

VIRGINIA:

BEFORE THE SECOND DISTRICT, SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MATTHEW GREGORY FINLEY

VSB Docket No. 24-021-129303

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 26, 2024, a meeting was held in this matter before a duly convened Second District, Section I Committee consisting of Patrick L. Maurer, Chair Presiding; Edwin S. Booth, Gerald L. Harris, and Shannon M. Twohig, Members; and Lewis J. Georges, Lay Member. During the meeting, the Second District, Section I Committee voted to approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-7.A.9 of the Rules of Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Shelley L. Spalding, Assistant Bar Counsel; Matthew G. Finley, Respondent.

WHEREFORE, the Second District, Section I Committee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. Lisa Elaine Etheridge (“Complainant”) was served with a divorce complaint on May 19, 2021, filed in the Virginia Beach Circuit Court. At that time, Matthew Gregory Finley (“Respondent”) was employed by the Law Office of Steven Barnette (“the Barnette Firm”). On or about June 22, 2021, Respondent and Complainant executed an Engagement Agreement, which stated:

In order to commence representation, The Firm and Client have agreed that Client will furnish a certified copy of their marriage certificate and pay a retainer in the amount of ~~Five Thousand Dollars (\$5000.00)~~ ⁴ payable as a flat fee, earned upon receipt; and broken down as follows:

- 1) Retainer payment of \$ 2000
- 2) Payment of \$ _____ by _____
- 3) Payment of \$ _____ by _____

While the Engagement Agreement stated that “The Law Office of Steven Barnette” will furnish legal representation, the paragraph entitled Communication, paragraph (¶ 5) of the Engagement Agreement identified Respondent as Complainant’s lawyer.

Complainant understood she hired Respondent to represent her.

2. Complainant paid \$4,000.00 to the Barnette Firm, which was deposited into the Barnette Firm’s trust account.
3. The Engagement Agreement also set forth:

Client understands that timely payment is integrate to this contract. Client further agrees that any fees and cost generated as a result of representation shall not be bankrupted or claimed on any petition to a bankruptcy court or proceeding from credit relief. If such relief is sought, client agrees to reaffirm this debt to the firm, and pay any costs or fees associated with legal action to enforce this agreement. Client agrees to this provision specifically, because client understands that as a part of representation and advice, attorneys for this firm may advise client of the benefits or necessity of filing for bankruptcy protection.

4. In his interview with the bar’s investigator, Respondent stated that the Engagement Agreement was provided by the Barnette Firm. However, Respondent acknowledged he edited the engagement agreement provided by the Barnette Firm and added the language in paragraph 5 of the Engagement Agreement regarding communication.
5. Respondent would testify that the engagement agreements used were provided by the Barnette Firm and updated, along with the letterhead, by the firm. Respondent would testify that he asked to add the communication provision to the agreement. Respondent

would testify that he was unaware the engagement agreements were not actually written by the Barnette Firm, but rather Olaf Gebhart, whose license has been suspended by the Virginia State Bar. Respondent would testify he was never privy to the financials of the firm, and so the actual nature of the fee agreement beyond what was written is unknown to him.

6. On July 27, 2021, Respondent served discovery on Complainant's husband in the divorce proceeding.
7. On August 5, 2021, Complainant's husband served Interrogatories on Respondent, as counsel for Complainant. On August 13, 2021, Complainant emailed Respondent information regarding joint debts and assets she was able to access. On October 7, 2021, Complainant emailed Respondent regarding paperwork and again noting she intended to drop off a payment. On December 17, 2021, Complainant followed up by email, inquiring if Respondent received the paperwork she mailed him, stating she had left a voicemail, but received no call back, and indicated she would drop by the office with the paperwork if he had not received it.
8. On February 2, 2022, Complainant emailed Respondent: "I was just wanting to know if you heard anything from my husband's lawyer yet on the discovery or anything for that matter."
9. On March 3, 2022, Complainant emailed Respondent stating: "I have emailed and called a few times with no response, even about a week ago. . . . Can you please call or email me with a follow up with the case since it's been a few months since I've talked to you."
10. Respondent responded that same day: "I have not forgotten about you. I'm in a bit of a staff crisis right now because of a family emergency. I plan on working on your case

tomorrow and will provide an update.” On March 14, 2022, and June 11, 2022, Complainant sent Respondent emails requesting an update. Respondent did not respond to either.

