

VIRGINIA:

BEFORE THE FIFTH DISTRICT, SECTION III COMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
SAMEENA SABIR

VS B Docket No. 19-053-114466

DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On August 13, 2020, a hearing in this matter was held before a duly convened Fifth District Committee, Section III panel consisting of Stephen McArdle, Jr., Lay Member; Dawn Elizabeth Boyce, Member; Tania Michelle Saylor, Member; Michael Kwang-Min Kim, Member; and Colleen M. Haddow, Chair Presiding (collectively, “the Committee”).

Respondent Sameena Sabir (“Respondent”) appeared in person with counsel, Timothy Joseph Battle. Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel appeared as counsel for the Virginia State Bar (“VSB”). The proceedings were transcribed by Susan Marie Marouse of Rudiger, Green & Kerns Reporting Service.

The Chair swore the court reporter and each member of the Committee verified that he or she has no personal or financial interest that may affect or be reasonably perceived to affect his or her ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Charge of Misconduct issued against Respondent setting forth allegations that Respondent violated Virginia Rules of Professional Conduct 1.1 and 1.3(a).

The Committee admitted the VSB’s exhibits 1-2, 3-24 and 26-33 without objection. Respondent had objected to the admission of the VSB’s exhibit 3, the Report of Investigation, but Respondent’s objection was overruled by the Chair at the pre-hearing conference and

Respondent did not raise the objection again before the full Committee. The Committee admitted Respondent's exhibits 1-11 without objection.

The parties made opening statements. Then the Committee then received the testimony of Investigator James Haughton for the VSB, after which the VSB rested.

At the conclusion of the VSB's case in chief, Respondent's counsel made a motion to strike. After considering the evidence and argument of counsel, the Committee denied the motion to strike.

The Committee received the testimony of Respondent Sameena Sabir for Respondent, after which Respondent rested. Respondent did not renew her motion to strike at the conclusion of Respondent's evidence.

The Committee then heard closing arguments by counsel and retired to deliberate.

#### Findings of Fact

Upon due deliberation and consideration of the exhibits, witness testimony, and argument of counsel, the Committee found that the VSB proved by clear and convincing evidence the following facts:

1. At all relevant times, Sameena Sabir ("Respondent") was a member in good standing of the VSB.
2. On or about January 2, 2019, the VSB received notice that Respondent was the counsel of record for the appellant on four Court of Appeals matters that were dismissed as a result of procedural defaults. VSB Ex. 33.

#### Facts Regarding D.S. v. Fairfax County Department of Family Services

3. On or about May 19, 2015, the Fairfax County Circuit Court entered an order removing D.S.'s child from her. Respondent was appointed to represent D.S. for the appeal.
4. On June 18, 2015, Respondent filed a Notice of Appeal, which stated, "A transcript of testimony and other incidents of the case will be filed." VSB Ex. 5.
5. Pursuant to Rule 5A:8(a) of the Rules of Supreme Court of Virginia, the transcript of the proceeding was required to be filed no later than 60 days after entry of the final

judgment. The Court of Appeals can extend the transcript filing deadline if the appellant files a written motion within 90 days after entry of the final judgment.

6. Respondent did not file the transcript by the deadline, nor did she file a motion for an extension of time to file the transcript.
7. Respondent never filed an opening brief to support D.S.'s appeal. VSB Ex. 8.
8. On October 20, 2015, the Court of Appeals dismissed D.S.'s appeal because Respondent had not filed an opening brief. VSB Ex. 8.

Facts Regarding K.S. v. Fairfax County Department of Family Services

9. K.S. appealed the termination of her parental rights. Respondent represented K.S. beginning in Fairfax County Juvenile & Domestic Relations court, then through Fairfax County Circuit Court and then the appeal to the Court of Appeals.
10. On or about April 2, 2015, Respondent filed a Notice of Appeal of a March 4, 2015 order. The Notice of Appeal stated that a "transcript of testimony and other incidents of the case will be filed." VSB Ex. 9.
11. On June 2, 2015, the Court of Appeals sent the parties, including Respondent, an email notifying them that the record had been filed on June 1, 2015. The record did not include the transcript. VSB Ex. 10.
12. On July 20, 2015, Respondent filed a motion for extension to allow her more time to obtain the transcript. She said that she had been unable to locate the court reporter, but had just located her.
13. On July 31, 2015, the Court of Appeals entered an order denying the motion to dismiss and giving Respondent an extension until August 10, 2015 to designate the contents of the record and until August 27, 2015 to file the opening brief and appendix. The Court of Appeals did not extend the deadline to file the transcript. VSB Ex. 14.
14. On March 22, 2016, the Court of Appeals dismissed the appeal, finding that Respondent had failed to file the transcript and that a timely filed transcript was indispensable to deciding the assignments of error. VSB Ex. 18.

Facts Regarding R.F. v. Fairfax County Department of Family Services (two appeals)

15. R.F. appealed the Fairfax County Circuit Court's decision to place her child into foster care ("R.F. I"). Respondent was appointed to handle the appeal of R.F. I as well as a subsequent matter regarding the termination of R.F.'s parental rights ("R.F. II").
16. R.F.'s prior counsel filed the Notice of Appeal and Motion for Preparation of the Transcript on May 30, 2017. This related to R.F. I, the decision regarding foster care. In June 2017, the prior counsel withdrew and Respondent was subsequently appointed. VSB Exs. 19 and 21.

