

VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF  
BERNICE MARIE STAFFORD TURNER

VSB DOCKET NOS.      02-032-3876 [Harris]  
                                 03-032-1259 [Hertz]

Order of  
Public Reprimand with Terms

These matters came on to be heard on December 14, 2005, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Third District, Section Two, Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Thaddeus T. Crump, Lay Member; Janipher W. Robinson, Esq.; Robert E. Eicher, Esq.; Glenn M. Hodge, Esq.; and Joseph R. Lassister, Jr., Esq., Acting Chair.

The Respondent, Bernice Marie Stafford Turner, appeared with her counsel, Thomas H. Roberts. Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

Upon consideration of the Agreed Disposition, the prior record of the Respondent and the argument of counsel, the Board deemed it appropriate to approve the Agreed Disposition and impose a Public Reprimand with Terms. Accordingly, the Board finds by clear and convincing evidence the following:

1. At all times relevant hereto the Respondent, Bernice Marie Stafford Turner [Turner] has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSJ Docket No. 02-032-3876 [Harris]:

### I. FINDINGS OF FACT

2. On or about January 18, 2002, Complainant Shakisha Harris [Harris] engaged Turner to represent her in a bankruptcy. The stated fee for the representation was \$500.00 plus filing fees and costs of \$200.00.

3. On January 18, 2002, Harris paid Turner \$250.00 in cash and received a receipt for the payment. Turner considered the \$250.00 as earned fees upon payment and did not deposit the funds into a trust account. If this matter were to go to trial, Turner would testify that Turner spent approximately 3 hours with Harris, *inter alia*, reviewing bills and the like, explaining bankruptcy law and forms, and began to prepare bankruptcy forms.

4. On or about February 1, 2002, Harris paid Turner another \$250.00 in cash. Harris did not receive a receipt for the payment. Turner considered the \$250.00 as earned fees upon payment and did not deposit the funds into a trust account. Turner's file reflects an entry on an activity log indicating the payment as "earned." If this matter were to go to trial, Turner would testify that on or about February 1, 2002, Harris returned to Turner's office, bringing with her additional bills related to previously undisclosed creditors. Turner again spent time with Harris related to her bankruptcy.

5. On March 8, 2002, Harris paid Turner \$200.00 in cash for filing fees and costs and received a receipt for the payment. Turner did not deposit the \$200.00 into a trust account. If this matter were to go to trial, Turner would testify that she safely maintained the cash separately from her own moneys.

6. It was Turner's policy during the time frame of the Harris complaint to receive filing fees and costs from a client in cash or a money order payable to the clerk at the bankruptcy court and pay them over to the clerk directly without depositing said funds into a trust account.

7. On March 5, 2002, April 1, 2002 and April 15, 2002, Turner tried repeatedly to contact Harris by telephone, but received no answer. From about March 8, 2002 until sometime in April of 2002, Harris called Turner about her case almost weekly using a cell phone number, but did not reach Turner. Harris claimed she had only a cell number for Turner. When the two connected by telephone, Turner promised Harris that she would bring the bankruptcy papers to Harris' home that night for signature; however, Harris did not answer her door. Harris contended that Turner did not appear at Harris' home that night as promised.

8. In or about late May of 2002, Harris reached Turner at the cell phone number and told Turner, *inter alia*, that Harris was upset at the delay and was seriously considering asking for a full refund in order to obtain the services of another attorney. The night of the phone call, Turner came to Harris' home with papers regarding the bankruptcy for Harris' signature. If this matter were to go to

trial, Turner would testify that on May 16, 2002, Turner met with Harris and reviewed the bankruptcy documents, and was advised by Turner that more information was needed to complete her schedules. Turner followed that meeting with a letter to the client.

9. Turner filed a Chapter 7 bankruptcy petition on June 7, 2002, in the Clerk's Office of the U. S. Bankruptcy Court, Eastern District of Virginia, Richmond Division in case number 02-64912-DOT. With the filing, Turner paid the \$200.00 filing fees and costs. The filing was a permissible partial filing without all necessary lists, schedules and statements.

10. On June 12, 2002, the Clerk of the Bankruptcy Court issued a Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors & Deadlines which noted, *inter alia*, that a Section 341 meeting of creditors in the case was scheduled for July 11, 2002.

11. Turner wrote Harris a letter dated June 13, 2002, informing Harris of the bankruptcy court case number and the July 11, 2002 court date. In the letter Turner referred Harris to the cell phone number as the means to contact Turner with any questions.

12. On June 14, 2002, Turner filed additional statements and schedules in the bankruptcy court.

13. On June 17, 2002, the Virginia State Bar received a bar complaint from Harris, contending that Turner had not filed a bankruptcy for Harris.

