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Mar 6, 2023

VIRGINIA STATE BAR
CLERK'S OFFICE

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

**IN THE MATTER OF
STEPHEN PHILLIP GIVANDO**

**CASE NO. CL22-7315
VSB DOCKET NO. 22-021-124529**

**AGREED DISPOSITION MEMORANDUM ORDER
FOR A PUBLIC REPRIMAND WITH TERMS**

This matter came to be heard on Friday, March 03, 2023, before a Circuit Court Three-Judge panel, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Michelle J. Atkins, Judge of the Fourth Judicial Circuit, Designated Chief Judge, the Honorable Bryant L. Sugg, Judge of the Seventh Judicial Circuit, and the Honorable Robert H. Sandwich, Jr., Judge of the Fifth Judicial Circuit. Stephen Phillip Givando was present and was represented by counsel, Mary T. Morgan. The Virginia State Bar appeared through its Assistant Bar Counsel, Shelley L. Spalding. The Chief Judge polled the members of the panel as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter Jennifer Hairfield, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

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

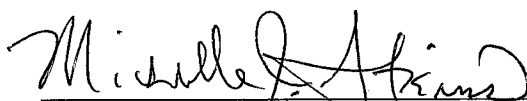
It is further **ORDERED** that the sanction is effective March 3, 2023.

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

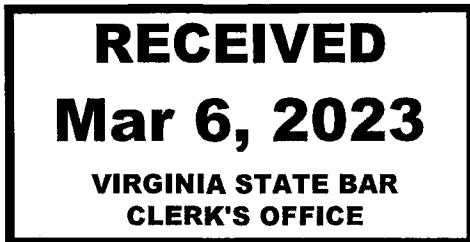
A copy teste of this Order shall be mailed, to the Respondent, Stephen Phillip Givando, at his last address of record with the Virginia State Bar, Stephen P. Givando, P.C., Town Center Office Suites, LLC, One Columbus Center, Suite 600, Virginia Beach, VA 23462, with an attested copy to: Mary T. Morgan, Infinity Law Group, PLC, 4646 Princess Anne Rd., Unit 104, Virginia Beach, VA 23462, Shelley L. Spalding, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026, and to the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 6th DAY OF MARCH, 2023

CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH



Michelle J. Atkins, Chief Judge
Three-Judge Circuit Court



VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL
SECOND DISTRICT, SECTION I COMMITTEE
VSB DOCKET NO.: 22-021-124529

v.

Case No.: CL22-7315

STEPHEN PHILLIP GIVANDO

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-6.H and Va. Code Section 54.1-3935, the Virginia State Bar, by Shelley L. Spalding, Assistant Bar Counsel, and Stephen Phillip Givando, (“Respondent”), and Mary Morgan, Esq., counsel for Respondent, hereby enter into the following Agreed Disposition arising out of the above-referenced matter.

STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1982. At all relevant times, Respondent was a member of the VSB.
2. In 2017, Laura Russell, retained Respondent to defend attempted capital murder and other related criminal charges in the Virginia Beach Juvenile and Domestic Relations Court against her son, Riley Miller (sometimes referred to as “Complainant”) on a verbal basis. No retainer agreement was signed. Initially, Respondent did not ask to be paid and no attorney’s fees were discussed. Respondent would testify that he and Russell had been friends since at least 2007, and he had helped her and her two sons with legal matters on multiple occasions, without a formal representation agreement and often without payment. Respondent told the bar’s investigator that he considered the

representation pro bono at the beginning, but expected he would be paid back at a later date.

