

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF NORFOLK

IN THE MATTER OF  
MARY G. COMMANDER

CASE NO. CL20-5291  
VSB DOCKET NO. 18-022-110553

AGREED DISPOSITION MEMORANDUM ORDER  
FOR A PUBLIC REPRIMAND

This matter came to be heard on Monday, October 05, 2020, before a Circuit Court Three-Judge panel, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Kimberly A. Irving, Judge of the Thirty-first Judicial Circuit, Designated Chief Judge, the Honorable John O. Harris, Judge of the Fifteenth Judicial Circuit, and the Honorable Victoria A. B. Willis, Judge of the Fifteenth Judicial Circuit. Mary G. Commander was present and was represented by counsel, Mary T. Morgan. The Virginia State Bar appeared through its Assistant Bar Counsel, Christine Corey. The Chief Judge polled the members of the panel as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter Lisa Wright, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

**WHEREFORE**, upon consideration of the Agreed Disposition, the Subcommittee Determination (Certification), Respondent's Answer and Demand and the Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Circuit Court accepts the Agreed Disposition and the Respondent shall receive a Public Reprimand. The Agreed Disposition is attached to and incorporated in this Memorandum Order.


It is further **ORDERED** that the sanction is effective October 5, 2020.

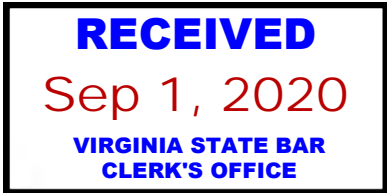
The Clerk of the Disciplinary System shall assess costs pursuant to Paragraph 13-9.E of the Rules.

A copy teste of this Order shall be mailed, to the Respondent, Mary G. Commander, at her last address of record with the Virginia State Bar, Mary G. Commander, Esq., Commander Law, 5442 Tidewater Drive, Norfolk, Virginia 23509, with an attested copy to: Mary Teresa Morgan, Esq., Golightly Mulligan & Morgan, PLC, 1244 Perimeter Parkway, Suite 441, Virginia Beach, Virginia 23454, and Christine Corey, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026, and to the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 5th DAY OF OCTOBER, 2020

CIRCUIT COURT FOR THE CITY OF NORFOLK

  
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Kimberly A. Irving, Chief Judge  
Three-Judge Circuit Court



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL  
SECOND DISTRICT, SECTION II SUBCOMMITTEE

v.

CASE No.: CL20-5291

MARY G. COMMANDER

AGREED DISPOSITION  
(PUBLIC REPRIMAND)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by Christine Corey, Assistant Bar Counsel and Mary G. Commander, Respondent, and Mary Teresa Morgan, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all times relevant hereto, Respondent was licensed to practice law in the Commonwealth of Virginia.
2. Respondent was retained to represent David Bailey (Father), and later Mary Chiles (Paternal Grandmother), in a child custody case that had been filed by Amy Bailey (Mother) in the Chesapeake Juvenile and Domestic Relations District Court.
3. The Bar Complaint was filed by Ms. Bailey on September 23, 2017. It was sent to Respondent on June 26, 2018, after the conclusion of litigation in Chesapeake Juvenile and Domestic Relations District Court. Respondent sent her response on July 2, 2018.
4. The bar complaint alleged that in June 2016, Ms. Bailey was served with a custody and visitation petition filed by Respondent on behalf of Ms. Chiles, and within days thereafter, Ms. Bailey also alleged that she was "sent an email that the paternal grandmother would remove her petition for custody if I accepted their terms in witness tampering..." Ms. Bailey included an allegation that Respondent offered a bribe in the sum of \$50,000. Prior to June 2016, Ms. Bailey had filed a custody petition in the Chesapeake Juvenile and Domestic Relations District Court seeking sole custody of the Parties' minor son. Ms. Chiles filed her petition in response.

