VIRGINIA:

BEFORE THE FIFTH DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Edith Charmaine Gray VSB Docket No. 18-052-112118

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On June 27, 2019 a meeting was held in this matter before a duly convened Fifth District, Section II Subcommittee consisting of Samuel E. Massenberg, Jr., Lay Member; Robert Haymes Cox, Member; and Anita Van McFadden, Chair Presiding. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Elizabeth K. Shoenfeld, Assistant Bar Counsel, and Edith Charmaine Gray, Respondent, and Michael L. Rigsby, Esquire, counsel for Respondent.

WHEREFORE, the Fifth District, Section II Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

1. **FINDINGS OF FACT**

1. At all relevant times, Respondent was a member in good standing of the Virginia State Bar.

2. In or about 2016, Respondent received a phone call from someone she identified as a representative of Debt Pay Gateway (“DPG”), a California company. The caller said that Respondent had been referred as a Virginia attorney who handles debt resolution matters.

3. Respondent said that she agreed to work with DPG.

4. When asked to describe DPG’s process, Respondent said that DPG had an established program set up over which she had no control. Debtors signed on with DPG and agreed
to pay them a monthly amount, which included legal fees, bank fees, administrative fees, and an amount to be held in escrow in order to pay a future debt settlement.

5. Respondent told the bar that DPG prepared and sent retainer agreements to clients. Even though the agreements for Respondent’s clients were sent out as a letter from Respondent, Respondent did not see the retainer agreements before they were sent. The retainer agreements included the legal fee the client would be charged.

6. The monthly withdrawals were deposited into a separate escrow account, held by DPG, for each client. Respondent did not have access to or control over the escrow accounts.

7. Non-attorney negotiators handled most of the debt negotiation. Respondent became involved only with certain creditor’s attorneys who insist that she be involved. Respondent described her typical involvement as assisting the client if there was any litigation from creditors. Pursuant to Va. Code § 54.1-3905, “[t]he furnishing of advice or services for compensation to a debtor in connection with a debt-pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors . . . shall be deemed to be practicing law.”

8. For her work, Respondent was compensated $500 per client. This compensation was divided into an initial payment of $200 and then additional payments of $50 per month until the $500 compensation was paid. The fees were deposited into Respondent’s operating account.

9. Respondent said that she did not keep track of when or what she was paid. When she received payments, she did not know to which clients the payments pertained. If a client left the program early, Respondent may not have received the full $500 for that client.

10. Meanwhile, the retainer agreements, which purported to bear Respondent’s electronic signature, stated that the client paid an initial retainer fee of $599, which is earned “upon retention of the firm,” as well as substantial additional legal fees. When she was asked whether she received the full legal fee described in the agreement, Respondent said that DPG got the rest of it.

11. On January 24, 2017, Complainant Monica Ferguson, who resides in Virginia, signed up for debt resolution services. At the time she signed up, she had $27,793 in debt that she was hoping to resolve. She was assigned Respondent as her attorney and a retainer agreement was sent to Ms. Ferguson. The agreement purported to be signed by Respondent, although Respondent said she never saw it.

12. Pursuant to the retainer agreement, Ms. Ferguson agreed to pay a total of $16,646.41, of which $4,168.95 was a legal fee. According to Respondent, she received $500 of this legal fee at the most. Another $9,727.55 of this amount was to be placed in savings to pay Respondent’s creditors. The remaining amount was comprised of the $599 retainer, a bank fee and a monthly fee. The fees were held by DPG.

13. On February 2, 2017, Respondent called Ms. Ferguson. They discussed the contract and the program. Respondent explained that DPG would hold Ms. Ferguson’s money.
14. In June or July 2017, Ms. Ferguson said that she received a letter from one of her creditors with a settlement offer of about 10% of the outstanding debt. Ms. Ferguson told the bar that she contacted DPG and said that she wanted to accept the offer, but said that she could not get DPG to act on her behalf. Respondent said that Ms. Ferguson had not submitted a notarized Power of Attorney and therefore nothing could be done on her behalf. Ms. Ferguson said that this process repeated itself a second time with a second creditor.

15. On January 23, 2018, Ms. Ferguson sent a certified letter to Respondent requesting termination of the contract and the return of her money.


17. On April 6, 2018, Shaleen Washington from the Client Services/Escalation Department emailed Ms. Ferguson with a copy to Respondent. Ms. Washington represented that the total amount that Ms. Ferguson had paid was $4,161.80 and she attached documentation to that effect.

18. On April 9, 2018, Respondent sent an email to Ms. Washington. Respondent instructed that Ms. Ferguson “be electronically sent the funds that she contributed to the escrow account with no additional funds being transmitted.”

19. On April 10, 2018, $4,161.80 was refunded to Ms. Ferguson.

20. After the events described herein, Respondent ceased any affiliation with DPG.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:
(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them.

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. The terms are:

1. Respondent shall review Legal Ethics Opinion 1885 and the Virginia State Bar publication Lawyers and Other People’s Money, 5th Edition, available on the Virginia State Bar’s website at www.vsb.org. This term shall be met within 30 days after issuance of a Subcommittee Determination approving this agreed disposition. Respondent shall certify her compliance in writing to the Assistant Bar Counsel assigned to this matter.

2. Respondent is placed on probation for a period of 18 months commencing upon the issuance of a Subcommittee Determination approving this agreed disposition. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.

If any of the terms is not met as described above, Respondent agrees that the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶
13-15.F of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

Pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

FIFTH DISTRICT, SECTION II
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

Anita Van McFadden
Subcommittee Chair
CERTIFICATE OF MAILING

I certify that on 8/6/2019, a true and complete copy of the Subcommittee Determination (Public Reprimand with Terms) was sent by certified mail to Edith Charmaine Gray, Respondent, at P.O. Box 4335, Ormond Beach, FL 32175-4335, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Michael L. Rigsby, counsel for Respondent, at Michael L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242.

