

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
CHARLES JOHN COVATI**

**VS. DOCKET NOS. 20-080-118062; 21-080-119336;
and 21-080-120640**

**AGREED DISPOSITION MEMORANDUM ORDER
THREE YEARS AND SIX MONTHS SUSPENSION**

On May 17, 2021 this matter was heard, telephonically, by the Virginia State Bar Disciplinary Board (“Board”) upon the joint request of the parties for the Board to accept the proposed Agreed Disposition signed by the parties and offered to the Board as provided by Part Six, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The Board panel consisted of Yvonne S. Gibney, Chair; Jennifer D. Royer, Tony H. Pham, Alexander Simon, Member, and Martha J. Goodman, Lay Member. The Virginia State Bar was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. Respondent Charles John Covati (“Respondent”) was present and was not represented by counsel. The Chair polled the members of the Board 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 member 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 proposed Agreed Disposition, the Certifications, Respondent’s Disciplinary Record, and the presentations of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the proposed Agreed Disposition and the Respondent shall receive a **SUSPENSION OF THREE YEARS AND SIX MONTHS**, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the suspension is effective May 17, 2021.

It is further **ORDERED** that:

The Respondent must comply with the requirements of 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 of the Suspension 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. The 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, he shall submit an affidavit to that effect within 60 days of the effective date of the Suspension 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, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of the Supreme Court of Virginia.

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent

by certified mail, return receipt requested, regular, and electronic mail at his last address of record with the Virginia State Bar at C.J. Covati, PC, 4370 Starkey Road, Suite 4A, Roanoke, VA 24018, and a copy by electronic mail to Paulo E. Franco, Jr., Assistant Bar Counsel.

Entered this 17th day of May 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney

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Gibney
Date: 2021.05.17 14:14:41 -04'00'

Yvonne S. Gibney, Chair

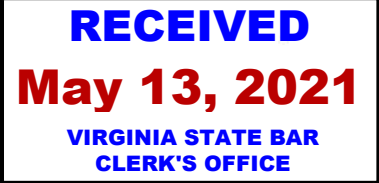


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**Clerk of the Disciplinary System
Virginia State Bar**



VIRGINIA :

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
CHARLES JOHN COVATI

VSB Docket Nos. 20-080-118062; 21-080-119336;
and 21-080-12064

AGREED DISPOSITION
(SUSPENSION – THREE YEARS and SIX MONTHS)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel and Charles John Covati, Respondent, *pro se*, hereby enter into the following Agreed Disposition arising out of the referenced matter.

VSB Docket Nos. 20-080-118062

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar (“VSB”) on April 25, 2002. At all relevant times, Respondent was a member of the VSB.
2. In May or June of 2016, Stacy Phillips retained Respondent to represent her interests in a divorce from her husband.
3. Ms. Phillips and her husband agreed that in lieu of any claims to his retirement accounts, Ms. Phillips would receive spousal support until either she or her husband died. They further agreed that in lieu of claims to the retirement accounts, spousal support would continue even in the event that Ms. Phillips remarried.
4. Respondent drafted a separation agreement for Ms. Phillips and her husband to sign that was executed on July 18, 2016 (“Separation Agreement”).
5. The Separation Agreement provided for a monthly support payment in the amount of \$1668.00. The monthly payment was equivalent to Ms. Phillips’ monthly mortgage obligation and provided a dollar-for-dollar set off if her husband paid the mortgage directly.
6. Despite the agreement between Ms. Phillips and her husband that she would continue to receive spousal support in the event that she remarried, the Separation Agreement did not specifically state that the right to spousal support would survive and continue in the event that Ms. Phillips remarried as required by Va. Code Ann. § 20-109 (D).
7. Respondent prepared and filed a suit for divorce in the Circuit Court of Bedford County on July 28, 2016 (“Divorce Action”).

8. Respondent prepared a divorce decree that the Bedford County Circuit Court entered on August 30, 2016 ("Divorce Decree").

9. The Divorce Decree that Respondent prepared stated that neither party shall be responsible for spousal support and that all such claims were forever extinguished and barred.

10. Unbeknownst to Ms. Phillips, the language that Respondent drafted in the Divorce Decree was in contravention of the Separation Agreement and the actual agreement between Ms. Phillips and her ex-husband that in lieu of her making any claim against his retirement accounts she would receive spousal support for life even if she remarried.

11. In April of 2018, Ms. Phillips contacted Respondent and advised him of her plans to remarry. She alleges she asked Respondent if her pending marriage would affect the spousal support set forth in the Separation Agreement.

