

VIRGINIA:

BEFORE THE THIRD DISTRICT COMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DENIS CHARLES ENGLISBY

VS B Docket No. 21-032-120687

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On October 29, 2021, a meeting in this matter was held telephonically before a duly convened Panel of the Third District Committee, Section II, consisting of Brielle M. Hunt, Chair, Meredith M. Haynes, David A. Stock, Wyatt J. Taylor, and John Nicoll, Lay Member, for the purpose of considering an Agreed Disposition (Public Reprimand Without Terms) (“Agreed Disposition”) entered into between the Virginia State Bar, by M. Brent Saunders, Senior Assistant Bar Counsel, and Denis Charles Englisby (“Respondent”), pursuant to Part 6, Section IV, Paragraph 13-4.B and 13-7.A.9. of the Rules of the Supreme Court of Virginia (“Rules”).

Respondent appeared in person, *pro se*, and M. Brent Saunders, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

The Chair polled the members of the Panel as to whether any of them was 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 A. 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, Charge of Misconduct, Respondent's Disciplinary Record, and the arguments of the parties, and after due deliberation, the Panel rejected the Agreed Disposition and made certain recommendations with regard to an agreed disposition it would accept. Upon consideration of the Panel's recommendations,

Respondent and the Virginia State Bar agreed to the recommendations (as set out in the Agreed Disposition (Public Reprimand With Terms) attached and incorporated herein) which the Panel unanimously accepts, and, accordingly, hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia on September 21, 1972, and was so licensed at all times relevant hereto.

2. In 2017, the complainant, Brittany Raquel Sutphin (“Sutphin”), hired Respondent to represent her in a domestic relations matter. Respondent charged Sutphin \$5,100.00 in legal fees for the representation toward which Sutphin paid only \$600.00.

3. On or about May 17, 2018, Respondent filed a Warrant in Debt against Sutphin in the Chesterfield County General District Court for the \$4,500.00 balance in unpaid legal fees.

4. On September 20, 2018, Sutphin filed a Chapter 7 voluntary bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Virginia (Richmond) (Case No. 18-34757-KLP) (the “Court”).

5. Sutphin included with that filing: i) a Schedule E/F identifying Respondent as one of her creditors holding an unsecured nonpriority claim, in the amount of \$4,500.00, and listing his address as 10101 Iron Bridge Road, Chesterfield, VA 23832¹; and ii) a Cover Sheet for List of Creditors along with a master mailing list of creditors listing her creditors, including Respondent at his address of 10101 Iron Bridge Road, Chesterfield, VA 23832 (“List of Creditors”).

6. On September 23, 2018, the Court mailed an Official Form 309A (For Individuals or Joint Debtors) Notice of Chapter 7 Bankruptcy Case (“Notice”) to Respondent at 10101 Iron Bridge Road, Chesterfield, VA 23832, notifying him of the filing of Sutphin’s Chapter 7 bankruptcy case. Respondent’s position is that he never received any notice from the Court.

7. Respondent subsequently requested a nonsuit of the Warrant in Debt he had filed against Sutphin on or about May 17, 2018 in the Chesterfield County General District Court, which was granted on October 15, 2018.

8. Respondent did not object to the dischargeability of his \$4,500.00 claim against Sutphin or otherwise participate in the bankruptcy case in any manner. Respondent states that he never received any notice from the Court.

9. On January 7, 2019, the Court entered a Discharge of Debtor order granting Sutphin a discharge under 11 U.S.C. § 727 (“Discharge Order”).

¹ The address of Respondent’s law firm.

10. On January 10, 2019, the Court mailed a copy of the Discharge Order to Respondent at 10101 Iron Bridge Road, Chesterfield, VA 23832. Respondent states that he never received any notice from the Court.

11. The Discharge Order released Sutphin from liability for Respondent's \$4,500.00 claim and barred and enjoined Respondent from attempting to collect that debt in any manner.

12. In 2020, Sutphin received a letter from Respondent demanding payment of the \$4,500.00 of unpaid legal fees.

13. Sutphin contacted Respondent and told him any monies she owed from his representation of her had been discharged in bankruptcy.

