

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTERS OF
TONJA MICHELLE ROBERTS**

VSJ Docket Nos. 08-090-073958 and 08-090-074552

MEMORANDUM ORDER

This matter came on to be heard on May 6, 2009, by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of John S. Barr, Glenn M. Hodge, Martha J.P. McQuade, Dr. Theodore Smith, lay member, and Robert E. Eicher, Chair, presiding (the Panel).

Renu Mago, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The Respondent did not appear. Rhett Moore Daniel, Esq., appeared as counsel for Respondent and affirmed that she was authorized to appear for the Respondent. The hearing was transcribed by Tracy J. Johnson, a registered professional reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, who was duly sworn by the Chair.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel.

The Chair polled the members of the Panel 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 Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar. During the hearing, Bar counsel and Respondent's counsel orally submitted to the Board the following additional term to the Agreed Disposition: Respondent shall return the sum of \$750.00 to Complainant Rabbi Theo B. Faith Semel on or before July 5, 2009. The Board thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, and argument of counsel, the Panel accepted the Agreed Disposition, with the additional term that Respondent is to return the sum of \$750.00 to Rabbi Theo B. Faith Semel on or before July 3, 2009.

**I. COMPLAINT #1: COMPLAINT NO. 08-090-073958
COMPLAINANT THEO B. FAITH SEMEL**

A. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. On or about November 16, 2007, Complainant Theo B. Faith Semel ("Complainant") retained Respondent Tonja Roberts to represent Complainant in her Chapter 7 bankruptcy proceeding.
2. Respondent's fee for her representation of Complainant was \$1,000.00.
3. On or about November 16, 2007, Complainant paid Respondent \$500.00.
4. On or about November 21, 2007, Respondent filed Complainant's Chapter 7 bankruptcy petition in the U.S. Bankruptcy Court of the Western District of Virginia, Lynchburg Division.
5. On or about December 17, 2007, Respondent represented Complainant at her 341(a) Meeting of Creditors. Respondent states, that on December 17, 2007, after the 341(a) Meeting, Respondent communicated to Complainant that she would need to amend her list

of creditors if there were any additional creditors, and Respondent states she advised Complainant that she would need to file the certificate for the completion of the Financial Management Course. Complainant states that Respondent did not advise Complainant of either of these items.

6. Complainant states that after the 341(a) Meeting, she unsuccessfully tried to communicate with Respondent regarding completion of the Financial Management course, amending her list of creditors, and completing her bankruptcy filing. Despite Complainant's many attempts, Complainant states that she and Respondent did not communicate after December 2007.
7. On January 4, 2008, Complainant submitted a money order to Respondent in the amount of \$250.00 for a total of \$750.00 paid to the Respondent.
8. Respondent did not return to Complainant any portion of the fees paid by Complainant.
9. Respondent states she attempted to contact Complainant after January 2008. She states that she and Complainant communicated by telephone on February 6, 2008 and on February 11, 2008. Respondent states that she also mailed Complainant a letter on February 13, 2008, as a follow-up to the telephone communication with the Complainant on February 6, 2008.
10. Complainant states she did not receive these calls or the letter from Respondent. Complainant states she received no form of any communication at all from Respondent after December 2007, including no acknowledgment from Respondent as to receipt of Complainant's January 4, 2008, payment. Complainant notes that if she had received the communications Respondent alleged she made, Complainant would not have had to inquire from both the Bankruptcy Trustee and Clerk of Court as to how she should proceed to complete her bankruptcy.
11. Respondent did not perform the services necessary to obtain Complainant's discharge, namely Respondent did not advise the Bankruptcy Court of Complainant's completion of the requisite Financial Management course nor did Respondent amend Complainant's List of Creditors to complete the bankruptcy filing. Complainant filed these documents by herself, and she also filed the Financial Management Course Certificate and the Amendment to List of Creditors on her own.
12. Respondent did not submit a response to the Complainant's Inquiry with the Virginia State Bar.
13. Respondent did not participate in the investigation of this matter by the Virginia State Bar.

