

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
KATINA C. WHITFIELD

VSB DOCKET NO.
19-031-112732

MEMORANDUM ORDER OF REVOCATION

THIS MATTER came on to be heard on November 15, 2019, before a panel of the Disciplinary Board consisting of Yvonne S. Gibney, Second Vice-Chair, Stephanie G. Cox, Donita M. King, Michael J. Sobey, and Tambera D. Stephenson, lay member. The Virginia State Bar (the “Bar” or “VSB”) was represented by Renu M. Brennan, Bar Counsel. Respondent Katina C. Whitfield (the “Respondent”) appeared in person and represented herself. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias that would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Jennifer L. Hairfield, court reporter, P.O. Box 9349, Richmond, VA 23227, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

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, ¶13-18 of the Rules of Court.

The matter came before the Board on the District Committee Determination for Certification by the Third District Committee, Section I, pursuant to Part Six, § IV, ¶13-18 of the Rules of the Supreme Court of Virginia (“Rules”) involving misconduct charges against the Respondent. Prior to the proceedings and at the final Pretrial Conference, VSB Exhibits 1-29 were admitted into evidence by the Chair without objection from the Respondent. During the hearing Respondent’s Exhibit 1, a more legible copy of VSB Exhibit 11, was admitted without objection.

The Board heard testimony during the misconduct phase from the following witnesses, who were sworn under oath: Tara Lynn Dickerson and Katina C. Whitfield. At the conclusion of

the Bar's case, the Respondent moved to strike the evidence as to the alleged violations of Rule 1.5, 1.16(d) and (e), and Rule 8.4. The Board considered the arguments of bar counsel and Respondent and, after deliberation in private, sustained the motion to strike as to the alleged violation of Rule 1.16(e). The Board overruled the motion as to the remaining Rule violations. After the Respondent presented her case, the Bar declined to offer any rebuttal evidence. The Board considered the exhibits introduced by the parties, heard arguments of bar counsel and Respondent, and met in private to consider its decision.

I. FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia since October 1998. Respondent received proper notice of this proceeding as required by Part Six, §IV, ¶¶13-12 and 13-18.A. of the Rules.
2. On May 8, 2018, the Complainant, Tara Lynn Dickerson, entered into a representation agreement which provided that Respondent would represent Complainant in custody and child support matters pending in Henrico County Juvenile and Domestic Relations District Court at a rate of \$300 per hour. The agreement further required an advance legal fee of \$3500, which Complainant paid in full on May 8, 2018.
3. Respondent cashed the check on May 8, 2018 and retained the cash in a pencil pouch in her desk drawer. Respondent did not deposit the funds in her firm trust account that day or at any time thereafter.
4. Respondent's representation of Complainant lasted two weeks during which time the Respondent and the Complainant met once and exchanged emails. On May 22, 2018, Complainant terminated Respondent as her legal counsel and requested Respondent to provide an accounting of her work and to return any unearned fees, as well as her file.
5. Respondent did not return any documents from the client file or any portion of the \$3500 fee to Complainant.

6. On June 1, 2018, Complainant filed a bar complaint. In response to this complaint, Respondent provided an accounting, dated May 28, 2018, which Complainant denies receiving from Respondent. The accounting, an itemized bill, reflects that Respondent devoted more than 9 hours to the representation and earned \$2,874.00 from the \$3,500.00 advance legal fee. It also reflects that Complainant was owed a refund of \$626.00. Included on the itemized bill is a statement that required Complainant to endorse the accounting in order to be reimbursed for the unearned fee of \$626.00. (VSB Exhibit 12).
7. Sometime after preparing the accounting on May 28, 2018, Respondent took and spent the amount she believed she had earned from the advance legal fee.
8. On June 1, 2018, the Complainant filed a warrant in debt against Respondent in Henrico County General District Court seeking the return of the \$3,500.00 advance fee.
9. In September 2018, the Henrico County General District Court awarded judgment by default in favor of the Complainant in the amount of \$3,000.00. Respondent testified that she arrived late to court that day due to an allergy attack, but that she had \$700.00 with her to attempt to pay the balance she believed she owed to Complainant. In her interview with the Bar's investigator Respondent stated that she ended up keeping the money as her attorney fee for having to defend herself against a frivolous suit. (VSB Exhibit 29).
10. As of the date of this hearing, Respondent has paid nothing towards the judgment against her, nor has she reimbursed Complainant the fee Respondent admits she did not earn.

II. NATURE OF MISCONDUCT

The Board found the following conduct by Respondent to constitute misconduct in violation of the following provisions of the Rules of Professional Conduct:

Rule 1.15 – Safekeeping Property

(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; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.