11. On June 24, 2022, Complainant again emailed Respondent:

I am following up per our conversation on June 22, 2022. I am awaiting the letter that you [were] going to copy me in that you are sending to my husband’s lawyer regarding him doing his discovery as well as the unpaid spousal support since 8/2021. Please copy me on any emails from the opposing side so I can stay updated. Like I said I would like to have this done asap.

12. According to Respondent, Complainant filed a *pro se* Motion to Amend Separate Maintenance in Virginia Beach J&DR without his knowledge on May 3, 2022.

13. By letter dated July 7, 2022, the Barnette Firm notified Complainant that Respondent would be leaving the firm on July 29, 2022, to pursue other endeavors. The letter gave Complainant the option to remain with the Barnette Firm or have her representation and file transferred to Respondent. The letter also stated that, if Complainant chose to continue having Respondent represent her, “[a]ny retained/unspent fees or costs currently held by the firm will be promptly returned or transferred to Attorney Matthew Finley.”

14. On July 7, 2022, Complainant emailed Respondent: “I am following up per my last email and conversation regarding you copying me in the email to my husband’s lawyer if he has done his discovery and when can we wrap this up asap.”

15. On July 11, 2022, Respondent wrote to opposing counsel proposing a settlement agreement on behalf of Complainant. On July 14, 2022, Complainant emailed Respondent: “Hi I have not received a copy of the letter you were sending to my husband’s lawyer yet. Just want to make sure you didn’t forget.”

16. On July 22, 2022, Complainant again emailed Respondent:

I just wanted to follow up with you per our last conversation. I told you that my husband's lawyer stated he had not received my discovery yet and that he had never heard back from you. Also that he had sent you a letter back in May of 2022 and you had never responded. Did you get to speak with him yet? My husband's lawyer and myself are wanting to move forward. I agree with him this case should have been over months ago, but I'm still waiting on my husband's discovery regarding how much was in his retirement in 2015 when we separated. Please keep me posted.

17. The same day, July 22, 2022, Respondent replied: "I have left a message for [opposing counsel], however I have not heard back from him yet. I also have not received any discovery from him. As soon as I hear something I will let you know."
18. On July 27, 2022, Complainant emailed Respondent: "Can you please reach back out to [opposing counsel] if you have not gotten a response back from your voicemail yet. . . . I want to get this matter resolved before 2023 if possible."
19. On August 16, 2022, Complainant emailed Respondent indicating that she would like to continue with Respondent as her counsel, but only if she was kept updated on her case. She stated: "If you are too busy to handle my case then I will request a full refund in the amount of 4,000 and I will be forced to go hire another lawyer." Her letter also reflected that she found out from the courthouse that Respondent filed something in July 2022.
20. Respondent made no attempts to get the advanced legal fees transferred after he left the Barnette Firm. The advanced legal fee paid by Complainant was not forwarded to Respondent's new firm. Respondent did not have access to the trust account at the Barnette Firm and did not have any trust accounting responsibilities while employed there. On August 19, 2022, Respondent replied by email:

I appreciate you reaching out. I also do not believe I filed anything in July and the court website does not show anything, although I would know if I filed something. What I have received from them today is a pretrial conference order to push forward a contested trial date.

If you feel that I'm not putting your best interests and time into your case, then I suggest that we part ways. However, the time that has been put into the case will be calculated against the amount you have paid, so you would not receive an entire refund. Although that money was paid at the prior firm, so I have no control over that process. If you did decide to do this, I would make sure everything is together and current for whoever your new attorney would be. I would not leave you in a spot that would be detrimental to your case.

The reason there was such a long delay in your divorce process was because I believed them to be negotiating, however they sat on it for a long period of time without any response. This is a common occurrence in contested divorce cases. I understand your frustration, however.

21. Respondent would testify that upon informing the Barnette Firm that Complainant was maintaining representation with Respondent, the Barnette Firm did not forward any unearned funds from their trust account to Respondent.
22. On September 2, 2022, Complainant emailed Respondent: "I would like to get this case over with or at least move toward getting our issues resolved. I feel like we are at the end and I would hate to have to start over . . . If you're willing to finish my case I would like that."
23. On September 8, 2022, Respondent responded: "I will continue to work on your case and make some movement."
24. In October 2022, Complainant and Respondent communicated by email regarding the general plan for resolving Complainant's divorce.
25. On November 9, 2022, Complainant emailed Respondent seeking an update and providing times she was available for a phone call.
26. Respondent would testify that throughout the representation of Complainant, Respondent met with her in person at least three times, and there are numerous phone calls that are not reflected in the email exchanges.

