VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF	VSB DOCKET NO.
PATRICK LYNN EDWARDS	22-041-124418

MEMORANDUM ORDER OF REPRIMAND

THIS MATTER came on to be heard on April 28, 2023, before a panel of the Disciplinary Board consisting of David J. Gogal, Second Vice Chair, Robin J. Kegley, Jennifer D. Royer, Michael J. Sobey, and Martha J. Goodman, Lay member. The Virginia State Bar (the "VSB") was represented by Tenley Carroll Seli, Assistant Bar Counsel. Patrick Lynn Edwards (the "Respondent") appeared in person and was represented by Timothy J. Battle, Esq. 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 which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Lisa A. Wright, court reporter, Chandler and Halasz, PO Box 9349, Richmond, Virginia 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, Paragraph 13-18 of the Rules of Court.

The matter came before the Board on the District Committee Determination for Certification by the Fourth District Sub- Committee pursuant to Part Six, § IV, ¶ 13-18 of the Rules of the Supreme Court of Virginia involving misconduct charges against the Respondent. Prior to the proceedings and at the final Pretrial Conference VSB Exhibits 1 through 17, were admitted into evidence by the Chair, without objection from the Respondent. The parties agreed that the Maryland Rules of Professional Conduct applied in this matter as well as the Virginia Rules of Professional Conduct.

Following opening statements of counsel, the Board heard testimony from the following witnesses, who were sworn under oath:

Complainant Keolattana Tootoo Saphilom ("Complainant") testified that she met the Respondent when she was serving as an interpreter in court. She described that she had a professional relationship with the Respondent. Complainant stated that she asked the Respondent to represent her on two cases: one being a Maryland employment matter and the second being a mold issue in Virginia. The Maryland case was filed in Federal Court by the Complainant before she retained the Respondent. (Ex 14).

Complainant stated that she asked the Respondent to represent her in the Maryland matter in August, 2018. She further stated that the Respondent did advise her that he was not licensed in Maryland and would require counsel to admit him *pro hac vice*.

Complainant stated that text messages were the primary means of communication with the Respondent. She acknowledged that they discussed legal fees and, in a November 30, 2018 text the Respondent stated that he needed a "retainer" up front. Complainant then testified that she understood that $2,000.00 was to be paid in advance and "once that ran out, it would be a 35% contingency." No written fee agreement was ever completed. Respondent's hourly rate was never discussed. Complainant further stated that Respondent never said the fee advanced was "non-refundable". They also never discussed how the $2,000.00 fee would be earned. Complainant stated that she did not believe that it had been earned. Respondent provided no detailed account of expenditures in the matter. Complainant stated that she considered that the representation began on December 22, 2018 in the Maryland case and terminated February 26, 2019.

Complainant further testified to two other matters for which the Respondent was paid $500 each. Complainant was not the client in these cases but acted as an intermediary between the Respondent and the clients.

Complainant stated that she did ask for a written agreement (Ex 8, p. 542) and never received one.

Complainant and Respondent entered into a co-counsel agreement with Attorney Mary Keating to assist with the Maryland case. The co-counsel agreement referenced a fee agreement between the Complainant and the Respondent, but no such agreement exists.

Complainant testified to a request by the Respondent for her to obtain Adderall for him. Complainant stated she was "shocked" and angered by this request and immediately asked Respondent to be dropped as her counsel. She also demanded her $2,000 be refunded. Notably, multiple text messages were exchanged between the two which seemed to indicate the Complainant and Respondent still had a cordial relationship and no request for a return of the fee advance appeared for several days.

On cross-examination, the Complainant couldn't recall several important details of the relationship with Attorney Keating or the demands Complainant made in the Maryland case.

The *de bene esse* deposition of Investigator Bosak was admitted as evidence in this matter by agreement. This deposition contained testimony of admissions of the Respondent that he did not deposit the $2,000 or either of the $500 fee advances in his trust account. In fact, his trust account had been closed by the bank. The funds were deposited in his personal account. Respondent admitted to at least ten cases in which he did not deposit fees into his trust account.

