

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JASON ALLEN SPITLER**

VSB DOCKET NO. 18-070-112538

MEMORANDUM ORDER OF REVOCATION

THIS MATTER came to be heard on May 17, 2019, on the Seventh District Subcommittee's Determination (Certification), before the duly convened panel of the Board consisting of attorney members John A.C. Keith (presiding chair), Yvonne S. Gibney, Jeffrey L. Marks, Steven B. Novey, and lay member Martha J. Goodman. The Virginia State Bar ("VSB") was represented at the hearing by Assistant Bar Counsel Paulo E. Franco, Jr. (the "Bar"). The Respondent was not present, nor did counsel appear on his behalf. The Chair directed the Assistant Clerk to call the Respondent's name three times in the adjacent hall. The Respondent did not answer or appear. The proceedings were recorded and reported by Tracy J. Stroh, a registered professional reporter with Chandler & Halasz, PO Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after she was duly sworn by the Chair.

At the outset of the hearing, the Chair polled the Board members to ascertain whether any of them had any personal or financial interest or bias which would affect, or could reasonably be perceived to affect, their ability to hear the case fairly, and all, including the Chair, answered in the negative.

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

EVIDENCE AND FACTUAL FINDINGS

Prior to the Subcommittee's certification of this matter to the Board, the Bar had issued a subpoena *duces tecum* seeking the Respondent's trust account records and other records pertaining to his representation of the Complainant. Despite proper service, the Respondent failed to respond to the subpoena and was administratively suspended by the Board (VSB Exhibit 6).

Prior to this proceeding, during the prehearing conference call, VSB Exhibits 1 – 15 were admitted without objection.

The Bar made a brief opening statement and then presented evidence. VSB Exhibit 16, an affidavit of Nancy M. Reed, Esquire, was admitted without objection. Respondent was licensed to practice law within the Commonwealth of Virginia on October 16, 2003, and at all relevant times had been an attorney licensed to practice law in the Commonwealth.

The Bar's first two witnesses were Sierra B. Hilliards, the Complainant, and her mother, Tracy Hottle. They testified to the following material facts. Mrs. Hilliards' friend was pregnant and asked Mrs. Hilliards if she and her husband would adopt the yet to be born child. Mr. and Mrs. Hilliards happily consented, as they could not have a child of their own. Neither Sierra Hilliards, her husband, nor anyone in their family were related by blood or by marriage to Mrs. Hilliards' pregnant friend, nor to the biological father of the soon to be born infant. The Hilliardses sought the legal assistance of the Respondent for the adoption. The Respondent charged a flat fee of \$750.00 to perform all necessary work for the adoption. Respondent advised that it was a simple process, and that the only requirement was for the birth mother to

sign a form, secure a date for a judge to execute the form, wait seven days and the adoption would be complete.

Mrs. Hottle met with the Respondent in order to get the Consent for Adoption form to take to the birth mother for her signature. The Respondent typed in the required information in the preprinted form- i.e. the court, the name of the infant to be adopted, the name of the biological mother and her address, and whether the birth mother was represented by counsel- and provided the form to Mrs. Hilliards. The Consent for Adoption form was admitted, without objection, as VSB Exhibit 17. Mrs. Hottle paid the Respondent \$750.00 by check dated October 10, 2017, which was admitted without objection as VSB Exhibit 18.

The child was born on November 2, 2017. The birth mother executed the form on November 3, 2017. The form was returned to the Respondent. The Hilliardses were desperately waiting for the Respondent to advise them of the court hearing date. The Respondent was called numerous times and failed to respond. Finally, Respondent advised the Hilliardses that a court date was set for the adoption. After the date had come and gone, the Hilliardses had not heard from the Respondent. The Hilliardses then called the Page County Juvenile and Domestic Relations District Court and were told that nothing was ever filed in their case and no hearing was ever set. The Hilliardses and Mrs. Hottle then telephoned and sent numerous text messages to the Respondent seeking an explanation and a refund of the \$750.00. Despite numerous voicemail messages left and text messages sent to the Respondent (VSB Exhibit 15), he never responded, nor did he ever refund the \$750.00.

