

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF HENRICO

**VIRGINIA STATE BAR, EX REL
SEVENTH DISTRICT SUBCOMMITTEE**

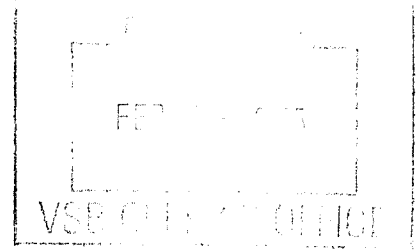
Complainant

v.

CASE NO. CL04-1066

OLIVER STUART CHALIFOUX

Respondent



MEMORANDUM ORDER

This cause came on for hearing on November 19, 2004 before a duly appointed three-judge court consisting of the Honorable Joseph E. Spruill, the Honorable Frank A. Hoss and the Honorable Pamela S. Baskervill, Chief Judge Designate; upon the Rule to Show Cause of this Court; pursuant to Va. Code §§54.1-3935 and 8.01-261(17) and Rules of Court, Part Six, § IV, Paragraph 13. Respondent Oliver Stuart Chalifoux appeared in person, pro se. Linda Mallory Berry appeared on behalf of the Virginia State Bar (VSB).

Upon the evidence presented and arguments of counsel, the Court finds that the VSB has proved by clear and convincing evidence the following facts:

A. General Factual Findings

1. Oliver Stuart Chalifoux was licensed to practice law in the Commonwealth of Virginia on May 10, 1977.

2. On March 16, 1989, in Docket No. 88-031-0086, the Disciplinary Board of the Virginia State Bar (Disciplinary Board) issued a Private Reprimand for violation of Disciplinary Rule (DR) 6-101(B) and (C). The Disciplinary Board found that Mr. Chalifoux failed to attend promptly to matters for which he had been engaged until completed or until he had properly and completely withdrawn from representing his client. The Disciplinary Board issued a Private Reprimand to Mr. Chalifoux.

3. On March 16, 1989, the Disciplinary Board separately found, in Docket No. 87-031-0957, violations of Disciplinary Rules 6-101(C) and 7-101(A)(5) of the Code of Professional Responsibility. The Disciplinary Board determined that Mr. Chalifoux did not keep his client reasonably informed about matters in which his services were being rendered. In addition, Mr. Chalifoux made a false statement of fact when he wrote a letter informing the heirs of the estate that the Final Accounting had been filed with the Commissioner of Accounts, when, in fact, Mr. Chalifoux knew that such an accounting had not been filed. The Disciplinary Board issued a second Private Reprimand to Mr. Chalifoux.

4. The license of Oliver Stuart Chalifoux to practice law within the Commonwealth of Virginia was suspended administratively on October 16, 1991, for noncompliance with Mandatory Continuing Legal Education (MCLE), annual dues and professional liability requirements. Mr. Chalifoux complied with the MCLE requirements on November 12, 1991, and was reinstated on November 13, 1991.

5. The Disciplinary Board suspended the license of Oliver Stuart Chalifoux to practice law within the Commonwealth of Virginia for disciplinary reasons for thirteen months effective February 25, 1993. The Disciplinary Board determined that, during the period of his administrative suspension, Mr. Chalifoux held himself out as an attorney and engaged in the practice of law but neglected certain matters undertaken during the suspension period and failed to communicate with his clients. In two separate disciplinary matters (Docket Nos. 92-033-0771 and 92-033-0882, Mr. Chalifoux was found in violation of DR 1-102(A)(3 and 4); DR 6-101 (B, C and D); DR 7-101(A)(1-3); DR 9-102(A) (1 and 2) and (B)(1 and 2); DR 9-103(A)(1-3) and (B)(2-6). Mr. Chalifoux did not have a trust account, did not deposit client funds collected in a trust account, did not pay over collected funds as they were collected, and did not make regular accountings of rents received.

