

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
TINA TRACY NEYHART**

VS B Docket No. 22-101-124323

MEMORANDUM ORDER OF REVOCATION

THIS MATTER came to be heard on August 26, 2022, on the Subcommittee Determination (Certification) by the Tenth District, Section I Subcommittee of the Virginia State Bar, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Kamala H. Lannetti, Second Vice Chair (“Chair”); Yvonne S. Gibney, Michael J. Sobey, Donita M. King, and Elisabeth Martingayle, Lay Member. The Virginia State Bar (the “VSB”) was represented by Edward J. Dillon, Deputy Bar Counsel. The Respondent Tina Tracy Neyhart (hereinafter “the Respondent”) was not present, nor did counsel appear on her behalf. The Chair directed the Assistant Clerk to call the Respondent’s name three times in the adjacent hall. The Respondent did not answer or appear. At the outset of the hearing, 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 this matter and serving on the panel, to which inquiry each member responded in the negative.

Lisa Wright, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the Chair’s request, the Assistant Clerk provided the Board with a detailed account of all communications between the Clerk and the Respondent concerning this matter, including all notices, emails and telephone communications. The log of these communications was admitted

as Board Exhibit 1.

The information provided by the Assistant Clerk established that the Clerk sent Notice of the August 26, 2022 hearing in this matter to the Respondent on June 9, 2022. On July 7, 2022, the Clerk received the Respondent's handwritten and signed Answer, dated June 27, 2022. VSB Exhibit #10. In her Answer the Respondent requested that the matter be dismissed. The Board FINDS that all legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") and properly served on the Respondent in the manner prescribed by Part Six, Section IV, Paragraphs 13-12.C. and 13-18 of the Rules of the Supreme Court of Virginia.

The Chair admitted Board Exhibit 2, the returned Notice of Telephone Conference, which had been addressed to the Respondent's address of record. Pursuant to the Prehearing Conference Call Order, VSB Exhibits 1-10 were also admitted into evidence by the Chair. The Board heard testimony from the following witnesses on behalf of the Bar, who were sworn under oath: Tracy Harless and Mark McHugh.

The Board considered the witness testimony, the exhibits, and argument of counsel. The Board then met in private to consider its decision.

FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence.

1. Respondent was admitted to the VSB in 1995. At all relevant times, Respondent has been licensed to practice law in the Commonwealth of Virginia. Respondent's license has been administratively suspended since October 2021.
2. On or about February 2020, Tracy Harless engaged Respondent to represent her in

obtaining a divorce. She paid Respondent a \$750 flat fee for the representation.

3. Respondent drafted a separation agreement that Respondent provided to Ms. Harless.

4. Between July 14, 2020, and October 1, 2021, Respondent and Ms. Harless had no communication with each other. Ms. Harless acknowledged having some reservations about proceeding with her divorce during this time.

5. On or about June 2021, Respondent closed her law practice and moved to Delaware. She also closed the bank accounts for her law practice. Respondent did not inform Ms. Harless of this.

6. On or about October 1, 2021, Ms. Harless attempted to file the fully signed and notarized separation agreement with the Montgomery County Circuit Court and learned then that Respondent had not filed for divorce on Ms. Harless' behalf.

7. In an email to Respondent the same day, Ms. Harless requested that Respondent file the divorce papers. Two days later Respondent responded with an email that advised Ms. Harless that Respondent would send a copy of her file to her, and that Ms. Harless needed to hire new legal counsel to handle her divorce.

8. When the file did not arrive as promised, Ms. Harless sent emails to Respondent dated October 12, 2021, and November 2, 2021, requesting the status of the file Respondent had promised to send. Despite assurances from Respondent that she had sent the file, Ms. Harless has never received it.

9. On or about November 22, 2021, Ms. Harless filed a bar complaint against Respondent.

10. By email to Respondent dated February 4, 2022, VSB investigator Mark McHugh requested that Respondent provide the VSB with a copy of Ms. Harless' file and any financial documentation pertaining to the \$750 flat fee in advance of his interview of Respondent.

11. Respondent did not provide the requested documentation to the VSB investigator in advance of the interview.
12. In her February 7, 2022, telephonic interview, Respondent told Mr. McHugh that she had refunded the \$750 flat fee to Ms. Harless approximately three weeks before the interview. Respondent stated that she paid it from her personal account because she had closed the bank accounts for her law practice. Respondent told Mr. McHugh that she had referred Ms. Harless to another attorney, whom she could not identify, and that she had provided that attorney with a copy of Ms. Harless' file. Respondent agreed to mail a copy of Ms. Harless' file and the financial documentation pertaining to the \$750 flat fee to the VSB the following day.
13. When the VSB did not receive a copy of Ms. Harless' file or the financial documentation pertaining to the \$750 flat fee, Mr. McHugh made multiple follow-up requests to Respondent by both telephone and email for this information.
14. Respondent has never provided the VSB with a copy of Ms. Harless' file or the financial documentation related to the \$750 flat fee.
15. Respondent, likewise, has never provided Ms. Harless with a copy of her file or refund of any portion of the \$750 flat fee she paid.
16. On July 7, 2022, Respondent filed her Answer in this matter in which she stated that she had returned to Ms. Harless the file and refunded the \$750 fee "over one year ago."

