

VIRGINIA:

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IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON, MAY 8 2009

IN THE MATTER OF DAVID LOREN SHURTZ, ESQUIRE
VSB DOCKET NUMBER 07-041-1154

VSB CLERK'S OFFICE

MEMORANDUM ORDER

ON THE 26th day of March, 2009, this matter came before the Three-Judge Court designated on the 23rd day of February, 2009, by Order of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the Code of Virginia (1950 *as amended*), consisting of the Honorable William H. Ledbetter, Jr., Retired Judge of the Fifteenth Judicial Circuit, the Honorable John J. McGrath, Retired Judge of the Twenty-Sixth Judicial Circuit, and the Honorable Lisa Bondareff Kemler, Judge of the Eighteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Kathleen M. Uston, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, David Loren Shurtz, personally appeared represented by counsel, Michael L. Rigsby, Esquire.

THEREAFTER, the hearing was conducted upon the Rule to Show Cause issued against the Respondent, which directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked or why he should not be otherwise sanctioned in accordance with Rules of Court, Part Six, Section IV, Paragraph 13;

FOLLOWING presentation of the Bar's evidence, which included the testimony of two (2) witnesses and nineteen (19) documentary exhibits, which were received by the Court on motion of the Bar, without objection, and following presentation of the Respondent's evidence, which included the testimony of two (2) witnesses including the Respondent and documentary

exhibits, which were received by the Court on motion of the Respondent without objection, and upon argument of counsel, the Three-Judge Court retired to deliberate and thereafter returned and announced that it had found, by clear and convincing evidence, the following:

1. At all times relevant hereto, the Respondent, David Loren Shurtz, Esquire (hereinafter "the Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia. The Respondent is also licensed in the District of Columbia, and he testified that he principally practices in Virginia.
2. On December 16, 2005, Vandora Chappelle was a passenger in an automobile involved in an accident in Washington, D.C. On December 18, 2005, an individual, who identified himself as Antoine Washington, appeared at Ms. Chappelle's home to discuss the accident with her, and suggested that she hire the Respondent to represent her interests. During this meeting, Mr. Washington presented Ms. Chappelle with a Contingency Fee Agreement on the Respondent's letterhead which Ms. Chappelle signed at that time, thereby retaining the Respondent to represent her in her personal injury case. Prior to signing this Agreement, Ms. Chappelle had never met the Respondent, nor had she had the opportunity to review the terms of the Agreement with him.
3. Soon after Ms. Chappelle hired the Respondent, she informed him that she was having trouble with her car, needed funds for a security deposit and for her car insurance, and she asked him for financial assistance. The Respondent agreed to loan Ms. Chappelle funds eventually totaling \$1,671.00. Two of those loans were made in \$600.00 cash increments that Ms. Chappelle traveled to Respondent's office in Arlington, Virginia to retrieve.

4. Following her receipt of these funds, Ms. Chappelle thereafter attempted to contact the Respondent to inquire regarding the status of her case, calling him many times. The Respondent, however, ignored her calls, and failed to update her on the status of her case, including failing to inform her of settlement offers made by the defendant's insurance carrier, Banker's Independent Insurance Company (hereinafter "Banker's.")

5. During the course of the representation, the Respondent signed Ms. Chappelle's name to an Authorization to Release/Disclose Protected Health Information in order to obtain her medical records.

6. On June 23, 2006, the Respondent accepted a settlement offer from Banker's in the amount of \$16,000.00 on Ms. Chappelle's behalf. Banker's transmitted a Release to the Respondent by facsimile with instructions that "upon receipt of a properly executed Release," the settlement funds would be forwarded to the Respondent. On that date, the Respondent signed Ms. Chappelle's name to the Release from Banker's, instructed two of his employees to witness the signature as being that of Ms. Chappelle, and then himself notarized the signature, attesting in the notary clause that Ms. Chappelle had "personally appeared" before him as a Notary Public and executed the document. The Respondent then returned the signed, witnessed, notarized Release to Banker's without informing that company that he, in fact, had signed his client's name to the Release.

7. The Respondent also admitted that he accepted the \$16,000.00 from Banker's without first obtaining Ms. Chappelle's authorization to do so.