5. In March 2016, Ms. Bailey hired Erin Bedois to represent her to communicate with Respondent regarding resolving a water leak at the marital residence, as well as to discuss resolution of other issues between the parties.
6. At the time Ms. Bailey hired Ms. Bedois, Mr. Bailey had pending legal issues. These issues included the following: (1) In June 2015, Mr. Bailey had been served with a protective order preventing him from contacting Ms. Bailey after an incident in which Mr. Bailey allegedly physically and verbally assaulted Ms. Bailey; (2) in April 2016, Mr. Bailey was charged in North Carolina with two felony counts of secretly using or installing a video recording device to record sexual activity without the other person's knowledge or consent. In April 2016, Mr. Bailey was charged with two violations of the protective order, although both charges were ultimately dismissed. In terms of the felony charges, Mr. Bailey ultimately pled guilty to a misdemeanor.
7. In May 2016, Respondent and Ms. Bedois discussed Ms. Bailey's desire to return to live in Texas and her need for financial assistance in doing so. Respondent advised that she would discuss this with Ms. Chiles. However, Respondent also told Ms. Bedois that she planned to file custody and visitation petitions on behalf of Ms. Chiles. In late May 2016, Ms. Chiles signed a petition for visitation prepared by Respondent, and it was filed on June 3, 2016 in Chesapeake Juvenile and Domestic Relations District Court.
8. On June 8, 2016, at 7:56 a.m., five days after Respondent filed the petition, Ms. Bedois summarized a conversation she had with Respondent in an email to Ms. Bailey:

“I've spoken with Mary Commander who has offered the following: they want EVERYTHING to go away, the PO violations, the criminal charges that you have any control over, etc. They are willing to open college accounts for both children in the amount of \$20,000 each and will continue to contribute to them. They are willing to give you \$10,000 to assist with moving expenses and to help you get back on your feet. He's willing to sign over his GI bill to you so that you can finish your master's degree and they will want some sort of visitation (she did not say what that would look like). They would be agreeable to you moving to Texas now with their petitions being withdrawn.”
9. Ms. Bailey responded to Ms. Bedois at 8:03 a.m. on June 8, 2016, and stated she wanted full custody.
10. On June 9, 2016, Ms. Bedois advised Respondent that Ms. Bailey “seemed agreeable to your offer, but we had some questions about what type of visitation was being requested and what you meant by everything going away. . . She doesn't have the ability to withdraw some of the matters that are pending.”

11. Approximately two weeks later, on June 23, 2016, at 9:17 a.m., Respondent wrote an email to Ms. Bedois and stated, "Any updates? Developments? Continuance Dates?"
12. That same day, at 12:23 p.m., Ms. Bedois communicated with Ms. Bailey, sending an email which outlined the content of the previous general discussions. In response to that email, at 2:08 p.m., Ms. Bailey asked Ms. Bedois: "Please provide the details of their request. I know you said "Everything" but I need to know specifically what they want laid out in writing in regards to me having full custody."
13. On June 23, 2016, at 3:25 p.m., Ms. Bedois wrote an email to Respondent, stating in part,

"She's requested what you all mean when you say 'everything goes away' with regards to your offer. When we spoke you indicated that the offer was college accounts for the children, \$10,000 for moving expenses, she'd have custody and they would like some sort of visitation and everything would go away. Please let me know what that means and what type of visitation they are requesting. Once I have an idea to tell her about this, I will get back with you with her response."
14. Respondent wrote back to Ms. Bedois by email on June 23, 2016, at 4:19 p.m. and stated,

"Thanks for the response. I would expect all Show Causes, Protective Orders, anticipated child abuse or neglect complaints or other contemplated civilian or military criminal/administrative actions to be dismissed, withdrawn, or not pursued. I would expect your client to advise the prosecutor in North Carolina that she does not wish to proceed and that she will not be available to testify. Since she is in VA, she is not subject to subpoena in NC. We can discuss visitation. Is there anything that she would propose?"
15. Ms. Bedois forwarded Respondent's email to Ms. Bailey on June 23, 2016, at 4:30 p.m.
16. The following morning June 24, 2016, at 9:15 a.m. Respondent sent an email to Ms. Bedois stating:

"Erin:  
As a follow up to my email yesterday which was written on the fly and was incomplete, I want to be clear that the things I listed were a list of things that were happening or could happen. In order to put an end to ALL of the chaos, I would expect that the parties and the child would benefit from having them come to an end. Obviously, your client is free to proceed as she sees fit, however. This is not

some type of bribe to interfere with any legitimate legal actions. Instead, it is a heartfelt offer by a grandmother to help the family recover and thrive.

I hope that your client takes the offer in the manner in which it is intended.

