VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
NNIKA E. WHITE **VSB Docket No. 15-031-102065**

MEMORANDUM ORDER

This matter was heard on November 20th, 2015, before a panel of the Virginia State Bar Disciplinary Board consisting of Pleasant S. Broadnax, III, Tony H. Pham, Michael Beverly, Stephen A. Wannall, Lay Member, and Richard J. Colten, presiding, Acting Chair (collectively, the "Board"). The Virginia State Bar was represented by Kathryn R. Montgomery, Deputy Bar Counsel (the "Bar"). The Respondent, Nnika E. White (the "Respondent"), appeared in person pro se. The Court Reporter for the proceeding, Tracy J. Stroh, CCR, RPR, CLR, 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 Board to ascertain whether any member had any personal or financial interest or bias that might affect, or could reasonably be perceived to affect, his ability to be impartial in this matter. Each Board panel member responded to this inquiry in the negative. On November 20, 2015, the Board heard this matter on allegations of violations of the following Rules of Professional Conduct: 1.1, 1.7(a)(2), 1.15(a)(1), 1.15(a)(3)(i), 1.15(a)(3)(ii), 1.15(b)(5), 1.15(c)(2), 1.15(c)(2)(i), 1.15(c)(2)(ii), 3.3(a)(1), 3.3(a)(2), 4.1(a), 4.1(b), 8.4(b) and 8.4(c).

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia in or about October 2001. At all times relevant to this matter, her license has been in good standing.

2. Respondent is the owner of and practices law at White & Associates, P.C. Respondent started this practice in or about 2004.

3. Respondent's areas of practice include, but are not limited to bankruptcy, domestic relations, criminal law, and small business law.

Misconduct Related to Respondent's Handling of Client Funds and Management of the Trust Account

4. Since 2004, Respondent has maintained her trust account and operating account at Wells Fargo Bank, which was formerly Wachovia Bank.

5. In or about 2004, Respondent set up her trust account to provide overdraft protection for her operating account. Respondent asserts that she was unaware that she could not use her trust account for overdraft protection for her operating account until the bar's 2015 inquiry to her and that she ceased this practice thereafter.
6. Since 2004, Respondent has deposited earned fees into her trust account and commingled her funds with client funds. Respondent asserts that until the bar's inquiry, she was unaware that it is improper to commingle funds belonging to the attorney with funds belonging to client. Respondent further asserts that she has since ceased this practice.

7. Since 2004, Respondent has failed to maintain client subsidiary ledgers.

8. In 2013, Respondent's trust account provided overdraft protection for deficits in her operating account 64 times, for a total of over $61,500.00.

9. In 2014, Respondent's trust account provided overdraft protection for deficits in her operating account 74 times, for a total of over $85,000.00.

10. From January 2015 to February 2015, Respondent's trust account provided overdraft protection for deficits in her operating account four times for a total of over $2,200.00.

11. Because Respondent has commingled her funds with client funds, and because she has failed to maintain client subsidiary ledgers, Respondent cannot confirm that client funds were not withdrawn from her trust account to provide overdraft protection for deficits in her operating account.

12. In 2013 and 2014, Respondent has, at various times, kept client funds in her operating account and has written checks from her operating account to make payments using client funds, including, but not limited to refunding unearned fees to clients, making payments to the bankruptcy trustee on behalf of clients, and paying support arrearages on behalf of clients.

13. By commingling her funds with those of her clients, Respondent has violated Rule 1.15 (a) (3) (i) and 1.15 (a) (3) (ii) of the Rules of Professional Conduct. [1]

14. By using her trust account for overdraft protection on her operating account since 2004 and by using the overdraft protection 142 times in 2013, 2014, and 2015, Respondent has violated 8.4

[1] Rule 1.15 was rewritten effective June 21, 2011. For commingling occurring prior to June 21, 2011, Respondent's conduct violated Rule 1.15 (a).

(b) and (c) of the Rules of Professional Conduct.[2] The allegation of Rule 1.15 (b) (5) has been dismissed.

