



VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DAVID MICHAEL MCCORMICK

VSB Docket Nos. 15-022-102544; 16-022-103337;
16-022-104918; 16-022-105038;
16-022-106220

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On February 8, 2017, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Patricia Johnson, Lay Member, Cal Bain, Esquire, and Wanda Cooper, Esquire, Chair presiding (the Subcommittee).

Pursuant to Part 6, Section IV, Paragraph 13.15.B.4 of the Rules of the Virginia Supreme Court, the Second District Committee Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC REPRIMAND with Terms:

I. STIPULATIONS OF FACT

1) At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.

2) This Agreed Disposition covers five separate complaints filed against Respondent and each Complaint is detailed in a separate section.

Bradley (15-022-102544)

3) Complainant retained Respondent to file a bankruptcy matter in December 2013. The retainer agreement provided that the case would not be filed until the fees were paid in full.

4) Complainant made his first payment to Respondent on December 27, 2013. He made a second payment on March 12, 2014, and a final payment on November 19, 2014.

5) Complainant began calling Respondent's office in January 2015 to ask about the status of his case and to determine if additional information was needed. Complainant stated that he never spoke with Respondent, but always talked with a receptionist/assistant.

6) Complainant met with a member of Respondent's staff on January 28, 2015 to update his forms and he was given a checklist of additional information that was needed. Complainant stated that his fiancé dropped off the additional information a week later. Thereafter, he began calling the office on a periodic basis trying to get answers regarding his matter.

7) He made three calls in March 2015, and in April 2015, he called on April 6, 15, and 21. Complainant stated that on the 15th, he was told that an attorney would get back to him the next day, but that did not happen. On April 21st, he called to let Respondent know that he never received a call back and Complainant stated that he was told his case was closed on February 24, 2015 for inactivity. Complainant filed the bar complaint that day.

8) In his initial response to the Virginia State Bar ("bar"), Respondent stated that Complainant delayed getting his documents to Respondent and that someone in his office sent a missing documents list on March 25, 2014. When shown the list, Complainant stated that he never received any such document from Respondent.

9) Respondent stated to the bar investigator that the bankruptcy was input into the system in April 2014, but was not filed because Complainant had an outstanding balance. However, Respondent had previously responded to the bar that he did not have the necessary documents from Complainant to file the bankruptcy.

10) Respondent told the bar investigator that Complainant paid the full retainer seven months later and was charged an additional expense for updating documents. The review appointment was scheduled for January 28, 2015, and Respondent stated that Complainant was

provided with yet another list of required documents on February 24, 2015.

11) Respondent claimed that Complainant did not provide the payment for the updates and he did not provide the additional documentation, but that he called on April 15, 2015 to ask for an update on his case. Respondent stated that he did not get the message for a week, and so before he could return the call, Complainant filed the bar complaint.

12) Initially, Respondent stated that he would issue a refund of \$14.00. He stated that Complainant never informed him or any attorney of any problem he was having with staff, except for the delayed phone call on April 15, 2015.

13) When Respondent was interviewed by the bar investigator, he advised that he knew more about the situation at that point and that he issued a refund check to Complainant the day before the interview with the bar investigator in the amount of \$450. He told the investigator that the fault was not all Complainant's fault, but that he should have set an appointment with Respondent if he had concerns.

Steele (16-022-103337)

14) Complainant paid Respondent \$1,750 in March 2014 for a divorce case.

15) Complainant filed her bar complaint in July 2015 claiming that Respondent did little to communicate with her. The bar's intake attorneys tried to be proactive and they wrote to Respondent on July 14, 2015 and demanded that he communicate with Complainant as to what issues needed to be resolved.

16) Respondent copied a bar intake attorney on an email he wrote to Complainant dated July 16, 2015, stating that they were in the process of having her husband served with documents.

17) The court information system indicates that the complaint for divorce was filed on

March 11, 2015, a year after Complainant retained the Respondent, and the Complaint did not go out for service until July 22, 2015.

