

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
ROBERT LYMAN ISAAC SHEARER, JR.**

**VS B Docket No. 18-052-109900**

**ORDER OF SUSPENSION**

**THIS MATTER** came to be heard on June 22, 2018 on the District Committee Determination for Certification by the Fifth District Subcommittee, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of John A. C. Keith, Chair, Bretta Marie Zimmer Lewis, T. Tony H. Pham, Melissa W. Robinson, and Nancy L. Bloom (Lay Member). The Virginia State Bar (“VSB”) was represented by Elizabeth K. Shoenfeld (“Bar Counsel”). Respondent Robert Lyman Isaac Shearer, Jr. (“Respondent”) was present and was represented by Paul D. Georgiadis (“Respondent’s Counsel”). Jennifer L. Hairfield, 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.

At the outset of the hearing, the Chair polled the members of the panel as to whether any of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

VSB Exhibits 1-3, 5-7, 9-18, 20-25 and Respondent's Exhibits 1-20, were admitted into evidence by the Chair, without any respective objections from the Respondent or the VSB. VSB Exhibit 19 was admitted over Respondent's objections.

As more fully set forth below, the hearing proceeded first upon the VSB's witnesses including the Complainant and VSB Investigator Edward Bosak. Following the Chair's denial of Respondent's motion to strike violation of Rule 1.3(b), Respondent then testified as a witness for himself, also relying upon James Leffler in the sanction phase of the proceeding. All of the following factual findings made by the Board were found to have been proven by clear and convincing evidence.

## **MISCONDUCT**

### **Factual and Procedural Background**

Respondent was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant to the conduct set forth herein. Respondent has been admitted to the Virginia State Bar since 1987 and his practice has consisted primarily of domestic relations matters.

Complainant Silue Wang (hereinafter referred to as "Mr. Wang") retained Respondent to represent him in a custody and support case after his former girlfriend, Kelly Baxter (hereinafter "Ms. Baxter"), withheld him access to their infant daughter and filed a petition in the Prince William County Juvenile & Domestic Relations Court seeking sole custody. In turn, Mr. Wang had filed an emergency motion for access to his daughter and a hearing was scheduled to take place on June 20, 2017. Respondent's stepdaughter is a friend of Mr. Wang and had recommended Respondent to him. In discussing with Mr. Wang his fee for representing him on all issues associated with custody and support of his daughter, Respondent offered to represent him hourly or on a flat fee basis of \$11,500.00 for the entire case, recommending the latter to him and offering

it because Mr. Wang was a “family friend.” After Respondent’s recommendation of the flat fee, Mr. Wang agreed to obtain a cashier’s check for the sum in question and deposit it directly into Respondent’s personal account, which Mr. Wang did four (4) days after their conversation on May 22, 2017. There was no written engagement agreement between Respondent and his client.

Prior to the June 20 hearing in Prince William County, Ms. Baxter also filed an identical petition for custody of her daughter in Stafford County, where she had subsequently moved. Time records created by Respondent after the fact in 2018 in connection with this proceeding (Respondent’s Exhibits 15-19) reflect that Respondent was made aware of the petition filed in Stafford County by Mr. Wang in early June of 2017 and reviewed the pleading, as well as answering questions for Mr. Wang concerning jurisdictional issues. Prior to the hearing, Respondent had several conversations with Mr. Wang concerning strategy matters and also began reviewing email exchanges between Mr. Wang and Ms. Baxter which he had recommended that Mr. Wang forward to him for review and potential use in the case.

The initial hearing date in the Prince William County J&D Court took place on June 20, 2017. Upon learning that Ms. Baxter had also filed a comparable petition in the Stafford County J&D Court, and given the length of time which the hearing would likely take on the substantive issues, the trial court continued the case until August 1, 2017, asking that the parties make the Stafford County J&D Court aware of the Prince William proceeding so the Stafford County judge could consider whether jurisdiction existed in Stafford County. From discussions with Respondent, Mr. Wang was under the impression that attendance at the Stafford County hearing on July 20, 2017 fell within the scope of Respondent’s representation of him.

