

Jun 06, 2016

VIRGINIA:

VSB CLERK'S OFFICE

BEFORE THE FIFTH DISTRICT-SECTION II COMMITTEE  
OF THE VIRGINIA STATE BARIN THE MATTER OF  
EMMETT FRANKLIN ROBINSON, SR.

VSB Docket No. 16-052-104143

DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITHOUT TERMS)

On May 11, 2016, pursuant to Part Six, Section IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, a hearing was held for Respondent Emmett Franklin Robinson, Sr. ("Respondent") to show cause why the alternative disposition of a Public Reprimand without Terms should not be imposed as set forth in the Private Reprimand with Terms issued by a Subcommittee of the Fifth District-Section II Committee on April 4, 2013.

The matter was held before a duly convened Fifth District-Section II Committee panel consisting of Donald King, Chair Presiding, Gary Mims, Member, Anita McFadden, Member, Grant Nelson, Member, David Roop, Member, Stephen McArdle, Lay Member, Michael Mackert, Lay Member, and Reba Davis, Lay Member. Respondent appeared in person, *pro se*. Elizabeth K. Shoenfeld, Assistant Bar Counsel appeared as counsel for the Virginia State Bar.

The Panel was polled as to whether any member had any conflict of interest, any apparent conflict of interest, or other reason why the member should not participate in the hearing. Each panel member, including the Chair, answered in the negative.

On April 5, 2016, the Bar had issued to Respondent a Notice of Show Cause Hearing regarding Respondent's violation of the Terms included in the April 4, 2013 Private Reprimand with Terms. The Notice of Show Cause with exhibits was admitted at the hearing as Bar Exhibit A. The exhibits to the Notice of Show Cause, admitted as part of Bar Exhibit A, are as follows: Private Reprimand with Terms (Exhibit 1); letter of October 9, 2015 from law practice consultant Jonathan Westreich (Exhibit 2); invoices issued by Mr. Westreich (Exhibit 3). Respondent testified in his case and the Bar cross-examined Respondent. Respondent also called another witness and introduced Respondents Exhibits 1-4, which were records and examples regarding his trust accounting practices.

Upon hearing all the evidence, the Panel determined that Respondent did not prove by clear and convincing evidence that he complied with the Terms of the Private Reprimand with Terms. Accordingly, pursuant to Part Six, Section IV, ¶¶ 13-15.F and 13-16.Z of the Rules of the Supreme Court of Virginia, the Panel hereby serves upon Respondent the following Public Reprimand, which includes Findings of Fact and Misconduct that were previously made by the Fifth District-Section II Subcommittee as part of the Private Reprimand with Terms.

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the commonwealth of Virginia.

10-052-080228 (Jones)

2. On July 29, 2006, Michael Jones ("Jones") entered into an Agreement To Provide Legal Services with Respondent. Jones had purchased a defective automobile from an entity known as Fair Auto Sales and Service, Inc. and employed Respondent for advice and counsel as to any legal remedies he might have. Jones paid Respondent Five Hundred Dollars (\$500.00) as an advance towards Respondent's fee.

3. Respondent filed a Complaint on behalf of Jones in the Circuit Court of Fairfax County against Fair Auto Sales and Service, Inc. On June 20, 2007, the Court entered judgment for Jones. It found that Jones' actual compensatory damages were \$7,450.00, which damages were trebled. The Court ordered that

... judgment be and is hereby entered in favor of MICHAEL JONES, the Plaintiff, against FAIR AUTO SALES AND SERVICE, INC., the Defendant, for compensatory damages in the amount of \$22,350.00 plus punitive damages pursuant to Counts I and II in the amount of \$50,000.00 and attorney's fees pursuant to Count III in the amount of \$23,062.00.

4. Fair Auto Sales and Service, Inc. was no longer in business and judgment proof, but Respondent had discovered that it had a Motor Vehicle Dealer Bond ("Bond") issued by Western Surety Company in the amount of Twenty Five Thousand Dollars (\$25,000.00). Respondent proposed to Jones that costs be paid from the Bond and that he (Respondent) receive Ten Thousand Dollars (\$10,000.00) as partial payment of his legal fee. Jones refused and the attorney-client relationship was severed. Thereafter, Respondent initiated a Declaratory Judgment proceeding against Michael Jones and Western Surety Company. Although Respondent had effectuated service of process on Jones, Jones asserts that he did not have actual notice of the Declaratory Judgment proceeding. The Declaratory Judgment proceeding was heard by the Court with defendant Michael Jones in default. On January 10, 2008, the Fairfax County Circuit Court found that Mr. Jones had obligated himself to pay over \$27,350.99 in conjunction with the June 20, 2007 judgment rendered by the Court and ordered that Western Surety Company send the bond coverage - Twenty Five Thousand Dollars (\$25,000.00) - to the Law Office of E. F. Robinson,

PLLC for distribution to creditors. Respondent disbursed \$4,288.99 for costs incurred to prosecute Jones' case and the balance towards his court-awarded fees.

5. The Fee Agreement between Respondent and Jones provided that Respondent was entitled to 30% of "any recovery exceeding your actual financial loss, such as for punitive or enhanced/treble-type damages under a consumer statute...." The Fee Agreement did not specify if expenses would be deducted before or after calculation of the contingent fee, and was unclear as to whether the contingent fee would be in addition to the hourly fees charged by Respondent. The June 20, 2007 judgment entered on behalf of Mr. Jones awarded Jones \$50,000.00 in punitive damages. Following termination of the Respondent/Jones attorney-client relationship, Respondent brought suit against Jones in the amount of Fifteen Thousand Dollars (\$15,000.00). This amount constituted 30% of the Fifty Thousand Dollar (\$50,000.00) punitive damage award ordered by the Court.
6. Respondent obtained a default judgment against Jones in the amount of Fifteen Thousand Dollars (\$15,000.00) and recorded his judgment with the court. Inasmuch as the punitive damage award was never funded, however, Respondent undertook no effort to collect this judgment from Jones.

11-052-084695 (VSB/trust account)

7. During the course of its investigation, the bar inquired about Respondent's compliance with the trust account reconciliation rules. Respondent acknowledged that he did not perform quarterly reconciliations of his trust account, and did not have the required supporting documentation.
8. Respondent further acknowledged that he did not maintain subsidiary ledgers of his clients' trust account activity, nor did he keep quarterly reconciliations of subsidiary ledgers, or required related supporting documentation, for five years.

II. NATURE OF MISCONDUCT

As to VSB Docket No. 10-032-080228 (Jones), such conduct constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RPC 1.5 Fees

- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis, or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing representation.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the

event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

RPC 1.15 Safekeeping Property

A lawyer shall:

(b)(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.

As to VSB Docket No. 11-052-084695 (VSB/trust account), such conduct constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RPC 1.15 Safekeeping Property

- (c) Record-Keeping Requirements
- (d) Required Trust Accounting Procedures

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee to impose a Public Reprimand Without Terms and Respondent is hereby so reprimanded.

Pursuant to ¶ 13-9.E of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

FIFTH DISTRICT-SECTION II COMMITTEE  
OF THE VIRGINIA STATE BAR

By

  
Donald King  
Chair Presiding, Fifth District-Section II Committee

CERTIFICATE OF SERVICE

I certify that on 6/6/16, a true copy of the District Committee Determination (Public Reprimand) was sent by certified mail to Emmett Franklin Robinson, Sr., Respondent, at Law Office of E. F. Robinson, 1712 Financial Loop, Lake Ridge, VA 22192, Respondent's last address of record with the Virginia State Bar.

  
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