

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
CRAIG E. BAUMANN

VSB Docket No.19-051-108422

ORDER AFFIRMING DISTRICT COMMITTEE'S DETERMINATION

This matter was heard on September 27, 2019, before a panel of the Virginia State Bar Disciplinary Board consisting of Thomas R. Scott, Acting Chair; Devika E. Davis; Steven B. Novey; Carolyn V. Grady; and Tambera D. Stephenson, Lay Member (collectively, the "Board"). The Virginia State Bar was represented by Kathleen M. Uston, Assistant Bar Counsel (the "Bar"). The Appellant was represented by Gregory M. Wade. Appellant was not present.

The matter came before the Board on the Appellant's timely filed appeal in accordance with Part 6, Section IV, Paragraph 13-17(A) of the Rules of the Supreme Court of Virginia, of a determination by the Fifth District Committee Section I, issued December 5, 2018, finding that the Bar had proven by clear and convincing evidence that Appellant had violated Rules 1.2(a),¹ 1.4(a),² and 1.5(a).³ The Fifth District Committee imposed a Public Admonition with Terms. The Clerk of the Disciplinary System stayed imposition of the **sanction** in accordance with Paragraph 13-17(B).

Jennifer L. Hairfield, Court Reporter, Chandler & Halasz, Post Office Box 9349, Richmond, VA 23227 (804-730-1222), after being duly sworn reported the hearing and transcribed the proceedings.

¹ A lawyer shall abide by a client's decisions concerning the objectives of representation...and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by the client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter.

² A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable request for information.

³ A lawyer's fee shall be reasonable.

The Chair opened the hearing by polling the members of the Board to determine whether any member had any personal or financial interest or bias that might affect, or could reasonably be perceived to affect his or her ability to be impartial in this matter. Each Board member responded to this inquiry in the negative.

The transcript and record having been filed, and the matter having been briefed in accordance with the Rules of the Supreme Court, the Board then proceeded to hear argument in support of the appeal.

A. Standard of Review

The standard of review in an appeal from a District Committee Determination is, to wit:

“In reviewing a District Committee Determination, the Board shall ascertain whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did.” See Va. Sup. Ct. R., Pt. 6 §IV, ¶13-19(E). Upon its review of the record in its entirety, the charge of misconduct must be dismissed if the Board finds that the District Committee’s Determination “is contrary to the law or is not supported by substantial evidence.”
Va. Sup. Ct. R., Pt. 6 §IV, ¶13-19(G)(1).

B. DISCUSSION

The record establishes that the Fifth District Committee, Section I, convened on December 5, 2018, and heard testimony of witnesses on behalf of the Bar and the Respondent. The testimony of the witnesses along with the exhibits of the parties, provided a substantial evidentiary basis for the factual findings made by the District Committee. Those findings appear in the District Committee Determination filed with the Clerk’s Office of the Disciplinary Board on January 11, 2019.

The issue before the Board was whether the District Committee’s findings of misconduct were supported by substantial evidence and whether such conclusion was contrary to the law.

The District Committee specifically found that the Respondent violated the Rules of Professional Conduct. The relevant Rules read are as follows:

A. Rule 1.2(a) Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objective of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement in a matter...

B. 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 communications from another party that may significantly affect settlement or resolution of the matter.

C. 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 skills 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.

The Board reviewed and considered the entire record from the District Committee hearing to include transcripts of witness testimony and documents admitted as evidence at the hearing. The Board received and considered the briefs filed by the parties and the arguments of counsel, in addition to the factual findings of the District Committee.

Respondent's Arguments

Respondent argued that the procedures outlined in Part Six of the Rules of The Supreme Court Paragraphs 13-16 are unconstitutional as they force a respondent to decline a lesser sanction in order to exercise his constitutional right to a hearing. Respondent argued the impossibility of private discipline poses a chilling effect upon the exercise of his right to due process. Respondent did not contest that the factual findings of the Disciplinary Committee were supported by substantial evidence in the record⁴. Instead he argued that the relevant conduct did not rise to the level of misconduct contemplated under the Rules of Professional Conduct.

Respondent identified four concerns of the client that were contemplated in the scope of the representation. The first, was whether her step-children were entitled to receive a copy of the trust as requested by their attorney. The second was whether the step-children were entitled to an annual accounting. Third, Respondent was to handle the distribution of items of personal property due to the children. Last, the client wished to have absolutely no direct communication with her step-children as their relationship had become strained.