Following the hearing in Prince William County, Respondent ceased responding to Mr. Wang completely. Mr. Wang diligently forwarded email exchanges between he and Ms. Baxter,

but never received advice from Respondent or even an acknowledgement of receipt of the information. Mr. Wang continued to be denied any access to his daughter and sought Respondent's guidance before the July 4th weekend on an offer made by Ms. Baxter for him to have a one-night visitation with his daughter. Mr. Wang emailed the proposed agreement to Respondent but never received any response. During this timeframe, Mr. Wang was also calling Respondent repeatedly, leaving at least three voicemail messages on various dates, after which time Respondent's voicemail was full every time he attempted to contact him. Mr. Wang, likewise, texted Respondent, desperate for his assistance. Mr. Wang consulted with Respondent's stepdaughter who was never able to tell him Respondent's whereabouts. Mr. Wang took a day off from work and drove to Respondent's physical office and learned that Respondent had moved out a few months earlier and left no forwarding address. Although Mr. Wang knew that Respondent had mentioned that he was moving his residence, Mr. Wang was unaware that Respondent intended to move his office and was unable to locate a new address. On July 14, 2017, Mr. Wang emailed Respondent the following:

Bob, I've not heard back from you since June 23rd and we have a court date coming up July 20th at the Stafford Courthouse. If you do not plan on representing me any longer, please let me know as we can work out a refund so I can have money to pay another council. However, I hope this is not the case. Let's schedule an appointment to talk Monday (7/17/17) morning at 10:00 a.m. My schedule is open so I'm also available to talk at all other times. Thanks Silue.

Finally, the day before the hearing, Mr. Wang texted Respondent:

Hello Bob? We have court tomorrow. I have no heard from you for almost a month. Please get back to me ASAP. Thanks

Respondent never responded to any of these communications nor otherwise attempted to contact Mr. Wang. Mr. Wang appeared at the July 20 hearing in Stafford County by himself at

which time the court dismissed the case on the grounds that jurisdiction was properly in the Prince William County J&D Court.

Given the state of affairs with Respondent, Mr. Wang retained new counsel to represent him, hoping that he would obtain a refund from Respondent as a source of funds for this significant expense. Despite Mr. Wang's efforts to see and care for his daughter, Mr. Wang's visitation was withheld from May 2017 when he initially consulted with Respondent until August 1, 2017 when the Prince William J&D Court ruled upon his motion.

Immediately preceding the July 20th hearing in Stafford County J&D Court, Mr. Wang filed a Bar complaint against Respondent. On July 31, he received a text from Respondent in response to his own earlier July 19 text. In that text and in the telephone conversation which followed in early August, Respondent represented to Mr. Wang that he had been without email or phone access for a three-week period during the moves, indicating that everything had gone wrong and his situation was a nightmare. Thereafter, Respondent promised several times to refund Mr. Wang's money, and told Mr. Wang that he should notify the VSB that the issues between them were resolved. In texts and emails, Mr. Wang made clear that he would not seek dismissal of the pending proceeding until payment was made by Respondent, which never occurred. To date, no refund has been provided to Mr. Wang.

As part of the Bar's investigation of Mr. Wang's complaint, the Fifth District Committee, Section II, issued a subpoena *duces tecum* to Respondent on July 20, 2017, requesting that Respondent produce his entire file regarding Mr. Wang's case on or before August 14, 2017. Respondent was also provided a copy of the subpoena during an interview with the VSB investigator, Edward Bosak. Although stipulating that appropriate legal service was made upon him during the hearing of this matter, Respondent failed to partially comply with the subpoena

until May of 2018. The file on Mr. Wang's case which Respondent finally produced to the VSB contained no pleadings, written correspondence or other documentation prepared by Respondent. Nor did it contain any materials, such as legal authorities, indicating that Respondent had engaged in any legal research or legal analysis on any potential issue in the case. In fact, despite the fact that Mr. Wang was very anxious to see his daughter, as made clear to Respondent when he was retained, Respondent's file reflects no communications to Ms. Baxter demanding visitation rights for his client.

Mr. Bosak testified before the Board that during his interview with Respondent, Respondent had indicated that he would be providing Mr. Wang with a full refund. Mr. Bosak testified that Respondent had also represented that he had been responsible for getting the Stafford County matter dismissed. Respondent denied to the Board he made either of these statements to the investigator, and also denied that he ever intended to represent Mr. Wang in the Stafford County matter. He testified that the Stafford County case was a separate matter for which he would have required a separate fee, despite the fact that the Stafford County proceeding involved the identical custody and support issues between Mr. Wang and Ms. Baxter.

