

VIRGINIA :

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JESSE SCOTT SHELOR

VSB Docket Nos. 09-080-077349 and 09-080-079109

ORDER

THIS MATTER came on to be heard on February 18, 2011, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Pleasant S. Brodnax III, Acting Chair presiding, Randall G. Johnson, Jr., Sandra L. Havrilak, Richard J. Colten, and Robert W. Carter, Lay Member.

The Respondent was properly served with notice of these proceedings, in accordance with Part Six, §IV, ¶13-18C of the Rules of the Supreme Court of Virginia. Service of all notices regarding both Complaints was accomplished pursuant to Part Six, §IV, ¶13-12C of the Rules of the Supreme Court of Virginia, by sending appropriate notice by certified mail, return receipt requested, to the Respondent's last address on record with the Bar for membership purposes. It should be noted, for the record, that the Clerk of the Disciplinary Board, in addition to the notice aforesaid, also mailed the required notices to various other addresses that the Respondent may have used and were ascertained during the investigative process.

The Respondent, Jesse Scott Shelor, did not appear in person or by counsel at the February 18, 2011, hearing, which took place at 9:00 a.m. in the Virginia Workers' Compensation Commission Building, Courtroom A, 1000 DMV Drive, Richmond, Virginia 23220. The Respondent's name was called and announced, both in the hearing room and in the hallway outside the hearing room, at least three times, and there was no response. Paulo E. Franco, Jr., Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The proceedings were recorded by Terry S. Griffith, Chandler & Halasz, registered professional reporters, whose address is Post Office Box 9349, Richmond, Virginia 23227, and whose phone number is 804/730-1222.

The Chair inquired of the respective Panel members whether any member had any personal or financial interest or bias which would preclude any of them from fairly hearing the matter and serving on the Panel, to which inquiry each member, including the Chair, answered in the negative.

This matter came before the Board by Certification of a Subcommittee of the Eighth District Committee resulting from a hearing before the Subcommittee on the 20th day of August 2010 and resulting in an Order submitted and properly served upon the Respondent, Jesse Scott Shelor, by certified mail, return receipt requested, on the 8th day of October 2010.

The Bar's Exhibits 1 through 13 were all offered and received into evidence without objection.

Bar Counsel called only Bar investigator James Whitener, who was administered the oath and so testified on behalf of the Bar. Mr. Whitener testified that he is an investigator with the Virginia State Bar and was assigned to this case. As part of his investigation, he diligently tried to locate the Respondent. Since the Respondent's address of record was a post office box, Mr. Whitener began his investigation with a simple Google search. When that failed, he went out to the neighborhood and talked to neighbors to see if they had heard from or seen the Respondent. No one offered any information. He also interviewed Respondent's previous law partner, who claimed not to know how to contact Respondent. He conducted a skip trace and ran a record check, all to no avail. According to Mr. Whitener, it was as though Respondent had just disappeared.

The Respondent, being absent and having not responded to any of the various notices throughout the investigative stage, offered no exhibits or witnesses.

There are two Complaints, which were factually similar in nature. This Order will address each Complaint separately, but the sanction imposed will dispose of both Complaints, simultaneously.

THE HARTMAN COMPLAINT

The factual basis of the first Complaint, VSB Docket No. 09-080-077349 (referred to as the "Hartman Complaint") was considered by this Board as a result of the Complaint filed by Donna D. Hartman with the Virginia State Bar. In order to address the issues raised in the Eighth District Subcommittee's Certification, each paragraph set out in the Findings of Fact and the Nature of Misconduct, as reported by the Subcommittee, will be set forth as they appear in the Certification, followed immediately thereby with this Board's findings and disposition.

The Certification to the Board with regard to the Hartman Complaint is as follows:

I. FINDINGS OF FACT

1. At all times relevant, Respondent, Jesse Scott Shelor, was licensed as an attorney in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on September 29, 1983.
3. The parents of Complainant, Donna D. Hartman, paid Respondent an initial retainer of \$800.00 to represent their interests in a dispute over an easement.
4. The Hartmans made their payment in June of 2004.

