

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR FAIRFAX COUNTY

VIRGINIA STATE BAR EX REL
FIFTH DISTRICT, SECTION II COMMITTEE
VSB Docket No. 22-052-125181

v.

Case No. 2023-02858

JOSEPH ANTHONY CERRONI, JR.

FINAL JUDGMENT MEMORANDUM ORDER

THIS MATTER came to be heard on May 1, 2023 by a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Patricia Kelly, Judge of the Fifteenth Judicial Circuit; the Honorable M. Duncan Minton, Jr., Judge of the Twelfth Judicial Circuit; and the Honorable Petula C. Metzler, Judge of the Thirty-First Judicial Circuit and designated Chief Judge ("Chief Judge") of the Three-Judge Circuit Court (collectively, "the Court").

Senior Assistant Bar Counsel Elizabeth K. Shoenfeld represented the Virginia State Bar ("VSB"). Respondent Joseph Cerroni, having received proper notice of the proceeding, appeared in person and was represented by Michael Weatherbee and himself.

The Chief Judge swore the court reporter. Each member of the Court verified that he or she had no personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked or otherwise

sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a Subcommittee of the Fifth District Committee, Section II, of the VSB.

Misconduct Phase

Pursuant to the Pre-Hearing Order, the Court admitted VSB Exhibits 1-18, 20-22, 24-29, 32-37, 39-41, and 43-56. The Court also admitted Respondent's Exhibits 1-11.

The parties argued the VSB's Motion to Quash the witness subpoena to Robert M. Worster, III. After considering the arguments of the parties, the court granted the Motion to Quash and Mr. Worster was excused.

The parties also discussed the VSB's Motion to Amend the Subcommittee Determination (Certification) to dismiss the allegation that Respondent violated Virginia Rule of Professional Conduct 3.4(d). Respondent did not object to the Motion to Amend and the Court granted it.

The parties submitted and the Court received the following stipulations:

1. Respondent was admitted to the Virginia State Bar ("VSB") in 1980. At all relevant times, Respondent was a member of the VSB.
2. This matter arises from Respondent and D.C. attorney Clifford Cohen's representation of Jacqueline Douglas, the mother and guardian of S.D., a minor. S.D.'s father, Tamiru Woldesemaet Adisu, died on February 6, 2019 in Fairfax County, Virginia. Douglas sought to establish Adisu's paternity of S.D. and to ensure that S.D. received her rightful share of Adisu's estate.
3. On or about September 13, 2019, Douglas signed an engagement agreement with Cohen, an attorney licensed in the District of Columbia but not in Virginia. VSB Exhibit 8 is a complete and accurate copy of this agreement.
4. Cohen deposited Douglas's \$3,000 advanced legal fee into his trust account.
5. Cohen wrote a letter to Lydia Adisu, Adisu's daughter and the administrator of his estate, requesting that S.D. be added to the list of Adisu's heirs. Lydia Adisu refused.
6. Cohen requested that Respondent act as Virginia counsel to pursue establishment of paternity and recovery of estate assets and Respondent agreed to do so.

7. On October 25, 2019, Respondent filed a Petition to Amend List of Heirs on behalf of Douglas, as next friend of S.D. Respondent said that at the time, he thought he could establish paternity by submitting the DNA test Douglas had obtained along with the affidavit.
8. On or about May 13, 2020, Respondent emailed Douglas a Representation Agreement for a contingency fee. VSB Exhibit 14 is a complete and accurate copy of the Representation Agreement.
9. On May 28, 2020, Douglas replied to Respondent that she wanted to move forward with the case but "ha[s] an issue with the contingency fee as it is on the higher end of that which is typically stipulated by the attorney." She requested that the fee be reduced from 40% to 33.3%. Respondent responded the same day:

Sorry I am not going to reduce the fee. The case requires a lot of work (some which has already been done). It is not certain how long it will take to liquidate the estate. Cliff (Cohen) and I may be working for two years without pay and it is not certain how much we could obtain. At this point, you can seek other counsel or I could nonsuit (voluntary dismissal) the case. You could then refile the case. Please advise.