With respect to his disappearance from his practice after the June 20 hearing, Respondent testified that the multiple moves of his residence and office had wreaked havoc on his online computer access, but did concede that he reviewed his emails every day at a coffee shop such as Starbucks where he had internet access. He conceded that he received and reviewed all of Mr. Wang's emails concerning potential visitation with his daughter and the upcoming July hearing, but never responded to any of these. Despite his billing timeline referencing the Stafford County matter, and despite his client's clear belief from his emails that Respondent was supposed to attend the Stafford County hearing, Respondent maintained that was not the case on which he was

retained and Mr. Wang knew this so there was no need to reply to the email. He also suggested that he had reviewed too late the questions concerning potential visitation so there was no need to respond thereafter to Mr. Wang's inquiries. However, in his timeline concerning the professional services rendered to Mr. Wang, Respondent billed for the time he spent reviewing each of the emails to which he never replied.

During the course of the hearing, Respondent conceded that the \$11,500.00 flat fee was not deposited into his trust account because he was unaware of this ethical obligation. He testified that most practitioners he knows use their personal accounts for flat fees in the same manner he did. Respondent represented to the Board that he will now no longer be able to offer "discounted rates" to everyday citizens who cannot afford the high cost of divorce because he will not have immediate access to the full flat fee and there is no consideration to him for these benevolent practices. When confronted about the fact that even according to his own billing timeframe he is still holding money that is rightfully owed to Mr. Wang, Respondent testified that he was willing to pay Mr. Wang something but reiterated that he had spent much time on Mr. Wang's case, unbeknownst to Mr. Wang who never heard from him until after the Bar complaint had been filed and new counsel had already been retained.

On December 13, 2017, the Fifth District Subcommittee issued its certification in which it found that Respondent's conduct violated Rules 1.3(a); 1.3(b); 1.4(a); 1.15(a)(1); 8.4(b); 1.15(b)(4); 1.16(d); 1.16(e); 8.1(c); and 8.4(b).

Based upon the evidence presented, including the certification received into evidence as Exhibit 1, and for the reasons more particularly set forth below, the Board finds, by clear and convincing evidence, that Respondent's conduct constitutes misconduct in violation of Rule 1.3(a); 1.15(b)(4); 1.16(d); and 8.1(c). The Board further notes that Respondent stipulated to, and the

Board concurs, violation of Rules 1.4(a) and 1.15(a)(1), and that the VSB withdrew a charge under Rule 1.16(e). The Board further found that the VSB had not met its burden of proof with regard to a violation of Rules 1.3(b) or 8.4(b).

Rule 1.3(a)

The Board finds by clear and convincing evidence that Respondent violated Rule 1.3(a). Pursuant to Rule 1.3(a), a lawyer must act with reasonable diligence and promptness in representing his clients. After agreeing to represent Mr. Wang on all custody and support issues with Ms. Baxter, Respondent abruptly ceased communicating with him after the first hearing on June 20 in Prince William County J&D Court. Mr. Wang was in continuing conversations with Ms. Baxter in his efforts to resume visitation with his daughter but was without the benefit of his attorney's advice despite numerous efforts to reach him. Likewise, Respondent failed to respond to any of Mr. Wang's inquiries concerning the July 20 hearing in Stafford County, leading Mr. Wang to fear that Respondent would not show up to represent him. The lengths to which Mr. Wang went in taking time off from work to try and locate Respondent well reflect the degree of distress he was experiencing due to Respondent's complete failure to respond to Mr. Wang's repeated inquiries, despite the fact that Respondent acknowledged reading the emails.

The Board did not find credible Respondent's explanation that he did not attend the Stafford County hearing because he did not consider that to be part of his oral fee agreement with Mr. Wang. Nevertheless, the Board concludes that Respondent's failure to provide advice to Mr. Wang concerning Ms. Baxter's proposed overnight visitation agreement likewise constitutes a violation of Rule 1.3(a), as does Respondent's failure to promptly discuss with Mr. Wang whether he would be attending the Stafford County hearing after inquiry by the client. Respondent failed to even contact Ms. Baxter concerning a demand for Mr. Wang's immediate visitation with his

daughter at any time before Mr. Wang retained new counsel. In fact, despite the fact that Respondent testified that he was reading emails from his client, he failed to respond to any of them during the period between June 23 and July 20, 2017. Respondent's file reflects no significant legal action undertaken on behalf of Mr. Wang, other than to simply attend the June 20 hearing. After that date, the Board finds that Respondent ceased any meaningful representation of Mr. Wang.