14. Both Turner and Harris attended the Section 341 meeting of creditors on July 11, 2002.

15. On July 9, 2002, Harris provided an additional list of creditors that Turner had previously requested and needed to file complete and accurate schedules in Bankruptcy. On July 25, 2002, Turner filed a notice and an amended schedule with the bankruptcy court adding creditors to the case.

16. On August 1, 2002, Turner filed a required "perjury statement" signed by Harris.

17. On September 20, 2002, the bankruptcy court entered a discharge order.

18. Turner forwarded a letter to Harris dated October 1, 2002, addressed to Harris, which purports, *inter alia*, to end the representation by closing her file, to enclose the discharge order and copies of the bankruptcy filings. Harris denies ever receiving the letter. If this matter were to go to trial, Turner would testify that the bankruptcy court customarily forwards a notice of discharge to the debtor.

19. Harris contends that she was not able to contact Turner about her bankruptcy case after the Section 341 meeting of creditors on July 11, 2002, despite making phone calls to Turner in attempts to reach her.

20. According to Harris, she did not know the result of her bankruptcy case until she contacted the clerk's office of the bankruptcy court on or about March 21, 2003 and learned that a discharge had been entered and the case had been closed. If this matter were to go to trial, Turner would argue that Harris offers no

explanation for her alleged failure to receive both the notice of discharge from the bankruptcy court or from Turner's office.

21. The bar asserts the two \$250.00 sums paid by Harris to Turner for attorney fees constituted unearned fees upon payment and should have been deposited into a trust account. If this matter were to go to trial, Turner would testify that the two \$250.00 sums constituted earned fees upon payment.

22. The \$200.00 sum paid by Harris to Turner as filing fees and costs for the bankruptcy constituted funds belonging to Harris, to be held by Turner in trust until utilized for the purpose of filing the bankruptcy. Three months elapsed between the payment of the \$200.00 to Turner and the use of the funds for the filing of the bankruptcy. During that three month period, Turner failed to maintain said funds in a trust account until disbursement.

23. One time (February 4, 2002), during the pendency of the representation of Harris, Turner changed her mailing address of record with the Virginia State Bar in compliance with the requirements for doing so.

## II. NATURE OF MISCONDUCT

Such conduct on the part of Bernice Marie Stafford Turner constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

### RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs

and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
  - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.....
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
- (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such

record shall be sufficiently detailed to show the identity of each item;

VS B Docket No. 03-032-1259 [Hertz]:

### I. FINDINGS OF FACT

24. In or about August of 2001, Complainant Richard Hertz, Sr. [Hertz] was represented by Darryl Parker, Esq. [Parker] in federal litigation involving allegations of fraud, conspiracy and racketeering (Transition, Inc., et al v. Austin, et al, 3:01-cv-00103-RLW), when Hertz asked Parker to represent him in a bankruptcy. Unable to do so, Parker referred Hertz to Turner. Hertz paid \$600.00 to Parker for a bankruptcy. At Hertz's direction, Parker paid the \$600.00 to Turner by his trust account check number 2901, dated August 15, 2001. If this matter were to go to trial, Turner would testify that Parker also delivered to Turner a copy of the civil file including extensive pleadings and other documents.

25. Turner cashed the \$600.00 check on August 16, 2001. Subsequently, at the request of Hertz, Turner gave Hertz a receipt for said funds. If this matter were to go to trial, Turner would testify Turner immediately reviewed the extensive file, and conducted legal research at the University of Richmond Law School. Hertz informed Turner that he had an impending foreclosure that he wanted to prevent by filing of a bankruptcy petition. Turner advised Hertz that due to the nature of the civil claims, that he may not be able to succeed in his bankruptcy petition to discharge the debts he incurred as a result of a Ponzi scheme he disclosed to Turner and further that the bankruptcy would only forestall the impending

foreclosure(s) under Chapter 7 of the Bankruptcy Code. Turner also advised Hertz that due to the complexities and the likelihood of the motions for relief of stay and the adversary proceedings she required him to pay for research before she agreed to file a bankruptcy petition for him. She advised Hertz that her research fee would be a minimum of \$600.00 for the initial research at a rate of \$200/hour. Turner spent an initial 3 hours of research and subsequently another 3 hours in research. She advised him that in addition to the research, she would charge him a separate \$600.00 to handle the filing of his bankruptcy in addition to \$200 required for the filing fee.

26. In or about August of 2001, Turner met with Hertz about the bankruptcy. Hertz informed Turner about the litigation which was ongoing against him involving allegations of fraud, conspiracy and racketeering. Turner agreed to file a Chapter 7 bankruptcy on Hertz's behalf. Hertz understood that Turner was going to file the bankruptcy on his behalf as his attorney. If this matter were to go to trial, Turner would testify that she agreed to file the bankruptcy provided that Hertz pre-paid the bankruptcy legal and filing fee of \$600 and \$200 respectively, and that Hertz agreed to do so, but did not forward that money to Turner.