Douglas signed and returned the fee agreement.

10. Respondent through independent investigation discovered that Adisu had life insurance. Respondent advised counsel for Adisu's daughter that there was life insurance and Douglas was entitled to a portion. Counsel for Adisu's daughter advised he would look into the matter. He later reported there was life insurance proceeds payable to Adisu's children. Adisu's counsel objected to paying over the proceeds to Douglas indicating she was not suitable to handle the money. He would only pay over the proceeds if Douglas was qualified as guardian and not before that.
11. On August 24, 2021, Douglas qualified as Guardian Over Property for S.D. and posted a \$626,000 bond.
12. On or about September 1, 2021, \$254,209.67, which was half of the life insurance proceeds, were deposited into Mr. Cohen's D.C. escrow account.
13. On November 12, 2021, Respondent filed an Attorney Fee Application on behalf of himself and Cohen in which they sought authorization to keep 40% of the life insurance proceeds as their interim fee.
14. The Court referred the application to Commissioner of Accounts Anne Heishman. VSB Exhibit 19 is a complete and accurate copy of Commissioner Heishman's report. Respondent reserves his previously asserted objection to the admissibility of Commissioner Heishman's report.
15. On February 11, 2022, the Court held a hearing regarding the reasonableness of the asserted fee. VSB Ex. 30 is a complete and accurate copy of the hearing transcript. VSB Ex. 31 is

a complete and accurate copy of the order entered, including Respondent's objections thereto.

16. On May 2, 2022, Cohen disbursed \$155,252.80 of the life insurance proceeds to Douglas.
17. Respondent appealed the Court's order to the Court of Appeals. A complete and accurate copy of Respondent's appellate filings is included in VSB Ex. 41.
18. On January 10, 2023, the Court of Appeals issued an opinion in which it held that the circuit court "lacked subject matter jurisdiction to consider appellant's fee application under the specific circumstances presented here. Therefore, the February 2022 order is void ab initio. Accordingly, this Court reverses and dismisses this case." The three-judge Court should take judicial notice of the existence of this opinion.

Both parties made opening statements. The Court received the testimony of Jacqueline Douglas and Commissioner of Accounts Anne Heishman for the VSB. During Commissioner Heishman's testimony, VSB Exhibits 19, 30, 31, and 42 were admitted over Respondent's objection. The VSB then rested.

Respondent moved to strike the VSB's evidence. After considering the evidence and the argument of the parties, the Court denied the motion.

The Court received the testimony of Respondent. Respondent then rested.

Both parties made closing arguments.

Upon due deliberation and consideration of the exhibits, witness testimony, and argument for the parties, the Court found that the alleged violations of Virginia Rules of Professional Conduct 1.5(b), 1.15(b)(4), and 8.4(b) were not proven by clear and convincing evidence.

The Court found that the alleged violations of Virginia Rule of Professional Conduct 1.5(e) was proven by clear and convincing evidence, as follows:

Rule 1.5(e): Fees

(e) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the client is advised of and consents to the participation of all the lawyers involved;

(2) the terms of the division of the fee are disclosed to the client and the client consents thereto;

(3) the total fee is reasonable; and

(4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.

To support this finding, the Court found that nothing in the contingency agreement between Respondent, Douglas, and Mr. Cohen disclosed how the fee would be split between Respondent and Mr. Cohen. The terms of the division of the contingency fee were never disclosed to Ms. Douglas and she never consented to the division.

Sanctions Phase

The Court then proceeded to the sanctions phase of the proceeding.

The VSB introduced a certification of Respondent's disciplinary record. The Court admitted the certification without objection as VSB Exhibit 57.

Respondent did not present any additional evidence.

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

Determination

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of a public reprimand with terms.

The terms are as follows:

1. For a period of five years following the entry of the Summary Order in this matter, Respondent will not engage in any conduct that violates the following provisions of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which

Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.