12. Respondent reassured Ms. Phillips that her subsequent marriage would not extinguish the spousal support.

13. In May of 2018, Ms. Phillips remarried.

14. Ms. Phillips' ex-husband stopped paying the spousal support agreed to under the Separation Agreement in May or June of 2018 and advised her he no longer had any obligation to her due to her getting married.

15. Ms. Phillips contacted Respondent to advise him of the situation.

16. Respondent advised Ms. Phillips that the Divorce Decree contained an error that allowed Ms. Phillips' ex-husband to claim that he was no longer obligated to pay the agreed upon spousal support and advised her that he would fix the error.

17. Respondent admitted in his answer and grounds of defense to the allegations in paragraph 16.b of a Motion for Judgment in a malpractice action that Ms. Phillips filed against him ("Malpractice Action") that he advised Ms. Phillips to file a Rule to Show Cause against her ex-husband in the Bedford County Juvenile and Domestic Relations Court to collect the spousal support arrearage.

18. On July 18, 2018, Respondent filed a Motion and draft Order to Reinstate the Divorce Action in order to amend the Divorce Decree to reflect the accord reached concerning spousal support set forth in the Separation Agreement.

19. The Bedford County Circuit Court entered the Order reinstating the Divorce Action to the court's active docket.

20. On August 22, 2018, Respondent prepared and forwarded to the Bedford County Circuit Court a Motion for entry of an Amended Decree ("First Amended Decree") along with a

proposed Amended Decree to properly reflect what the parties had agreed to in the Separation Agreement. The court entered the First Amended Decree on August 24, 2018.

21. Despite his knowledge that Ms. Phillips' husband was in arrears, Respondent represented in the First Amended Decree that the spousal support "obligation was agreed to begin on the entry of the original Decree on August 30, 2016 and has been paid, thus no arrearage has been created."

22. As with the Separation Agreement and the Divorce Decree, the First Amended Decree was inadequate pursuant to Va. Code Ann. § 20-109 (D) to protect Ms. Phillips' right under the parties' contemplated agreement for her to receive spousal support for the life of either party, including remarriage, in exchange for relinquishing any claims she had to her ex-husband's retirement accounts.

23. In accordance with Respondent's advice and instruction, Ms. Phillips filed a *pro se* Rule to Show Cause in the Bedford County Juvenile and Domestic Relations Court on September 4, 2018 seeking arrearages in agreed to spousal support in the amount of \$5,004.00.

24. Thereafter, Respondent's associate, Chelsea Vaughan, Esquire, represented Ms. Phillips on the Rule to Show Cause seeking to collect the arrearages in spousal support claimed by Ms. Phillips.

25. The Rule to Show Cause was originally set for September 19, 2018.

26. On that same date, Respondent prepared and filed a Second Motion to Reinstate, a Second Motion for entry of Amended Decree, and a proposed Amended Decree ("Second Amended Decree"). The Court entered the Second Amended Decree on September 21, 2018.

27. Despite his knowledge that Ms. Phillips' husband was in arrears, Respondent represented in the Second Amended Decree that pursuant to the Separation Agreement that Ms. Phillips' ex-husband was "obligated to pay spousal support to Plaintiff in the amount of \$1,668.00 per month. Further such obligation was agreed to begin on the entry of the original Decree on August 30, 2016 and has been paid, thus no arrearage has been created."

28. Like the Separation Agreement, the Divorce Decree and the First Amended Decree, the Second Amended Decree was inadequate pursuant to Va. Code Ann. § 20-109 (D) to protect Ms. Phillips' right under the parties contemplated agreement to receive spousal support for the life of either party, including remarriage, in exchange for relinquishing any claims she had to her ex-husband's retirement accounts.

29. On October 17, 2018, Respondent's Associate Chelsea Vaughan appeared in the Bedford County Juvenile and Domestic Relations Court on behalf of Ms. Phillips to represent her interests in seeking the arrearage that her ex-husband owed her.

30. Respondent had direct supervisory and managerial authority over Ms. Vaughan, who was the only associate attorney at CJ Covati, PC.

31. Prior to the hearing on October 17, 2018, Ms. Vaughan and Respondent discussed the inconsistency of arguing in the Juvenile and Domestic Relations Court that Ms. Phillips' ex-husband was in arrears on spousal support while stating in the First Amended Decree that Ms. Phillips' ex-husband owed no arrearage.