18) Complainant came to the firm with an executed Property Settlement Agreement (“PSA”), but she also wanted to try to amend the PSA. She paid the firm an extra \$350 for the amendment to the PSA on August 23, 2014. She received the draft amendment on September 29, 2014 and she asked for a change that same day.

19) On October 2, 2014, Complainant wrote to Respondent informing him about her concerns regarding working with him (lack of effort, poor response time, and communication).

20) There is no evidence that Respondent provided a response to this e-mail, based on a review of Respondent’s file, which was subpoenaed by the bar. Respondent wrote to Complainant on November 20, 2014 and asked her if the signed PSA from 4/15/11 was their only agreement, if her divorce had been finalized, what date her husband retired, and whether he was receiving any benefits. Complainant responded that there was also a child support/custody court order, she hired Respondent’s firm to finalize her divorce, her husband retired in the summer of 2014, and he was receiving retirement benefits (of which she was to be getting a percentage, but was not because no order had been entered).

21) Respondent provided the bar with case notes from Complainant’s case and the notes indicate that Complainant called Respondent’s office on 8/28/14 to speak with an attorney about her divorce, but the notes do not indicate that a call was returned. Complainant made another call on 9/8/14, when she called Respondent to find out the status of filings she had been told would be filed by 9/5/14. Again, there is no indication that there was a return call. Complainant called again on 9/12/14 with questions. The receptionist offered to set an appointment, but Complainant did not want an appointment, she just wanted answers regarding the status of her

case. Complainant called again on 9/15/14 wanting to know the status.

22) There is an entry in Respondent's notes on 10/2/14 in which Respondent wrote, "no more phone calls with attorney, we will put final amendment and that's it, once she emails me. Wants far beyond the one change to the agreement..." The client provided the referenced e-mail on 10/3/14 and the assistant printed the email and put it in Respondent's basket. Thereafter, client called on 11/5/14, 11/10/14, and 11/12/14 trying to determine the status of her case and on 11/12/14, Respondent's assistant transferred the call to Respondent's associate. The client called again on 12/4/14 and 1/5/15 asking about the status. On 4/13/15, Complainant called Respondent's office because she wanted to know the status of her divorce and when her husband would be served with the divorce complaint. Additional final paperwork was prepared between May and June 2015.

23) In July 2015, Complainant called numerous times regarding a status on her divorce. After receiving no information, Complainant filed her bar complaint. During the bar investigation, Respondent refunded \$1,000 to Complainant on October 21, 2015. The divorce was finally concluded on November 25, 2015.

West (16-022-104918)

24) The Complainants hired Respondent for a bankruptcy. Over the course of the representation, Complainants paid Respondent \$870.

25) The Complainants came back to Respondent two different times for a bankruptcy because the first time they retained Respondent for a bankruptcy in 2012, they could not pay him the full amount for the representation. They did pay him \$300. Respondent stated that \$55 was allocated to credit report expenses, \$175 to administrative costs, and \$70 was refunded.

26) Respondent stated that in February 2014, the case was closed for inactivity. Complainants came back to Respondent in April 2014 and paid another retainer of \$500 to start

another bankruptcy case and they gave Respondent the refund check for \$70 that was never cashed, which was credited towards their account as well.

27) Respondent stated that Complainants did not pursue the bankruptcy and did not submit paperwork, so the fees were transferred as earned fees in July 2015, the case was closed, and the file was moved to storage in August 2015. In October 2015, Complainant made calls to Respondent's office to find out how much they owed so that they could file bankruptcy. Complainant stated that she could never get through to anyone, until finally someone answered and told her that Respondent's firm merged with another firm and he was no longer at that number. Respondent had actually sold his bankruptcy practice to another firm.