2. On or before May 1, 2024, Respondent will complete 10 hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent will certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Bar Counsel, promptly following his attendance of each such CLE program(s).

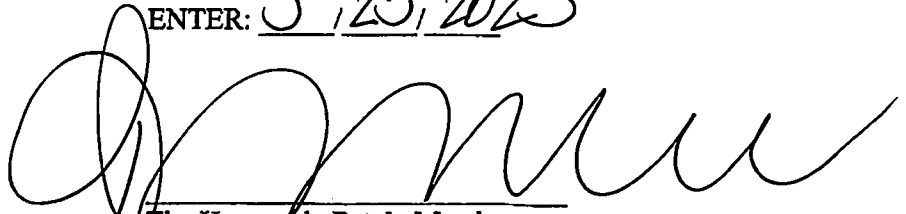
If Respondent violates any of the above terms, an alternative sanction of a 30-day suspension shall be imposed pursuant to Part Six, Section IV, Paragraph 13-18.O of the Rules of Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Paragraph 13-9.E of the Rules of Supreme Court of Virginia.

Accordingly, it is hereby ORDERED that Respondent is publicly reprimanded, effective May 1, 2023.

It is further ORDERED that the Clerk shall send a copy teste of this Memorandum Order to Respondent, Joseph Cerroni, by certified mail, return receipt requested, at 5033-B Backlick Road, Annandale, VA 22003-6046; by first class mail to Michael P. Weatherbee, Respondent's Co-Counsel, at Law Office of Michael P. Weatherbee, 6670 Avignon Blvd, Falls Church, VA 22043; to the Honorable Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219; and to Elizabeth Shoenfeld, 1111 E. Main Street, Suite 700, Richmond, Virginia 23219.

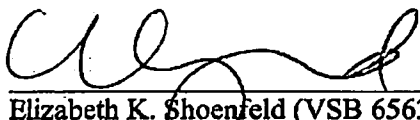
The hearing was recorded by Rudiger & Green, 8441 Rixlew Lane, Suite 330, Manassas,
Virginia 20109.

ENTER: 5, 23, 2023



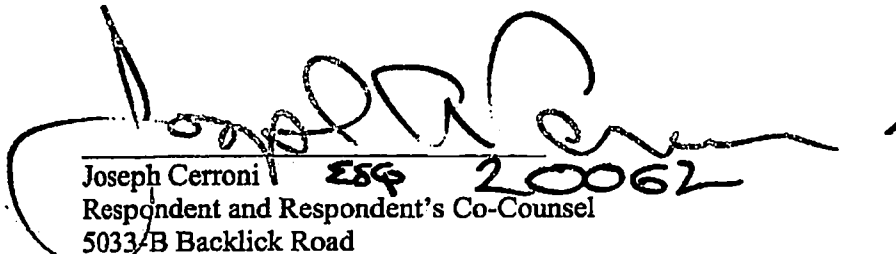
The Honorable Petula Metzler
Chief Judge Designate

Seen and objected to as to the dismissal of Rule 1.5(b), 1.15(b)(4)
and 8.4(b) violations, and
as to the insufficient
sanction.



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Seen and OBJECTED TO (objection attached)



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Michael P. Weatherbee
Respondent's Co-Counsel

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Objection to Order

Violation of Rule 1.5(e) was not proved by clear and convincing evidence.

- 1) Douglas testified she did not recall whether she was advised fee would be split or shared.**
- 2) Respondent testified he advised Douglas the fee would be split or shared.**
- 3) The contingency fee agreement listed both Respondent and Cohen as "attorney" providing the legal services.**
- 4) Douglas signed the fee agreement.**
- 5) The inference from the terms of the fee agreement and the testimony is Douglas was aware the fee would be shared between Respondent and Cohen.**
- 6) The testimony established Douglas was advised Respondent and Cohen were providing legal services and she consented to the participation.**
- 7) The testimony established Douglas was advised the fee would be split or shared prior to her execution of the fee agreement.**