15. By failing to maintain client subsidiary ledgers, Respondent has violated Rule 1.15 (c) (2) of the Rules of Professional Conduct.[3]

16. By keeping client funds in her operating account instead of her trust account, Respondent was allegedly charged with violating Rule 1.15 (a) (1) of the Rules of Professional Conduct.[4] That charge has been dismissed.

17. By failing to handle client funds and maintain trust account records competently, Respondent was allegedly charged with violating Rule 1.1 of the Rules of Professional Conduct. That charge has been dismissed.

Misconduct Related to Tamara Crews Bankruptcies

18. Since 2004, Respondent has represented a substantial number of debtors in bankruptcy proceedings.

19. Respondent represented Tamara Sue Crews in a Chapter 13 bankruptcy filed in the United States Bankruptcy Court for the Eastern District of Virginia on February 29, 2012 and dismissed on September 18, 2014 (case no. 00-12-31264).

20. During the time that Respondent represented Ms. Crews in this bankruptcy, Respondent was a general creditor of Ms. Crews, who incurred several thousand dollars in fees for various services Respondent performed since 2005.

21. Respondent was listed as a creditor in the bankruptcy only to the extent of the attorney's fees and costs associated with this bankruptcy. Respondent was paid attorney's fees of $3,359.00 through the plan.

22. According to Respondent's own time records, on July 15, 2014, she and Ms. Crews had a discussion about "payments" Ms. Crews would receive from a "stock disbursement."

23. On August 6, 2014, the trustee filed an action to remedy default by Ms. Crews in performance under the plan.

24. On or about September 10, 2014, Ms. Crews received two checks payable to her totaling $50,074.58 from TIAA-CREF. Ms. Crews advised the bar's investigator that these checks represented an inheritance from a cousin.

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[2] For overdraft protection withdrawals occurring before June 21, 2011, Respondent's conduct violated Rule 1.15 (a) and Rule 8.4 (b) and (c).

[3] For failures to maintain subsidiary ledgers prior to June 21, 2011, Respondent's conduct violated Rule 1.15(e)(1)(iii).

[4] For failures to keep client funds in the trust account prior to June 21, 2011, Respondent violated Rule 1.15 (a).

25. Ms. Crews took the checks to Respondent, and on September 16, 2014, Respondent deposited the money into her trust account. Even though Ms. Crews was out of compliance with the payment plan, at no time did Respondent disclose to the bankruptcy trustee or the bankruptcy court the receipt of these funds. On September 18, 2014, Judge Phillips dismissed Ms. Crews' bankruptcy case for failure to make payments as required by the plan.

26. Respondent has provided the bar with a "disbursement sheet" indicating that Respondent immediately disbursed to herself $33,490.00 of the $50,074.58 as payment for outstanding fees for work Respondent had performed for Ms. Crews dating back to 2005. Respondent then deducted $679.00 for a bankruptcy filing fee and $1,875.00 for "future bankruptcy payments." According to the disbursement sheet, the remaining funds of $14,030.58 remained in the possession of Respondent.

27. On September 29, 2014, Respondent filed a new Chapter 13 petition on behalf of Ms. Crews in the U.S. Bankruptcy Court for the Eastern District of Virginia (case number 14-35243), which remains pending. In none of the filings made for either of Ms. Crews' bankruptcies has Respondent disclosed the following: 1) that Ms. Crews received an inheritance of $50,074.58 on or about September 10, 2014; 2) that Respondent herself was a general creditor of Ms. Crews; 3) that shortly before filing the second petition on September 29, 2014, Respondent had accepted thousands of dollars from Ms. Crews to satisfy outstanding fees; 4) that Respondent continues to hold money for Ms. Crews; or 5) that Respondent has made several payments to Ms. Crews since filing the second bankruptcy.