27. On December 14, 2022, Complainant again emailed Respondent: “I’m just following up from my last email, can we schedule a phone meeting to answer any questions you need to move forward.”

28. The same day, Respondent replied: “I’m currently in a jury trial, which should be completed soon. I also have hired someone to help me with my divorce cases. I will follow up with you on Friday to get things moving.”

29. On January 6, 2023, Complainant emailed Respondent:

Just wanted to touch base since I never received a phone call from you per your last email. I hope things are slowing down for you, and since you have more assistance with your divorce cases we can move forward pretty promptly. Give me a call anytime between 12:30 to 1:00 or after 4:30 daily.

30. On February 22, 2023, and June 12, 2023, Complainant emailed Respondent again seeking an update on her case.

31. Respondent did not communicate with Complainant at all between December 14, 2022, and June 12, 2023. He stated that there was nothing going on in the case, so there was nothing to report to her.

32. In his response to the bar complaint dated August 2, 2023, Respondent wrote: “it is coincidental timing as I was going to reach out to Ms. Etheridge to inform her that I am closing my private practice.” He also stated that he notified Complainant and made a copy of her file available to her. By letter the same day, August 2, 2023, Respondent wrote to Complainant:

You paid \$4,000 to the Law Office of Steve Barnette, my prior firm. None of that money was forwarded with me and I am not privy to their financials. If you are interested in a refund, you should reach out to them. Since going out on my own, I have been handling your case “pro bono,” or in other terms for free.

33. In his response to the bar complaint, Respondent generally blamed the lack of movement in the case on opposing counsel. “I understand she wanted discovery from her husband, but how to do that without litigation is essentially to wait.” During his interview with the bar’s investigator, Respondent was asked why he did not file a motion to compel regarding the discovery. He answered that he did not have a response and there was no reason. Respondent would testify that he then explained the procedural problems with a motion to compel and that ironically, it could delay the discovery process even further.
34. During his interview with the bar’s investigator, Respondent was asked why Complainant’s discovery responses were never served. Respondent blamed the Barnette Firm’s paralegals.
35. Respondent would testify that after serving discovery on opposing counsel and attempting on more than one occasion to discuss the case with opposing counsel, there was no response from opposing counsel at all. The sum total of communication with opposing counsel, despite Respondent’s efforts, were 1.) a request for discovery, 2.) A letter requesting a status on discovery, 3.) a request to sign a pretrial order, 4.) A phone call requesting information on why complainant filed a motion for separate maintenance *pro se* and 5.) a question of whether I still represented her, in a span of two years.
36. Respondent has no prior disciplinary record.

II. NATURE OF MISCONDUCT

By failing to serve discovery responses, by failing to file a motion to compel discovery responses from the opposing party, and by failing to otherwise take action to move the case toward conclusion, Respondent violated the following Rule of Professional Conduct:

RULE 1.3 Diligence

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

By failing to communicate with his client at all between December 14, 2022, and June 12, 2023, despite multiple emails from his client requesting updates and communicating that she did not want to delay the divorce, Respondent violated the following Rule of Professional Conduct:

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.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

By representing to his client that his attorney's fees were earned upon receipt, and by representing to his client that any attorney's fees owed are not dischargeable in bankruptcy, Respondent violated the following Rule of Professional Conduct:

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the District Committee to impose a Public Reprimand with Terms. The terms are:

1. On or before July 31, 2024, Respondent shall complete four (4) hours of live continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. These credits shall not be fulfilled via training by Respondent's employer. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Bar Counsel, promptly following his attendance of each such CLE program(s).

If any of the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-16.BB and CC of the Rules of Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why a Certification for Sanction Determination should not be imposed. 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, § IV, ¶ 13-9.E of the Rules of Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

This District Committee Determination shall be effective March 26, 2024.

Entered this __ 1st __ day of April 2024.

SECOND DISTRICT, SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR



Patrick L. Maurer
Acting Chair