5. During the course of the representation, Respondent did little, if any, work on the case.
6. The Hartmans initially reached a settlement with the other party and his counsel, and Mr. Shelor had no involvement in the settlement.
7. The Hartmans eventually contacted Respondent, who said he would review the settlement agreement the other party prepared by coming to the Hartmans' home.
8. The Respondent did not show as promised.
9. Over the course of time, Respondent relocated his office four times without ever advising the Hartmans.
10. The Hartmans and the Complainant made numerous attempts to contact Respondent to obtain their original documents and an accounting of how their retainer was spent.
11. Despite numerous promises to meet with them, Respondent failed to keep any appointments.
12. During the Hartmans last contact with Respondent, he promised to meet with them on October 1, 2008.
13. That was the last contact the Hartmans ever had with Respondent.
14. Donna Hartman filed a Bar complaint on her parents' behalf on November 4, 2008.
15. On December 15, 2008, the Virginia State Bar sent a copy of the Hartman Complaint to the Respondent demanding a response within twenty-one days.
16. Respondent did not provide any answer.
17. The Virginia State Bar issued a subpoena *duces tecum* to Respondent on May 14, 2009, requesting documents from the Respondent.
18. The Respondent failed to respond to the subpoena *duces tecum*.
19. During the course of the investigation, the investigator for the Virginia State Bar attempted to contact the Respondent to no avail. The investigator

used numerous methods to track down the Respondent's location, but all of those efforts have proven fruitless.

20. Respondent has simply disappeared and abandoned his clients, and has failed to properly account for how he earned the fees taken from the Hartmans.

21. Respondent has failed to cooperate with the Bar's investigation of this case in any manner whatsoever.

No evidence having been presented to contradict any of the foregoing Findings of Fact by the Subcommittee, the Panel finds such representations to be accurate.

II. NATURE OF MISCONDUCT

The Certification alleged that the Respondent engaged in the following acts of misconduct, and the Board finds that Bar Counsel proved, by clear and convincing evidence, that the Respondent violated the Virginia Rules of Professional Conduct, as charged and as more specifically set forth below:

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.

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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 1.15 Safekeeping Property

(c) 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 accounts 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 which such person is entitled to receive.

* * * *

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).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-person communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation

under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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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:

- (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

* * * *

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.

* * * *

By unanimous vote, the Panel finds that the Virginia State Bar proved the foregoing Rules violations with regard to the Hartman Complaint by clear and convincing evidence.

The Certification to the Board with regard to the Hartman Complaint further alleged the following violations of Rule 1.5(b) and Rule 8.1(d):

RULE 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 the representation.

* * * *

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:

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

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The Board finds that the Bar did not meet the burden of clear and convincing evidence in proving that Respondent violated these two Rules with regard to the Hartman Complaint.

THE MERRIX COMPLAINT

Regarding VSB Docket No. 09-080-079109 (referred to as the "Merrix Complaint"), the factual basis of the Complaint considered by this Board is a result of a Complaint filed by David B. Merrix with the Virginia State Bar. In order to address the issues raised in the Eighth District Subcommittee Certification, each paragraph set out in the Findings of Fact and the Nature of Misconduct, as reported by the Subcommittee, will be set forth below as they appear in the certification, followed immediately thereby with the Board's findings and disposition.

The Certification to the Board is as follows:

I. FINDINGS OF FACT

1. At all times relevant, Respondent, Jesse Scott Shelor, was licensed as an attorney in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on September 29, 1983.
3. On April 25, 2008, David D. Merrix hired Respondent to file a bankruptcy petition for him.
4. Mr. Merrix paid Respondent \$1,100.00.
5. Mr. Merrix and Respondent met twice to discuss the case.
5. (Sic) That was the last time Mr. Merrix ever met with or spoke with Respondent.
6. Mr. Merrix tried on numerous occasions to contact Respondent by phone and by letter but all attempts to communicate with Respondent failed.

