

VIRGINIA :

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

**IN THE MATTER OF STANLEY KIRKLAND FOSHEE, ESQUIRE
VSB Docket No. 02-042-2942**

ORDER

This matter came on to be heard on June 10, 2004, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fourth District–Section II Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Janipher W. Robinson, Esquire, David R. Schultz, Esquire, Theophlise L. Twitty, Esquire, Thaddeus T. Crump, lay member, and Roscoe B. Stephenson, III, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, the Respondent, Stanley Kirkland Foshee, Esquire, and his counsel, Edwin C. Brown, Jr., Esquire, presented an endorsed Agreed Disposition, dated May 26, 2004, reflecting the terms of the Agreed Disposition.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant to the matters set forth herein, Stanley Kirkland Foshee, Esquire (hereafter “Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia, although not always in good standing.

2. On or about September 18, 1996, Sylvia W. Hairston (hereafter “Complainant”) was involved in a motor vehicle accident and sustained personal injuries. On or about October 22, 1996, the Complainant retained the Respondent to represent her in her personal injury claim.

3. Although the fee agreement presented to the Complainant by the Respondent, and signed by the Complainant, was a ten page document citing disciplinary rules and legal ethics opinions relating to attorneys' fees, the agreement nonetheless failed to state whether expenses were to be deducted before or after the contingent fee was calculated; contained hourly rate provisions ostensibly inapplicable to the Complainant's matter; and included confusing, unreasonable, and oppressive attorney's lien, arbitration, and confession of judgment provisions.

4. On September 18, 1998, the Respondent filed suit on Complainant's behalf in the Circuit Court for the City of Alexandria, Virginia. Counsel for the defendant in the action propounded discovery to the Complainant through Respondent, to which Respondent made no response. Defense counsel thereafter, in March of 1999, filed a motion to compel discovery, to which the Respondent made no response. On or about April 19, 1999, defense counsel filed a motion *in limine*. On May 3, 1999, the Respondent filed a "Motion for Nonsuit," stating therein:

1. Counsel for plaintiff was assigned a Federal Capitol [*sic*] murder case in the District of Columbia Federal Circuit which precluded counsel from timely completing discovery in the above captioned case.

The nonsuit motion was granted by the Court on May 6, 1999.

5. The Respondent neither secured the Complainant's prior authority to nonsuit her case, nor did he advise her that he had taken such action on her behalf. Moreover, the Respondent did not reinstitute the Complainant's lawsuit within the period permitted by the nonsuit statute and the applicable statute of limitation, or at any time thereafter.

6. Although the Motion for Judgment alleged that "while sitting in her car at a red traffic light . . . Ms. Hairston was struck from behind by the defendant. . .", the Respondent

advised the Complainant in or around February of 2002 that opposing counsel claimed that the Complainant was at fault in the accident, that to proceed would require expert witnesses, that in his opinion the case could not be won, and that there was nothing more that he, the Respondent, could do for her.

7. The Complainant had an outstanding health care bill related to her personal injury claim in the sum of \$2,920.81 as of the time that the Respondent nonsuited her case. The health care provider threatened the Complainant with collection action as of November, 2001. The Respondent contacted the health care provider on November 5, 2001, and stated that he was not successful in settling the Complainant's claim, and that he would have to "eat this bill."

8. On April 25, 2002, the Respondent promised the health care provider with a payment of \$500.00 on May 1, 2002, and every month thereafter until the outstanding balance was paid in full. He also promised to furnish the provider with a promissory note respecting the outstanding balance due.

9. The Respondent never furnished the health care provider with a promissory note and he never made any payments to the health care provider on the Complainant's behalf.

10. On October 15, 2001, the Respondent's license to practice law in Virginia was suspended for his failure to comply with Paragraphs 11, 18 and/or 19, Part Six, Section IV, of the Rules of the Supreme Court of Virginia, and he was so notified by a certified letter delivered to and accepted at his address of record with the Virginia State Bar on October 16, 2001.