32. Respondent was aware that his associate, Ms. Vaughan, was going to argue in Juvenile and Domestic Relations Court that Ms. Phillips' ex-husband was in arrears on spousal support despite the fact that Respondent had represented in circuit court in the First and Second Amended Decree that spousal support Ms. Vaughan would be seeking was not in arrears because Ms. Phillips' ex-husband had paid all sums due and owing.

33. Despite Respondent's knowledge in the previous paragraph, he took no steps to prevent Ms. Vaughan from seeking to enforce a spousal support obligation that he had represented was not due and owing.

34. Respondent took the steps in paragraphs 32-34 above in order to conceal his professional negligence in drafting the Separation Agreement, Divorce Decree, and First and Second Amended Decree.

35. With Respondent's full knowledge, on October 17, 2018, Ms. Vaughan argued that Ms. Phillip's ex-husband was in arrears on his obligation to pay court-ordered spousal support under the Separation Agreement.

36. At the October 17, 2018 hearing, the Bedford County Juvenile and Domestic Relations Court found Ms. Phillips' ex-husband in contempt for failure to pay court-ordered spousal support and ordered him to pay the sum of \$1,668.00.

37. Ms. Phillips' ex-husband appealed the contempt order to the Bedford County Circuit Court and argued that the Separation Agreement was on its face not in conformance with Va. Code Ann. § 20.109, and, therefore, his obligation to pay spousal support terminated upon Ms. Phillips' remarriage.

38. The Bedford County Circuit Court agreed with the position taken by Ms. Phillips' ex-husband and entered an Order on March 13, 2019 dismissing the contempt finding.

39. The Malpractice Action sets forth the allegations contained in this Certification and alleges that such acts constituted professional negligence.

40. In answering the Malpractice Action, Respondent admitted to an allegation that he in fact advised Ms. Phillips to file the Rule to Show Cause in the Bedford County Juvenile and Domestic Relations Court against her ex-husband for failure to make spousal support payments.

41. In his interview with the Virginia State Bar's investigator ("Investigator"), Respondent denied telling Ms. Phillips to file the Rule to Show Cause and stated further that he only advised her about it and then referred her to his associate, Ms. Vaughan.

42. The Investigator questioned Respondent about the First and Second Amended Decree that Respondent filed and were subsequently entered by the Bedford County Circuit Court. Specifically, the Investigator asked Respondent about the passage of the First and Second Amended Decrees where he had written, “[f]urther, said obligation was agreed to begin on the entry of the original Decree on August 30, 2016 and had been paid, thus no arrearage has been created.”

43. Respondent recalled to the Investigator that both the First and Second Amended Decrees contained the passage.

44. Respondent admitted to the Investigator that the Representations he made in the First and Second Amended Decrees were not true.

45. The court entered summary judgment against Respondent and his law firm, CJ Covati, P.C in the Malpractice Action on July 8, 2020.

46. The court’s order of July 8, 2020 found that Respondent knowingly and intentionally made materially false statements of fact to the court concerning arrearages to conceal his professional negligence and gain an unfair advantage at trial in the Malpractice Action.

47. On October 28, 2020 the court entered an award of judgment in the amount of \$642,513.00 in favor of Ms. Phillips against Respondent and found that Respondent’s actions in the Malpractice Action constituted fraud.

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:

(1) the representation of one client will be directly adverse to another client; or

(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 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

* * * *

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;

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

* * * *

Rule 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

* * * *

Rule 5.1 Responsibilities Of Partners And Supervisory Lawyers

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

* * * *

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:

(a) knowingly make a false statement of material fact;

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.

* * * *

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;

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

* * * *

VSb DOCKET No. 21-080-119336

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar ("VSB") in 2002. At all relevant times, Respondent was a member of the VSB.

2. In June of 2016, Ms. Stacy Phillips retained Respondent and his law firm, CJ Covati, P.C. to represent her interests in obtaining a divorce from her husband.

3. As part of the representation, Respondent had his associate, Ms. Chelsea Vaughan, appear with Ms. Phillips in an action against Ms. Phillips's ex-husband to pursue arrearages in spousal support.

