

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
RACHAEL ANNE HAMMER**

VS. DOCKET NO. 19-052-115487

**AGREED DISPOSITION MEMORANDUM ORDER
SIXTY DAY SUSPENSION WITH TERMS**

On Thursday, August 06, 2020 this matter was heard by a panel of the Virginia State Bar Disciplinary Board (“Board”) upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part Six, Section IV, Paragraph 13-6.H of the *Rules of the Supreme Court of Virginia*. The panel consisted of Yvonne S. Gibney, Chair, David J. Gogal, Kamala H. Lannetti, Steven B. Novey and Nancy L. Bloom, Lay Member. The Virginia State Bar was represented by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel. Respondent Rachael Anne Hammer was present and was represented by counsel Tori D. Bramble, Attorney at Law. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Beverly Lukowsky, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent’s Answer, Respondent’s Disciplinary Record, the arguments of the parties, and after due deliberation;

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition and the Respondent shall receive a sixty-day Suspension with terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order;

It is further **ORDERED** that if Respondent fails to comply with any of the terms and conditions set forth in the Agreed Disposition, the alternative sanction of an additional one-year

suspension shall be imposed and such additional suspension shall not run concurrently with the sixty-day Suspension;

It is further **ORDERED** that the sixty-day Suspension is effective August 6, 2020;

It is further **ORDERED** that:

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the *Rules of the Supreme Court of Virginia*. The Respondent shall forthwith give notice by certified mail of the Suspension of her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her 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 Bar within 60 days of the effective day of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Suspension, she shall submit an affidavit to that effect within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to Part Six, Section IV, Paragraph 13-9.E. of the *Rules of the Supreme Court of Virginia*.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, at her last address of record with the Virginia State Bar at Rachael Anne Hammer, Hammer Legal, PLLC, 14331 Papilion Way, Centreville, VA 20121, and a copy to Tori D. Bramble, Respondent's counsel, at Tori D. Bramble, Clear Vantage Law, PLLC, 15000 Potomac Town Pl., Ste 100-160, Woodbridge, VA 22191, and a copy hand-delivered to Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, Virginia State Bar, Suite 700, 1111 E. Main Street, Richmond, VA 23219.

Entered this 6th day of August, 2020

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney

Digitally signed by Yvonne S.
Gibney
Date: 2020.08.06 19:19:49 -04'00'

Yvonne S. Gibney
Chair



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
RACHAEL ANNE HAMMER

VS B Docket No. 19-052-115487

AGREED DISPOSITION
(60-DAY SUSPENSION WITH TERMS)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar ("VSB"), by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel and Rachael Anne Hammer, Respondent, ^{by counsel} ~~pro se~~, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent has been a member of the VSB.
2. On August 7, 2018, Complainant Tracy Nguyen retained Respondent to represent her in what Ms. Nguyen then believed would be an uncontested divorce.
3. Respondent charged Ms. Nguyen a \$1,500 flat fee. Pursuant to the terms of the fee agreement that Respondent and Ms. Nguyen signed, the parties agreed that "25% of the money is considered 'earned' upon payment, 75% and the final percentage when the Petition and PSA (Property Settlement Agreement) are drafted and filed." Respondent interpreted and intended this to mean that she would not earn the final 75% of the fee until a divorce decree incorporating a Property Settlement Agreement was entered.
4. Ms. Nguyen paid Respondent \$1,500 by check issued within a few days of the August 7, 2018 meeting. Respondent knew that at least a portion of this check constituted an advance legal fee that was required to be deposited into her attorney trust account. Nonetheless, Respondent cashed the check and kept the cash.
5. On September 4, 2018, Respondent filed a Complaint for Divorce on behalf of Ms. Nguyen in the Fairfax County Circuit Court. The Complaint for Divorce sought divorce on the grounds that the parties had been separated for six months. The Complaint for Divorce also listed the separation date as March 6, 2018, which was less than six months before the Complaint was filed.
6. On November 15, 2018, counsel for Ms. Nguyen's husband filed a Motion to Dismiss the Complaint on the grounds that Respondent had filed it too early. The Certificate of Service indicated that Respondent was served with the Motion to Dismiss by first class

mail at 112 B East Broad Street, Falls Church, Virginia 22046, which was the address provided on the Complaint for Divorce.