Whereupon, the Bar rested. The Respondent made a motion to strike the evidence as to all the allegations, which motion was opposed by the Bar. After argument of counsel, the Board recessed to consider the motion.

After due consideration, the Board announced its decision as follows:

The motion to strike the evidence as to the alleged violation of Virginia Rules 1.5(a), 1.5(b), 8.4(a) and 8.4(c) is granted and those matters are dismissed.

The motion to strike the evidence as to the alleged violation of Maryland Rules 19-301.5(a)(1), 19-301.5(a)(2), 19-301.5(b), 19-308.4(a), and 19-308.4(c) is granted and these matters are dismissed.

The motion to strike the evidence with respect to the remaining alleged violations was overruled.

The Respondent then testified on his own behalf on the remaining allegations of misconduct.

Respondent testified that the criminal cases for which he was retained, he was paid either on the day of the trial or after and the funds did not require being placed in trust. He further admitted that there was no written fee agreement for the contingency matter with the Complainant but that it was clearly understood that the fee would be 35%. He acknowledged that he did not deposit either of the $500 fee advances he received in his trust account.

The Respondent then rested. The Bar introduced no rebuttal evidence.

The Board considered the exhibits introduced by the parties; heard arguments of counsel; 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. At all relevant times, Patrick Lynn Edwards ("Respondent") has been licensed to practice law in Virginia. He was admitted to practice law on February 2, 2009.

2. On December 22, 2018, Keolattana Tootoo Saphilom ("Complainant") hired Respondent to represent her in an employment discrimination case pending in the U.S. District Court for the District of Maryland, Baltimore Division ("MD Federal Court"). Respondent is not admitted to practice law in Maryland and could not represent Complainant without *pro hac vice* admission by an attorney admitted to practice law in Maryland.

3. On December 22, 2018, Complainant paid Respondent $2,000 via electronic transfer. She also verbally agreed to pay an additional contingency fee of 35% of any recovery. Complainant told Virginia State Bar Investigator Edward Bosak

('VSB Investigator Bosak") that Respondent never explained the amount of his hourly fee and refused to provide her with an invoice. Respondent confirmed that he did not explain the fee or disclose his hourly rate to Complainant.

4. Complainant had previously contacted Mary Keating, Esq., ("Keating") a Maryland attorney, to move to admit Respondent *pro hac vice* to the MD Federal Court. On February 11, 2019, Respondent signed a Co-Counseling Agreement with Keating. The Agreement provided that Complainant retained Respondent per an attached contingency fee agreement. However, no agreement was attached. Respondent later stated in his response to the bar complaint that he was "not able to memorialize my agreement with[Complainant] into a single document, though it is clarified through written communications in various text and/or email messages."

5. The Co-Counsel Agreement further stated, "In the event that the litigation is successful in whole or in part, co-counsel shall jointly seek court-awarded litigation expenses and attorney fees for all time and expenses reasonably expended in the case." It also stated, "Co-counsel agree to maintain a complete, detailed, and contemporaneous record of time (to the nearest 1/10 of an hour) devoted to the prosecution of this action, in the expectation that a fee petition will be filed in the matter, and will require such complete, detailed, and contemporaneous records to obtain an award of attorneys' fees."

6. The Co-Counsel Agreement did not mention the $2,000 fee collected by Respondent and deposited into his personal bank account.

7. On February 19, 2019, Keating filed a motion for Respondent to appear *pro hac vice* in an action already pending in the MD Federal Court.

8. Between January 2019 and March 2019, Respondent and Keating corresponded with opposing counsel regarding various discovery extensions in the matter.

9. On February 20, 2019, in a text exchange between Respondent and Complainant, Respondent stated, "Are you still prescribed Adderall? Can I have some?" Complainant replied, "I don't have any." Respondent stated, "Can you still get it?" Complainant answered, "No." Respondent then stated, "What happened?" Complainant stated, "I don't have insurance." Respondent stated, "I'll pay for the script." Complainant replied, "My Dr. is I(n) Glen Burnie. I haven't seen him in a year. Not gonna happen."

