

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ERIN MARIE WEBBER AKA
ERIN WEBBER ANDERSON

VS B Docket No.: 12-000-090627

ORDER OF REVOCATION

This matter came to be heard on Friday, April 27, 2012, before a duly convened panel of the Virginia State Bar Disciplinary Board pursuant to Notice in Courtroom A of the Worker's Compensation Commission of the Commonwealth of Virginia in Richmond, Virginia. Pleasant S. Brodnax, III, chaired the proceedings with Timothy A. Coyle, Michael S. Mulkey, Whitney G. Saunders and Robert W. Carter, lay member, comprising the remaining members of the panel.

The Virginia State Bar (the "Bar") was represented by Kathleen M. Uston, Assistant Bar Counsel. Erin Marie Webber, aka Erin Webber Anderson, (the "Respondent"), appeared in person and was represented by Michael Rigsby. Jennifer L. Hairfield, court reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

All legal notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

The Chair opened the hearing by polling the members of the panel to ascertain if any member had a personal or financial interest that might affect or reasonably be perceived to affect his ability to be impartial in the matters before the panel. Each member, including the Chair, verified that he had no such interest.

The matter came before the Disciplinary Board pursuant to a Rule to Show Cause and Order for Suspension and Hearing ("the Show Cause Order") entered January 23, 2011 by Richard J. Colton, Chair designate of the Virginia State Bar Disciplinary Board. The Show Cause Order being issued after the Clerk of the Disciplinary System received written notification that the Respondent had been convicted of a "crime" as defined by the Rules of Virginia Supreme Court (the "Rules"), Part Six, § IV, ¶ 13-22A. The Show Cause Order summarily suspended the Respondent's license to practice law pursuant to Rules, Part Six, § IV, ¶ 13-22A.

The Show Cause Order was modified by an Order entered March 2, 2012 continuing the hearing on the Show Cause Order until April 27, 2012.

The Chair explained the process to be followed in the hearing. The Chair stated to the Respondent that the Show Cause Order filed by the Bar and served upon the Respondent required the Respondent to Show Cause, if she could, why the summary suspension of her license should not be continued or her license revoked as a result of her conviction of a felony in the Circuit Court of Fairfax County on or about January 20, 2012. The Respondent, therefore, had the burden of proof by clear and convincing evidence that the summary suspension should not be continued or, alternately, that she should not have her license to practice law in Virginia revoked. The Chair also informed the Bar that it would have the opportunity to present evidence in rebuttal.

The Chair inquired whether Counsel for the Respondent or Counsel for the Bar had any questions with regard to procedure. Neither counsel having questions, a rule to exclude witnesses was made and granted. The witnesses in the courtroom were sworn. All witnesses were admonished not to discuss the case and then sent out of the courtroom.

The Bar offered an Affidavit of Membership from the Virginia State Bar dated March 12, 2012 certifying Erin Marie Webber as an active member of the Virginia State Bar not in good standing. The Chair accepted the Affidavit. The Bar submitted that Erin Marie Webber, also known as Erin Marie Anderson, had entered a guilty plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, to the crime of embezzlement in the Circuit Court of Fairfax County on January 20, 2012, for which she was sentenced to four years of incarceration with the Virginia Department of Corrections. The term of incarceration was suspended and she was placed on supervised probation and ordered to make restitution in the amount of \$275,140.28.

The Bar asked that the panel accept the finding of guilt before the Circuit Court for Fairfax County as a finding of guilt of a "crime" as defined by the Rules of Court, Part 6, Section IV, Paragraphs 13-22A. Mr. Rigsby, Counsel for the Respondent, agreed that the Respondent was convicted of embezzlement as represented by the Bar and stipulated that the conviction of embezzlement before the Circuit Court of Fairfax County does constitute a "crime" under the above referenced paragraphs of the Rules.

Michael Rigsby, on behalf of the Respondent, made an opening statement which was followed by an opening statement presented on behalf of the Bar by Kathleen Ulston. Mr. Rigsby

called his first witness, Dennis Dean Kirk. Mr. Kirk testified that he was an attorney in practice in Northern Virginia where he represented the interests of Mildred Bailey ("Ms. Bailey") and William ("Robbie") Robertson ("Mr. Robertson"). Mr. Kirk accepted a position as Counsel for the Department of the Army and on or about 2005, with the concurrence of Ms. Bailey and Mr. Robertson, he transferred his representation of Ms. Bailey and Mr. Robertson to the Respondent. Mr. Kirk further testified that Ms. Bailey and Mr. Robertson had decided to employ the Respondent due to their prior familiarity with her.