7. On December 7, 2018, following a hearing, the Court entered an Order dismissing the Complaint for Divorce based on the premature filing. Respondent did not attend the hearing. The Court's Order indicated that Respondent had received notice of the hearing but was not present. Respondent later told the VSB that she did not attend the hearing because she did not receive notice of it.
8. After the Complaint for Divorce was dismissed, Respondent agreed to re-file the divorce at no additional charge. However, Ms. Nguyen later opted to receive a refund instead, and Respondent agreed to refund \$750 to Ms. Nguyen, which was half of the total amount Ms. Nguyen had paid.
9. On February 21, 2019, Respondent issued a check for \$350 to Ms. Nguyen, acknowledging that she still owed Ms. Nguyen an additional \$400 in reimbursement. The check was drawn on Respondent's operating account. Ms. Nguyen attempted to deposit the \$350 check, but it was returned for insufficient funds.
10. On or about April 4, 2019, Ms. Nguyen filed a Warrant in Debt against Respondent in the Small Claims Division of the Fairfax County General District Court. Ms. Nguyen sought \$1,512, plus \$58 in court costs.
11. On April 17, 2019, Ms. Nguyen filed a complaint with the VSB regarding Ms. Hammer.
12. On May 17, 2019, which was the return date for Ms. Nguyen's Warrant in Debt, Ms. Nguyen and Respondent signed a mediated agreement resolving Ms. Nguyen's lawsuit. The agreement required Respondent to refund Ms. Nguyen the entire \$1,500 fee, court costs of \$58, and reimbursement for the bounced check for \$35. Payment was to be made no later than May 31, 2019.
13. On May 20, 2019, Respondent issued a \$600 check to Ms. Nguyen. Respondent also paid Ms. Nguyen \$998 in cash.¹
14. On June 6, 2019, Respondent asked Ms. Nguyen to sign a Satisfaction of Settlement, which Respondent had drafted, confirming that Respondent had refunded \$1,593 to Ms. Nguyen. Ms. Nguyen signed the Satisfaction of Settlement.
15. The Satisfaction of Settlement stated that Ms. Nguyen "will retract her Virginia Bar Complaint" and that the parties "shall keep the terms of this Agreement confidential and shall indemnify the other should it be discovered that damage is caused by failure to keep this matter confidential."

¹ Respondent paid Ms. Nguyen a total of \$1,598, which was \$5 more than what the mediated agreement required.

16. Respondent represented that she did not intend to impede the VSB's investigation when she drafted the confidentiality agreement. Rather, she sought to prevent her client's relative, who had already written a negative online review of Respondent, from writing additional negative online reviews.
17. On the same day she signed the Satisfaction of Settlement, Ms. Nguyen wrote to the VSB to request that her bar complaint be retracted. In response to this request, the VSB explained that pursuant to the Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-10.B, "No Complaint or allegation of Misconduct shall be dismissed at any stage of the process solely upon a request by a Complainant to withdraw his or her Complaint."
18. The VSB referred the complaint against Respondent for further investigation. As part of the investigation, VSB Investigator William Sterling made several attempts to interview Ms. Nguyen.
19. On November 1, 2019, Ms. Nguyen responded to Investigator Sterling:

I tried to dismiss the complaint regarding Rachael Hammer because we had come to an agreement at court. As part of our agreement, I was to dismiss the complaint against her at the VA Bar Association [sic]. I do not wish to explain further regarding Ms. Hammer because of the documents she had me sign. I kindly ask you or anyone at the Bar to stop calling me asking about Ms. Hammer.
20. During the time period addressed herein, Respondent was experiencing personal difficulties that impaired her judgment and behavior. Since these events, Respondent has taken steps to improve her circumstances to avoid a recurrence.

II. NATURE OF MISCONDUCT

Such conduct by the 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:

...

(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 that such person is entitled to receive; and

(5) not disburse funds or use property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

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[.]

III. PROPOSED DISPOSITION

Accordingly, Senior Assistant Bar Counsel, Respondent, and Respondent's counsel tender to the Disciplinary Board for its approval the agreed disposition of a 60-day suspension with terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. The terms with which Respondent must comply are as follows:

1. No later than seven days after the date this Agreed Disposition is approved, Respondent shall contact the Judges and Lawyers Assistance Program ("JLAP") to schedule an evaluation to be conducted by JLAP. Thereafter, Respondent shall fully participate in the evaluation conducted by JLAP and shall implement all of JLAP's recommendations.
2. Respondent shall enter into a written contract with JLAP for a minimum period of 18 months and shall comply with the terms of such contract, including personally meeting with JLAP and its professionals, as directed.
3. Respondent authorizes JLAP to provide periodic reports to the Office of Bar Counsel stating whether Respondent is in compliance with JLAP's contract with Respondent. The Office of Bar Counsel shall be bound by JLAP's contract with Respondent with respect to confidentiality and disclosure of information.
4. Respondent shall review Virginia Rule of Professional Conduct 1.15 and the VSB 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 by August 31, 2020. Upon completion of this Term, Respondent shall so certify in writing to the bar counsel assigned to this case.
5. Respondent shall submit to a random review of her trust account records by a Virginia State Bar Investigator or other agent of the bar during the course of the next 12 months for the purpose of ascertaining her compliance with the trust account maintenance and record-keeping requirements of Rule 1.15 of the Virginia Rules of Professional Conduct. Respondent shall reasonably cooperate with the Investigator or bar agent in submitting to such random review and making available bank records, cancelled checks, checkbooks, subsidiary ledgers, cash receipts journals, cash disbursements journals, evidence of reconciliations, and any and all other documents necessary for the completion of the review.

If Respondent fails to comply with any of the terms and conditions herein ordered, the alternative sanction of an additional one-year suspension of her license to practice law would then be imposed.

Any additional suspension will not run concurrently with this suspension.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.

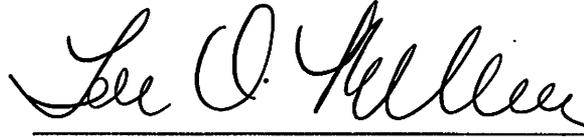
THE VIRGINIA STATE BAR



By: _____
Elizabeth K. Shoenfeld, Senior Assistant Bar
Counsel



Rachael Anne Hammer, Respondent



Tori D. Bramble, Respondent's counsel