You advised me previously that your client had an interest in something of this nature which is why it is being pursued further. As you will recall, I went to my client after our conversation in order to find out what she could contribute monetarily to help your client and all of the kids.

Quite frankly, I feel a bit uneasy about pursuing this further, as I am not involved in or knowledgeable about the “criminal” aspects of the case and do not want our discussions to interfere with those. Your client will need to seek guidance from you or the others with whom she has been dealing.”

Less than 20 minutes later, at 9:34 a.m., on June 24, 2016, Respondent wrote to Ms. Bedois and withdrew the offer, stating:

“Erin,

As a follow up to my follow up (just getting my thoughts together slowly), I want to retract the previous discussion of college funds, moving costs, etc. I plan to advise my client that it just looks too much like giving your client money to keep her from testifying, etc. That obviously is not the intent, but I just am not comfortable with the appearance it creates. I trust that you understand.

Thank you.”

17. On June 24, 2016 at 9:45 a.m., Ms. Bedois responded:

“I understand your position. There are some blurred lines when we start mixing money when there are criminal matters pending and even trickier getting a written order in place. My hope is that we can put some of those monetary offers in place with regards to the support petitions and not pursue the protective order violations. If she relocates it will make it difficult for her to get back to testify in many of these matters. I believe that she wants to move on as well and I am hopeful that we can reach a resolution that allows all parties to do the same.”

18. Ms. Bailey alleges that she did not receive notification from Ms. Bedois that the offer was withdrawn. Ms. Bedois sent Ms. Commander an email stating she was withdrawing on July 5 and an Order was entered on July 21, 2016 allowing Ms. Bedois to withdraw.

19. Respondent stipulates that there was sufficient evidence to find a violation of Rule 3.4(c).
20. In October 2017, Ms. Bailey's attorney at the time, Randolph Raines, filed for divorce on her behalf in Chesapeake Circuit Court. This was done by agreement of counsel in order to have an Order entered with regard to the Parties' property. There were no hearings or contested matters during the time of Respondent's representation of Mr. Bailey in the Chesapeake Circuit Court. Respondent was also representing Ms. Chiles in regard to the petition for visitation pending in Chesapeake Juvenile and Domestic Relations Court.
21. A final custody and visitation consent order (the "Consent Order") was entered by the Chesapeake Juvenile and Domestic Relations Court on March 9, 2018. As such, Respondent's representation of Ms. Chiles was concluded. The order provided for joint legal custody of the minor child with primary physical custody to Ms. Bailey and visitation to Mr. Bailey.
22. On June 21, 2018, A. Bartlett Keil filed a letter of representation on behalf of Mr. Bailey in the divorce case pending in Chesapeake Circuit Court and Respondent withdrew from the representation of Mr. Bailey in the divorce case.
23. Despite the Consent Order entered on March 9, 2018, the parties sought to reopen the custody and visitation matter as part of the divorce case pending in Chesapeake Circuit Court.
24. On August 16, 2018, Mr. Bailey's counsel filed a motion to appoint a guardian *ad litem* for the parties' minor child. On August 29, 2018, the Court appointed a guardian *ad litem*. Later, Ms. Chiles testified in the Chesapeake Circuit Court that the Guardian *ad Litem* had contacted her and requested that she intervene in the case to be a temporary caretaker of the child. Ms. Chiles hired Respondent to represent her and an Agreed Order was entered on June 20, 2019 permitting Ms. Chiles to intervene. Ms. Chiles was not interviewed as a part of the bar investigation.
25. On February 13, 2019, the parties and the guardian *ad litem* submitted an agreed order for *pendente lite* custody and visitation. The Order granted joint legal custody to the mother and father with Ms. Bailey having primary physical custody and father having visitation.
26. Upon entering the case as counsel for Ms. Chiles, Respondent attended depositions that had been previously scheduled. During the depositions, the Respondent asked the witnesses questions regarding the pending bar complaint. Respondent also issued subpoenas, filed motions, and conducted other discovery that appeared to relate to the pending bar complaint and investigation. The Respondent has indicated that the "discovery" was designed to prove that Ms. Bailey was not a suitable custodian for the Parties' minor child.