Mr. Rigsby then called the Respondent as his next witness. Mr. Rigsby introduced the Respondent's résumé, to which exhibit the Bar had no objection and it was admitted into evidence as Respondent's Exhibit No. 1. The Respondent testified that she was diagnosed with depression in 1999 and that she had recovered by the time she began representation of Ms. Bailey and Mr. Robertson. She stated that her depression reoccurred in 2006, after her appointment in January 2005, as Conservator and Guardian for Ms. Bailey and Mr. Robertson. The Respondent stated that she discussed the financial arrangement for her service as Guardian and Conservator with Ms. Bailey and Mr. Robertson and at that time stated clearly that she would be paid \$250 per hour for the work she performed on behalf of Ms. Bailey and Mr. Robertson. As a result of her duties as Conservator, the Respondent testified that she filed an inventory and first accounting with the Commissioner of Accounts, John H. Rust, Jr. Mr. Rigsby asked the Respondent to identify the letter of John H. Rust, Jr., Commissioner of Accounts dated April 21, 2009 and the Commissioner's Report attached to that letter, which he asked that the Chair mark and accept into evidence as Respondent's Exhibit No. 2. Mr. Rigsby also asked that the Respondent identify the letter of John H. Rust, Jr., Commissioner of Accounts, dated June 26, 2009 and the supplemental Commissioner's Report attached to that letter, which he asked that the Chair mark and accept into evidence as Respondent's Exhibit No. 3. There being no objection, Respondent's Exhibits No. 2 and 3 were admitted into evidence. The Respondent stated that she did not file the second or third accounting for Ms. Bailey or Mr. Robertson due to the complexity of the accounting process. She further testified that she sought separate Counsel to aid her in completion of this task.

On cross examination, the Bar asked the Respondent to examine the Commissioner of Accounts fee schedule for Guardians and Conservators. The Respondent conceded that the fee schedule would not approve the fees which she had paid herself as Guardian and Conservator

and that she did not ask for an increase in her fees which could have been granted by the Commissioner of Accounts upon proof of "exceptional circumstances". The Bar asked the Respondent to identify a fiduciary acknowledgement form, in which she confirmed her obligation to provide accountings for the Estate of Mildred Bailey. The Respondent acknowledged receipt of this form and acknowledged her signature upon it.

The Bar also presented the Respondent with copies of the Orders appointing her as Guardian and Conservator for William Robertson and Mildred Bailey, each being dated January 28, 2005 and entered into the records of the Circuit Court of Fairfax County. The Bar asked that Virginia State Bar Exhibits 4, 5 and 7 be admitted into evidence by the Chair. The Order of the Circuit Court of Fairfax County appointing the Respondent as Guardian and Conservator for William Robertson was marked as VSB Exhibit No. 4. The Order appointing the Respondent as Guardian and Conservator for Mildred Bailey was marked as VSB Exhibit No. 5. The Fiduciary Acknowledgement before the Circuit Court of Fairfax County in which the Respondent acknowledged the general responsibilities as Conservator, was marked as VSB Exhibit No. 7. There being no objection, these exhibits were admitted into evidence by the Chair.

Upon further cross examination, the Respondent acknowledged a hearing before the Commissioner of Accounts for Fairfax County in which the issue of the appropriateness of the fees which she had charged Ms. Bailey's and Mr. Robertson's estates was at issue. The Respondent testified that she had no knowledge that her fees would be at issue until this hearing. The billing records of the Respondent, with her cover letter of March 31, 2006, were submitted as Respondent's Exhibit No. 4 and placed in evidence without objection. A letter from Roy Tucker, III, Accounts Analyst for the Commissioner of Accounts, dated November 8, 2007, which asked for additional documentation for completion of the First Accounting of the William B. Robertson Conservatorship and which also noted that the Second Accounting for this Conservatorship was delinquent, was also identified by the Respondent and was admitted into evidence as Respondent's Exhibit No. 5 without objection.

The Bar presented the Respondent with a copy of the Petition for Appointment of a new Guardian and Conservator which was filed in the Circuit Court of Fairfax County on March 19, 2008. Upon cross examination, the Respondent admitted that the Petition does raise issues with regard to her compensation prior to the hearing before the Commissioner of Accounts on November 11, 2008. The Bar introduced the Petition for Appointment of a New Guardian and

Conservator which was accepted into evidence without objection and marked as VSB Exhibit No. 8.