14. Respondent asked Sutphin to provide him with proof his claim had been discharged.

15. On June 11, 2020, Sutphin faxed Respondent the Discharge Order the Court had mailed to him on January 10, 2019.

16. Respondent then asked Sutphin to provide him with proof he had been named as a creditor in her bankruptcy case.

17. On June 25, 2020, Sutphin faxed Respondent the List of Creditors.

18. On July 20, 2020, Respondent wrote to Sutphin suggesting she had not handled her bankruptcy properly such that "the probability is that you still owe my firm the amount that you tried to bankrupt." Respondent further stated:

I would appreciate it if you would do a couple of things before I have to sue you, and that would be if you would please send me a copy of all of the bankruptcy papers that you filed with the Bankruptcy Court. That is a head start. Then, I would appreciate it if you would check the Bankruptcy file at the Clerk's Office and see if either you sent out a Notice of Bankruptcy to my office, or if they did. Then, while you are over there checking on the file in the Bankruptcy Clerk's Office, please see if either you or the Bankruptcy Court sent me a "Notice of Discharge" ... I would appreciate it if you would get that information to me no later than August 17, 2020. If it looks like you have done everything correctly and those records reveal that, then I certainly will not be suing you. If I have not heard from you one way or the other by August 17, 2020, I will be filing suit against you for the balance still due and owing, assuming that you have not filed correctly with the Bankruptcy Court. I hope to hear from you.

19. On August 4, 2020, Sutphin faxed Respondent: i) the Notice along with a Certificate of

Notice listing Respondent and showing the Court had mailed a copy of the Notice to Respondent on September 23, 2018, at 10101 Iron Bridge Road, Chesterfield, VA 23832; and ii) the Discharge Order along with a Certificate of Notice listing Respondent and showing the Court had mailed a copy of the Discharge Order to Respondent on January 10, 2019, at 10101 Iron Bridge Road, Chesterfield, VA 23832. Respondent states that he had never received any notice from the Court.

20. Respondent received the documents from Sutphin's bankruptcy case she faxed to him on June 11, 2020, June 25, 2020, and August 4, 2020.

21. Notwithstanding, on or about August 13, 2020, Respondent filed a Warrant in Debt against Sutphin in the Chesterfield County General District Court for \$4,556.00².

22. On September 4, 2020, Sutphin filed this bar complaint.

23. On September 10, 2020, Respondent wrote a letter to the clerk of the Chesterfield County General District Court, in which he stated "[t]he defendant has claimed that she has filed a Chapter 7 Bankruptcy. Our office does not have any record of being named as a creditor, nor have we received any notice from the Bankruptcy Court ... Having said all of that, this lady has filed an ethical complaint against me, and that (sic) although [Sutphin] legitimately owes me \$4,500.00, I am going to ask the Court to dismiss this case. Hopefully, that will resolve the ethical complaint."

24. On October 26, 2020, the Warrant in Debt Respondent filed against Sutphin in the Chesterfield County General District Court on or about August 13, 2020 was dismissed with the notation "BK." Respondent states that the "BK" notation was as a result of Respondent's letter to the clerk of the Chesterfield County General District Court dated September 10, 2020.

II. NATURE OF MISCONDUCT

Such conduct by Denis Charles Englishby constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

² As and for the same \$4,500.00 unpaid legal fees (plus \$56.00 in costs) claim Respondent had sued Sutphin for in May 2018 that had been discharged by the Court on January 7, 2019.

...

(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 4.3 Dealing With Unrepresented Persons

...

(b) A lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interest of the client.

