

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

received

FEB 2 2006

IN THE MATTER OF CYNTHIA ANN JOHNSON, ESQUIRE
VSB DOCKET NO. 05-070-1412

VSB CLERK'S OFFICE

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On the 9th day of February, 2006, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of Minor Eager, Thomas J. Chasler, Esquire, and Frederick W. Payne, Esquire, presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the *Rules of Virginia Supreme Court*, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition of a PUBLIC REPRIMAND WITH TERMS, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant Cynthia A. Johnson, Esq. (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In June or July of 2004, Mr. Michael D. Doniel retained Respondent Johnson to represent his interest against his wife in a divorce. Mrs. Doniel hired Complainant, William C. Scott, IV, Esquire to represent her interests.^a

3. On or about July 29, 2004, Mr. Scott contacted Respondent Johnson by letter to inform her that he represented Mrs. Doniel. The letter discussed what Mr. Scott considered as the content of the separation agreement (hereinafter "SA") between the Doniel's and ask Respondent to prepare a draft.

^a Mrs. Doniel worked for Mr. Scott law firm approximately 15 years until Multiple Sclerosis overtook her. She is

the content of the separation agreement (hereinafter "SA") between the Doniels and ask Respondent to prepare a draft.

4. In response to Mr. Scott's letter, on or about August 5, 2004, Respondent Johnson forwarded a proposed SA to Mr. Scott. Mr. Scott was on vacation. He did, however, forward the proposed SA to Mrs. Doniel for her review.

5. In September of 2004, Mr. Scott started discussions with Mrs. Doniel about the terms and conditions contained in the draft SA prepared by Respondent Johnson. They were especially interested in whether or not a \$250.00 spousal support payment would jeopardize her current Medicaid payments to the convalescent home that cared for her.

6. On or about October 5, 2004, Ms. Deborah Green called Mr. Scott to inform him that her sister, Mrs. Doniel, had signed the SA without his assistance. The SA Mrs. Doniel signed in Respondent Johnson's office contained a term which was significantly different from the first SA presented in August of 2004. This SA excluded the \$250.00 spousal support. Mrs. Doniel signed an Answer and a Waiver of Notice while in Respondent Johnson's office. Mr. Scott's office made several telephone calls to Respondent's office to request a faxed copy of the SA and the other pleadings signed by Mrs. Doniel, but could not get in touch with Respondent. Eventually, Mr. Scott did get in touch with Respondent by phone. During the call, in the presence of Ms. Gail Gibson, his legal secretary, Mr. Scott asked Respondent whether she knew that he represented Mrs. Doniel. In their interviews with the Bar investigator, Mr. Scott and Ms. Gibson stated that Respondent answered that she did know that Mr. Scott represented Mrs. Doniel. Mr. Scott also asked Respondent if she was aware of her ethical obligation to contact him to get his permission to contact his client. Mr. Scott and Ms. Gibson stated that Respondent answered that it was not her responsibility to get his permission. At the conclusion of the



telephone call, Mr. Scott instructed Respondent Johnson not to contact Mrs. Doniel without his permission.

7. On October 5, 2004, after having made prior arrangements with Mrs. Doniel's convalescent home and with Respondent Johnson's office, Mr. Doniel picked up Mrs. Doniel from the home and transported her to Respondent's office. Mrs. Doniel stated to Investigator Powell that during the meeting with Respondent Johnson in her office, Respondent asked Mrs. Doniel where "Scotty" was, referring to Mr. Scott, Mrs. Doniel's attorney. Respondent Johnson denies that she asked Mrs. Doniel this question. Respondent Johnson admits that she did not review the file before she met with Mrs. Doniel because she was in hurry to get to court. Respondent Johnson admits that she instructed her legal assistant, Ms. Judy A. Davis, to notarized Mrs. Doniel's signature, and that Ms. Davis did not review the file before proceeding as directed by Respondent Johnson.

8. On or about October 7, 2005, Mr. Scott mailed a letter to Respondent Johnson informing her that he had filed a bar complaint against her. On or about October 8, 2004, Respondent Johnson faxed a cover letter to Mr. Scott referring to Mr. Scott's October 7, 2004 letter, informing him that Mr. Doniel, her client, had agreed to destroy the "original and the all copies of the agreement Mrs. Doniel signed in my office on October 5, 2004." The cover letter goes on to state that "[Respondent Johnson] will schedule a signing date with Mrs. Doniel and notify you of the date and time Mrs. Doniel is available to re-sign the agreement. It will be her choice to have you present when the document is signed."

9. On or about October 11, Mr. Scott again notified Respondent Johnson by letter that she was not to contact Mrs. Doniel without his permission.

A handwritten signature or set of initials, possibly 'A', written in black ink in the bottom right corner of the page.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

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.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
 - (1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent a PUBLIC REPRIMAND WITH TERMS. Disposition of this complaint is predicated upon Respondent's compliance with the terms set forth below.



TERMS

1. The Respondent shall complete six (6) hours of continuing legal education in the areas of ethics. Her Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward her Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. She shall certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, VA 22314, promptly following her attendance of such CLE program(s). The terms and conditions shall be met and made known to the Bar by **May 31, 2006**.

2. The Respondent shall read Legal Ethics Opinions 644, 689, 876, 884, 890, 1112, 1167, 1344, and 1464. She shall certify her compliance with the term set forth in this paragraph by delivering a sworn document to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, VA 22314, promptly following her reading of the all the above Legal Ethics Opinions.

Upon satisfactory proof that the above noted terms and conditions have been met, a PUBLIC REPRIMAND WITH TERMS shall then be imposed.

ALTERNATE DISPOSITION

If, however, the terms and conditions have not been met by the 31st day of May, 2006, and in such event, the Committee shall, as an alternative disposition to a PUBLIC REPRIMAND WITH TERMS, certify this matter to the Virginia State Bar Disciplinary Board. Upon certification, the parties shall be deemed to have stipulated to the admissibility into evidence by the Board of the "Findings of Fact" appearing above, and the Respondent shall be



ALTERNATE DISPOSITION

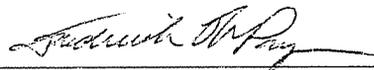
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“Findings of Fact” appearing above, and the Respondent shall be deemed to have admitted before the Board to a violation of the provisions of the Professional Rules of Conduct as set forth under the above “Nature of Misconduct” section.

COSTS

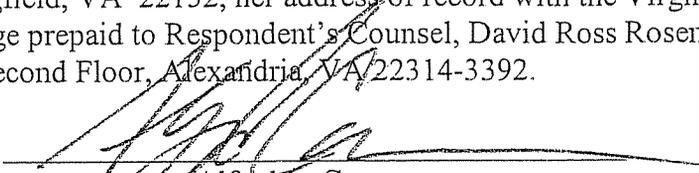
Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
Frederick W. Payne, Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this ~~17TH~~ day of FEBRUARY, 2006, mailed a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND WITH TERMS) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Cynthia Ann Johnson at 8623 Reseca Lane, Springfield, VA 22152, her address of record with the Virginia State Bar, and by regular mail, postage prepaid to Respondent's Counsel, David Ross Rosenfeld, Esquire at 118 South Royal Street, Second Floor, Alexandria, VA 22314-3392.



Alfred L. Carr
Assistant Bar Counsel