28) Complainants used the new law firm to handle their bankruptcy, but Complainant advised that Respondent never transferred any of their fees to the new law firm. Further, Complainants never received any notification that Respondent sold his bankruptcy practice and sent their file to a new firm. Complainants claimed that Respondent never did any work on their case and they should receive a full refund. Complainants never provided any documents or returned any paperwork to Respondent's firm, so there was no administrative meeting to go over paperwork for the bankruptcy.

29) Respondent did not have a retainer agreement for Complainants' matter. He provided the bar investigator with his standard agreement and said that Complainants signed it. The retainer agreement provided by Respondent stated that the first \$150 was used for administrative costs and was non-refundable. The agreement also stated that if the services were terminated for any reason before the discharge of bankruptcy, the attorney fee would be on a quantum meruit basis. It further stated that if the firm created any part of the petition, the first \$500 was non-refundable.

30) Respondent provided a copy of the Complainants' Voluntary Petition to the investigator who stated that the Petition contains nothing but the names of Complainants and the last four digits of their social security numbers. Respondent told the investigator that he took exception with the

Complainants' statement that Respondent did nothing for them related to the bankruptcy. He said he or his staff calls the clients to get updates, deal with creditors, and perform administrative activities. However, Respondent did not produce any evidence that these activities took place in Complainants' case.

31) Respondent was unable to locate any letter advising Complainants that their case was being transferred to another law firm. He said they might not have received one because their case had been closed for inactivity. However, Respondent's initial response to the bar included a statement that Complainants had a \$120 credit in their trust account on November 1, 2015, around the time when Respondent sold his bankruptcy practice, which is then contradicted by his client ledger which shows that he transferred \$570 out of trust as attorney's fees on July 6, 2015.

32) Respondent told the bar investigator that he believed he earned the money paid to him to start the bankruptcy process, but he refunded \$400 to Complainants anyway.

Christian (16-022-105038)

33) Complainant hired Respondent in January 2015 to prepare an agreement in a divorce matter. Complainant filled out a questionnaire so that an agreement could be drafted. She returned the questionnaire to Respondent, and in March 2015, her case was transferred to Respondent's associate to prepare a rough draft.

34) Respondent's associate prepared the rough draft and met with Complainant to go over it. Complainant marked up the rough draft and returned it to the office. In July 2015, Complainant contacted Respondent's office to find out what was going on and she was informed that Respondent's associate was no longer with the office. She had not received any contact regarding her divorce since March 2015, and no notification that the associate had left the firm.

35) Complainant called the office again on July 10, 2015, and she was told that a call would be returned within the next 24 hours, but she did not receive a return call. On July 21,

2015, Complainant spoke with an assistant at Respondent's office who informed Complainant that a copy of the agreement would be mailed to her. She did not receive a copy of the agreement and when she called again, she was advised that it would be emailed to her. It was not e-mailed. Complainant had paid Respondent \$600 towards the agreement.

Askew (16-022-106220)

36) Complainant hired Respondent for a bankruptcy matter and paid him a total of \$1,514 in payments that he made between December 2013 and March 2014. Respondent did not file a bankruptcy on behalf of Complainant and claimed that Complainant did not bring in the required documents.

37) Respondent eventually closed Complainant's file on July 4, 2015, but Respondent disbursed the \$1,514 fee to himself because he claimed he earned the funds.

38) Respondent told the bar investigator that a new firm that bought his bankruptcy practice and started answering Respondent's phone calls when they took over his files on November 1, 2015. Complainant called Respondent, but employees of the new law firm answered the phone and Complainant made an appointment with them regarding his bankruptcy.

39) Complainant met with an associate at the new law firm who declined to take his case. Complainant asked for his money back and he was told that he would need to request a refund from Respondent. Complainant requested a refund from Respondent, and Respondent refused to refund any of the fee until the bar investigator spoke with Respondent and Respondent told the bar investigator that he would provide a \$514 refund to Complainant.