17. Respondent did not file the transcripts, a designation of the record or the opening brief in the R.F. I appeal. Respondent testified that, because she was working on the trial of R.F.'s termination of parental rights case ("R.F. II"), she made the strategic decision to focus on R.F. II and to allow R.F. I to default.
18. On December 18, 2017, Respondent filed a Notice of Appeal of the November 13, 2017 final order in R.F. II. The notice of the appeal indicated that a transcript would be filed. VSB Ex. 22.
19. Pursuant to Rule of Supreme Court of Virginia 5A:8(a), the R.F. II transcript was due by January 12, 2018. Respondent did not file the R.F. II transcript until January 26, 2018. Respondent testified that she did not file the transcript until January 26, 2018 because the court reporter did not prepare it on time.
20. On January 4, 2018<sup>1</sup>, Respondent filed a motion with the Court of Appeals asking to consolidate the appeals of the two cases and extend the briefing schedules. VSB Ex. 23. Also on January 4, 2018, Respondent filed a motion for preparation of the transcript. R. Ex. 6.
21. On January 19, 2018, the Department filed an opposition to Respondent's motion requesting consolidation of the R.F. I and R.F. II appeals.
22. On February 7, 2018, the Court of Appeals denied the motion for consolidation and dismissed the R.F. I appeal for failure to timely file a brief. VSB Ex. 26.
23. On June 13, 2018, Respondent filed a motion for an extension of time to file her brief in the R.F. II appeal. Respondent said that an extension was necessary because R.F.'s child was missing. VSB Ex. 28. The Department opposed the motion for an extension.
24. On July 13, 2018, the Court of Appeals entered an order giving Respondent until July 28, 2018 to file the opening brief and appendix. VSB Ex. 30.
25. Respondent filed her opening brief in R.F. II on July 30, 2018, two days after the extended deadline. VSB Ex. 31. Respondent testified that she filed the brief on July 30 because she believed that was the deadline.
26. On October 2, 2018, the Court of Appeals dismissed the R.F. II appeal. The Court found that a timely filed transcript was indispensable to deciding the assignments of error, and that Respondent had failed to identify authorities pertaining to each of the assignments of error. The late-filed brief was not a stated basis for the Court's decision. VSB Ex. 32.

### Misconduct

Based on the foregoing facts, the Committee found that the VSB proved by clear and

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<sup>1</sup> Although Respondent's certificate of service is dated January 4, 2018, the Court of Appeals file-stamp indicated that the motion was not filed until January 22, 2018.

convincing evidence that Respondent violated the following Virginia Rules of Professional Conduct:

**RULE 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

With regard to Rule 1.1, the Committee found that Respondent engaged in a pattern of failing to perfect appeals by making repeated mistakes of the same nature, including failing to file transcripts on time, failing to file timely motions for extensions for required transcripts and/or briefs, and failing to calendar deadlines properly.

**RULE 1.3 Diligence**

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

With regard to Rule 1.3(a), the Committee found that Respondent repeatedly failed to timely file transcripts or briefs, and that even when extensions were granted Respondent did not meet those extensions in a timely manner. The Committee also found that although Respondent said that she was going to allow the RF 1 appeal to procedurally default for a strategic reason, she did not notify the Court of Appeals or her opposing counsel that she was withdrawing the appeal.

Sanction

Having found that Respondent violated the Virginia Rules of Professional Conduct identified above, the Committee continued to the sanctions phase of the proceedings. The VSB introduced a Certification of Respondent's disciplinary record in Virginia as VSB Exhibit 34, which was admitted without objection. The Certification reflected that Respondent had no

disciplinary record in Virginia. The VSB then rested. Respondent introduced the testimony of Darren Behr, who testified as to Respondent's good character and representation. Respondent then offered the testimony of Seema Ruchandani by proffer, without objection from the VSB. Ms. Ruchandani's testimony was offered by proffer because Ms. Ruchandani was not available at the time that Respondent was ready to call her as a witness. Respondent represented that Ms. Ruchandani would also testify as to Respondent's good character and reputation.

Counsel for the VSB and Respondent then presented argument regarding the sanction to be imposed on Respondent for the misconduct found, and the Committee recessed to deliberate.

#### Public Reprimand With Terms

After due consideration of the evidence as to mitigation and aggravation and other arguments of counsel, the Committee reconvened to announce its sanction of a Public Reprimand with Terms, effective on August 13, 2020.

The Terms are as follows:

1. On or before September 12, 2020, Respondent shall read Part 5A of the Rules of the Supreme Court of Virginia and certify that she has done so, under oath, to the Virginia State Bar.
2. On or before August 13, 2021, Respondent shall complete six (6) hours of Continuing Legal Education focused on appellate procedure and certify, under oath, to the VSB that she has completed the six (6) hours.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the date(s) specified, the district committee shall certify the matter to the Virginia State Bar Disciplinary Board for sanction determination pursuant to Part Six, Section IV, Paragraph 13-16.CC 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 Paragraph 13-9.E of the Rules of Court.

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

FIFTH DISTRICT, SECTION III COMMITTEE  
OF THE VIRGINIA STATE BAR

By Colleen M. Haddow  
Colleen M. Haddow  
Chair