6. On May 3, 1993, Mr. Chalifoux's license was suspended administratively for failure to pay costs associated with the above-referenced disciplinary suspension. On September 26, 1994, a Subcommittee of the Third District Committee, Section III, issued a Dismissal for Exceptional Circumstances to Mr. Chalifoux. The Subcommittee cited as the exceptional circumstances the fact that Mr. Chalifoux had not sought reinstatement of his license to practice law since his disciplinary suspension in 1993, and the fact that Mr. Chalifoux was barred, at that time, from resuming his law practice until he complied with certain administrative requirements.

7. The administrative suspension was lifted by order of the Disciplinary Board on September 24, 1999. The thirteen-month disciplinary suspension was lifted upon the entry of an order of the Disciplinary Board on November 3, 1999, when Mr. Chalifoux finally took all necessary steps required by the Rules of the Supreme Court of Virginia to reinstate his license from the suspension. Those steps included but were not limited to completing MCLE requirements and passing with a score above 85, the Multi-state Professional Responsibility Examination.

8. On October 24, 2003, the Disciplinary Board suspended the license of Oliver Stuart Chalifoux to practice law within the Commonwealth of Virginia on an interim basis. The interim suspension was imposed as a result of Mr. Chalifoux's failure to comply with a subpoena *duces tecum* issued by the VSB and personally served on him on September 9, 2003. The interim suspension was lifted by order of the Disciplinary Board on November 6, 2003, after Mr. Chalifoux complied with the terms of the subpoena *duces tecum*.

B. VSB Docket No. 03-033-3680

Complainant: Roger and Deborah Socha

1. In the mid-1990s, Deborah and Roger Socha began using the services of Oliver Stuart Chalifoux for their business and personal tax work. Mr. Chalifoux was a close friend of Mrs. Socha's half-brother, Jerry Coyle.

2. The Sochas knew that Mr. Chalifoux was an attorney. They stated to a Virginia State Bar (VSB) investigator that they used Mr. Chalifoux's services because they believed that he would be able to answer questions they might have about the filings with the State Corporation Commission. These questions concerned the start-up of Mr. Socha's new business, System Automation, Inc., a small business corporation (S-Corporation), which was incorporated on August 1, 1998, to do electrical engineering project solutions.

3. Deborah Socha knew that Mr. Chalifoux had been suspended for a period in early 1990 from the practice of law. Mr. Socha, however, stated that he was unaware of that information during much of the time that Mr. Chalifoux advised him on his business incorporation, contracts and tax matters.

4. In May 1999, Roger Socha received an invoice dated May 24, 1999, signed "O. Stuart Chalifoux," for services rendered by Mr. Chalifoux for the preparation of the Articles of Incorporation for System Automation, Inc., preparation of Form SS-4 (Application for Employer Identification Number) and preparation of Form 2553 (Election by a Small Business Corporation).

5. On March 15, 2001, Mr. Chalifoux filed Form 500E, Virginia Corporate Income Tax Extension Payment Voucher and Tentative Tax Return, for System Automation, Inc. and signed "O. Stuart Chalifoux, Esq.". On August 13, 2001, Mr. Chalifoux

signed an Application for Additional Extension of Time to File U. S. Individual Income Tax Return for the Sochas in exactly the same way.

6. On July 25, 2002, the Sochas paid Mr. Chalifoux a \$200.00 deposit by check and gave him, for the 2001 tax year, their personal invoices, receipts, and bank statements, as well as the invoices, receipts and bank statements for System Automation, Inc., Mr. Socha's business. The check was cashed out on July 26, 2002.

7. In September 2002, Mr. Chalifoux told the Sochas that their tax returns were completed, and yet, Mr. Chalifoux testified in an October 24, 2003 hearing before the Disciplinary Board that the tax returns "have essentially been finished since back in January and February," *i.e.*, of 2003. (Tr. 10/24/2003, Docket No. 03-033-3680, at 35 ll. 8-11)

8. In previous years, the Sochas gave Mr. Chalifoux money to begin work on their taxes, and Mr. Chalifoux arranged to deliver the returns to the Sochas' home and to pick up the Sochas' check for the balance due him for preparation of the returns. An appointment was made for Mr. Chalifoux to come to the Sochas' home after his telephone call in September 2002. Mr. Chalifoux, however, broke the original appointment to deliver the Sochas' returns and missed several other appointments.