14. On or about June 11, 2008, the Virginia State Bar issued a subpoena to Respondent for her files and trust account records related to her representation of Complainant.
15. Respondent never responded to the subpoena by the Virginia State Bar for her files and trust account records related to her representation of Complainant.
16. On July 14, 2008, Assistant Bar Counsel of the Virginia State Bar advised Respondent in writing that if Respondent failed to comply with the subpoena by July 24, 2008, that a Notice of Noncompliance with the Disciplinary Board would issue, as well as a request for suspension of Respondent's license on an interim basis.
17. On August 12, 2008, the Virginia State Bar issued Notice of Noncompliance and Request for Interim Suspension to be filed with the Disciplinary Board. Respondent did not request a hearing, and her license was subsequently suspended on an interim basis for failure to comply with the Bar's subpoena.
18. On February 26, 2009, the Virginia State Bar issued a summons to Respondent requesting her appearance before the Ninth District Committee of the Virginia State Bar on March 20, 2009, at 9:00 a.m. at the City of Lynchburg City Hall, 900 E. Church Street, City Council Chambers Conference Room, 1st Floor, Lynchburg, Virginia, to testify regarding the Complaint of Rabbi Semel. Also on February 26, 2009, the Virginia State Bar requested that Sheriff James E. Dooley, City of Danville Sheriff's Department, serve the subpoena on Respondent. On March 5, 2009, the Sheriff's Department noted that Respondent was not found in Danville and that the office was no longer open. Respondent failed to appear at the March 20, 2009, hearing and to give information and testimony related to her representation of Complainant.
19. Despite the fact that all of the following documents were mailed by the Virginia State Bar to Respondent at her address of record with the Virginia State Bar, a fact which Respondent does not and cannot dispute, Respondent states that she never received the Complaint and above-listed documents from the Virginia State Bar.

B. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Tonja Michelle Roberts constitutes misconduct in violation of the following 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.

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

RULE 1.16 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 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

A lawyer already admitted to the bar . . . in connection with a disciplinary matter, shall not:

(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.

II. COMPLAINT #2: COMPLAINT NO. 08-090-074552 COMPLAINANT RICHARD L. BROWN, D.C.

A. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. In the spring of 2008, Richard L. Brown, D.C., a chiropractor, complained to the Virginia State Bar that Respondent had failed to communicate with him regarding bills he submitted to Respondent on behalf of Karen and Everick Lamont Traynham, Respondent's clients in a personal injury case. Dr. Brown asserts the Traynhams advised him to communicate with Respondent regarding his bills.
2. The Virginia State Bar responded that Respondent had no obligation to discuss her clients' cases with Dr. Brown, but Respondent would be obligated to issue payment to _____ Dr. Brown if he sent copies of written liens executed by his patients and if Dr. Brown

had knowledge that Respondent had funds in her possession intended for payment to medical providers.

3. Dr. Brown states that in January 2006, he provided Respondent with a written medical lien by mail. Respondent states she did not receive a written medical lien from Dr. Brown.
4. At the time that Dr. Brown filed his complaint with the Virginia State Bar, Dr. Brown states that Everick Lamont Traynham advised Dr. Brown that Respondent had not been in contact with him or his wife, and that he was thus unaware if a settlement had been negotiated. As of that date, Respondent had not responded to Dr. Brown's correspondence to or attempts to communicate with her. At the Traynhams' instruction, and beginning in November 2005 and continuing every month thereafter, Dr. Brown had billed Respondent for the medical services rendered to the Traynhams. Dr. Brown had received no response. Upon being informed by Mr. Traynham that the Traynhams also could not communicate with Respondent, Dr. Brown filed a Complaint with the Bar. As set forth below, Respondent stated for the first time in her Answer to the Certification, filed April 22, 2009, that the Traynhams had their settlement funds in 2006.
5. Neither the Traynhams, nor the Respondent, responded to the investigation by the Virginia State Bar.
6. The Bar could not investigate Dr. Brown's Complaint due to Respondent's failure to participate in the investigation or respond to any attempts from the Bar for information. The Bar, as set forth below, sent all requests and made all attempts using Respondent's address of record and information maintained by Respondent on file with the Virginia State Bar. Despite the fact that the mail was sent to Respondent's address of record, Respondent did not attempt to pick up the mail issued by the Bar. The Bar therefore could not investigate Dr. Brown's complaint and therefore only charged Respondent with a violation of Rule 8.1(c).
7. On April 22, 2009, after Respondent failed to respond to the Bar's numerous attempts to contact Respondent to obtain information regarding this matter, including several attempts to interview Respondent, subpoena documents, and otherwise investigate the matter; and after Respondent failed to attend the district committee hearing on March 20, 2009, and to give testimony, despite an attempt to serve Respondent at her address of record, Respondent filed a timely Answer to the Bar's Certification which was Respondent's first response to any of the Bar's numerous attempts to obtain information regarding Dr. Brown's Complaint.
8. In Respondent's Answer to the District Committee Certification, Respondent acknowledges that the Traynhams retained Respondent to represent them in a personal injury suit in March 2005. Respondent further states that the Traynhams' case settled,

and that she remitted the Traynhams' portion of the settlement funds to the Traynhams in two checks. Respondent states that the Traynhams cashed the settlement checks, numbered 0591 and 0592, issued from her Trust Account, on or about June 20, 2006.

