for the name, address, and telephone number of the bookkeeper, and was informed that the bookkeeper was Olivia Newton, 9202 Christopher Street, Fairfax, Virginia 22032, whose telephone number was (703) 385-5710.

16. Bar Counsel immediately called the number given to him by the Respondent, and left a message on a recording device. Thereafter on February 9, 2006, Bar Counsel received a call responsive to his message, from an individual who identified herself by a name other than Olivia Newton, and who stated that while she was a friend of the Respondent she had nothing to do with the Respondent's office or her billing. Later that same day, the Respondent faxed a summary of the timesheets compiled regarding the Complainant's legal matter and the actual timesheets pertaining thereto.

17. A Summons and Subpoena Duces Tecum was issued to the Respondent on February 15, 2006, which, *inter alia*, directed her to appear and to produce in the Bar offices on March 7, 2006, documents relative to services performed by Olivia Newton for the Respondent and/or her law firm.

18. On March 7, 2006, the Respondent appeared in the Bar offices, and stated to an investigator that no one does the Respondent's billing; that she does the billing herself; and that she had not done billing recently because she had not had the time to do so. The Respondent further stated that Olivia Newton does not exist, and conceded that she made up a name in response to Bar Counsel's question, and supplied Bar Counsel with her friend's address and

phone number.

19. The Respondent asserts that were this matter to have been litigated, she would have testified that her ethical misconduct was attributable to her distress and state of mind occasioned by the death of her mother-in-law, for whom she had been caring.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Arlene Lavinia Pripeton, Esquire, constitutes 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.

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 8.1 Bar Admission And Disciplinary Matters

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

- (a) knowingly make a false statement of material fact;
- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; [and]
- (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; [and]
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law[.]

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that:

1. The Respondent, Arlene Lavinia Pripeton, receive a sixty (60) day suspension of her license to practice law in Virginia, effective December 22, 2007.
2. The Respondent comply with the provisions of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia.
3. Pursuant to Part 6, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent; and it is further

ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of Fairfax County, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court dispenses with any requirement that this Order be endorsed by counsel of record for the parties.

ENTERED this 19th day of December, 2007.

FOR THE THREE-JUDGE COURT:

Margaret Poles Spencer

MARGARET POLES SPENCER

Circuit Judge and Chief Judge of Three-Judge Court

A COPY TESTE:
JOHN T. FREY, CLERK

BY *Netta M. Whitlock*
Deputy Clerk

Date: 12/20/07

Original retained in the office of
the Clerk of the Circuit Court of
Fairfax County, Virginia