27. On August 20, 2001, Hertz met Turner at the bankruptcy court for the purpose of filing a voluntary bankruptcy petition which Turner had prepared. Hertz had the \$200.00 filing fees with him. If this matter were to go to trial, Turner would testify that on August 19, 2001, Hertz spoke with Turner by telephone. Turner advised Hertz that he needed to pay to her the fees owing as

well as the bankruptcy fee and cost that Turner had quoted to him before she would file the petition of bankruptcy for him. Hertz promised that he would meet Turner the next day and that he would bring the money, informing Turner that “I am a man of the cloth” and that Turner should therefore trust him to bring the money. On August 20, 2001, Hertz met Turner at her office on Grace Street, but failed to bring the money he promised. Turner informed Hertz that she would not file his petition that she had prepared for him and would not make an appearance as his counsel without the money he promised. Hertz told Turner that it was imperative that his petition be filed immediately to prevent an immediate foreclosure. Turner advised Hertz that without the fee, she would not file, but that she would release the file to him, namely the bankruptcy petition, and he could sign and file the petition himself and that Turner would make an appearance when he presented her with the fee required. Turner went with Hertz to the bankruptcy court, and into the clerk’s office where the petition was filed without endorsement by Turner. Hertz paid the \$200 filing fee. Turner did not sign the petition as attorney for Hertz or otherwise indicate that she was counsel for Hertz. There is no place on the petition form for the signature of an attorney who prepared the petition form but is not entering an appearance on behalf of the petitioner. Although Hertz had not paid for the petition prepared by Turner, Turner believed that she was required to provide the same to him so as not to prejudice his case.

28. It was Turner’s policy during the time frame of the Hertz complaint to receive filing fees and costs from a client in cash immediately before filing or a

money order payable to the clerk at the bankruptcy court and pay them over to the clerk directly without depositing said funds into a trust account.

29. Turner took no further action in the bankruptcy case for Hertz.

30. The bankruptcy petition included the following names for the debtor: Richard Hertz, Sr.; Richard A. Hertz, Sr.; Abby Fund, LLC; Remnant Fund, LLC; Dunumis Fund, LLC; Resource Fund, LLC [sic]; and Koinonia Fund, LLC. If this matter were to go to trial, Turner would testify that the multiple names were as required in the petition form under the heading “ALL OTHER NAMES used by the debtor in the last 6 years (including married, maiden and trade names)”

31. According to Hertz, the bankruptcy court clerk’s office contacted him subsequent to the filing about the necessity to correct the petition as filed, which he did, by striking through the trade names previously listed.

32. The bankruptcy petition as filed included the names of corporate entities as additional names for the debtor. Pursuant to Local Rules of Practice of the U.S. Bankruptcy Court for the Eastern District of Virginia [Local Rules] 5005-1(D)(1) a voluntary petition cannot include a listing of more than one entity as the debtor.

33. The bankruptcy petition filed also included Hertz’s signature as the attorney for the petitioner.

34. Turner maintains that she had earned the \$600.00 received by check from Parker, by performing research on behalf of Hertz on an emergency basis as a prelude to filing the bankruptcy petition and that Hertz failed to pay another

\$600.00 as attorney fees for representation in the bankruptcy in addition to the outstanding balance of fees owing for the research of an additional \$600.00.

35. The bar asserts that the \$600.00 payment to Turner in the form of Parker's check constituted the payment of unearned fees to Turner. If this matter were to go to trial, Turner would testify that the \$600.00 payment constituted earned fees upon payment.

36. During the pendency of the representation of Hertz, from August 15, 2001 until August 20, 2001, prior to the date and time of the filing of the petition by Hertz, Turner did not change her address of record with the Virginia State Bar.

## II. NATURE OF MISCONDUCT

Such conduct by Bernice Marie Stafford Turner constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

### RULE 1.5 Fees

- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

## III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is ORDERED that the Respondent shall receive a Public Reprimand with Terms upon the entry of this Order. It is further ORDERED that

the terms, compliance with which is a predicate for the disposition of the Public Reprimand with Terms, shall be met by the dates and time frames herewith stated and the terms are as follows:

1. Limitations on Bankruptcy Practice - Within ten days of the issuance of the Board's order resulting from this agreed disposition, the Respondent shall certify in writing to the Office of Bar Counsel a list of all bankruptcy cases in which the Respondent is currently representing a client and shall not undertake to represent any clients in any new bankruptcy cases until she has completed the twenty (20) hours of Continuing Legal Education (CLE) described below.