Rule 1.4(a)

Respondent has stipulated to violation of Rule 1.4(a) which requires a lawyer to keep a client reasonably informed about the status of his or her case and promptly comply with reasonable requests for information. The Board concurs that the evidence described herein establishes misconduct under Rule 1.4(a).

Rule 1.15(a)(1)

Respondent also stipulated to a violation of Rule 1.15(a)(1) which requires a lawyer to deposit funds held on behalf of a client into an identifiable trust account. The Board concurs that the evidence establishes misconduct under Rule 1.15(a)(1).

Rule 1.15(b)(4)

The Board finds by clear and convincing evidence that Respondent violated Rule 1.15(b)(4). Pursuant to Rule 1.15(b)(4), a lawyer must promptly pay or deliver to the client the funds, securities or other properties in the possession of the lawyer that such client is entitled to receive. In May of 2017, Respondent was retained to represent Mr. Wang on all matters of custody and support arising between Mr. Wang and Ms. Baxter for a flat fee of \$11,500 to handle all such matters. Respondent began work on the case, but abruptly moved and ceased communications with Mr. Wang following the June 20 hearing in Prince William County J&D Court. Mr. Wang

attended the next hearing in Stafford County J&D Court by himself and retained another lawyer to represent him at the next hearing in Prince William County J&D Court in August of 2017. No substantive rulings or negotiations between the parties concerning custody or support occurred during the short timeframe in which Respondent worked on the case. The bulk of the flat fee which Respondent continues to withhold from Mr. Wang has not been earned by him and is owed to Mr. Wang, yet withheld in violation of Rule 1.15(b)(4).

Rule 1.16(d)

The Board finds by clear and convincing evidence that Respondent violated Rule 1.16(d). In accordance with Rule 1.16(d), upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, including refunding any advance payment of fees that has not been earned and properly handle their records. Despite Respondent's repeated promises to do so, he has refused to refund Mr. Wang's unearned fees, including fees Respondent claims for review of Mr. Wang's emails seeking advice or a reply to which he never responded. These actions constitute violation of Rule 1.16(d).

Rule 8.1(c)

The Board finds by clear and convincing evidence that Respondent violated Rule 8.1(c). Rule 8.1 of the Rules of Professional Conduct governs disciplinary matters before the VSB and prohibits lawyers from making false statements of material fact, failing to respond to demands for information, or otherwise obstructing an investigation by a disciplinary authority. Respondent ignored the subpoena *duces tecum* served upon him by the Fifth District Committee on July 20, 2017, until May of 2018, thereby obstructing the VSB's investigation of Mr. Wang's Bar complaint in violation of Rule 8.1.

## **SUMMARY OF THE BOARD'S FINDINGS**

Having considered the stipulations, the testimony and the evidence presented at the hearing, the Board recessed to deliberate; and, after due deliberation, reconvened and stated its findings that the VSB had proven, by clear and convincing evidence, that Respondent violated Rules 1.3(a); 1.4(a); 1.15(a)(1); 1.15(b)(4); 1.16(d); and 8.1(c). Similarly, after consideration of the testimony and evidence, the Board found that the VSB had not proven, by clear and convincing evidence, that Respondent had violated Rules 1.3(b) and 8.4(b). The Board then reconvened for the sanction phase of the hearing, as addressed herein.

## **SANCTION PHASE OF THE HEARING**

After the Board announced its findings by clear and convincing evidence that Respondent had committed the Rule violations noted above, it received further evidence regarding aggravating factors applicable to the appropriate sanction for the conduct of Respondent underlying the Rule violations. The VSB relied upon Exhibit 25 concerning Respondent's prior disciplinary record, thereafter resting its case.

Subsequently, the Board heard evidence regarding mitigating factors applicable to the sanction herein. Respondent testified that during the period in which the incidents of misconduct occurred, he was struggling with numerous personal issues. He testified concerning his stepson's significant legal issues, as well as his brother's and mother's very significant health issues. Respondent also testified to the numerous residential and office moves which he had to make unexpectedly during the summer of 2017. Finally, although testifying that he was not offering it as an excuse, Respondent indicated that he had begun turning to alcohol consumption in stressful times, despite having successfully been a recovering alcoholic since treatment by Lawyers Helping

Lawyers (LHL) in 2007. Respondent claimed that as of March 5, 2018, he is again sober and in treatment with LHL but has not come close to completing the program.