27. The Chesapeake Circuit Court was advised regarding the complaints, including the bar complaints that Ms. Bailey had filed against Respondent, and others.
28. In late June 2019, Respondent asked that the VSB send additional documents to her that were submitted to the bar by Ms. Bailey in relation to the bar complaint. Respondent asked Assistant Bar Counsel to participate in a conference call, and by doing so, purportedly attempted to involve the bar in the divorce litigation.
29. The VSB advised Respondent on multiple occasions that the bar investigation was confidential. In a May 17, 2019 email from the VSB, Respondent was advised: "The confidentiality at this stage is to protect Respondents from having these made public until such time as the rules provide that they become public (if that occurs)."
30. Respondent filed a pleading with the court in which she advised the Chesapeake Circuit Court that the documents that she requested that the VSB provide to Respondent were provided to her by the VSB with the full knowledge that the documents would be used in the divorce litigation. In fact, prior to providing a document to Respondent that Respondent had requested, the VSB had asked Respondent if Respondent intended to file the document with the court, but Respondent did not provide a response
31. Despite the fact that an Agreed Order had been entered on June 20, 2019 permitting Ms. Chiles to intervene in the proceedings in the Chesapeake Circuit Court, Counsel for Ms. Bailey later filed an objection to her intervention in the divorce matter, arguing that Respondent was using the divorce case to try to impeach witnesses to Ms. Bailey's bar complaint. After Respondent attempted to argue that Ms. Bailey was using the bar complaint as a litigation tactic to prevent Respondent from representing Mr. Bailey's mother in seeking custody of the Bailey's minor child, Ms. Bailey's counsel disclosed to the circuit court the aforementioned "offer" that was part of the bar complaint filed by Ms. Bailey.
32. On December 18, 2019, on advice of counsel, Respondent advised the Chesapeake Circuit Court that because of the pending bar investigation, she felt that she could not effectively represent Ms. Chiles any longer. The Court agreed with Respondent that it might not be possible to adequately represent Ms. Chiles when she was also concerned with the pending investigation and how it might be perceived by the bar, and that she should be permitted to withdraw and the Court entered an order disqualifying Respondent from representing any party or intervenor in the matter.
33. Thereafter, Ms. Chiles moved to withdraw as an intervenor. The circuit court entered an order on January 15, 2020, allowing her to withdraw as intervenor.
34. During the course of the investigation, the VSB sought to interview Respondent and requested dates on at least two occasions over the course of a few months. Respondent did not provide dates, but instead, requested to know what she was being investigated for and wanted to be provided with a brief summary. As of July 2019,

Respondent had received the bar complaint and Ms. Bailey's rebuttal to the bar complaint, which included approximately 340 pages of material. Once Respondent hired counsel, she agreed to provide dates for an interview. Respondent contends that she was concerned because Ms. Bailey had continued to provide emails to the Virginia State Bar throughout the investigation, and Respondent was concerned that she did not have a full understanding of the scope of the investigation.

35. Respondent participated in an interview on a mutually agreeable date in December 2019.
36. Respondent expressed remorse during her interview, acknowledging that she should not have extended the offer to Ms. Bailey's attorney in June 2016, and admitted that she made a mistake when she agreed to represent Ms. Chiles in the Circuit Court after she had received the bar complaint filed by Ms. Bailey.

## II. NATURE OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### 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:

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(2) there is significant risk that the representation of one or more clients will be materially limited by ... *a personal interest of the lawyer.*

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph(a), a lawyer may represent a client if each affected client consents after consultation, and:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) the consent from the client is memorialized in writing.



RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

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(c) Falsify evidence, counsel or assist a witness to testify falsely, or *offer an inducement to a witness that is prohibited by law.*

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant 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:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

III. PROPOSED DISPOSITION

Upon the stipulations of misconduct, the VSB and Respondent considered the aggravating and mitigating factors set forth in the ABA Standards for Imposing Lawyer Sanctions and tender to the Three-Judge Panel for its approval the agreed disposition of PUBLIC REPRIMAND as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing

by a Three-Judge Panel. Assistant Bar Counsel and the Respondent agree that the effective date for the sanction shall be the date of entry of the Order approving this Agreed Disposition.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules. If the Agreed Disposition is approved, the Order shall not be appealable.

THE VIRGINIA STATE BAR

By: Christine M. Corey  
Christine M. Corey, Assistant Bar Counsel

Mary G. Cromm  
Mary G. Commander, Respondent

Mary T. Morgan  
Mary Teresa Morgan, Respondent's Counsel