

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

**IN THE MATTER OF NNIKA EVANGELINE WHITE  
VSB DOCKET NO. 14-031-097169**

**OPINION AND ORDER IMPOSING PUBLIC REPRIMAND**

This matter came to be heard on March 27, 2015 before a duly-convened panel of the Virginia State Bar Disciplinary Board on a certified Subcommittee Determination from the Third District Subcommittee, dated September 26, 2014. The panel consisted of Esther Windmueller, Chair Designate; R. Lucas Hobbs; J. Casey Forrester; John S. Barr; and Stephen A. Wannall, lay member.

The Virginia State Bar was represented by Kathryn R. Montgomery, Deputy Bar Counsel. Respondent Nnika Evangeline White was present, and was represented by Charlotte P. Hodges. Tracy J. Stroh, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding.

The Chair polled members of the Panel regarding any personal or financial interest or conflict they might have which would preclude them from fairly hearing the matter before them. Each member, including the Chair Designate, responded in the negative.

**FINDINGS OF FACT**

Exhibits of the parties, numbered as Bar Exhibits 1-14 and Respondent's Exhibits 1-18 were admitted, with certain of the Bar's Exhibits being admitted over the objection of Respondent, which objection was to any exhibit created by or based

upon information from the Complainant, Regina Reams, who was not present and did not testify. There were no objections to the admission of any of the Respondent's exhibits.

All witnesses who planned to testify were excluded from the hearing room during the proceedings. The parties delivered opening statements, and the Bar proceeded to present evidence in its case-in-chief, by calling witnesses.

The Respondent then presented evidence in her case-in-chief, by calling witnesses.

The parties entered into a Joint Stipulation of certain facts, establishing that:

1. Respondent was licensed to practice law on or about October 17, 2001. At all times relevant to this matter, Respondent was a member in good standing with the Virginia State Bar.
2. On or about June 26, 2013, the Complainant retained Respondent to represent her in a divorce.
3. The Contract of Legal Representation contained a clause, typewritten in all capital letters, which read, "I understand and agree that the minimum annual advance against fees due for legal services to rendered [sic] in this case, and which is not refundable, will be \$3,000."
4. On or about September 19, 2013, by letter Complainant terminated Respondent's services. Complainant demanded that Respondent return her jewelry. Complainant filed the instant Bar complaint on that same day.
5. Thereafter Complainant retained another attorney, who filed a motion for substitution of counsel on or about September 23, 2013.
6. On or about October 22, 2013, Respondent wrote Complainant a letter about the representation and said she had taken photographs of the jewelry. Respondent asked Complainant to contact her about returning the jewelry.
7. On or about February 5, 2014, Respondent had her legal assistant deliver the jewelry to Complainant's attorney's office.

In addition, the panel made the following findings of fact on the basis of clear and convincing evidence:

1. On or about June 26, 2013, Complainant signed Respondent's Contract of Legal Representation and paid Respondent an advanced legal fee of \$3000.
2. Shortly after retaining Respondent, Complainant delivered to Respondent several boxes of jewelry and loose gemstones (collectively "jewelry"). Complainant gave Respondent the jewelry to hold for safekeeping, as Complainant feared her spouse might take the jewelry from her home.
3. Upon receipt of the jewelry, Respondent made no inventory or record of the type or amount of jewelry received. Respondent did not photograph the jewelry at that time. Moreover, Complainant did not supply Respondent with a list itemizing the pieces of jewelry. Respondent locked the jewelry in a desk drawer in her office.
4. Respondent did not immediately return Complainant's jewelry upon Complainant's request for it.
5. On or about January 24, 2014, a bar investigator contacted Respondent to schedule an interview. The investigator asked Respondent why she had not returned Complainant's jewelry and relayed that Complainant's attorney had offered to receive the jewelry for Complainant. Respondent said prior to this conversation with the investigator, Complainant had not provided her with any options for returning the jewelry.

#### MISCONDUCT

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

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 1.5      Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

**RULE 1.15 Safekeeping Property**

(b) Specific Duties. A lawyer shall:

- (2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;
- (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;
- (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 that such person is entitled to receive . . . .

**DISPOSITION**

At the conclusion of the Bar's case-in-chief, Respondent moved to strike the allegations against her. After due deliberation, the panel granted the motion as to Rule 1.4, finding that the Bar had failed to present a *prima facie* case of misconduct based on violation of that Rule. The charge of a violation of Rule 1.4 was then

dismissed. The panel denied the motion as to the allegations of violations of other rules of professional conduct.

After resting her case-in-chief, the Respondent renewed her motion to strike, whereupon the parties argued the motion to strike and delivered closing arguments at the same time.

Following recess for due deliberation, the panel denied the renewed motion to strike.

Consistent with its findings of fact stated above, the panel found that the Bar had failed to meet its burden of proof to the alleged violation of Rules 1.15(b)(2) and (3), but that the Bar had met its burden of proving that Respondent had engaged in misconduct in violation of Rule 1.5(a) and Rule 1.15(b)(4). The charges of violations of Rules 1.15(b)(2) and (3) were then dismissed.

Specifically, Respondent violated Rule 1.5(a) by requiring that Complainant agree to a nonrefundable advanced legal fee and by accepting payment of the fee Respondent deemed nonrefundable. Respondent violated Rule 1.15(b)(4) by failing to promptly deliver the jewelry to Complainant upon Complainant's demand that the jewelry be returned.

The panel observed that while there was no violation of Rule 1.15(b)(2) and (3), that the recommended practice for attorneys who hold property for clients or as a fiduciary is to create a written inventory of such property at the time of its receipt. The panel also noted that use of the term "nonrefundable" in discussions or documentation with a current or prospective client regarding a fee should be avoided.

In summary, the panel determined that the Bar failed to prove by clear and convincing evidence any violation of Rules 1.4 and 1.15(b)(2) and (3), and determined the Bar did prove by clear and convincing evidence that the Respondent had violated Rules 1.5(a) and 1.15(b)(4).

The panel then heard evidence of Respondent's prior disciplinary record, and entertained argument of the parties as to an appropriate sanction to impose on Respondent. After recess and due deliberation, and upon consideration of the Respondent's prior disciplinary record and the argument of counsel, as well as the ABA standards for the imposition of discipline, it is hereby

**ORDERED** that Respondent is hereby **PUBLICLY REPRIMANDED** for her violation of Rules 1.5(a) and 1.15(b)(4) of the Rules of Professional Conduct, with said sanction being effective March 27, 2015; and

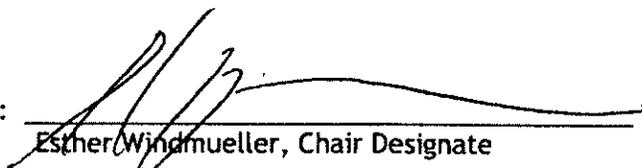
**ORDERED** that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent; and

**ORDERED** that an attested copy of this Order be mailed by certified mail, return receipt requested, to Respondent, Nnika Evangeline White, at her Virginia State Bar address of record, 9101 Midlothian Turnpike, Suite 800, Richmond, VA 23235; and to Charlotte P. Hodges, Counsel for Respondent, B.I.G. Legal Services, P.O. Box 4302, Midlothian, VA 23112; and hand-delivered to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

ENTERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:



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Esther Windmueller, Chair Designate

6/1/2015