7. On April 7, 2009, Complainant filed the instant bar complaint.
8. On April 9, 2009, the Virginia State Bar sent a copy of the Merrix complaint to the Respondent demanding a response within twenty-one days.
9. Respondent did not provide any answer.
10. The Virginia State Bar issued a subpoena *duces tecum* to Respondent on May 14, 2009, requesting documents from the Respondent.
11. The Respondent failed to respond to the subpoena *duces tecum*.
12. During the course of the investigation, the investigator for the Virginia State Bar attempted to contact the Respondent to no avail. The investigator used numerous methods to track down the Respondent's location, but all of those efforts have proven fruitless.
13. Respondent has simply disappeared and abandoned his clients, and has failed to properly account for how he earned the fees taken from the Hartmans (*sic*).
14. Respondent has failed to cooperate with the Bar's investigation of this case in any manner whatsoever.

No evidence having been presented to contradict any of the foregoing Findings of Fact by the Subcommittee, the Panel finds such representations to be accurate. The Panel is cognizant of the clerical error in Merrix Finding of Fact number 13, inadvertently identifying the Complainant as Hartman rather than Merrix. The Panel notes that the finding was intended to relate to Respondent's failure to properly account for how he earned the fees taken from Mr. Merrix, and the finding has been addressed by the Panel as intended.

II. NATURE OF MISCONDUCT

The Certification alleged that the Respondent engaged in the following acts of misconduct, and the Board finds that Bar Counsel proved, by clear and convincing evidence, that the Respondent violated the Virginia Rules of Professional Conduct, as charged and as more specifically set forth below:

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 1.15 Safekeeping Property

(c) 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 accounts 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 which such person is entitled to receive.

* * * *

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

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:

- (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

* * * *

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.

* * * *

By unanimous vote, the Panel finds that the Virginia State Bar proved the foregoing Rules violations with regard to the Merrix Complaint by clear and convincing evidence.

The Certification to the Board with regard to the Merrix Complaint further alleged the following violations of Rule 1.5(b), Rule 1.16(e) and Rule 8.1(d):

RULE 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 the representation.

* * * *

RULE 1.16 Declining Or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the

client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-person communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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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:

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

* * * *

The Board finds that the Bar did not prove, by clear and convincing evidence, that the Respondent violated the aforesaid Rules with regard to the Merrix Complaint.

After considering the testimony of the witness, and after reviewing all Exhibits introduced by the Virginia State Bar, and having considered the pleadings submitted by the Virginia State Bar, and having heard argument, the Board recessed to deliberate. In its deliberations After due deliberation, the Board reconvened and stated its findings as set forth above.

The Board then entertained evidence regarding mitigation and/or aggravation. The Board duly considered that the Respondent, Jesse Scott Shelor, has been practicing law in the Commonwealth of Virginia since September, 1983, and has no disciplinary record. The Board took

cognizance, however, of the fact that on March 25, 2009, Respondent's license to practice law was suspended due to his failure to comply with the Mandatory Continuing Legal Education Requirement; and on August 19, 2009, this Board suspended his law license for failure to comply with the subpoena *duces tecum* served on him on May 14, 2009. Respondent never complied with either Order. Other than the evidence offered by the Bar in its case in chief, no additional evidence was submitted regarding mitigation or aggravation.

The Board again recessed to deliberate what sanction to impose upon its finding of misconduct. Incident to such deliberations, the Board was particularly concerned about the nature of the violations and the fact that Respondent had simply abandoned his law practice with utter disregard for the welfare of his clients. After due deliberation, the Board reconvened and the Chair announced the Board's unanimous determination that the license of Jesse Scott Shelor to practice law in the Commonwealth of Virginia be **REVOKED, EFFECTIVE FEBRUARY 18, 2011**. And it is hereby

FURTHER ORDERED that the Respondent must comply with the requirements of Part Six, §IV, ¶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 the 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 clients. 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 Virginia State Bar within 60 days of the effective date of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

FURTHER ORDERED that, if the Respondent is not handling any client matter on the effective date of the revocation, 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 ¶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.

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

FURTHER ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order by certified mail to the Respondent, Jesse Scott Shelor, at P.O. Box 545, Vinton, Virginia 24179-141 and to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar.

ENTERED this 24th day of February, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Pleasant S. Brodnax III, Acting Chair