Mr. Rigsby recalled the Respondent and rested. The Bar called James McConville as its first witness and Mr. McConville testified that on March 28, 2008 he was appointed by the Circuit Court of Fairfax County as Guardian and Conservator of the Estate of William Robertson and as Executor of the Estate of Mildred Bailey, Mildred Bailey having died in 2006. The Bar asked Mr. McConville to identify Virginia Code Sections 37.2-1022, 37.2-1020, 37.2-1023, and 37.2-1011. The Bar requested that the Chair take judicial notice of these sections of the Virginia Code and that they be admitted into evidence. There being no objection, the Chair admitted Virginia Code Sections 37.2-1022, 37.2-1020 and 37.2-1023 as VSB Exhibit No. 1 and Virginia Code Section 37.2-1011 as VSB Exhibit No. 2. The Bar further requested that Mr. McConville identify and provide explanation of the means of compensation for Conservators as explained on Page 11 and 12 of the Instruction Handbook provided by the County of Fairfax Commissioner of Accounts office to all individuals appointed as fiduciaries. The Bar introduced pages 11 and 12 of the Commissioner of Accounts office Handbook as VSB Exhibit No. 3, which was admitted into record by the Chair without objection.

The Bar called detective Richard Downham, Criminal Investigator for the Fairfax County Police Department as its next witness. The Bar asked Detective Downham to identify a series of pages entitled "Checks Deposited into Erin Anderson's Bank Account", as evidence of payments made by the Respondent to herself for her services as Conservator for Mildred Bailey and William Robertson. Detective Downham confirmed that the list submitted was an accurate reflection of checks deposited into Erin Anderson's bank accounts from the funds of Ms. Bailey and Mr. Robertson. The Bar requested that the pages entitled "Checks Deposited into Erin Anderson's Bank Account" be admitted into evidence and there being no objection the Chair admitted them as VSB Exhibit No. 6.

As its last witness, the Bar called Judith York, who identified herself as a friend of Mildred Bailey and William Robertson who lives in an apartment at Skyline House where Ms. Bailey and Mr. Robertson resided. Ms. York identified Ms. Bailey and Mr. Robertson as very frugal and exceedingly unlikely to allow anyone to be paid a sum as great as \$250.00 an hour for non-legal services to be provided to them. The Board found Ms. York's testimony to be particularly credible.

At the conclusion of its case, the Bar rested and closing argument was presented on behalf of the Respondent and then on behalf of the Bar. The Board retired for deliberation and upon its return, the Chair reported a unanimous opinion that upon the Show Cause, the Respondent had failed to establish, by clear and convincing evidence, that the temporary suspension of her license should not be terminated or to give a basis upon which her license should not be revoked, pursuant to the Rules of the Virginia Supreme Court.

The Chair announced that the Board was bound by the rule which defined the felony of embezzlement as a crime requiring the suspension and possible revocation of the Respondent's License. The Board could not retry the criminal case, which resulted, regardless of the nature of the plea entered into by the Respondent thereto, in a conviction of a felony involving the misappropriation of monies from those for whom she was appointed Conservator. The Board found from the evidence presented and the exhibits received that the Respondent failed to show cause why her license should not be revoked. The Respondent stands convicted of a crime that directly impacts upon her honesty and integrity as a member of the Bar and that conviction was not explained or justified by the Respondent. Therefore, pursuant to a unanimous decision of this panel of the Board, it is ORDERED that the license of Erin Marie Webber, aka Erin Webber Anderson, to practice law in Virginia should be, and is hereby, revoked effective April 27, 2012.

It is further ORDERED, that, as directed in the Board's April 27, 2012 Summary Order 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 her license to practice law in the Commonwealth of Virginia, to all clients to whom Respondent is currently handling matters and to all opposing attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's clients. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation, and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the revocation that such notices have been timely given and such arrangements made for the disposition of all client matters. It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this Order, Respondent 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 Paragraph 13 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request before a three Judge court.

It is 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.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent Erin Marie Webber, aka Erin Webber Anderson, at her address of record with the Virginia State Bar, 6221 Home Spun Lane, Falls Church, Virginia 22044, by certified mail, return receipt requested. The Clerk of the Disciplinary System shall also mail an attested copy of this Order by regular mail to Kathleen M. Ulston, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THE SM DAY OF June, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Pleasant S Brodnax III
Pleasant S. Brodnax, III, Second Vice Chair