NATURE OF MISCONDUCT

The following conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules 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.

Respondent violated Rule 1.4(a) when she failed to communicate with Ms. Harless in June 2021 to notify Ms. Harless that Respondent was closing her practice and that Ms. Harless would need to retain other legal counsel to pursue her divorce.

RULE 1.15 Safekeeping Property

(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;

...

Respondent violated Rule 1.15(b)(4) by failing to return any portion of the \$750 flat fee to Ms. Harless despite the fact that Respondent did not complete the divorce for Ms. Harless and had notified Ms. Harless in October 2021 that Ms. Harless would need to retain new counsel to complete the divorce.

RULE 1.15 Safekeeping Property

(b) Specific Duties. A lawyer shall:

(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.

Respondent violated Rule 1.15(b)(5) by disbursing the unearned \$750 flat fee from her trust account when she retired and closed the bank accounts for her law practice in 2021 and failed to return any of the \$750 flat fee to Ms. Harless. At least a portion of the flat fee was unearned when it was disbursed because Respondent had not completed the work to obtain the divorce for Ms. Harless.

RULE 1.16 Declining Or Terminating Representation

(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).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third -party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

Respondent violated Rule 1.16(d) and (e) by failing to provide Ms. Harless with a copy of her file or a refund of any portion of the \$750 flat fee when she had not completed the divorce

and had notified Ms. Harless in October 2021 that she needed to retain new counsel to complete the divorce.

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[.]

Respondent violated Rule 8.1(c) by failing to provide a copy of Ms. Harless' file and financial documentation pertaining to the \$750 flat fee to the VSB during the course of the VSB investigation into Ms. Harless' bar complaint after multiple verbal and written requests for the information by the VSB investigator and after Respondent represented to the VSB investigator that she would do so or that she had already done so.

SANCTION

After having found misconduct as alleged in the certification by clear and convincing evidence, the Board considered additional evidence regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed. The Chair admitted VSB Exhibit 11, the Respondent's disciplinary history, which reflected that Respondent had received a private reprimand with terms in 2010 for violating the rules governing trust accounts as a result of improper oversight and management of her firm's real estate escrow account.

The evidence further reflected that Ms. Harless has been unable to afford to retain new legal counsel as a result of Respondent's failure to refund the flat fee she paid, and Ms. Harless has not been able to obtain a divorce. This experience has also caused Ms. Harless to distrust the legal profession as a result of the Respondent's actions.

Although the Respondent was polite and cooperative during the VSB's investigation, she required the VSB's investigator to expend significant time emailing and telephoning her in what proved to be a vain attempt to obtain the records needed to complete the investigation.

DISPOSITION

After considering the evidence regarding the aggravating and mitigating factors applicable to the appropriate sanction to be imposed, the Board was guided in its decision by Standard 4.11 of the Annotated Standards for Imposing Lawyer Sanctions, Second Edition (ABA 2019), which states that "disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client." The Board also considered the following aggravating factors:

The Respondent's prior disciplinary record included a twelve-year old private reprimand for a trust account violation, although it was for misconduct unrelated to the trust account violation involved here. In addition, Respondent submitted an Answer in which she falsely claimed to have returned the file and fee to Ms. Harless, and she made similar false statements to the VSB investigator and to Ms. Harless. Other aggravating factors include the Respondent's substantial experience in the practice of law, her lack of remorse for her misconduct, her indifference to making restitution, and the vulnerability of her client.

The Board found no evidence of any mitigating factors.

After due deliberation, the Board reconvened and announced its decision as follows:

Upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by unanimous vote of the Board, that Respondent's license to practice law in the Commonwealth of Virginia be REVOKED.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section § IV, ¶ 13-29 of the *Rules of Supreme Court of Virginia*. Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of her license to practice law in the Commonwealth of Virginia to all clients for whom she is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her clients. Respondent shall give such notice immediately and in no event later than fourteen (14) days of the effective date of the revocation and make such arrangements as are required herein as soon as practicable and in no event later than forty-five (45) days of the effective date of the revocation. Respondent shall also furnish proof to the Clerk within sixty (60) days of the effective date of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of revocation, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective date of the revocation. 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 additional sanctions for failure to comply with the requirements of this subparagraph.


It is further ORDERED that pursuant to Part 6, Section, § IV, ¶ 13-9(E) of the *Rules of Supreme Court of Virginia*, the Clerk of the Disciplinary System shall assess all costs against Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Memorandum Order of Revocation to Respondent, Tina Tracy Neyhart, by certified

mail, return receipt requested, at her address of record with the Virginia State Bar, P.O. Box 196, Blacksburg, VA 24063-0196, and a copy by electronic mail to Edward J. Dillon, Jr., Deputy Bar Counsel.

ENTERED this 27th day of September 2022.

VIRGINIA STATE BAR DISCIPLINARY BOARD


Kamala H. Lannetti
2nd Vice Chair