9. Mr. Chalifoux did not return the telephone messages left by the Sochas in their attempts to set up new appointments. The Sochas reported attempts to retrieve the returns from Mr. Chalifoux that including waiting for approximately three hours for Mr. Chalifoux to finish with a client, only to be told the tax returns they sought were at Mr. Chalifoux's home.

10. The Sochas finally asked that Mr. Chalifoux return the invoices, receipts and bank statements to them even if the tax returns were not completed. Mr. Chalifoux, however, did not contact the Sochas. Instead, Mr. Chalifoux spoke with Mr. Coyle telling him that the bill for the Sochas' taxes was the same as last year. When told this information, the Sochas left their check, dated March 13, 2003, for \$500.00, with Mr. Coyle. Mr. Chalifoux did not take the Sochas tax returns and documents to the Coyles' home nor did he retrieve the check. Mrs. Socha took the check back from the Coyles' custody in July 2003.

11. On May 30, 2003, the Virginia State Bar received a complaint by the Sochas alleging violations of the Rules of Professional Conduct by Oliver Stuart Chalifoux. A disciplinary file was opened and assigned to the Office of Bar Counsel for preliminary investigation on or about June 3, 2003. Mr. Chalifoux made no response to the Office of Bar Counsel regarding this complaint. Accordingly, bar counsel requested a full investigation.

12. On September 9, 2003, Mr. Chalifoux was served personally with a subpoena *duces tecum* as part of the investigation of the complaint. Mr. Chalifoux did not comply with the subpoena, even after he was given an extension of time and he made

several promises by telephone to take his response to the bar offices. Therefore, a Notice of Non-Compliance and Request for Interim Suspension was filed by bar counsel and a hearing was set for October 24, 2003.

13. During the hearing before the Disciplinary Board, Mr. Chalifoux offered into evidence a cover letter and an invoice, which he stated he was mailing to the Sochas on October 24, 2003. The cover letter and invoice concerned the preparation of 2001 Form 1120S, U.S. Income Tax Return for an S Corporation; Form 500S, Virginia Small Business Corporation Return of Income; 2001 Form 1040, U.S. Individual Income Tax Return; and Form 760, Virginia Individual Income Tax Return, and was dated October 24, 2003. The cover letter and invoice, offered as Defendant's Exhibit 6, was received as Respondent's Exhibit 6. (Tr. 10/24/2003, Docket No. 03-033-3680, at 29 ll. 22-25)

14. On October 28, 2003, Mr. Chalifoux complied with the terms of the subpoena *duces tecum*. On November 6, 2003, the interim suspension was lifted.

15. On November 17, 2003, the Sochas paid a total of \$1,312.10 by check to Mr. Chalifoux and received their 2001 tax returns and all documentation formerly provided to Mr. Chalifoux.

C. **VSB Docket No. 04-033-2472**
Complainant: VSB/Anonymous

1. Mr. Chalifoux's signed billing for services rendered was admitted into evidence without objection as VSB Exhibit 7 at the October 24, 2003 Disciplinary Board hearing. Mr. Chalifoux testified under oath that VSB Exhibit 7 is a bill that he rendered and that the bill shows billing for the preparation of Articles of Incorporation.

2. Mr. Chalifoux denied preparation of the Articles of Incorporation for Mr. Socha's business despite claiming that he rendered a bill to the Sochas for preparation thereof. Mr. Chalifoux offered into evidence his own exhibit, Respondent Exhibit 2, which is an unsigned bill also dated May 24, 1999. Mr. Chalifoux testified that he did not bill the Sochas for the preparation of the Articles of Incorporation. Instead, it was Mr. Chalifoux's testimony that he billed the Sochas for coming down to the State Corporation Commission and getting samples of articles of incorporation and taking the samples back to the Sochas.

3. During the Disciplinary Board hearing, Mr. Chalifoux testified that his law practice and his tax practice are both incorporated, with Mr. Chalifoux as their sole principal. Mr. Chalifoux also testified that he moves between his role as tax preparer and his role as lawyer. If a client is there to see him about a tax return and they get into something legal, unless actual legal work is involved, he just "roll[s] with the advice" but bills at tax accounting rates.

