

VIRGINIA:

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

IN THE MATTER OF  
Katherine Martell

VSB Docket No. 19-052-114171

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On October 23, 2019, a meeting was held in this matter before a duly convened Fifth District, Section II Subcommittee consisting of Robert Marshall Worster, III, Chair Presiding; Robert Haymes Cox, Member; and Stephen J. McArdle, Jr., Lay Member. 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, Senior Assistant Bar Counsel; Katherine Martell, Respondent; and Jonathan Leo Phillips, 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:

I. FINDINGS OF FACT

1. At all relevant times, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent represented a client who asserted that he suffered emotional distress as a result of a workplace sexual assault. The initial lawsuit complaint, which asserted counts of assault, battery, and intentional infliction of emotional distress, was filed in the Circuit Court for Fairfax County in May 2016.
3. Although Respondent had various associates assist her with the client's case, Respondent served as lead counsel for the client throughout the representation.

4. In expert witness designations submitted on November 23 and 28, 2016, Respondent designated three of the client's treating physicians as expert witnesses. The pleadings stated that the physicians "will testify as expert" and that each of them "will testify" to certain medical findings and that their testimony was "based upon prior examination of Plaintiff whose records have been previously disclosed to Defendant."
5. Prior to submitting these expert witness designations, Respondent did not talk to these physicians about their opinions. Rather, these designations were based only on the client's medical records. Respondent acknowledged that the medical records did not contain any "opinion" statements.
6. The trial was set for February 21, 2017. Respondent identified the three doctors on her witness list and subpoenaed them, but none of the doctors appeared for trial. Respondent took a voluntary nonsuit on the day of trial. The defendant moved for sanctions, but the motion was denied.
7. After the nonsuit, Respondent said that her client, who was indigent and homeless at the time, had disappeared. She called and emailed him but he did not respond. Respondent re-filed the case on August 21, 2017, making the same allegations, in order to preserve the client's claims.
8. In June 2018, Respondent filed a motion to withdraw as counsel due to the client's disappearance. However, the night before the motion was set to be heard, the client contracted Respondent. Consequently, Respondent withdrew her motion and agreed to stay on the case.
9. On August 7, 2018, Respondent submitted discovery responses identifying the same three doctors as "expert[s] you expect to call to testify in this case." The response indicated that each doctor "will testify" regarding certain aspects of the client's health condition. Respondent did not consult with the doctors prior to disclosing them as expert. Respondent did not file a separate expert witness designation in the second suit.
10. Respondent again identified the three doctors on her witness list and attempted to subpoena them for trial.
11. The trial was scheduled to occur on September 4, 2018. Respondent's client did not appear for trial, nor did the three doctors that Respondent had designated and subpoenaed. When defense counsel asked Respondent whether she expected the doctors to appear that morning, Respondent said that one doctor had called her office that morning and told her that they did not remember any details regarding their treatment of the client, and therefore Respondent released that person from their subpoena. Respondent was uncertain as to why the remaining two witnesses failed to appear.
12. Based on her client's failure to appear, Respondent requested a second nonsuit. The court denied the request and dismissed the case with prejudice.
13. On September 14, 2018, defense counsel filed a motion for sanctions. The dismissal order was suspended awaiting consideration of the motion for sanctions. In her

opposition to the motion for sanctions, Respondent acknowledged that only physicians are authorized by law to offer opinions regarding injury causation. She argued that because the doctors had actually treated the client, it did not matter that she had not talked to them.

14. On November 7, the court issued a letter opinion granting the motion for sanctions and ordering Respondent to pay \$9,912.50 in attorneys' fees. The court held that Respondent was required to conduct a reasonable inquiry as to whether the experts she designated "would testify at trial, or in the very least communicate with them." The court found that Respondent lacked a reasonable basis to identify the doctors as expert witnesses.
15. Respondent has paid the sanction imposed on her in full.