Respondent contended the client's concern of whether her husband's children were qualified beneficiaries and what rights they would have to certain specific information regarding the trust was readily determined by the requirements of Virginia Code § 64.2-775(b)(1). When Respondent authorized the step-children to contact the client directly to retrieve personal property, he admitted this error was simply a mistake, but it was not misconduct. He further argued that the client had prematurely terminated the representation before he could complete all tasks. Respondent had sought to take the entire fee as earned due to undocumented research and trial preparation. He contended that because the fee had not been treated as a retainer and

⁴ Respondent took exception to the District Committees finding in Paragraph 4 of the District Committee Determination that he failed to inform the client that he sent a copy of the trust to the step-children's counsel in order to comply with obligations under Virginia Code § 64.2-775(b)(1).

remained in his trust account, that the inquiry as to the fee was no more than a fee dispute more appropriately resolved outside of the disciplinary process.

Position of the Bar

The Bar argued that the District Committee hearing process was not violative of Respondent's Due Process rights as he was placed on notice of the alleged rule violations, he was given an opportunity to respond, and an opportunity for a hearing after being given the opportunity to elect a private admonition. Further, the Bar argued there was substantial evidence in the record upon which the District Committee could reasonably find that the Respondent committed misconduct as to Rules 1.2, 1.4, and 1.5 and that such finding was not contrary to the law. The Bar noted Respondent's concession that the District Committee's findings of fact were supported with the exception of paragraph 4 of the District Committee Determination.

D. Analysis

The Board unanimously concluded that the Fifth District Committee, Section I, properly found that Respondent committed misconduct in violation of Rules 1.2(a), 1.4(a), and 1.5. There was substantial evidence to support the District Committee's conclusion that Respondent did not act in accordance with the objectives of the representation after proper consultation with the client regarding the means by which he would accomplish those objectives. The purported strategy Respondent communicated to the Bar, that is, to delay a response to the step-children's requests, was not communicated to the client nor did Respondent advise the client of his legal opinion that the law required him to provide a copy of the trust agreement to opposing counsel. Additionally, there was substantial evidence to support the finding that Respondent failed to adequately inform the client of the status of the matter as he did not provide her with copies of letters from opposing counsel that were material to the representation. Respondent also failed to

adequately inform the client of the status of the matter considering the research he conducted so that she could make informed decisions. In sum, the District Committee's finding that Respondent violated Rules 1.2(a), 1.4(a) and 1.5 was supported by substantial evidence and was not contrary to the law.

Based on its review of the record and argument of counsel, the Board found that the District Committee properly denied Respondent's Motion to Dismiss and that the District Committee's findings of misconduct were supported by substantial evidence and were not contrary to the law.

E. Sanction

Under Part 6, Section IV, Paragraph 13-19(G)(2) of the Rules of the Supreme Court, once the Board affirms the District Committee Determination, it "may impose the same or any lesser sanction as that imposed by the District Committee."

The sanction imposed by the District Committee was a Public Admonition with terms. Upon consideration of the record and arguments of counsel, the Board finds the sanction imposed by the District Committee was appropriate. **The Board re-imposed the same sanction, of a Public Admonition with Terms⁵.**

F. Conclusion

At the conclusion of the proceedings on September 27, 2019, the Board entered a Summary Order affirming the District Committee's Determination of the violation of Rules 1.2(a), 1.4(a), and 1.5 and imposed a sanction of a Public Admonition with Terms. By this

⁵ 1) Respondent shall return the sum of \$5000.00 to the Complainant. The VSB has been informed that Respondent has complied with this term. 2) The Respondent shall take eight (8) hours of live Continuing Legal Education credits in ethics, in addition to the yearly requirement of two (2) Continuing Legal Education credits in ethics, in the next twenty-four (24) months and provide proof of such attendance to Bar Counsel.

Memorandum Order, the Board confirms the Summary Order and the District Committee's Determination.

It is further ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order by Certified Mail, Return Receipt Requested to: Respondent at his last address of record with the Bar, Craig E. Baumann, Craig E. Baumann, P.C., 8770 Richmond Highway, Alexandria, VA 22309-4204; Gregory M. Wade, Esquire, Counsel for Respondent, Wade, Freidman & Sutter, P.C., 616 North Washington Street, Alexandria, VA 22314; and Kathleen M. Uston, Counsel for the Virginia State Bar, 1111 East Main Street, Richmond, VA 23219.

ENTERED this 9th day of
October, 2019.

VIRGINIA STATE BAR DISCIPLINARY
BOARD



Thomas R. Scott, Jr., Acting Chair