

VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF BERNICE MARIE STAFFORD TURNER

VSB Docket Nos. 14-032-098575 and 14-032-099212

MEMORANDUM ORDER

These matters came to be heard on March 27, 2015, pursuant to the Certification of the Third District Subcommittee, dated October 30, 2014, alleging that with respect to case numbers 14-032-098575 and 14-032-099212, the Respondent Bernice Marie Stafford Turner ("Respondent") has violated the Rules of Professional Conduct.

The matter was heard before a duly convened panel of the Virginia State Bar ("VSB") Disciplinary Board (the "Board"), consisting of Richard J. Colten, Chair, presiding; Reverend W. Ray Inscoe, Bretta Z. Lewis, Jeffrey L. Marks, and William M. Moffet.

The Virginia State Bar was represented by Renu M. Brennan, Assistant Bar Counsel. Respondent Bernice Marie Stafford Turner appeared in person and was represented by Thomas H. Roberts. Court Reporters Angela N. Sidener and Tracy J. Stroh, Certified Court Reporters with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23327, (804) 730-1222 after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board for information regarding whether any of the members has a personal or financial interest which would preclude hearing the matter fairly and impartially. Each member, including the Chair, individually responded that he/she has no such conflict or interest.

After the witnesses and parties were sworn, the VSB and Respondent's Counsel made a joint motion to exclude witnesses, and the witnesses were excused and exited the hearing

room. The Board entertained opening statements from the Virginia State Bar and from Counsel for Respondent prior to hearing evidence.

VSB Exhibit A, with subparts 1 through 59 were admitted into evidence without objection, along with an additional Exhibit admitted as Respondent's Exhibit A prior to the commencement of the proceedings. During the presentation of evidence, VSB Exhibit B and Respondent's A, C, D, F, G were admitted without objection. During the proceedings, Bar Counsel lodged an objection to the entry of Respondent's Exhibit H. The Panel heard argument and Respondent's Exhibit H was admitted over the objection of Bar Counsel. Respondent's Exhibits B and E were marked for identification but not offered into evidence.

No stipulations of fact were agreed upon prior to commencement of the proceedings. During the proceedings, Bar Counsel and Counsel for the Respondent stipulated that VSB Exhibits 25 – 38 contained identical information to that which was provided to the Board on Schedule F of the Bankruptcy filings prepared by the Respondent on behalf of Complainants.

After the close of the Bar's presentation of each matter, Respondent's Counsel moved to strike the Bar's evidence. After retiring for deliberations in each instance, the Motion to Strike was denied as to each matter.

I. FINDINGS OF FACT

A. Facts As to VSB Docket No. 14-032-098575

1. Respondent Bernice Stafford Turner was licensed to practice law in the Commonwealth of Virginia on October 5, 1990, and has been licensed to practice law at all times relevant hereto and referenced herein.
2. On January 15, 2014, Rebecca Doucet hired Respondent to file a Chapter 7 bankruptcy. Ms. Doucet paid Respondent \$1300 in cash, \$306 of which was the filing fee required to file the Petition. Prior to meeting with Complainant on January 15, 2014, Respondent advised the Complainant to bring certain financial information to the meeting, which Complainant did.

3. Ms. Doucet testified that after January 15, 2015 she and her husband were unable to access their funds, as their accounts were frozen and could only be accessed after the filing of the Petition. After the initial meeting, Ms. Doucet testified that she was unable to reach Respondent to discuss this matter.
4. Respondent did not deposit the \$1,300 into a trust account. Respondent asserts that she kept a portion of the cash fees in her locked desk drawer and eventually used it to purchase a debit card to pay the filing fee, which must be paid electronically pursuant to procedure. Respondent presented no receipts for the debit card and testified that she could not recall what type of card she purchased, from where she purchased it, or when she purchased it. The balance of the \$1,300 was not placed in trust as unearned fee, but was deposited to Respondent's operating account and was treated as earned fee.
5. From January 15 to February 16, 2014, Complainant testified that she was unable to reach Respondent by telephone or email, despite repeated attempts. During this period, Complainant's husband attempted to visit the Respondent at her office, but went to the wrong office.
6. Respondent testified that her phone numbers were not functional for some period between January 15 and February 16 time due to a change in service providers.
7. Respondent admits that she does not use email frequently and does not check her emails daily. Respondent testified that she does not recall whether she received the Complainant's emails.
8. Respondent testified that she closed her office during early February because she also runs a flower shop and was completing flower orders for Valentine's Day.
9. On February 4, 2014, Ms. Doucet and her husband received certificates showing that they had completed the credit counseling course that is a prerequisite to filing a bankruptcy Petition.
10. Ms. Doucet attempted to contact Respondent to provide her with the certificates so that the Petition could be filed. Ms. Doucet testified that she and her husband were unable to access their funds, as their accounts were frozen and could only be accessed after the filing of the Petition. Ms. Doucet testified that she received no response from Respondent during February 4 – 14, 2014.
11. On February 14, 2014, Ms. Doucet filed her bar complaint.
12. On February 14, 2014, Ms. Doucet contacted the attorney who referred them to Respondent in an attempt to make contact with Respondent.
13. On February 16, 2014 after speaking with the referring attorney, Respondent contacted Ms. Doucet by telephone.
14. On February 17, 2014, Respondent refunded \$200.00 to the Complainant.

