

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
THOMAS HUNT ROBERTS

VS B Docket No. 16-031-106233

ORDER AFFIRMING DISTRICT COMMITTEE'S DETERMINATION

This matter was heard on October 27, 2017, before a panel of the Virginia State Bar Disciplinary Board consisting of John A. C. Keith, Chair; R. Lucas Hobbs; Donita M. King; Sandra M. Rohrstaff; and Stephen A. Wannall, Lay Member (collectively, the "Panel"). The Virginia State Bar was represented by Kathryn R. Montgomery, Deputy Bar Counsel (the "Bar"). The Appellant, Thomas Hunt Roberts (hereinafter the "Appellant"), appeared in person and was represented by Andrew T. Bodoh.

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 Third District Committee, Section I, issued on May 6, 2017, finding that the Virginia State Bar had proved by clear and convincing evidence that Appellant had violated Rules 1.15(a)(3)(ii)¹ and 1.15(b)(5)² of the Rules of Professional Conduct, and imposed a Public Reprimand with Terms. The Clerk of the Disciplinary System stayed imposition of the sanction, in accordance with Paragraph 13-17(B).

¹ No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows; ... (ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be promptly withdrawn from the trust account.

² A lawyer shall ... not disburse funds or use property of a client or third party without their consent or convert or convert funds or property of a client or third party, except as directed by a tribunal.

Tracy J. Stroh, CCR, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227 (804-730-1222), after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board Panel to ascertain 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 Panel member responded to this inquiry in the negative.

Prior to argument, Counsel for Appellant presented argument in support of his Motion to Strike portions of the Bar's Brief that included argument supporting a theory that had been rejected by the District Committee. The Motion to Strike and the Bar's response thereto were included as part of the document provided to the Panel. Upon considering argument of Counsel for Appellant and the Bar, the Chair denied the motion.

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 and consider the appeal.

After the Panel retired to deliberate, the Chair and the Panel were informed that during the argument one member recalled that she had mediated a case some years ago in which the Appellant was involved; she had no specific recollection of that interaction. After deliberations, the Chair reconvened the hearing, and the panel member disclosed her recollection and affirmed that she did not believe that past encounter would affect her ability to be impartial in this matter. Counsel for the parties each waived any objection to the Board's proceeding with the hearing.

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, ,r13-19(E). Upon its review of the record in its entirety, the charge of misconduct is to be dismissed if the Board finds that the District Committee's Determination "is contrary to the law or is not supported by substantial evidence." See Va. Sup. Ct. R., Pt. 6, §IV, ,I13-19(G)(1).

B. Discussion

Background

The record indicates that the Third District Committee, Section I, convened on May 16, 2017 and heard testimony of witnesses on behalf of the Bar and the Appellant. The testimony of the witnesses, along with the exhibits of the parties, provide a substantial evidentiary basis for the factual findings made by the District Committee. Those factual findings appear in the District Committee Determination filed in the Clerk's Office of the Virginia State Bar on June 12, 2017.

The Misconduct Finding

The issue before the Board was to determine whether the District Committee's factual findings of misconduct were supported by substantial evidence and whether such conclusion was contrary to the law. Specifically, the District Committee found that the Appellant's conduct violated Rules 1.15(a)(3)(ii) and 1.15(b)(5) regarding the safekeeping of a client's property, which read as follows:

A. Rule 1.15 Safekeeping Property

(a) Depositing Funds

- (3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

B . Rule 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

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

The Panel reviewed and considered the entire record from the District Committee hearing, including the testimony of the witnesses, documents received as evidence at that hearing and arguments made by counsel. In addition to the factual findings that formed the basis of the determination of the District Committee, the Panel received and considered the briefs filed by the parties and argument of counsel.

Position of Appellant

Appellant argued that the District Committee's findings that Rule 1.15(a)(3)(ii) and 1.15(b)(5) had been violated were contrary to law and not supported by substantial evidence. Appellant contended that he was entitled, by his client's written consent contained in the Representation Agreement, to disburse monies from his trust account to his operating account in order to partially satisfy his quantum meruit claim for the value of legal services he had provided to his client. In addition, Appellant argued that finding of a violation of Rule 1.15(a)(3)(ii) was improper as it is unconstitutionally vague.

Position of the Bar

The Bar argued that there was substantial evidence in the record upon which the District Committee could reasonably have found the Appellant committed misconduct and

that such finding was not contrary to the law. Furthermore, it argued there was substantial evidence to support the District Committee's conclusion that Appellant's Due Process rights had been satisfied and that the Rule is not void for vagueness.

C. Analysis

The Panel unanimously concluded that the Third District Committee, Section I, properly found that Appellant committed misconduct in violation of 1.15(a)(3){ii} and 1.15(b)(5). There was substantial evidence to support the District Committee's conclusion that Appellant's client did not consent to the withdrawal of the funds from Appellant's trust account (nor had a tribunal directed such disbursement). A majority of the Panel determined that even if the client's signature on the Representation Agreement constituted her agreement to such a withdrawal at that time (a determination not made by the Panel), her actions after terminating the Appellant's representation were sufficient to evince her withdrawal of any approval that could have been inferred from her signature on the Representation Agreement.

Furthermore, the requirement of Rule 1.15(a)(3)(ii) of an accounting and severance of the parties' interest before disputed funds are released depends on the resolution of the dispute. Here, the dispute between the Appellant and his client had not been resolved at the time he withdrew the funds from his trust account, and he had no authority to withdraw the funds. Absent resolution of the dispute, there was no determination of the amount of a quantum meruit fee, if any, to which Appellant was entitled.

Based on its review of the record and argument of counsel, the Panel found no violation of Appellant's Constitutional rights.

D. 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 Reprimand with

Terms.³ After considering the record and after hearing argument, the Panel determined this to be an appropriate sanction.

E. Conclusion

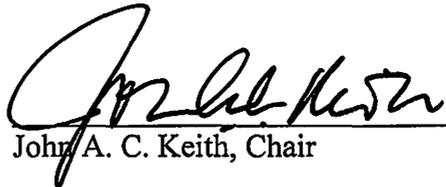
At the conclusion of the proceedings on October 27, 2017, the Panel entered a Summary Order affirming the District Committee's Determination of violation of Rules 1.15(a)(3)(ii) and 1.15(b)(5), and imposed a sanction of a Public Reprimand with Terms. By this Memorandum Order, we confirm the Summary Order.

It is further ORDERED that, pursuant to Part 6, §IV, ,113-9 (E)(1) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Appellant.

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 Appellant at his last address of record with the Virginia State Bar, Thomas Hunt Roberts, Thomas H. Roberts & Associates, P.C., 105 South First Street, Richmond, Virginia 23219, and to Andrew T. Bodoh, Esquire, Counsel for Appellant, Thomas H. Roberts & Associates, P.C., 105 South First Street, Richmond, Virginia 23219; and a copy to Kathryn R. Montgomery, Deputy Bar Counsel, 1111 East Main Street, Richmond, Virginia 23219.

ENTERED this 28th day of November, 2017.

VIRGINIA STATE BAR DISCIPLINARY BOARD



John A. C. Keith, Chair

³ The parties stipulated that the Appellant had fully complied with the Terms imposed by the District Committee.