



VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SHENANDOAH

**VIRGINIA STATE BAR EX REL
SEVENTH DISTRICT COMMITTEE**

**VSB Docket No. 21-070-120540, 21-070-121524
and 21-070-121548**

Complainant,
v. **Case Number: CL21001114-00**

BRADLEY GLENN POLLACK

Respondent.

FINAL JUDGMENT MEMORANDUM ORDER

THIS MATTER, originally scheduled to be heard on February 3 and 4, 2022, and continued for good cause upon Motion of the Respondent, was heard on June 30 and July 1, 2022 by a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Penney S. Azcarate, Judge of the 19th Judicial Circuit (Chief Judge), the Honorable Edward K. Stein, Judge of the 25th Judicial Circuit, and the Honorable James A. Willett, Judge of the 31st Judicial Circuit (collectively "the Court").

Paulo E. Franco, Jr., Assistant Bar Counsel, represented the Virginia State Bar ("VSB"). Respondent, having received proper notice of the proceeding, appeared in person at all times throughout the proceedings and was represented by Jeffery H. Geiger, Esquire of Sands Anderson PC.

The Chief Judge swore the court reporter, and each member of the Court verified that he or she had no personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or otherwise sanctioned by reason of the allegations of ethical misconduct set forth in the Certification issued on September 22, 2021 by a subcommittee of the Seventh District Committee of the VSB.

MISCONDUCT PHASE

At the beginning of the hearing, the parties presented stipulations to the Court that were filed on June 29, 2022 and were received and accepted by the Court (“Stipulations”).

The VSB withdrew the following charges in the Certification

1. Jones – 1.15 (a)(2) and (3), (b)(1)(2) (post 3.2020)
2. King – 1.15 (a)(2) and (3), (b)(1)(2) and (4) (post 3.2020)
3. Thomas – 1.15 (a)(2) and (3), 1.15 (b)(1)(2) and (4)

The VSB moved into evidence without objection the following exhibits prior to calling witnesses - 2, 3, 6, 8-14, 16-18, 22-25, 30-33, 35-39. The Court sustained Respondent’s objection to VSB Exhibit 1.

Both parties made opening statements.

The Court received the testimony of the following witnesses for the VSB:

Wayne D. Jones
William Allen, Esquire
Amanda Drumheller, Esquire
Robert Thomas

Respondent

The VSB proffered the testimony of Ronald H. McCall without objection as noted in the transcript.

The VSB then rested. Respondent moved to strike all rule violations to which he did not stipulate, and the Court heard arguments of counsel. After deliberation and viewing the evidence in the light most favorable to the VSB, the Court granted Respondent's Motion to Strike and dismissed Rules 1.3 (a) and 1.5 (a)(4) in the Jones matter (VSB Docket No. 21-070-120540) and Rules 1.3 (a) and 1.4 (a) and (b) in the Thomas matter (VSB Docket No. 21-070-121548). The Court overruled Respondent's Motion to Strike as to Rule 1.4 (a) and 1.16 (d) in the Jones matter and Rule 1.5 (b) in the Thomas matter.

Respondent testified in his case in chief. Respondent did not call any other witnesses and did not introduce any exhibits during the Misconduct phase of the trial. Respondent thereafter rested. Both parties made closing statements.

Upon due deliberation and consideration of the parties' Stipulations, exhibits, witness testimony, and the arguments of counsel, the Court made the following findings of fact by clear and convincing evidence:

1. Respondent was admitted to the Virginia State Bar ("VSB") on October 2, 1985. At all relevant times, Respondent was a member of the VSB.

VSB Docket No. 21-070-120540

Complainant: Wayne D. Jones

2. On December 4, 2019, Wayne D. Jones was arrested and charged with misdemeanor attempt to purchase a firearm after having been involuntarily committed.
3. Mr. Jones retained Respondent to represent his interests. Respondent charged Mr. Jones a flat fee of \$2,500 for the representation.

4. On December 6, 2019, Mr. Jones paid Respondent the \$2,500 by check, which Respondent did not deposit into his trust account.
5. Respondent entered his appearance on behalf of Mr. Jones on December 12, 2019.
6. After Mr. Jones was charged with a felony for making a false statement on a criminal history consent, Respondent charged Mr. Jones an additional flat fee of \$3,500 which Mr. Jones testified he paid by cash on December 16, 2019.
7. In his response to the bar complaint, Respondent did not recall that he had received two payments; however, during the bar investigation, Respondent confirmed that he had received the second payment, and had not deposited it into his trust account.
8. On July 7, 2020, the Commonwealth *nolle prossed* the charges against Mr. Jones because it did not have a record of his involuntary commitment that day but advised that the necessary record was in the mail. Assistant Commonwealth's Attorney Amanda Strecky advised Respondent that his client would be re-indicted.
9. On July 15, 2020, at 2:00 p.m., Respondent appeared in court with Mr. Jones; however, Mr. Jones was not then indicted.
10. On August 11, 2020, the Commonwealth filed a direct indictment with the Shenandoah Circuit Court, and on August 12, 2020, Mr. Jones was indicted.
11. On August 17, 2020, Mr. Jones wrote a letter to Respondent terminating his representation.
12. On August 18, 2020, Respondent dropped off Mr. Jones's file to his new counsel. In the file were copies of the *capias* and the recognizance form.
13. On August 19, 2020, Mr. Jones turned himself in to law enforcement for processing on the indictment.
14. On April 14, 2021, Mr. Jones pled guilty to an amended charge of misdemeanor false information to a criminal investigator.
15. During the investigation, Respondent cooperated fully and admitted that he did not keep the records required by Rule 1.15 of the Virginia Rules of Professional Conduct and otherwise did not keep his trust account in accordance with the requirements of Rule 1.15 of the Virginia Rules of Professional Conduct.