3. On July 5, 2017, Respondent entered an appearance as counsel for Riley Miller in the Virginia Beach J&DR.
4. In 2018, the charges against Complainant were certified to the Virginia Beach Circuit Court, with a Direct Grand Jury Indictment for Attempted Capital Murder of a law Enforcement Officer and Possession of a Controlled Substance, and a Grand Jury Indictment for Robbery with Use of a Gun, Malicious Wounding of a Law Enforcement Officer, Use of a Firearm in the Commission of a Felony and Conspiracy to Commit a Felony.
5. In September 2020, Complainant was found guilty of Attempted Second Degree Murder, a lesser included offense and pled guilty to other related charges in the Virginia Beach Circuit Court.
6. In 2020 Complainant's father, Glenn Rex Miller, owed Ms. Russell a significant child support arrearage, over \$70,000.00.
7. Laura Russell stated that around this time she felt badly about Respondent representing her son without payment.
8. Ms. Russell would testify that in 2020, she and Respondent verbally agreed \$35,000.00 would be fair compensation for Respondent for his representation of Complainant. Respondent would testify that he and Ms. Russell never discussed what would be fair compensation for his representation of Complainant.
9. Later, Ms. Russell and Respondent verbally agreed that Respondent would pursue enforcement of the child support arrearage on behalf of Ms. Russell, and that Respondent

would be entitled to keep any recovery as payment for his representation of Complainant in the criminal charges pending in Virginia Beach Circuit Court.

10. On March 1, 2021, the Circuit Court for the City of Virginia Beach entered a consent order requiring Glenn Rex Miller to pay a total of \$35,000.00 in arrearages (the "Child Support Order"): \$15,000.00 as a lump sum within thirty days of entry of the order and bi-monthly payments of \$750.00 beginning April 1, 2021, until the arrearage was paid in full. The Order stated that payments were to be made to Respondent.
11. In early 2021, Laura Russell inherited funds upon her mother's death. Ms. Russell stated she believed that Respondent would be not be able to collect on the child support arrearage even if Glenn Rex Miller was ordered to pay. By check dated March 15, 2021, Ms. Russell paid Respondent \$15,000.00 in attorney's fees for his representation of Complainant from the inherited funds. Ms. Russell understood this payment would go toward the \$35,000.00 that Respondent expected to be paid, leaving an attorney's fees balance of \$20,000.00 for Riley's representation, which if collectible, would be paid through the arrearage.
12. By check dated April 6, 2021, Glenn Rex Miller paid Respondent \$15,000.00 pursuant to the Child Support Order.
13. By check dated April 6, 2021, Glenn Rex Miller paid Laura Russell \$1,500.00 pursuant to the Child Support Order.
14. On April 27, 2021, Complainant was sentenced to 37 years of incarceration, 17 years of which were suspended. Upon completion of the sentencing hearing, Respondent's representation of Complainant was concluded.

15. By check dated May 4, 2021, Glenn Rex Miller paid Laura Russell \$1,500.00 pursuant to the Child Support Order.
16. Glenn Rex Miller would testify that after making these first two payments directly to Laura Russell, Respondent called Glenn Rex Miller and instructed that all future payments made pursuant to the Child Support Order be made directly to Respondent.
17. By check dated June 3, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. Laura Russell would testify that around the same time she called Respondent to alert him that she did not receive the expected monthly payment from Glenn Rex Miller. Respondent would testify that if this conversation occurred, he would have advised Laura Russell that the June payment had been made directly to him as outlined in the Order.
18. By check dated July 2, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order.
19. By check dated August 12, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order.
20. By check dated September 12, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. Respondent deposited these fees directly into his operating account. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$36,000.00.
21. By check dated October 10, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. Respondent deposited these fees directly into his operating account, even though the fees he had received exceeded the attorney's fees Laura Russell