4. The pursuit of spousal support required two appearances in court by Ms. Vaughan.
5. Ms. Phillips paid Respondent \$600.00 on October 9, 2018 and \$500.00 on January 7, 2019 by check for advance fees in connection with the court appearances.
6. The VSB received information that Respondent had not properly handled Ms. Phillips's client funds in accordance with Rule 1.15.
7. During the course of investigating this complaint, the VSB reviewed a document provided by the Respondent that purported to be a client subsidiary ledger called "TRUST ACCOUNT ACTIVITY" related to Respondent and his associate's representation of Ms. Phillips ("Subsidiary Ledger").
8. The Subsidiary Ledger contains an entry dated October 9, 2018 indicating receipt of \$600.00 and another entry dated January 7, 2019 incorrectly indicating receipt of \$400.00 from Ms. Phillips as payment to Respondent and CJ Covati, PC. Respondent never indicated to the VSB that the entries were inaccurate.
9. Despite the entries in the Subsidiary Ledger, copies of the checks that Ms. Phillips provided to the VSB show that she did in fact make the payments to Respondent as noted in paragraph 5.
10. The backs of the two checks indicate that Respondent personally negotiated them.
11. The Subsidiary Ledger also contained notations that Respondent paid himself fees on October 17, 2018 in the amount of \$500.00 and on January 29, 2019 in the amount of \$650.00.
12. On July 28, 2020, the VSB issued Bank Branch and Trust ("BB&T") a subpoena *duces tecum* for bank statements from January of 2016 through July of 2020 for Respondent's trust and other accounts.
13. BB&T produced those records on August 18, 2020.
14. A review of the records provided by BB&T demonstrate that Respondent did not deposit Ms. Phillips' checks into either his trust account or any other account he maintained at BB&T.

II. NATURE OF MISCONDUCT

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

RULE 1.15 Safekeeping Property (Effective June 2011 through February 2019)

(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.

(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;

(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.

* * * *

VSB DOCKET No. 21-080-12064

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar ("VSB") in 2002. At all relevant times, Respondent was a member of the VSB.
2. Through a mutual friend, Kristal Winder paid Respondent an advance fee of \$2,000.00 that Respondent received on July 28, 2020 to represent her spouse, Jacqueline Carson, and replace her spouse's court appointed lawyer, in seeking a sentence reconsideration for a probation violation charge in Bedford County, Virginia. After receiving the advance fee and participating in a meeting with Ms. Carson on August 3, 2020 to discuss the case, Respondent took no actions to safeguard Ms. Carson's interests, nor did he perform any of the work he agreed to undertake in connection with the representation.
3. Ms. Winder resides in Henderson, Nevada. Ms. Carson grew up in the Roanoke Valley area and lived there prior to marrying Ms. Winder.
4. In 2014, Ms. Carson was convicted of several felonies in the Bedford County Circuit Court. As part of her sentence, she was placed on probation.
5. While out on probation, Ms. Carson committed another felony involving credit card larceny in 2019.
6. In January of 2020, Ms. Carson pled guilty to credit card larceny.

7. As a result of pleading guilty to credit card larceny, Ms. Carson was charged with a probation violation.

8. The Bedford County Circuit Court appointed William P. Walker, Esquire, to represent Ms. Carson on the probation violation charge.

9. In May of 2020, the Bedford County Circuit Court revoked Ms. Carson's probation and sentenced her to five years imprisonment with three years suspended.

10. Ms. Carson was ordered to report to prison on August 6, 2020 to begin serving her sentence.

11. After sentence was imposed for the probation violation, Ms. Winder called her court appointed attorney, Mr. Walker and informed him that she and Ms. Carson had hired Respondent to represent Ms. Carson and file a motion to reconsider her sentence.

12. Ms. Carson was introduced to Respondent by a friend of hers named Amber Eckert. Ms. Carson stated that Ms. Eckert told her that she and Respondent were friends.

13. Respondent advised Ms. Winder that for a fee of \$2,000.00 he would file a motion to reconsider Ms. Carson's sentence.

14. In furtherance of Respondent's agreement to represent Ms. Carson, Ms. Winder, acting on behalf of Ms. Carson, wired Ms. Eckert \$2050.00 on July 27, 2020. \$2,000.00 was to be paid to Respondent and the extra \$50.00 was a payment to Ms. Eckert for delivering the fee to Respondent.

15. Ms. Eckert received the funds and took them to Respondent's house.

16. Respondent acknowledged receiving the funds and wrote a receipt that read "7/28/20 Receipt \$2,000 Jacquelin CARSON PAID Retainer for Bedford Reconsideration x C Covati."

17. Respondent stated that the \$2,000.00 payment was an advance fee against which he would bill at his usual and customary hourly rate of \$300.00 per hour.