11. The Respondent's license suspension remained in force and effect during the period that he was in contact with and negotiating the resolution of Complainant's health care bill, as aforesaid. The Respondent was also in contact with the Complainant during that period, and counseled her respecting the outstanding bill. The Respondent failed to notify either the

Complainant or the health care provider that his license was suspended and that he was not authorized to practice law in Virginia at the time he counseled the Complainant and negotiated with the health care provider.

The Board finds by clear and convincing evidence that such conduct on the part of Stanley Kirkland Foshee, Esquire, constitutes a violation of the following provisions of the revised Virginia Code of Professional Responsibility and Rules of Professional Conduct:

DR 1-102. Misconduct.

- (A) A lawyer shall not:
 - (3) Commit a . . . deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

DR 2-105. Fees.

- (A) A lawyer's fees shall be reasonable and adequately explained to the client.
- (C) A fee may be contingent on the outcome of the matter for which the service is rendered, except in criminal cases or other matters in which a contingent fee is prohibited by law. A contingent fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, expenses to be deducted from the recovery, and whether expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a closing statement showing the fee and the method of its determination.

DR 6-101. Competence and Promptness.

- (A) A lawyer shall undertake representation only in matters in which:
 - (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

- (2) The lawyer has associated with another lawyer who is competent in those matters.
- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.
- (D) A lawyer shall inform his client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

DR 7-101. Representing a Client Zealously.

- (A) A lawyer shall not intentionally:
 - (1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
 - (2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-108, DR 5-102, and DR 5-105.
 - (3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 4-101(D).

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and

Rule 3.3.

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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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 . . . deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

Upon consideration whereof, it is ORDERED that:

1. Subject to the provisions of Paragraph 3 set forth below, the Respondent shall receive a three (3) year suspension of his license to practice law in the Commonwealth of Virginia, to commence upon entry of this Order, as representing an appropriate sanction if this matter were to be heard.

2. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Cornerstone Complete Care, the sum of \$3,200.00. The payment that is due hereunder

shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than November 15, 2004.

3. If the Respondent fails to comply with any of the terms set forth in the preceding Paragraph 2 in the manner and at the time compliance with any such term is required, then, and in such event, the Virginia State Bar Disciplinary Board shall, as an alternative disposition to the three (3) year license suspension otherwise provided for herein, REVOKE the Respondent's license to practice law in the Commonwealth of Virginia; and it is further

ORDERED that pursuant to the provisions of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia, the Respondent shall give notice by certified mail, return receipt requested, of this suspension to all clients for whom he is handling matters and to all opposing attorneys and the presiding judges in pending litigation and that he shall also make appropriate arrangements for the disposition of matters that are in his care in conformity with the wishes of his clients. The notice shall be given within fourteen (14) days of the effective date of his suspension and arrangements shall be made within forty-five (45) days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of his suspension that such notices have been timely given and that such arrangements for the dispositions of matters have been made. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Disciplinary Board, or, alternatively, by a three-judge circuit court, either of which tribunals may impose a sanction of revocation or additional suspension for failure to comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. Respondent shall furnish true copies of all of the notice letters sent to all persons notified of the suspension, with the original return

receipts for said notice letters, to the Clerk of the Disciplinary System, on or before the sixtieth (60th) day following the effective date of his suspension; and it is further

ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his address of record with the Virginia State Bar, 11815 Bishop's Content, Mitchellville, MD 20721-2750 and a copy by first class, regular mail, to Respondent's counsel, Edwin C. Brown, Jr., Brown, Brown & Brown, PC, 6269 Franconia Road, Alexandria, VA 22310 and to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, VA 22314-3133.

The court reporter for this hearing on the Agreed Disposition was Theresa S. Griffith of Chandler & Halasz Court Reporters, P. O. Box 9349, Richmond, VA 23227, (804) 730-1222.

ENTER this Order this ____ day of _____, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Roscoe B. Stephenson, III, Chair