4. During the Disciplinary Board hearing, Mr. Chalifoux also testified that, as far as the Internal Revenue Service was concerned, the Sochas had a late return, a misdemeanor under the Internal Revenue Code, because he had not filed their tax return for 2001, based on non-payment to him by the Sochas for the preparation of their taxes. Mr. Chalifoux testified that the bar investigator and assigned bar counsel conspired to get the returns for the Sochas without paying Mr. Chalifoux for the preparation.

5. Mr. Chalifoux testified that he was suspended for a thirteen-month period simply because he lacked CLE credits. When actually confronted with his disciplinary record, he did not deny that he had a thirteen-month suspension because he practiced law during the CLE suspension of 60 days. He did not deny that he also received a thirteen-month suspension because he put money that should have gone in a trust account into his freezer, his drawer, the trunk of his car, and elsewhere.

6. On October 24, 2003, the Disciplinary Board, upon the pleadings, exhibits, and arguments presented, determined that Mr. Chalifoux was non-compliant with the subpoena *duces tecum* and that his testimony was "less than candid." The Disciplinary Board suspended Mr. Chalifoux's license to practice law in the Commonwealth of Virginia until he complied with the subpoena *duces tecum* and until he gave notices that are required by Section 13.M of the Rules of the Supreme Court. The interim suspension was lifted on November 6, 2003.

Upon the evidence presented and arguments of counsel, the Court finds that the Virginia State Bar has proved by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct:

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

- (c) A lawyer shall:

- (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 which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal;
 - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 5.5 Unauthorized Practice Of Law

- (a) A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

The Respondent made a motion to strike the bar's case after the bar rested and renewed the motion at the end of his case. In both instances, the motion to strike was denied. Evidence was presented and arguments by counsel were made on the issue of an appropriate sanction. The prior record of the respondent was presented by the bar. The Respondent's prior record consists of the following: one Dismissal for Exceptional Circumstances, two Private Reprimands, one Public Reprimand with Terms and one Thirteen-Month Suspension. These sanctions were issued in attorney disciplinary proceedings and include a thirteen-month suspension of Mr. Chalifoux's license to practice law in the Commonwealth of Virginia for lack of a trust account in which to deposit his clients' funds, failures to notify his clients of the receipt of funds and the failure to pay over collected funds as they were collected. The bar also presented relevant provisions of the most recent ABA Standards for Imposing Lawyer Sanctions. The Respondent presented two character witnesses.

The Court, based on the evidence presented, including the prior record, the credibility of the witnesses, the argument of counsel, the demeanor of the Respondent and what the Court felt to be the inability of the Respondent to recognize the

consequences of his actions and to take appropriate responsibility, ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be SUSPENDED for a period of FIVE YEARS, effective December 19, 2004.

IT IS FURTHER ORDERED, pursuant to Rules of Court, Part Six, §IV, Paragraph 13.M., that the Respondent shall forthwith give notice, by certified mail, of his Suspension to all clients for whom he 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 his care in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the Virginia State Bar within 60 days of the effective date of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

IT IS FURTHER ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to Rules of Court, Part Six, §IV, Paragraph 13.B.8.c.

IT IS FURTHER ORDERED that certified copies of this order shall be mailed by the Clerk of the Circuit Court to the counsel of record.

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall send a certified copy of this order to the Clerk of the Disciplinary System, at Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

IT IS FURTHER ORDERED that upon the end of all proceedings in this matter, the Clerk of the Disciplinary System shall maintain the complete file of this matter in accordance with file retention policies and requirements of the bar.

ENTERED: January 24, 2005

Pamela S. Baskerville
Pamela S. Baskerville, Chief Judge Designate

Frank A. Hoss
Frank A. Hoss, Judge

Joseph E. Spruill, Jr.
Joseph E. Spruill, Jr., Judge

A COPY TESTE:
YVONNE G. SMITH, CLERK
DEPUTY CLERK