## II. NATURE OF MISCONDUCT

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

### RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(e) . . . fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

## 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 term shall be met by February 28, 2020 and is as follows:

1. Respondent shall enroll and attend six (6) hours of continuing legal education ("CLE") in the substantive area of civil litigation discovery, including expert discovery. These hours shall not be credited toward Respondent's compliance with her annual mandatory CLE requirement. Upon completion of this term, Respondent shall so certify in writing to the bar counsel assigned to this case.

If the term is not met by February 28, 2020, 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 the term 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



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Robert Marshall Worster, III  
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 11/4/19, a true and complete copy of the Subcommittee Determination (Public Reprimand with Terms) was sent by certified mail to Katherine Martell, Respondent, at First Point Law Group, PC, 10521 Judicial Dr Ste 300A, Fairfax, VA 22030, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Jonathan Leo Phillips, counsel for Respondent, at LefflerPhillips PLC, 10505 Judicial Drive, Suite 200, Fairfax, VA 22030.



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Elizabeth K. Shoenfeld  
Senior Assistant Bar Counsel

VIRGINIA:

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

IN THE MATTER OF  
KATHERINE MARTELL

VS B Docket No. 19-052-114171

AGREED DISPOSITION  
PUBLIC REPRIMAND WITH TERMS

Pursuant to the Rules of Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, and Katherine Martell, Respondent, and Jonathan Leo Phillips, Esquire, counsel for Respondent, hereby enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent represented a client who asserted that he suffered emotional distress as a result of a workplace sexual assault. The initial lawsuit complaint, which asserted counts of assault, battery, and intentional infliction of emotional distress, was filed in the Circuit Court for Fairfax County in May 2016.
3. Although Respondent had various associates assist her with the client's case, Respondent served as lead counsel for the client throughout the representation.
4. In expert witness designations submitted on November 23 and 28, 2016, Respondent designated three of the client's treating physicians as expert witnesses. The pleadings stated that the physicians "will testify as experts" and that each of them "will testify" to certain medical findings and that their testimony was "based upon prior examination of Plaintiff whose records have been previously disclosed to Defendant."
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6. The trial was set for February 21, 2017. Respondent identified the three doctors on her witness list and subpoenaed them, but none of the doctors appeared for trial. Respondent

took a voluntary nonsuit on the day of trial. The defendant moved for sanctions, but the motion was denied.

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14. On November 7, the court issued a letter opinion granting the motion for sanctions and ordering Respondent to pay \$9,912.50 in attorneys' fees. The court held that Respondent was required to conduct a reasonable inquiry as to whether the experts she designated "would testify at trial, or in the very least communicate with them." The court found that Respondent lacked a reasonable basis to identify the doctors as expert witnesses.
15. Respondent has paid the sanction imposed on her in full.

## II. NATURE OF MISCONDUCT

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

### RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(e) . . . fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

## III. PROPOSED DISPOSITION

Accordingly, Senior Assistant Bar Counsel, Respondent, and Respondent's counsel 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 term shall be met by February 28, 2020 and is as follows:

Respondent shall enroll and attend six (6) hours of continuing legal education ("CLE") in the substantive area of civil litigation discovery, including expert discovery. These hours shall not be credited toward Respondent's compliance with her annual mandatory CLE requirement. Upon completion of this term, Respondent shall so certify in writing to the bar counsel assigned to this case.

If the term is not met by February 28, 2020, 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 the term 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 costs.

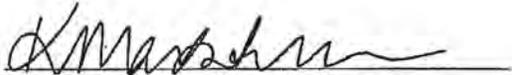
Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia,  
Respondent's prior disciplinary record shall be furnished to the subcommittee considering this  
agreed disposition.

THE VIRGINIA STATE BAR



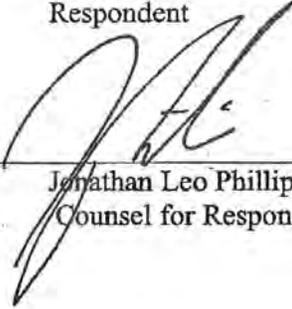
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Elizabeth K. Shoenfeld  
Senior Assistant Bar Counsel



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Katherine Martell, Esquire  
Respondent



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Jonathan Leo Phillips  
Counsel for Respondent