- had agreed upon. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$37,500.00.
22. By check dated November 10, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. Respondent deposited these fees directly into his operating account. With, this payment, the balance of fees paid to Respondent for his representation of Complainant was \$39,000.00.
 23. By check dated December 10, 2021, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. Respondent deposited these fees directly into his operating account. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$40,500.00.
 24. Respondent would testify that the fee for a complicated criminal matter such as Respondent's fee would have been a minimum of \$50,000.00, not including costs and expenses.
 25. Respondent would testify that after the Complainant was sentenced, Laura Russell was distraught. Respondent was exceedingly worried about her. Laura Russell contacted Respondent multiple times, and at one point, asked for him to return \$15,000 because her husband was leaving her and she was in need of money.
 26. On December 11, 2021, Riley Miller filed a bar complaint regarding Respondent's representation of him at trial and sentencing, and failure to file an appeal on his behalf.
 27. On or about January 8, 2022, Respondent refunded \$2,000.00 to Ms. Russell from his personal account. The re: line of the check reads "Riley Miller." The check was delivered to Ms. Russell by mail with a handwritten note from Respondent that read: "I guess with this check, I will owe you \$10,000 of the money you requested I return to you."

Will make further payments when I'm able. In the meantime, hope you're hanging in there." With this refund, the balance of fees paid to Respondent for his representation of Complainant was \$38,500.00. Despite his representation he would do so, Respondent made no additional payments to Laura Russell. Respondent would testify that he made the "I guess" statement because he did not believe that Laura Russell really wanted him to return the funds. Respondent would also testify that Laura Russell never contacted him again to ask for the remaining balance.

28. In January 2022, Respondent closed his trust account.
29. Notwithstanding the note, Respondent continued to receive and deposit into his operating account additional checks in the amount of \$1,500.00 from Glenn Rex Miller as follows:
 - a. By check dated January 12, 2022, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$40,000.00.
 - b. By check dated February 12, 2022, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$41,500.00.
 - c. By check dated March 15, 2022, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$43,000.00.
 - d. By check dated April 15, 2022, Glenn Rex Miller paid Respondent \$1,500.00 pursuant to the Child Support Order. With this payment, the balance of fees paid to Respondent for his representation of Complainant was \$44,500.00.

NATURE OF MISCONDUCT

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

RULE 1.5 Fees

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

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:

(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.

PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to the Three-Judge Panel for its approval the Agreed Disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Three-Judge Panel. The terms are as follows:

1. Respondent shall repay Laura Russell \$10,000.00, in monthly payments of \$1,000.00 beginning April 1, 2023, and on or before the first of each month from April 1, 2023 to January 1, 2024, until fully repaid. Within 2 weeks of each payment, Respondent shall certify

having made such payment in writing, and shall tender a copy of the check reflecting such payment, to Shelley L. Spalding.

2. Respondent shall read in its entirety *Lawyers and Other People's Money* and shall certify compliance in writing to Bar Counsel not later than April 1, 2023.

3. Respondent shall read in its entirety Legal Ethics Opinion 1606 and shall certify compliance in writing to Bar Counsel not later than April 1, 2023.

4. Respondent shall read in its entirety Rule 1.15 of the Virginia Rules of Professional Conduct and shall certify compliance in writing to Bar Counsel not later than April 1, 2023.

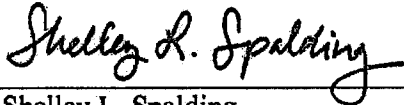
5. For a period of two years following entry of this Order, Respondent hereby authorizes a Virginia State Bar Investigator to conduct unannounced personal inspections of his trust account books, records, and bank records to ensure his compliance with all of the provisions of Rule 1.15 of the Rules of Professional Conduct, and shall fully cooperate with the Virginia State Bar investigator.

If any of the terms are not fully and timely met by the deadlines set forth above, Respondent agrees that the alternative disposition shall be a suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of one year and one day. 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 of the Supreme Court of Virginia.

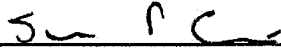
The Virginia State Bar and Respondent agree that, should the Three-Judge Panel reject this Agreed Disposition, the Three-Judge Panel retains jurisdiction to hear this matter on March 7, 2023 or anytime thereafter.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia,
Respondent's prior disciplinary record shall be furnished to the Three-Judge Panel considering
this Agreed Disposition.



Shelley L. Spalding
Assistant Bar Counsel
Virginia State Bar



Stephen Phillip Givando, Esquire
Respondent



Mary T. Morgan, Esquire
Counsel for Respondent