(b) Specific Duties. A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(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; and

(5) not disburse fund or use the property of a client or of a third party with a valid lien or assignment without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

Respondent violated this Rule when she did not deposit any portion of the \$3500 advance fee into her trust account. She further violated the Rule by not keeping records of the funds she received from Complainant. Upon termination of the representation, Respondent did not return any funds to the Complainant as required by the Rule. Despite determining that Complainant was due a \$626 refund of the unearned fee, Respondent has never paid even this amount to the Complainant. Respondent then converted those funds to her own use by deciding she was entitled to use those funds as her attorney fee for defending herself in the General District Court action Complainant brought against Respondent to recover the unearned fee. This action violated Rule 1.15(b)(5).

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).

Respondent violated this Rule when she failed to return any portion of the advance fee to the Complainant despite her own accounting showing that the Complainant was owed \$626. Respondent further violated the Rule by failing to return the client file to the Complainant, which Respondent claimed contained legal research and a draft of a letter to the opposing party regarding custody and visitation. Respondent violated the Rule further by conditioning the return of the \$626 on the Complainant accepting and signing her accounting.

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.

Respondent violated this Rule when she converted Complainant's money to her own use. After acknowledging that the Complainant was owed a refund of portion of the advance fee, the Respondent did not return the money and later admitted that she kept the funds as her "attorney fee" for having to defend herself against Complainant's lawsuit to recover the unearned fee.

The Board found that the Bar did not meet its burden of proving a violation of Rule 1.5(a) by clear and convincing evidence and that charge is dismissed.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
- (2) the likelihood, if apparent to the client, that the acceptance of the particular**

- employment will preclude other employment by the lawyer;**
- (3) the fee customarily charged in the locality for similar legal services;**
 - (4) the amount involved and the results obtained;**
 - (5) the time limitations imposed by the client or by the circumstances;**
 - (6) the nature and length of the professional relationship with the client;**
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and**
 - (8) whether the fee is fixed or contingent.**

III. IMPOSITION OF SANCTION

Thereafter, the Board received further evidence and argument in aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record, which reflected that Respondent had been the subject of four bar complaints since 2007 for which she received private or public discipline. (VSB Exhibit 30). Of particular concern was a disciplinary matter from 2011 in which Respondent was found to have violated Rule 1.5 Fees, Rule 1.15 Safekeeping Property, and Rule 8.4 Misconduct with respect to her representation of seven different clients. Although the sanction she received for these violations was a Public Reprimand, it included terms that required her to educate herself on her professional obligations with respect to the handling of client's money and other property, including reading Legal Ethics Opinion 1606.

In her testimony during the sanction phase Respondent offered her explanation for her misconduct – that it was simply “a lapse of judgment and then life just intervened.” The Board found this explanation reflected a total lack of recognition or appreciation of the effect of her conduct on her former client, the fact that she took her former client's money and has never made any effort to repay it, and the fact that she alone is responsible for her misconduct.

In its consideration of an appropriate sanction the Board found the following aggravating factors: Respondent's prior discipline; the dishonest motive exhibited by Respondent's conduct; Respondent's refusal to acknowledge her wrongful conduct; the vulnerability of the victim of her misconduct, the Complainant, who has suffered harm from Respondent's misconduct; and Respondent's indifference to making restitution.

Upon receipt of all evidence presented in mitigation or aggravation of the findings of misconduct, the Board heard argument and then retired to deliberate what sanction should be imposed. Following its deliberation, the Board reconvened in open session and announced that it had unanimously found that Respondent's license to practice law in the Commonwealth of Virginia should be revoked. Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is hereby REVOKED effective November 15, 2019.

It is further ORDERED that, as directed in the Board's November 15, 2019, 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 revocation 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 revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the 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 revocation, November 15, 2019, 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 revocation. All issues concerning the adequacy of the notice and arrangements required by ¶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 6933 Commons Plaza, Ste. 210, Chesterfield, VA 23832, by certified mail, return receipt requested, and by hand delivery to Renu M. Brennan, Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 25th day of November, 2019.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____
Yvonne S. Gibney, Second Vice-Chair

Dissent:

Panel members Tambera D. Stephenson and Yvonne S. Gibney dissent from the Board's dismissal of the charge alleging a violation of Rule 1.5(a) Fees for the following reasons:

The evidence relating to the \$2,874.00 fee Respondent claims to have earned does not support its reasonableness under the factors listed in Rule 1.5(a) for determining the reasonableness of a fee.

Respondent's representation of Complainant lasted 13 days. At no time during the brief representation, or after its conclusion, did Respondent provide Complainant with any of her legal research for which she billed 3 hours. Respondent admitted, as well, that she did not provide her client with the letter she drafted for which she billed 30 minutes. Respondent billed her client for two trips to Prince George courthouse and testified that she discovered information about the child support obligation of Complainant's child's father, but did not share the information with Complainant. Yet she billed her more than 3 hours for these trips.

In short, Respondent billed \$2,874.00 for which her client received no more than the advice Respondent dispensed during their initial meeting. Given "the amount involved and the results obtained" (Rule 1.5(a)(4)), Respondent's fee was, therefore, unreasonable.