The Hilliardses then sought the legal advice of Nancy Reed, Esquire, who practices in the area of family and domestic relations matters including adoptions. She advised the Hilliardses that the legal advice the Respondent had provided to them was incorrect because neither of them

was related to the birth mother. She explained that it was a much longer, involved, and expensive process that included the necessity and expense of a home study. The Hilliardses then retained the services of Mrs. Reed, who had to start the process from the beginning. The Hilliardses paid attorney's fees to Mrs. Reed in the amount of \$3,000.00 and paid another \$3,000.00 for the home study to be completed. Mrs. Hilliards testified that had they known this process was much more expensive than a \$750.00 legal fee, then they would have spent less money on their wedding in August 2017, and less money on the furniture they purchased for the baby's nursery. She also testified that when they had taken the baby for needed oral surgery, the doctor would not perform the surgery as they could not give consent, as they were not the legal parents of the baby, thus causing delay of the needed surgery.

Mrs. Hilliards' testimony was corroborated via the Affidavit of Nancy Reed, Esquire (VSB Exhibit 16). The final order of adoption was entered by the Page County Circuit Court on April 24, 2019.

The Bar's final witness was David Jackson, a Virginia State Bar investigator. Mr. Jackson testified that he called the Respondent's telephone number on file with the Virginia State Bar several times, but never spoke to Respondent or any staff. On the first set of calls, the voicemail was full and Jackson was unable to leave a message; on the subsequent attempts, the number was out of service. On September 17, 2018, Jackson mailed a letter to Respondent at his address of record attempting to set up an interview. The letter had been admitted as VSB Exhibit 9. The letter was not returned by the U.S. Postal Service, nor did Jackson receive a response from the Respondent. On October 9, 2018, Jackson sent an email to the Respondent requesting a meeting, but received no response. The email had been admitted as VSB Exhibit 10.

After having no success in communicating with the Respondent, Jackson decided to drive to Page County in an attempt to meet with the Respondent. On October 17, 2018, Jackson drove to the Respondent's office of record and knocked on the door but received no response. He left his business card and a note requesting the Respondent to call him. Jackson then drove to the Page County courthouse and was able to locate the Respondent. Jackson introduced himself to the Respondent, gave him a business card and advised that he wanted to discuss this matter. Jackson also handed the Respondent a copy of the Notice of Noncompliance and Request for Interim Suspension Order (VSB Exhibit 5). During this brief encounter, the Respondent verified to Jackson that he was familiar with the Hilliardses' file and had the file, but not with him at the courthouse. The Respondent verified that his address of record and email address on file with the Virginia State Bar were both correct, but that he had changed his telephone number. The Respondent scheduled a meeting with Jackson at the Respondent's office for November 20, 2018.

On November 19, 2018, and in response to voice messages left by Jackson confirming the meeting for November 20, 2018, the Respondent sent Jackson an email advising that his office was without power and heat and needed to reschedule (VSB Exhibit 11). The meeting was rescheduled for November 29, 2018. On November 28, 2018, the Respondent sent another email message to Jackson and advised that his office was still without heat and he needed to reschedule the meeting (VSB Exhibit 12). Jackson immediately responded with an email suggesting the new date of December 4, 2018 (VSB Exhibit 13). Jackson never heard back from the Respondent.

The Bar then made brief closing statements and the Board retired to deliberate, before returning to announce its decision.

RULES VIOLATED

The Chair then announced the Board's decision, by a majority, which was as follows. After considering the evidence and arguments of the Bar, the Board found by clear and convincing evidence that the Respondent violated the following Rules:

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.

Respondent advised that the adoption was a simple process that only required the birth mother to sign a form, have a judge execute the same form, and then wait seven days and the adoption would be complete. As Nancy Reed, Esquire, stated in her affidavit, as the birth mother was not related to Hilliardses, the process was much more burdensome, expensive, and complicated. Respondent demonstrated by his advice and actions that he did not possess the legal knowledge, skill, and experience to provide competent representation in this matter.

RULE 1.3 Diligence

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

Although the adoption form that Respondent provided was of no benefit to the Hilliardses, they followed his advice and immediately secured the birth mother's signature and promptly returned it to Respondent. They were anxiously waiting for the Respondent to set the Court date so the adoption could be completed. Despite numerous telephone calls, Respondent failed to set the Court date. Once he finally advised that the Court date was set and the date had come and gone, the Hilliardses learned that Respondent had never filed the form with the court and never set a court date. Hence, even though he apparently believed that the adoption was as

simple as filing a form with the court and setting a hearing, Respondent failed to act with diligence and promptness in carrying out his perceived duties.

RULE 1.4 Communication

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

As stated above, despite numerous telephone calls to the Respondent inquiring about the Court date, Respondent failed to timely respond to the Hilliardses. After apparently misrepresenting that he had set a court date, once the court date had passed, the Hilliardses persistently emailed and telephoned the Respondent seeking an explanation. Respondent simply never responded to their requests for information as to the status of the adoption, thereby violating Rule 1.4(a).