III. PUBLIC REPRIMAND WITH TERMS

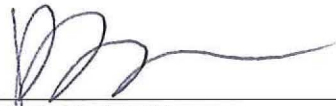
Accordingly, having accepted the Agreed Disposition (Public Reprimand With Terms), the Panel imposes a Public Reprimand with Terms. The terms are:

1. Within 45 days of the issuance of this District Committee Determination, Respondent shall certify in writing to M. Brent Saunders, Senior Assistant Bar Counsel, his completion of the Virginia CLE online seminar titled "Annual Bankruptcy Practice 2020 (6.5 Total Credit) (1.5 Ethics Credit)". Respondent shall not submit these hours for credit toward his annual mandatory CLE requirement.
2. Respondent is placed on probation for a period of two (2) years commencing upon the issuance of this District Committee Determination. During such probationary period, Respondent will not engage in Misconduct as defined by Part 6, Section IV, Paragraph 13-1 of the Rules. Any final determination that Respondent engaged in Misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel, or the Supreme Court of Virginia, shall conclusively be deemed to be a violation of this term.

If the terms are not met, the Third District Committee, Section II, shall certify the matter to the Virginia State Bar Disciplinary Board for sanction determination. 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 Part 6, Section IV, Paragraph 13-9.E of the Rules.

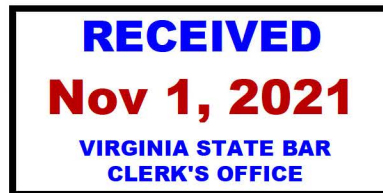
Pursuant to Part Six, Section IV, Paragraph 13-9.E of the Rules, the Clerk of the
Disciplinary System shall assess costs.

THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 

Brielle M. Hunt
Chair

Date: November 1, 2021



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IN THE MATTER OF
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VSB Docket No. 21-032-120687

AGREED DISPOSITION
(PUBLIC REPRIMAND WITH TERMS)

Pursuant to Part 6, Section IV, Paragraph 13-7.A.9. of the Rules of the Supreme Court of Virginia (“Rules”), the Virginia State Bar, by M. Brent Saunders, Senior Assistant Bar Counsel, and Denis Charles Englisby (“Respondent”), *pro se*, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia on September 21, 1972, and was so licensed at all times relevant hereto.

2. In 2017, the complainant, Brittany Raquel Sutphin (“Sutphin”), hired Respondent to represent her in a domestic relations matter. Respondent charged Sutphin \$5,100.00 in legal fees for the representation toward which Sutphin paid only \$600.00.

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Bankruptcy Clerk's Office, please see if either you or the Bankruptcy Court sent me a "Notice of Discharge" ... I would appreciate it if you would get that information to me no later than August 17, 2020. If it looks like you have done everything correctly and those records reveal that, then I certainly will not be suing you. If I have not heard from you one way or the other by August 17, 2020, I will be filing suit against you for the balance still due and owing, assuming that you have not filed correctly with the Bankruptcy Court. I hope to hear from you.

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Rule 4.3 Dealing With Unrepresented Persons

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(b) A lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interest of the client.

III. PROPOSED DISPOSITION

Accordingly, Senior Assistant Bar Counsel and Respondent tender to the Third District Committee, Section II, for its approval the agreed disposition of a Public Reprimand With

Terms. The terms are as follows:

1. Within 45 days of the issuance of a District Committee Determination approving this agreed disposition, Respondent shall certify in writing to the undersigned bar counsel his completion of the Virginia CLE online seminar titled "Annual Bankruptcy Practice 2020 (6.5 Total Credit) (1.5 Ethics Credit)". Respondent shall not submit these hours for credit toward his annual mandatory CLE requirement.

2. Respondent is placed on probation for a period of two (2) years commencing upon the issuance of a District Committee Determination approving this agreed disposition. During such probationary period, Respondent will not engage in Misconduct as defined by Part 6, Section IV, Paragraph 13-1 of the Rules. Any final determination that Respondent engaged in Misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel, or the Supreme Court of Virginia, shall conclusively be deemed to be a violation of this term.

If the terms are not met, Respondent agrees that the District Committee shall issue a Certification for Sanction Determination. 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 ¶ 13-9.E of the Rules.


Pursuant to Part 6, Section IV, Paragraph 13-30.B of the Rules, Respondent's prior disciplinary record shall be furnished to the Panel considering this agreed disposition.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13-9.E of the Rules.

THE VIRGINIA STATE BAR



By: _____
M. Brent Saunders
Senior Assistant Bar Counsel



Denis Charles Englisby
Respondent