40) During the bar investigation, Respondent was unable to provide a copy of Complainant's file because he said that the new law firm destroyed the Complainant's file because it was not active. This included retainer agreements, intake sheets and fee sheets. Respondent provided a copy of a typical fee agreement, but not the fee agreement signed by

Complainant. Complainant claimed that he did not receive any calls from Respondent, except for a call in January 2015 when Respondent left a message on Complainant's voicemail letting him know that he was not going to provide a refund.

41) Complainant told the bar investigator that he gave Respondent everything he had regarding his bankruptcy and that no one ever told him to schedule a signing or attend a specific meeting. Respondent claims that correspondence was sent to Complainant requesting that he come in and sign the bankruptcy documents on May 22, 2015, but Complainant stated that he never received such a request. Respondent has no proof of any letter because he claims the file was destroyed.

42) Complainant stated that he called several times to meet with Respondent about his case, but was never given an appointment with Respondent after he paid his retainer. He always saw an associate and usually a different associate each time. Complainant said that each attorney told him something different and he just wanted an appointment with Respondent.

II. NATURE OF MISCONDUCT

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

Failure to act with Diligence in violation of **RPC 1.3**

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

Failure to Communicate in violation of **RPC 1.4**

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

Failure to comply with **Rule 1.16** regarding sale of a law practice

(c) Actual written notice is given by the seller to each of the seller's clients (as defined by the terms of the proposed sale) regarding; (1) the proposed sale and

the identity of the purchaser; (2) any proposed change in the terms of the future representation including the fee arrangement; (3) the client's right to consent or to refuse to consent to the transfer of the client's matter; and that said right must be exercised within ninety (90) days of receipt of the notice; (4) the client's right to retain other counsel and/or take possession of the file; and (5) the fact that the client's refusal to consent to the transfer of the client's matter will be presumed if the client does not take any action or does not otherwise consent within ninety (90) days of receipt of the notice.

Failure to comply with **Rule 5.8** regarding notification to clients when a lawyer leaves a law firm

(c) Timely notice to the clients shall be given promptly either by agreement or unilaterally in accordance with Rule 5.8(a) or (b).

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms. The terms and conditions are:

Respondent shall attend 12 hours of Continuing Legal Education ethics credits by March 31, 2018. These Continuing Legal Education credits shall not apply towards Respondent's annual Continuing Legal Education credits requirement. Respondent shall certify his completion of this requirement to Assistant Bar Counsel Christine M. Corey, or her designee by April 15, 2018.

For a period of two years beginning January 1, 2017, and ending January 1, 2019, the Respondent shall not engage in any conduct that violates the following provisions of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, provided, however, that the conduct upon which such finding was based occurred within the period referred above, and provided, further, that such ruling has become final.

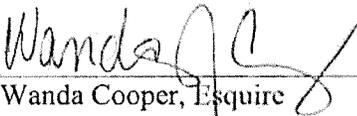
Upon satisfactory proof that the Terms have been met, this matter shall be closed. If,

however, it appears that Respondent has not complied with the Terms, then pursuant to the Rules of Court, Part Six, Section IV, Paragraph 13-15.F, Assistant Bar Counsel shall serve notice requiring Respondent to show cause why the alternative disposition of a 60-day Suspension of his license to practice law should not be imposed. The burden of proof shall be on Respondent to show compliance with the Terms by clear and convincing evidence. As set forth at Paragraph 13-15.F, if Respondent has failed to comply with the Terms, including written certification of compliance, within the stated time period, as determined by the Subcommittee, the alternative disposition for a 60-day Suspension of his license to practice law shall be imposed. In accordance with the Agreed Disposition for a Public Reprimand with Terms, any proceeding to address compliance with these Terms will be heard by the District Committee.

In accordance with the Agreed Disposition for a Public Reprimand with Terms, this **ORDER** is **FINAL** and **NON-APPEALABLE**.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: 
Wanda Cooper, Esquire
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on April 6, 2017, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to David Michael McCormick, Respondent, at P.O. Box 81, Lightfoot, VA 23090, Respondent's last address of record with the Virginia State Bar.



Christine M. Corey
Assistant Bar Counsel