8. The Respondent cited the following language from his Contingent Fee Agreement as his authority for the above described conduct:

Client gives Mr. Shurtz full power and authority to prepared (*sic*), endorse, execute and/or file on client's behalf all pleading (*sic*), contracts, settlements, compromises, released (*sic*), verifications and orders that, in Mr. Shurtz' opinion, is (*sic*) necessary in connection with this case.

9. In August of 2006, the Respondent received a check from Banker's, made out to both Ms. Chappelle and the Respondent. The Respondent testified that he endorsed the check with both his own name and Ms. Chappelle's and deposited it into his trust account. The Respondent also drew up a settlement statement which indicated that he would recover the \$1,671.00 he had loaned to Ms. Chappelle from the settlement funds. However, Ms. Chappelle refused to accept the settlement. She fired the Respondent and hired a new attorney, Louis Fireison, Esquire, who filed this complaint with the Bar in October of 2006.

10. Mr. Fireison contacted Banker's regarding this matter but the company denied any further liability in the case due to it's receipt of a signed, notarized Release bearing what Banker's understood to be Ms. Chappelle's signature.

11. Mr. Fireison thereafter filed suit in the D.C. Superior Court, arguing in motions filed in the case that the signature was a forgery and therefore void.

12. Ultimately, on April 18, 2008, Mr. Fireison negotiated a settlement of the case with Banker's for the sum of \$22,000.00, and Banker's counsel transmitted a check to Mr. Fireison in this amount. The Respondent had contributed \$6,000.00 of his own funds to the settlement, in addition to returning the original \$16,000.00 he held in trust directly to Banker's counsel.

THE THREE-JUDGE COURT thereupon stated its finding that the Virginia State Bar had proven, by clear and convincing evidence, that the above described conduct by the Respondent violated the following provisions of the Rules of Professional Conduct:

RULE 1.4 Communication

- (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 1.8 Conflict of Interest: Prohibited Transactions

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:
 - (1) a lawyer may advance court costs and expenses of litigation, provided the client remains ultimately liable for such costs and expenses; and
 - (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

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[.]

THEREAFTER, the Bar and the Respondent presented argument regarding the sanction to be imposed upon the Respondent for the ethical misconduct found by the Three-Judge Court. The members of the Three-Judge Court deliberated and announced the decision that the

Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of eighteen (18) months, effective April 16, 2009.

AT THE CONCLUSION of the proceedings on the 26th day of March, 2009, the Three-Judge Court entered a Summary Order suspending Respondent's license to practice law in the Commonwealth of Virginia for a period of eighteen (18) months, effective April 16, 2009; accordingly, it is, therefore

ORDERED, that Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of eighteen (18) months, effective April 16, 2009, on the basis of the violations of the Rule of Professional Conduct set forth above; and it is further

ORDERED, that pursuant to Part Six, 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 Arlington 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.

THIS ORDER IS EFFECTIVE *NUNC PRO TUNC* MARCH 26, 2009.

AND THIS ORDER IS FINAL.

Entered this 29th day of April, 2009.

FOR THE THREE-JUDGE COURT:

By:



LISA BONDAREFF KEMLER

Circuit Judge and

Chief Judge of the Three-Judge Court

I ASK FOR THIS:

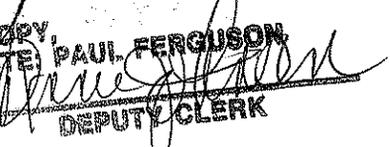


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SEEN AND

Objected to for the reasons stated on the record and:
Michael L. Rigsby
Michael L. Rigsby, Esquire
Respondent's Counsel
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Carrell, Rice & Rigsby
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1. Rule 1.4 - bar's evidence did not rise to the level of clear & convincing evidence
2. Rule 1.8 - the Rules of Professional Conduct for the District of Columbia applied & the bar offered no evidence establishing a violation of the applicable D.C. rule
3. Rule 8.4(b) - the bar did not establish the existence of a criminal act.

A COPY
TESTE: PAUL FERGLISON
BY: 
DEPUTY CLERK