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive.

The Hilliardses telephoned and emailed the Respondent after they learned that no court date was ever set, as he represented. In these communications, the Hilliardses requested a refund of the \$750.00 paid to Respondent, as the Respondent utterly failed to even attempt to complete the work contemplated. Respondent never refunded the \$750.00 or any part thereof, and violated Rule 1.15(b)(4).

RULE 1.16 Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client,

allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

Once it was apparent that Respondent was no longer taking any actions in the representation of the Hilliardses, as evidenced by his complete failure to respond to them, he took no further steps to protect their interests, such as helping them find a competent attorney or returning their file to them or to their new attorney. As stated above, he failed to return the advance payment of \$750, or any part thereof, that was unearned. By these actions, he violated Rule 1.16(d).

RULE 8.1 Bar Admission and Disciplinary Matters

An application for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Prior to the Subcommittee's certification of this matter to the Board, the Bar had issued a subpoena *duces tecum* seeking the Respondent's trust account records and other records pertaining to his representation of the Complainant. Despite proper service, the Respondent failed to respond to the subpoena and thereby violated Rule 8.1(c).

RULE 8.1 Bar Admission and Disciplinary Matters

An application for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(d) obstruct a lawful investigation by an admission or disciplinary authority.

The Respondent clearly failed to cooperate with the Bar during the investigation of this matter. However, he did more than fail to cooperate. He obstructed the investigation by setting meeting dates with Jackson, the Bar's investigator, and then canceling each meeting the day before, citing problems with his office conditions. His stated reasons were simply unconvincing to the Board and evidenced his intent to obstruct investigator Jackson. The Respondent's conduct violated Rule 8.1(d).

The Board did not find that the Bar proved violations of Rule 1.3(b), Rule 1.15(b) (3), and Rule 8.4(b) by clear and convincing evidence.

SANCTIONS PHASE

After the Board announced the above findings, it received further evidence and arguments of the Bar as to the appropriate disposition. The Complainant testified as to the emotional turmoil and hardships the Respondent's actions and the delay of the adoption caused her and her family. Specifically, she explained that had they known that the costs of the adoption was not just \$750.00, but \$6,000.00, they would have never spent the money they spent on their wedding and new furniture for the nursery and this caused a financial hardship. The Bar then introduced a Certification of the Respondent's disciplinary record which consisted of a private reprimand with terms. Finally, the Bar argued for revocation of the Respondent's license to practice law in the Commonwealth of Virginia. The Board then retired to deliberate.

SANCTION

The Board considered all evidence of aggravation and mitigation. As the Respondent failed to participate in any stage of the process, including this hearing, he presented no mitigation. The Board did consider his minimal prior disciplinary record.

In aggravation, the Board considered the following factors. The Respondent's prior disciplinary matter involved similar conduct- taking a fee, not performing the legal work, and failing to communicate with his client despite repeated telephone calls, text messages, and letters by that complainant. Significantly, after the Respondent had received the reprimand with terms and while he was in the process of complying with those terms, he engaged in the misconduct that is the subject of this complaint. He never refunded the fee that was unearned, he failed to comply with the subpoena *duce tecum* for his trust account records, which were, in fact, nonexistent at the time of the prior complaint, and he obstructed the Bar's investigation, by utterly failing to meet with the Bar's investigator, despite great efforts by the investigator. Without evidence to the contrary and evidenced by the Respondent's complete lack of concern for the complaint and this process, the Board could only conclude that the Respondent has no rational explanation or remorse for his actions.

The Board unanimously found that the Respondent's license to practice law in the Commonwealth of Virginia should be revoked, and the Board returned to the courtroom and the Chair announced the same. Accordingly, it is ORDERED that the license of the Respondent, Jason Allen Spitler, to practice law in the Commonwealth of Virginia is REVOKED, effective May 17, 2019.

It is further ORDERED pursuant to Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, the Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation 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. The 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 the revocation, and make such arrangements as are required herein within 45 days of the effective date of this revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of his revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of his revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. 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, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested and true copy of this Order to Respondent, Jason Allen Spitler, at his address of record with the Virginia State Bar, 170 South Court Street, Luray, Virginia 22836, by certified mail, return receipt requested, and hand deliver a copy of this Order to Paulo E. Franco, Jr., Assistant Bar Counsel, at the Virginia State Bar, 111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

Entered this 6th day of June 2019
VIRGINIA STATE BAR DISCIPLINARY BOARD

JOHN A.C. KEITH, Presiding Chair