Respondent's testimony during the sanction phase of the proceeding was, at times, at odds with the testimony he provided to the Board during the misconduct phase. For instance, in very detailed testimony, Respondent blamed the lack of internet services occasioned by the move of his office and residences as the reason for his lack of contact with Mr. Wang. Respondent blamed the lack of his cell phone access during this interim on the fact that his son had broken it and he was "teaching him a lesson" by waiting for him to pay for a new phone. Respondent claimed that he did not attend the Stafford County hearing because he was not retained to do so, although also telling VSB Investigator Bosak that he took care of the matter by phone. Finally, in the context of discussing his mother's health, Respondent testified to the Board that he stayed with her between December of 2017 and March of 2018, providing her great help during that timeframe, suggesting that he was not chronically impaired from alcohol abuse.

James Leffler, who qualified as an expert in the field of mental health and substance abuse related to attorneys practicing in the Commonwealth of Virginia, testified regarding his ongoing treatment with Respondent, as well as a meeting he had had with Respondent approximately eleven (11) months ago in July of 2017 at the request of one of his employees with knowledge of Respondent's condition. Mr. Leffler testified that, in his opinion, Respondent's condition during that timeframe would have significantly impaired his ability to practice law, thus leading Mr. Leffler to recommend to Respondent during that visit that he seek treatment from LHL, which did not occur until May of 2018. Mr. Leffler confirmed that Respondent is currently in treatment with LHL.

## DISPOSITION

At the conclusion of the evidence in the sanctions phase of this proceeding, the Board recessed to deliberate. After due deliberation and review of the foregoing findings of fact, upon review of Exhibits 1-3, 5-7, and 9-25 presented by Bar Counsel on behalf of the VSB, upon review of Respondent's Exhibits 1-20, upon the testimony from the witnesses presented on behalf of the VSB, and upon the testimony of witnesses presented by Respondent, the Board reconvened and stated its finding that, when considered together, Respondent's current violations, along with his prior disciplinary record, refusal to acknowledge the wrongful nature of the bulk of his conduct, failure to make any restitution, obstruction of the disciplinary proceeding by failing to comply with Rules and Orders of the VSB and substantial experience in the practice of law, demonstrate a severe failure to uphold his duties to his clients and the profession. The Board's finding is mitigated by Respondent's evidence regarding his personal and emotional problems during the period in which the violations occurred.

With respect to Respondent's efforts to rely upon alcohol dependency as a mitigating factor in the sanction phase of this proceeding, the Board concludes that Respondent has failed to establish evidence (1) that Respondent's alcohol abuse caused the misconduct; and (2) that Respondent's recovery from his alcohol dependency has been demonstrated by a meaningful and sustained period of successful rehabilitation; and (3) that the recovery arrested the misconduct and recurrence of that misconduct is unlikely. Accordingly, it does not qualify as a mitigating factor under Standard 9.32(i) of the American Bar Association's *Standards for Imposing Lawyer Sanctions (2005)*.

Therefore, upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by majority vote of the Board, that Respondent's license to

practice law in the Commonwealth of Virginia is suspended for a period of three (3) years, effective June 22, 2018. Respondent is also advised that he should continue counseling with Lawyers Helping Lawyers.

It is further ORDERED that, as directed in the Board's June 22, 2018 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, of the three (3) year suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of June 22, 2018, and make such arrangements as are required herein within 45 days of the effective date of the suspension. 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 Respondent is not handling any client matters on the effective date of June 22, 2018, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days of the effective day of the suspension. 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.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Opinion and Order to Respondent, Robert Lyman Isaac Shearer, Jr., at his address of record with the Virginia State Bar, being 6012 Frederick St., Springfield, Virginia 22150, by certified mail, return receipt requested; by regular mail to Respondent's Counsel, Paul D. Georgiadis, at 2819 North Parham Road, Suite 110, Richmond, Virginia 23294-4425; and by hand delivery to Elizabeth K. Shoenfeld, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 3<sup>rd</sup> day of July, 2018.

VIRGINIA STATE BAR DISCIPLINARY BOARD

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John A. C. Keith, Chair