[Signature]
Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel
VIRGINIA:

BEFORE THE FIFTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDITH CHARMAINE GRAY

VSB Docket No. 18-052-112118

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Elizabeth K. Shoenfeld, Assistant Bar Counsel; Edith Charmaine Gray, Respondent; and Michael L. Rigsby, counsel for Respondent, hereby enter into the following agreed disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent was a member in good standing of the Virginia State Bar.

2. In or about 2016, Respondent received a phone call from someone she identified as a representative of Debt Pay Gateway ("DPG"), a California company. The caller said that Respondent had been referred as a Virginia attorney who handles debt resolution matters.

3. Respondent said that she agreed to work with DPG.

4. When asked to describe DPG's process, Respondent said that DPG had an established program set up over which she had no control. Debtors signed on with DPG and agreed to pay them a monthly amount, which included legal fees, bank fees, administrative fees, and an amount to be held in escrow in order to pay a future debt settlement.

5. Respondent told the bar that DPG prepared and sent retainer agreements to clients. Even though the agreements for Respondent's clients were sent out as a letter from Respondent, Respondent did not see the retainer agreements before they were sent. The retainer agreements included the legal fee the client would be charged.

6. The monthly withdrawals were deposited into a separate escrow account, held by DPG, for each client. Respondent did not have access to or control over the escrow accounts.

7. Non-attorney negotiators handled most of the debt negotiation. Respondent became involved only with certain creditor's attorneys who insist that she be involved.
Respondent described her typical involvement as assisting the client if there was any litigation from creditors. Pursuant to Va. Code § 54.1-3905, “[t]he furnishing of advice or services for compensation to a debtor in connection with a debt-pooling plan pursuant to which the debtor deposits funds for the purpose of distributing them among his creditors . . . shall be deemed to be practicing law.”

8. For her work, Respondent was compensated $500 per client. This compensation was divided into an initial payment of $200 and then additional payments of $50 per month until the $500 compensation was paid. The fees were deposited into Respondent’s operating account.

9. Respondent said that she did not keep track of when or what she was paid. When she received payments, she did not know to which clients the payments pertained. If a client left the program early, Respondent may not have received the full $500 for that client.

10. Meanwhile, the retainer agreements, which purported to bear Respondent’s electronic signature, stated that the client paid an initial retainer fee of $599, which is earned “upon retention of the firm,” as well as substantial additional legal fees. When she was asked whether she received the full legal fee described in the agreement, Respondent said that DPG got the rest of it.

11. On January 24, 2017, Complainant Monica Ferguson, who resides in Virginia, signed up for debt resolution services. At the time she signed up, she had $27,793 in debt that she was hoping to resolve. She was assigned Respondent as her attorney and a retainer agreement was sent to Ms. Ferguson. The agreement purported to be signed by Respondent, although Respondent said she never saw it.

12. Pursuant to the retainer agreement, Ms. Ferguson agreed to pay a total of $16,646.41, of which $4,168.95 was a legal fee. According to Respondent, she received $500 of this legal fee at the most. Another $9,727.55 of this amount was to be placed in savings to pay Respondent’s creditors. The remaining amount was comprised of the $599 retainer, a bank fee and a monthly fee. The fees were held by DPG.

13. On February 2, 2017, Respondent called Ms. Ferguson. They discussed the contract and the program. Respondent explained that DPG would hold Ms. Ferguson’s money.

14. In June or July 2017, Ms. Ferguson said that she received a letter from one of her creditors with a settlement offer of about 10% of the outstanding debt. Ms. Ferguson told the bar that she contacted DPG and said that she wanted to accept the offer, but said that she could not get DPG to act on her behalf. Respondent said that Ms. Ferguson had not submitted a notarized Power of Attorney and therefore nothing could be done on her behalf. Ms. Ferguson said that this process repeated itself a second time with a second creditor.

15. On January 23, 2018, Ms. Ferguson sent a certified letter to Respondent requesting termination of the contract and the return of her money.

17. On April 6, 2018, Shaleen Washington from the Client Services/Escalation Department emailed Ms. Ferguson with a copy to Respondent. Ms. Washington represented that the total amount that Ms. Ferguson had paid was $4,161.80 and she attached documentation to that effect.

18. On April 9, 2018, Respondent sent an email to Ms. Washington. Respondent instructed that Ms. Ferguson "be electronically sent the funds that she contributed to the escrow account with no additional funds being transmitted."

19. On April 10, 2018, $4,161.80 was refunded to Ms. Ferguson.

20. After the events described herein, Respondent ceased any affiliation with DPG.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

... (b) Specific Duties. A lawyer shall:

... (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them[.]

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
RULE 8.4   Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]

III.  PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to a subcommittee of the Fifth District Committee, Section II for its approval the agreed disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Fifth District Committee, Section II. The terms are as follows.

1. Respondent shall review Legal Ethics Opinion 1885 and the Virginia State Bar publication Lawyers and Other People's Money, 5th Edition, available on the Virginia State Bar's website at www.vsb.org. This term shall be met within 30 days after issuance of a Subcommittee Determination approving this agreed disposition. Respondent shall certify her compliance in writing to the Assistant Bar Counsel assigned to this matter.

2. Respondent is placed on probation for a period of 18 months commencing upon the issuance of a Subcommittee Determination approving this agreed disposition. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.

If any of the terms is not met as described above, Respondent agrees that the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.
If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent’s prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR

[Signatures]

Elizabeth K. Shoenfeld
Assistant Bar Counsel

Edith Charmaine Gray, Esquire
Respondent

Michael L. Rigsby
Counsel for Respondent