9. In her Answer to the Certification, Respondent also asserted for the first time that she sent Dr. Brown two checks, numbered 0594 and 0595 from her trust account, however Respondent states these checks were never cashed. Dr. Brown did not receive the checks, thus resulting in the Complaint. Respondent did not attempt to reimburse Dr. Brown again until April 2009. In April, 2009, Respondent states that she stopped payment on checks numbered 0594 and 0595, and Respondent hand-delivered checks numbered 0599 and 0600 from her Trust Account to Dr. Brown. Dr. Brown asserts that these checks did not constitute payment in full for the medical services rendered by him to the Traynhams.
10. On or about June 16, 2008, the Virginia State Bar issued a subpoena to Respondent for her files and trust account records related to her representation of Complainant.
11. Respondent never responded to the subpoena by the Virginia State Bar for her files and trust account records related to her representation of Complainant.
12. On July 14, 2008, Assistant Bar Counsel of the Virginia State Bar advised Respondent in writing that if Respondent failed to comply with the subpoena by July 24, 2008, that a Notice of Noncompliance with the Disciplinary Board would issue, as well as a request for suspension of Respondent's license on an interim basis.
13. On August 12, 2008, the Virginia State Bar issued Notice of Noncompliance and Request for Interim Suspension to be filed with the Disciplinary Board. Respondent did not request a hearing, and her license was subsequently suspended on an interim basis for failure to comply with the Bar's subpoena.
14. On February 26, 2009, the Virginia State Bar issued a summons to Respondent requesting her appearance before the Ninth District Committee of the Virginia State Bar on March 20, 2009, at 9:00 a.m. at the City of Lynchburg City Hall, 900 E. Church Street, City Council Chambers Conference Room, 1st Floor, Lynchburg, Virginia, to testify regarding the Complaint of Richard L. Brown, D.C. Also on February 26, 2009, the Virginia State Bar requested that Sheriff James E. Dooley, City of Danville Sheriff's Department, serve the subpoena on Respondent. On March 5, 2009, the Sheriff's Department noted that Respondent was not found in Danville and that the office was no longer open. Respondent failed to appear at the March 20, 2009, hearing and to give information and testimony related to the Complaint of Richard L. Brown, D.C.
15. Despite the fact that all of the foregoing documents were mailed by the Virginia State Bar to Respondent at her address of record with the Virginia State Bar, a fact which

Respondent does not and cannot dispute, Respondent states that she did not receive the Complaint and above-listed documents from the Virginia State Bar.

B. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Tonja Michelle Roberts constitutes misconduct in violation of the following Rules of Professional Conduct:

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A lawyer already admitted to the bar . . . in connection with a disciplinary matter, shall not:

(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.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, with the additional provision that Respondent return \$750.00 to Rabbi Theo B.Faith Semel on or before July 3, 2009, the Disciplinary Board **ORDERS** that Respondent is suspended from the practice of law in the Commonwealth of Virginia for one year beginning June 2, 2009, with the following terms:

1. On or before June 1, 2009, Respondent will attend and participate fully in an evaluation by Lawyers Helping Lawyers (“LHL”).
2. Respondent will implement and execute all recommendations of LHL, including, but not limited to, entering into a written contract with LHL for a period of a minimum of one (1) year and abide by the terms of that

written contract, including meeting with LHL and its professionals, as directed. Respondent understands that LHL will provide a periodic report to the Virginia State Bar affirming Respondent's compliance with the written contract. Respondent understands further that LHL will maintain the confidentiality of Respondent's professional counselor relationship and that any information embraced within the professional counselor privilege will not be disclosed to the Virginia State Bar without Respondent's prior written consent.

3. Respondent will return the sum \$750.00 to Rabbi Theo B. Faith Semel on or before July 3, 2009.

In the event that Respondent fails to comply with any of the terms of this Order, including, but not limited to, complying with and implementing all written recommendations of LHL, Bar Counsel for the Virginia State Bar shall issue a Rule to Show Cause to the Respondent requiring the Respondent to Show Cause, if any, why the Disciplinary Board should not impose an alternative sanction of SUSPENSION for Three (3) Years. The sole issue to be determined by the Disciplinary Board will be Respondent's compliance with the terms of this Order. The Respondent shall bear the burden of proof by clear and convincing evidence that she has met all the terms of this Order. In the event that Respondent fails to show by clear and convincing evidence that she has met all the terms of this Order, the Disciplinary Board shall impose the alternative sanction of the Three-Year Suspension.

It is further ORDERED that any notice required to be given by Rule to Show Cause shall be by Certified Mail, Return Receipt Requested to Respondent's address of record with the

Virginia State Bar.

It is further ORDERED that any notice required shall be deemed given and complete by Bar Counsel mailing such notice Certified Mail, Return Receipt Requested to Respondent's address of record with the Virginia State Bar.

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 her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her client(s). 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 day of the suspension 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 the suspension, she 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 costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order by certified mail to Tonja Michelle Roberts at her last address of record with the Virginia State Bar, to her counsel Rhetta Daniel, Esq., 7264 Hanover Green Drive, Mechanicsville, VA 23111, by regular mail, and shall deliver a copy to Assistant Bar Counsel.

ENTERED: May 6, 2009

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Robert E. Eicher
Robert E. Eicher, Esq.,
Chair