15. On February 18, 2014, Respondent filed the bankruptcy petition on behalf of Ms. Doucet and her husband.
16. The bankruptcy proceeding was continued twice, pursuant to pleadings Respondent filed stating that the debtors needed additional time to gather information. Complainant disputes that any additional information was requested or provided prior to the finalization of the proceedings.
17. Additional steps by the Trustee and Complainant became necessary to effectuate the finalization of the matter due to Respondent's unfamiliarity with the details of Complainant's financial situation.
18. The matter was finalized on May 27, 2014.

B. Facts As to VSB Docket No. 14-032-099212

1. Respondent Bernice Stafford Turner was licensed to practice law in the Commonwealth of Virginia on October 5, 1990, and she has been licensed to practice law at all times relevant hereto and referenced herein.
2. On April 2, 2013, Ms. Linda Gillis hired Respondent to file an uncontested divorce from her incarcerated spouse.
3. Ms. Gillis reported that she and her spouse had been separated and had lived separate and apart for several years, and shared no children or property.
4. Respondent explained that a Guardian *Ad Litem* (GAL) must be appointed to represent her husband's interests based on his status as a person "under a disability" due to his incarceration.
5. Ms. Gillis testified that she told Respondent that she would like the divorce concluded as soon as possible.
6. Respondent asserts that Ms. Gillis reported that cost was a major factor with respect to how she would like Respondent to proceed. Complainant disputes that she instructed Respondent that cost was a critical factor.
7. On April 2, 2013, Ms. Gillis paid Respondent the sum of \$359.00 in two checks, one for \$250.00 and one for \$109.00. Respondent testified that she does not recall in what account she deposited the checks, which were both negotiated on April 4, 2013.
8. The check for \$109.00 contained a notation in the memo line stating that it was for filing and service fees. Respondent testified that the \$109.00 was for her legal service. Complainant testified that the \$109.00 check was intended to pay for filing and service of the Complaint.

9. Ms. Gillis testified that she attempted to contact Respondent on numerous occasions by telephone and email in April and May 2013 to request information about the status of her case, to no avail.
10. Respondent admits that she did not respond via email. Respondent admits that she does not use email frequently and does not check her emails daily. Respondent testified that she does not recall whether she received Ms. Gillis's emails.
11. Respondent contacted Ms. Gillis by telephone in June 2013 and stated that she had not started work because Ms. Gillis had not yet paid the remainder of the \$500 legal fee initially quoted for the divorce.
12. On July 11, 2013, Ms. Gillis provided a check to Respondent for the remaining \$250.00 of her legal fee.
13. On multiple occasions between in July 2013 and August 2013, Complainant contacted Respondent in an attempt to ascertain the status of her case. During the same period, Complainant contacted the Court to determine if any Respondent had filed pleadings on her behalf and learned that nothing had been filed.
14. On August 5, 2013, Respondent negotiated the check Ms. Gillis provided in July 2013. Respondent has provided no records of what she did with the funds. Respondent admits that she did not keep records of her accounting during the relevant time period. Despite receiving a lawful subpoena from the Bar, Respondent provided no documentation of her trust account, of any deposits into her trust account, or of a subsidiary ledger recording such transactions.
15. On August 26, 2013, Respondent sent an email to Ms. Gillis asking whether Ms. Gillis wanted Respondent to e-mail her the "divorce papers." Ms. Gillis responded in the affirmative.
16. Respondent mailed a Complaint and related pleadings to the Court with a cover letter dated September 9, 2013. Court records indicate that the Complaint was marked as filed in October 2013.
17. Within the Complaint, Respondent included a Motion to Appoint a GAL in which she alleged, *inter alia*, that the parties were indigent and prayed that the Court appoint a GAL for Ms. Gillis's husband.
18. Respondent did not file a Notice or set a date for a hearing on the Motion to Appoint a GAL. She did not enclose with the Complaint/Motion an Order Appointing GAL for consideration or entry by the Court.
19. During August - October 2013, Ms. Gillis sent several emails to Respondent regarding her own efforts to secure a GAL to represent the interests of her husband. Ms. Gillis indicated in several emails that she was willing to pay a fee to secure a GAL and provided specific individuals that she requested Respondent should contact.