10. On February 26, 2019, after Complainant disagreed with Respondent's work in another case he was handling for her, Complainant emailed Respondent, "My last resort is to file a complaint with the Virginia bar. I really do not want to go that route. You are seriously causing damage to my all cases at this point," and "The fact that you asked me to get you Adderall is illegal. Period. I will submit the text to them."

11. At 12:09pm, Respondent replied, "That was completely tongue in cheek. (But for purposes of whether I did something illegal, it doesn't even matter). That's just an fyi. I'm

not trying to argue with you right now."

12. On February 27, 2019 at 3:28am, Complainant wrote to Respondent, "I am requesting that you send me the full $2000 retainer for my Maryland case. I have no fee agreement with you and I've asked you to put it in writing several times. You've tried to change 35% contingency to 40% contingency, after 5% for my employment case. Which is unethical legal practice. Period."

13. On February 27, 2019 at 11:51pm, Respondent replied, "You aren't getting any money back. Period. I have already earned the 2,000 with time worked. Way over. Not close. Thanks for the ethical advice. Good day."

14. On February 27, 2019, at 11:57pm, Complainant replied, "You are subject to Maryland bar requirements. My employment case is a Maryland case. You are required to have a fee agreement in Maryland. I've asked you repeatedly for one prior to you accepting the case and after you received my retainer. You're also subject to malpractice violations as well as felony violations. If you disclose any attorney privilege client information in any of my cases, there will be further disciplinary violations."

15. Respondent immediately replied to Complainant, "I'm not going to tell you any more that you aren't getting any of the 2,000 back. It was a retainer. You have no legal basis for it. So stop wasting my time."

16. On March 1, 2019, Respondent wrote to Complainant stating that he would ask the MD Federal Court to allow him to withdraw his representation in seven days. On March 6, 2019, he and Keating filed a joint Motion to Withdraw Appearance as Counsel. The MD Federal Court Civil Docket Sheet showed that between February 15, 2019, and March 6, 2019, Respondent and Keating filed a Response in Opposition to a Motion to Dismiss, a Motion to Appear Pro Hac Vice and a Motion to Withdraw as Counsel. The MD Federal Court granted the Motion to Withdraw on March 11, 2019, less than one month after the Motion to Appear Pro Hac Vice was filed. On April 20, 2020, the court granted the defendant's Motion for Summary Judgment.

17. Respondent did not deposit any of Complainant's payment into his trust account. The VSB issued a January 21, 22 subpoena for Respondent's trust account records, and Respondent later produced only a July 21, 2022, letter from Bank of America stating that Respondent's trust account was closed on March 20, 2019, with a zero balance. He did not provide Complainant with a full or partial refund. He did not maintain a complete, detailed, and contemporaneous time record as promised in his Co-Counsel Agreement.

18. Respondent initially claimed to the VSB and to VSB Investigator Bosak that the fee he collected was earned on receipt because it was a true retainer. He later retracted this, stating that when he received the bar complaint, he came up with a legal argument to justify his failure to deposit the fee into his trust account. Respondent admitted to VSB Investigator Bosak that he did not memorialize the contingency fee agreement in writing but claimed that Complainant never asked him to provide her with a written agreement.

However, Complainant showed VSB Investigator Bosak a December 22, 2018, email in which she asked Respondent, "Send me the paperwork for the representation and contact that attorney please!!"

19. Respondent told VSB Investigator Bosak that he was admitted to practice law in Virginia in 2009 and practiced patent law until approximately February 2015 when he became "burned-out" and began practicing as a sole practitioner focusing mostly on criminal defense. Respondent was on the court-appointed list in Arlington and Alexandria and estimated that 90 percent of his work consisted of court appointments.

20. Respondent told VSB Investigator Bosak that he did have approximately 10 private paying clients from 2018 to present and these clients paid him retainers that were deposited into his personal checking account prior to being earned. Respondent confirmed with VSB Investigator Bosak that he did have a trust account open during this timeframe but failed to deposit the client's funds in the trust account. Respondent stated to VSB Investigator Bosak that he could not recall ever depositing funds into his trust account.