18. Ms. Eckert made arrangements for Ms. Carson to meet with Respondent on August 3, 2020.

19. Ms. Carson stated that she signed a formal retainer agreement that day, which Respondent kept.

20. Ms. Carson stated that Respondent advised her that he would contact Mr. Walker to get an order of substitution entered, would push back her turn in date so she could take some classes, and would thereafter file a motion to reconsider the sentence.

21. Ms. Carson did not hear back from Respondent at all and turned herself in to begin her two year sentence on August 6, 2020 as previously ordered.

22. Respondent did not contact Mr. Walker to substitute in as counsel and took no steps to push back Ms. Carson's turn in date or pursue a sentence reduction.

23. In fact, Respondent took no action whatsoever on Ms. Carson's behalf despite getting paid, even after she turned herself in on August 6, 2020.

24. When it became apparent that Respondent had done nothing to assist Ms. Carson, Ms. Winder made numerous attempts to contact Respondent to demand a refund.

25. Ms. Winder left a voicemail message on Respondent's phone demanding a refund but was thereafter unable to leave any messages due to that voice mail box being full.

26. Ms. Winder filed the instant complaint on August 20, 2020 when it became apparent that Respondent would not answer any of her attempts to contact him. Ms. Carson was added as a complainant a short time thereafter.

27. While the instant complaint was pending, Ms. Winder informed Ms. Eckert about Respondent's failure to pursue the matter and her demand for a refund.

28. Ms. Eckert was able to contact Respondent.

29. Despite acknowledging that he received the \$2,000.00 for representing Ms. Carson, Respondent gave Ms. Eckert \$2,000.00 cash on October 1, 2020 without first having contacted either Ms. Winder or Ms. Carson.

30. Respondent stated to the VSB that he was obligated to return the money to Ms. Eckert because he received the money from her.

31. Prior to returning the funds to Ms. Winder, Ms. Eckert improperly converted \$400.00 for her personal use and returned only \$1,600.00, claiming that Respondent kept \$400.00 for earned fees. Ms. Eckert subsequently admitted to improperly converting the money in a text message to Ms. Winder.

32. Respondent did not deposit the \$2,000.00 advance fee paid by Ms. Winder for Ms. Caron's representation into his trust account.

33. Respondent admitted in the course of this investigation that he did not maintain a client subsidiary ledger for Ms. Carson's representation, nor did he otherwise maintain his trust account records in accordance with Rule 1.15 (c) and (d) of the Virginia Rules of Professional Conduct.

34. Respondent stated that he was unable to represent Ms. Carson as promised because he had suffered a stroke.

35. Respondent initially claimed he suffered the stroke on August 4, 2020, which is before the date that Ms. Carson turned herself in to begin serving her prison sentence.

36. Respondent posted on social media that he had suffered a stroke on Friday August 7, 2020 which is after the date that Ms. Carson had already turned herself in to begin serving her prison sentence.

37. When shown the social media post, Respondent then stated he was not certain when he suffered the stroke due to problems with his memory.

38. Respondent advised the VSB that he would sign a release to obtain his complete medical records with respect to the stroke he alleges to have suffered.

39. The VSB provided that release to Respondent on September 28, 2020.

40. To date, Respondent has failed to sign and return the release that the VSB provided. As a result, the VSB has not been able to obtain respondent's full and complete records related to the stroke he stated he suffered on August 7, 2020.

41. At no time after suffering what Respondent called a "stroke" on August 7, 2020 did he take any steps to protect Ms. Carson's interests, nor did he take any steps to withdraw, decline or terminate the representation pursuant to Rule 1.16 (a)(2) of the Virginia Rules of Professional Conduct.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services but may withdraw as permitted under Rule 1.16.

* * * *

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.

* * * *

RULE 1.8 Conflict of Interest: Prohibited Transactions

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client consents after consultation.

* * * *

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 funds or use 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.

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

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the

transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and

subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

* * * *

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:

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

* * * *

(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).

* * * *

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:

(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; or

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

* * * *

PROPOSED DISPOSITION

Accordingly, bar counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of **SUSPENSION – THREE YEARS and SIX MONTHS** as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Bar counsel and Respondent agree that the effective date for the sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition.


Prior to having his/her license reinstated in Virginia, Respondent must comply with the requirements set forth in the Rules of Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-25.D.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.

THE VIRGINIA STATE BAR

By: Paulo E. Franco, Jr.
Paulo E. Franco, Jr.
Assistant Bar Counsel

Digitally signed by Paulo E. Franco, Jr.
Date: 2021.05.12 17:15:27 -04'00'


Charles John Covati
Respondent