

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF KRISTINA KITTLE USRY

VSB DOCKET NUMBER 08-032-072773

ORDER OF PUBLIC REPRIMAND, WITH TERMS

This matter came on June 24, 2011, to be heard before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of William E. Glover, Chair, Timothy A. Coyle, John Casey Forrester, Michael S. Mulkey and Stephen A. Wannall, lay member.

The Virginia State Bar (the "Bar") was represented by Richard E. Slaney, Assistant Bar Counsel. Kristina Kittle Usry (the "Respondent") appeared in person and was represented by counsel, William G. Shields. Jennifer L. Hairfield, a registered professional reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn reported the hearing and transcribed the proceedings.

The Chair opened the proceedings and polled the members of the Board as to whether any of them had any personal or financial interest, which would impair, or reasonably could be perceived to impair, his ability to be impartial. Each member of the Board, including the Chair, responded in the negative.

This matter came before the Board on the Subcommittee Determination for Certification by the Third District Subcommittee of the Bar. The Certification was sent to Respondent on August 6, 2010.

At the commencement of the hearing, Bar Exhibits 1 through 9, inclusive, were admitted and collectively marked as Bar Exhibit A, Respondent's objections to Bar Exhibits 1, 2, 3 and 8 having been overruled. The transcript of the deposition of David Duffer dated June 20, 2011 was admitted without objection as Bar Exhibit B. Respondent Exhibits 1 through 14, inclusive, were admitted and collectively marked Respondent Exhibit A, the Bar's objections to Respondent's Exhibits 13 and 14 having been overruled. The transcript of the deposition of Melinda McDonough dated June 17, 2011 was admitted without objection as Respondent Exhibit B.

The Bar called Complainant, Marc A. Astore as a witness. At the conclusion of his testimony, the Bar rested. Respondent, Kristina Kittle Usry testified and Respondent then rested. Virginia State Bar investigator Cam Moffatt was called as a rebuttal witness by the Bar and thereafter the Chair closed the presentation of evidence.

I. FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, the Respondent, Kristina Kittle Usry, formerly known as Kristina Marie K. Fitzgerald, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. By letter dated June 27, 2007, Complainant, Marc A. Astore, Esq. ("Astore") notified Respondent of his representation of James D. Duffer ("Duffer") regarding issues that had arisen between Duffer and Duffer's significant other, Melinda K. McDonough ("McDonough"). Respondent represented McDonough with respect to the issues (See Bar Exhibit A, Tab 3, fifth page).
3. The issues were related, among other things, to the residence in which McDonough and Duffer had lived together. At a point in time McDonough had moved out. At a later point in time, McDonough wished to enter the residence in order to remove financial records and clothing.
4. On or about September 20, 2007, Respondent filed a Complaint on behalf of McDonough against Duffer in the Circuit Court of Fairfax County (See Respondent Exhibit A, Tab 3).
5. By letter dated October 5, 2007, Respondent told Astore that October 13, 2007, the date which Duffer had proposed, was an agreeable date for McDonough to enter the residence to retrieve financial records and clothing. Respondent suggested that the parties and counsel meet that date for a settlement conference as well. Respondent also indicated in that correspondence that if Duffer was going to be present in the residence when McDonough was there, Respondent needed to know so she could arrange security for McDonough. (See Bar Exhibit A, Tab 3, sixth page).
6. By letter dated October 10, 2007 to Respondent, Astore stated the residence would be open for McDonough on October 13, 2007, at the agreed time frame and that Duffer would be present and Astore needed to know who would be providing security for the visit. Astore also stated he would be out of town and a settlement conference was not convenient for him on October 13, 2007. (See Bar Exhibit A, Tab 3, seventh page).
7. Astore testified he never received a response to his October 10, 2007 letter and thus did not know who would be providing security on October 13, 2007.

8. On October 13, 2007, McDonough entered the property to retrieve financial records and clothing. She was accompanied only by Respondent. Duffer was also present.
9. During the time that McDonough, Respondent and Duffer were in the residence, Respondent communicated directly with Duffer.
10. On or about October 15, 2007, Astore learned from Duffer that Respondent provided the security for McDonough and was present in the residence when the property was removed from the house and that Respondent had communicated directly with Duffer without his consent.
11. On or about October 29, 2007, Astore filed a Complaint against the Respondent with the Virginia State Bar (See Bar Exhibit A, Tab 3, first four pages).
12. During the Bar's investigation of this matter, Investigator Cam Moffatt interviewed Respondent who admitted communicating directly with Duffer. Specifically, she admitted that she advised Duffer that it was illegal to prohibit Ms. McDonough from coming into the house and also admitted that she probably asked Duffer about the status of settlement negotiations and whether he would provide her client with a key to the residence (See Bar Exhibit A, Tab 8, fifth page).
13. On October 13, 2007, Respondent communicated with Duffer about the subject of the representation, with the knowledge that Duffer was represented by Astore, but without the consent of Astore or any other authority to do so.
14. Following receipt of the Third District Subcommittee Determination (Certification) that the actions of Respondent violated Rule 4.2 of the Rules of Professional Conduct, by letter dated August 11, 2010 to the Clerk of the Virginia State Bar Disciplinary System, Respondent stated "I do not dispute the Subcommittee's determination" (See Bar Exhibit A, Tab 2).

II. NATURE OF MISCONDUCT

The Certification charged a violation of the following provision of the Rules of Professional Conduct:

RULE 4.2 Communication With Persons Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another

lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel and Counsel for Respondent, upon evidence from witnesses presented on behalf of the Bar and upon evidence presented by Respondent in the form of her own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 4:2 of the Rules of Professional Conduct.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record (See Bar Exhibit C). The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent.

After due deliberation, the Board reconvened to announce the sanction imposed. The Chair remarked that although Bar Counsel was correct to argue that Respondent's conduct could warrant suspension of her license pursuant to Section 6.22 of the American Bar Association Standards for Imposing Lawyer Discipline, it was noted that since April 2008 Respondent has not engaged in the private practice of law. Since that time, she has been employed by the Administrative Office of the United States Courts and is currently employed by that Office as an attorney advisor, which involves assisting federal judges to file financial disclosure forms. This position requires her to have a law license and Respondent testified that she would lose her job if the Board were to suspend her license. Considering all the facts and circumstances, the Chair stated that the Board determined that suspension of Respondent's license is not the appropriate sanction and that it is the unanimous decision of the Board to impose the sanction of a Public Reprimand, with Terms.

Accordingly, it is ORDERED that the Respondent, Kristina Kittle Usry, receive, and the Board hereby imposes upon her effective June 24, 2011, a PUBLIC REPRIMAND, WITH TERMS. The terms and conditions of such discipline are as follows: for a period of five (5) years from and after June 24, 2011, Respondent shall not represent members of the public in the private practice of law.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order by certified mail, return receipt requested, to Respondent at her address of record with the Virginia State Bar, being 3851 Edwards Drive, King George, VA 22485, and by regular mail to Respondent's counsel William G. Shields, 11503 Allecingie Parkway, Richmond, VA 23235, and to Richard E. Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 26th day of July 2011

VIRGINIA STATE BAR DISCIPLINARY BOARD



William E. Glover, Chair