21. On December 7, 2021, Complainant filed the instant bar complaint.

II. NATURE OF MISCONDUCT

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

For failing to provide Complainant with a written fee agreement memorializing a 35% contingency fee in the MD Federal case, Respondent violated:

MD Rule 19-301.5. Fees , [Also Virginia Rule 1.5 (c)]

(c)A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by section (d) of this Rule or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the attorney in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be responsible whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the attorney shall provide the client with a written

statement stating the outcome of the matter, and, if there is a recovery, showing the remittance to the client and the method of its determination.

For failing to deposit unearned fees received between 2018 and the present into his trust account, Respondent violated:

VA 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.

MD Rule 19-301.15 - Safekeeping Property (1.15)

(a) An attorney shall hold property of clients or third persons that is in an attorney's possession in connection with a representation separate from the attorney's own property. Funds shall be kept in a separate account maintained pursuant to Title 19, Chapter 400 of the Maryland Rules, and records shall be created and maintained in accordance with the Rules in that Chapter. Other property shall be identified specifically as such and appropriately safeguarded, and records of its receipt and distribution shall be created and maintained. Complete records of the account funds and of other property shall be kept by the attorney and shall be preserved for a period of at least five years after the date the record was created.

(b) Unless the client gives informed consent, confirmed in writing, to a different arrangement, an attorney shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the attorney's own benefit only as fees are earned or expenses incurred.

III. IMPOSITION OF SANCTION

Thereafter, the Board received further evidence and argument in aggravation and mitigation from the Bar and Respondent, including Respondent 's lack of any prior disciplinary record. In aggravation, the evidence shows a refusal on the part of the Respondent to accept responsibility for his actions and his experience in the practice of law. The Board recessed to

deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed.

The Chair announced the sanction as a Public Reprimand with Terms effective April 28, 2023. The terms are as follows:

1. For a period of one year from the date of the Misconduct Summary Order, April 28, 2023, the Respondent shall not engage in any conduct that violates the Virginia Rules of Professional Conduct. This term shall be deemed to have been violated when any ruling, determination, judgment or decree has been issued against the 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, provided, however, that the conduct upon which such finding was based occurred within the period referred to above, which is one year, and provided further that such ruling has become final.

2. On or before December 21, 2023, Respondent shall complete six hours of continuing legal education credits by attending courses approved by the Virginia State Bar on the subject matter of law office management. At least two of these hours must be regarding trust accounting. Respondent's continuing legal education attendance obligation set forth in this term shall not be applied toward his mandatory continuing legal education requirement in Virginia or any other jurisdiction. The Respondent shall certify his compliance with the terms set forth in this term by delivering a fully and properly executed Virginia MCLE Board certificate of attendance form to Bar Counsel promptly following his completion of each such CLE program.

3. The Respondent shall read in its entirety "Lawyers and Other People's Money" and Legal Ethics Opinion 1606 and shall certify compliance in writing to Bar Counsel no later than 30 days from April 28, 2023.

4. For a period of three years from April 28, 2023, the Respondent hereby authorizes a VSB investigator to conduct unannounced personal inspections of his trust accounts, books, records, and bank records to ensure his compliance with all of the provisions of Rule 1.15 and shall fully cooperate with the VSB investigator.

As an alternate disposition, should the Respondent fail to comply with the terms set forth, his license to practice law shall be suspended for a period of thirty (30) days. In the event of alleged non-compliance, a hearing will be convened upon an order for the Respondent to show cause why the alternative disposition should not be imposed. At such hearing, the Respondent shall have the burden of proving compliance or good cause for the alleged non-compliance by clear and convincing evidence.

Accordingly, it is ORDERED that the Respondent, Patrick Lynn Edwards, is publicly reprimanded effective April 28, 2023 under the terms as stated above.

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 his address of record with the Virginia State Bar, being 2200 Wilson Blvd., Suite 102 #247, Arlington, VA 22201, by certified mail, return receipt requested, by regular mail to Respondent's Counsel, at 4400 Ferry Landing Road, Alexandria, VA 22309, and by hand delivery to Tenley Carroll Seli, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 22nd day of May, 2023.

VIRGINIA STATE BAR DISCIPLINARY BOARD

David J. Gogal, Chair