28. Respondent has made payments to or on behalf of Ms. Crews from Respondent's operating account as follows:

Amount	**Date**	**Payment to and Memo line**
$500.00	9/26/14	Payable to Tamara Crews, "trust"
$600.00	9/26/14	Payable to Patsy Wells, "pd. in full for Tamara Crews"
$1,100.00	10/21/14	Payable to Tamara Crews, "estate"
$350.00	11/3/14	Payable to Tamara Crews, no memo
$1,421.00	11/7/14	Payable to Tamara Crews, "estate for [illegible]"
$440.00	11/18/14	Payable to Tamara Crews, no memo
$250.00	11/24/14	Payable to Tamara Crews, "estate"
$2,500.00	12/18/14	Payable to Tamara Crews, "estate"
$525.00	12/18/14	Payable to Tamara

		Crews, "estate"
$2,044.00	1/8/15	Payable to Tamara Crews, "estate"
$400.00	1/15/15	Payable to Mary E. Johnson, "Crews estate"

29. By representing Ms. Crews in two bankruptcies when Respondent was a general creditor of Ms. Crews, Respondent violated Rules 1.7 (a) (2) and 8.4 (b) and (c) of the Rules of Professional Conduct.

30. By failing to disclose the following information to the bankruptcy trustee and/or the bankruptcy court in one or both of bankruptcy cases: 1) that Ms. Crews received an inheritance of $50,074.58 on or about September 10, 2014; 2) that Respondent herself was a general creditor of Ms. Crews; 3) that shortly before filing the second bankruptcy petition on September 29, 2014, Respondent accepted thousands of dollars from Ms. Crews to satisfy outstanding fees; 4) that Respondent continued to hold money for Ms. Crews; or 5) that Respondent has made several payments to Ms. Crews since filing the second bankruptcy, Respondent violated Rule 3.3 (a) (1) and (2), Rule 4.1 (b), and Rule 8.4 (b) and (c) of the Rules of Professional Conduct. The allegation of a violation of Rule 4.1(a) was dismissed.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the 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.

RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

RULE 1.15 Safekeeping Property[5]

(a) Depositing Funds.

(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts or placed in a safe deposit box or other place of safekeeping as soon as practicable.

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

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(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 withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

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[5] Rule 1.15 was rewritten effective June 21, 2011. Respondent's conduct prior to this date violated Rule 1.15 (a) and Rule 1.15 (e)(1) (iii) as then written, which provided:

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
(1) Funds reasonable sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or the law firm to receive is disputed by the client, in which even the disputed portion shall not be withdrawn until the dispute is finally resolved.

(e)(1)(iii) Record-Keeping Requirements, Required Books and records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15 (a) and(c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(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.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, subject to Rule 1.6;

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law; or

(b) fail to disclose a fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. DISPOSITION

The Board received into evidence Virginia State Bar Exhibits 1-20, Respondent Exhibits 1-22 an endorsed Stipulation of Facts endorsed by both parties and testimony of Mr. Oren M. Powell, Ms. Tamara Crews, Mr. Carl Bates and the Respondent.

After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence any violation of 1.1, 1.15(a)(1), 1.15(b)(5), and 4.1(a).

2. Upon completion of argument, the hearing was recessed to give the Board the opportunity to further review the record and to deliberate. Upon reconvening, the Chair announced that the Bar had proven by clear and convincing evidence violations of the following Rules of Professional Conduct: 1.7(a)(2), 1.15(a)(3)(i), 1.15(a)(3)(ii), 1.15(c)(2), 1.15(c)(2)(i), 1.15(c)(2)(ii), 3.3(a)(1), 3.3(a)(2), 4.1(b), 8.4(b) and 8.4(c).

After the findings of violations, the Board received into evidence a certified copy of the Respondent's prior disciplinary record. In consideration of the Respondent's prior record and arguments, the Board determined as the sanction, the Respondent's license to practice law in the Commonwealth of Virginia is suspended for a term of three (3) years, effective the day of this hearing. At the conclusion of the proceedings on November 20, 2015, the Board entered a Summary Order imposing the suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a term of three (3) years effective November 20, 2105.

It is further ORDERED that, as directed in the Board's November 20, 2015, 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. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of her license to practice law in the

Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The 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 the Respondent is not handling any client matters on the effective date of the suspension, she 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 order to respondent at her address of record with the Virginia State Bar, being Nnika Evangeline White, Suite 800, 9101 Midlothian Turnpike, Richmond, VA 23235,

by certified mail, return receipt requested, and by hand delivery to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

ENTERED this 9th of December 2015.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Richard J. Colten, Acting Chair