Nothing herein shall limit the ability of Turner to continue to represent the clients, who are so listed, in their bankruptcy cases to conclusion

2. Continuing Legal Education - By June 30, 2006, the Respondent shall attend and complete ten (10) hours of continuing legal education in the practice area of bankruptcy law; four (4) hours of continuing legal education in law office management; four (4) hours of continuing legal education in ethics/trust accounting, and two (2) hours in malpractice avoidance/ethics and Respondent shall certify in writing to the Office of Bar Counsel that she has done so pursuant to this term. Said courses shall be approved for mandatory continuing legal education in Virginia. Respondent shall receive credit for said attendance toward her annual Virginia mandatory continuing legal education requirements in the total amount of 10 hours.

3. PC Law training: Respondent shall forthwith register, attend and complete the January 19 and 20, 2006 training in the use of PC Law billing/trust accounting software at a cost of \$599.00 paid by Respondent, and shall further receive individualized onsite (**at the training center**) and remote training in trust accounting and reconciliation, etc. through Marilyn King, of HMU Consulting (<http://www.hmuconsulting.com/>), formerly the Columbus Bar IT Director and a vendor for PCLAW (<http://www.pclaw.com/training/>) at a cost of \$145/hour. Respondent shall receive from Marilyn King monitoring and further instruction as needed at the following minimum intervals, monthly for three months beginning February 2006, and then quarterly for four quarters. Respondent shall authorize and direct Marilyn King to report to the Virginia State Bar, any failure to comply with training, practices and procedures recommended to the Respondent by Marilyn King.

4. Law Office Management Consultant: The Respondent shall forthwith engage the services of a law office management consultant approved by the Virginia State Bar to review and make written recommendations concerning the Respondent's law practice policies, methods, systems and procedures.

5. The Respondent shall institute and thereafter follow with consistency any and all recommendations made to her by Marilyn King, of HMU Consulting. Additionally, the Respondent shall institute and thereafter follow with consistency any and all recommendations made to her by the law office management consultant following the law office management consultant's evaluation of the

Respondent's practice. The Respondent shall grant the law office management consultant reasonable access to her law practice from time to time, at the consultant's request, for purposes of ensuring that the Respondent has instituted and is complying with the law office management consultant's recommendations. In evaluating the Respondent's law office management policies and procedures, the law office management should, *inter alia*, consult with Respondent initially to organize and to set practices and procedures into place and thereafter may provide three quarterly checkups to adjust and/or to insure that the practices and procedures are working.

6. The engagement of the law office management consultant's services shall specifically include the authorization and directive by the Respondent to the law office management consultant, upon the Respondent's failure to comply with any of the law office management consultant's recommendations, that the law office management consultant shall provide the Virginia State Bar with access, by telephone conferences and/or written reports detailing the failure to comply with the findings and recommendations of the law office management consultant by the Respondent.

7. The Respondent shall be obligated to pay when due the fees and costs of Marilyn King of HMU Consulting, as well as the fees and costs of the law office management consultant including, but not limited to, the provision to the Bar of information described above concerning this matter.

8. Terms in paragraphs 3, 4, 5, 6 and 7 shall end no later than one year after the entry of the Board order resulting from this agreed disposition.

Upon satisfactory proof that such terms and conditions have been met, these matters shall be closed. If, however, the terms and conditions are not met by the dates and time frames as stated, the Board shall impose a Four (4) Month Suspension upon a finding by the Board in a show cause proceeding that the Respondent failed to fulfill the terms and conditions in any respect.

It is further ORDERED that the Clerk of the Disciplinary System shall impose costs upon the Respondent pursuant to Paragraph 13.B.8.c.

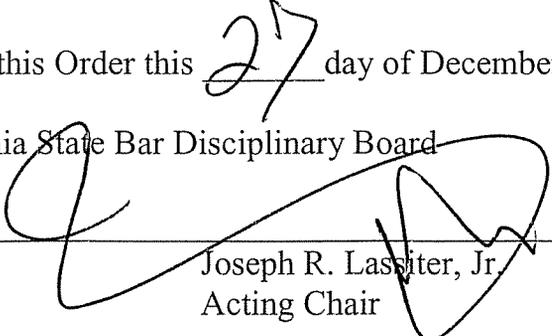
The court reporter for this hearing was Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone number 804-730-1222.

It is further ORDERED that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the Respondent at her last address of record at the Virginia State Bar, and by first class mail to Thomas H. Roberts, counsel for the Respondent; and a copy of this Order shall be furnished to Deputy Bar Counsel Harry M. Hirsch.

Enter this Order this 27 day of December, 2005

Virginia State Bar Disciplinary Board

By \_\_\_\_\_

  
Joseph R. Lassiter, Jr.  
Acting Chair