20. Complainant testified that Respondent never responded to her emails and never sent her a copy of the Complaint.
21. Court records indicate that on November 5, 2013, Mr. Gillis, the incarcerated spouse of Complainant, received service of the Complaint.
22. Throughout the period between October 2013 and March 2014, Ms. Gillis sent emails requesting information about the status of her case. She also requested a copy of the Complaint. Ms. Gillis testified that Respondent did not provide any response to her telephone or email requests for information.
23. Respondent's telephone service was interrupted at some point in January 2014, which Respondent testified was the result of her changing service providers.
24. Ms. Gillis's telephone service may have been interrupted for a total of 24-48 hours during the relevant time period of approximately eighteen (18) months.
25. During March 2014, Complainant sent numerous emails to Respondent requesting information about the status of her case and requesting that she secure a GAL. Ms. Gillis provided specific suggestions of individuals who may agree to serve, and provided repeated assurances that Ms. Gillis was willing to pay the GAL fees.
26. Ms. Gillis sent Respondent an e-mail on March 20, 2014 expressing that she would contact the bar because she was not able to obtain information from Respondent.
27. On March 21, 2014, Respondent contacted Ms. Gillis. Ms. Gillis requested that Respondent contact a specific individual she believed would be willing to serve as GAL.
28. On April 13, 2014, Respondent filed a Motion seeking appointment of a GAL. Respondent's Motion referenced an individual who had previously declined to serve.
29. Ms. Gillis filed a bar complaint on April 14, 2014.
30. At some point after April 13, 2014, at Complainant's behest, Respondent contacted Barbara Mason, who agreed to serve as GAL. On May 28, 2014, Respondent filed an Amended Motion to appoint a GAL, naming Barbara Mason as the proposed appointee. Barbara Mason was appointed by Order entered July 17, 2014.
31. From July to September 2014, various oversights and administrative errors in Respondent's execution of documents delayed the entry of Ms. Gillis's Final Decree. During this period, the Bar investigator became involved and communicated with Respondent and Complainant regarding the procedural issues with the matter.
32. The final decree of divorce was entered September 22, 2014.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

VS B Docket No. 14-032-098575/Rebecca Doucet

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

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

VS B Docket No. 14-032-099212/Linda Gillis

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. 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 accountings to the client regarding them;

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

III. DISPOSITION – Findings Regarding Alleged Misconduct

After the conclusion of evidence and argument by Bar Counsel and Counsel for Respondent, the Board retired to deliberate. After deliberations and a consideration of all evidence and argument herein, the Board hereby finds as follows:

1. Case number 14-032-098575 - Complainant Doucet

With respect to Case number 14-032-098575, the Virginia State Bar has established by clear and convincing evidence that the Respondent has violated Rules 1.15(a)(1) of the Rules of Professional Conduct.

The Board hereby finds that the Bar failed to establish by clear and convincing evidence that the Respondent violated Rule 1.4(a) with respect to Complainant Doucet, Case

Number 14-032-098575.

2. Case number 14-032-099212- Complainant Gillis

With respect to Case number 14-032-099212, the Board hereby finds that the Bar has established by clear and convincing evidence that the Respondent violated Rules 1.3(a), 1.4(a), 1.15 (b)(3) and 1.15(c)(2) of the Rules of Professional Conduct.

The Board hereby finds that the Bar failed to establish by clear and convincing evidence that the Respondent violated Rule 1.15(a)(1) with respect to Complainant Gillis, Case No. 14-032-099212.

IV. SANCTIONS

Having made the above findings, the Board received VSB Exhibit C regarding Respondent's prior disciplinary history, which was admitted into evidence without objection. Additional evidence and argument were offered by the Bar and Respondent regarding aggravation and mitigation.

After due deliberations regarding the matter of Sanctions, **the Board hereby imposes a suspension of the Respondent's license to practice law within the Commonwealth of Virginia for a period of one (1) year commencing March 27, 2015 effective immediately.** Respondent's Counsel noted his exception.

It is hereby **ORDERED** that in accordance with Part 6, Section IV, Paragraph 1 3-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against Respondent.

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested to her Virginia State Bar address of

record, at PO Box 25852, Richmond, VA 23260, and to the Respondent by certified mail to her Virginia State Bar alternate address of record at 3105 W Marshall St., Suite 109, Richmond, VA 23230, and a copy by regular mail to Thomas H. Roberts, her counsel, at Thomas H. Roberts & Associates, P.C., 105 South First Street, Richmond, VA 23219, and a copy hand-delivered to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219.

ENTER THIS ORDER THIS 22nd DAY OF APRIL, 2015.

VIRGINIA STATE BAR DISCIPLINARY BOARD


RICHARD J. COLTEN, Acting Chair