16. Respondent attempted to address his fees with Mr. Jones on a number of occasions and ultimately issued him a check in June of 2022 for the amount of \$6,000, representing the full amount of the fee paid to him.
17. Based on the Stipulations, the exhibits, witness testimony, arguments of counsel, and the findings of fact, the Court dismissed Rule 1.4 (a) and found violations of the following rules by clear and convincing evidence: 1.15 (b)(3) and (5); Rule 1.15 (c)(1)-(4); Rule 1.15 (d)(1)-(4); Effective March 2020 Rule 1.15 (a)(1), Rule 1.15 (b)(3)-(5); Rule 1.15 (c)(1)-(4); Rule 1.15 (d)(1)-(4); and Rule 1.16 (d). The Court further finds that Mr. Jones terminated Respondent in August of 2020, and Respondent waited almost two years to return any fees that Respondent did not earn. The Court further finds that Respondent's actions in this regard create a harm or potential harm to his client, the bar, and the public.

VS B Docket No. 21-070-121524

Complainant: Brandi King

18. Brandi King retained Respondent in February of 2019 to represent her interests in a divorce from her husband.
19. Ms. King paid Respondent an initial advance fee of \$10,000 against which she would be billed at his usual rate.
20. Respondent did not deposit the advance legal fee into his trust account in accordance with Rule 1.15 of the Virginia Rules of Professional Conduct.
21. Ms. King subsequently terminated Respondent and retained new counsel in December of 2020 to continue the representation in her divorce.
22. During the investigation, Respondent cooperated fully and admitted that he did not keep his trust account in accordance with requirements of Rule 1.15 of the Virginia Rules of Professional Conduct.
23. Based on the Stipulations, the exhibits, witness testimony, arguments of counsel, and the findings of fact, the Court found violations of the following rules by clear and convincing evidence: 1.15 (a)(1), Rule 1.15 (b)(3) and (5); Rule 1.15 (c)(1)-(4); Rule 1.15 (d)(1)-(4); Effective March 2020 Rule 1.15 (a)(1), Rule 1.15 (b)(3) and (5); Rule 1.15 (c)(1)-(4); and Rule 1.15 (d)(1)-(4). The Court further finds that fees in the King case were not flat fees but rather billable. Therefore, the Court finds that Respondent's testimony regarding his understanding of handling flat fees does not equate in the King matter.

VSB Docket No. 21-070-121548

Complainant: Robert D. Thomas

24. On August 11, 2020, Robert D. Thomas was arrested for shoplifting, third offense, a felony.
25. On August 19, 2020, Mr. Thomas received a solicitation from Respondent, offering to represent Mr. Thomas on the felony charge.
26. Respondent advised Mr. Thomas that he would represent him for a fee of \$800. There was no written fee agreement.
27. On October 10, 2020, Mr. Thomas dropped off a check for \$800 along with the paperwork charging him with a felony.
28. Respondent did not deposit the fee in his trust account in accordance with the requirements of Rule 1.15 of the Virginia Rules of Professional Conduct.
29. Respondent entered his appearance on Mr. Thomas's behalf shortly thereafter.
30. At a preliminary hearing on November 23, 2020, in general district court, Respondent advised Mr. Thomas that the Commonwealth was going to press ahead with charges and that he should waive preliminary hearing.
31. On the basis of Respondent's advice, Mr. Thomas waived his preliminary hearing, and the charges were certified to circuit court.
32. Mr. Thomas appeared at his next scheduled hearing in circuit court on December 18, 2020.
33. Mr. Thomas had another attorney appointed to represent him in circuit court.
34. On March 24, 2021, the circuit court held a hearing on Mr. Thomas' plea of guilty with a deferred disposition.
35. During the investigation, Respondent cooperated fully and admitted that he did not keep his trust account in accordance with requirements of Rule 1.15 of the Virginia Rules of Professional Conduct.
36. Respondent attempted to address his fees with Mr. Thomas and ultimately issued him a check in June of 2022 for the amount of \$800, representing the full amount of the fee paid to him.
37. Based on the stipulations of the parties, the exhibits, witness testimony, arguments of counsel, and the findings of fact, the Court dismissed Rule 1.5 (b) and found violations of the following rules by clear and convincing evidence: Effective

March 2020 Rule 1.15 (a)(1), Rule 1.15 (b)(3) and (5); Rule 1.15 (c)(1)-(4); Rule 1.15 (d)(1)-(4).

SANCTIONS PHASE

The Court then proceeded to the sanctions phase of the proceeding. The VSB and Respondent presented opening statements.

The VSB moved Exhibits 41-77 and 79 and 80 (Respondent's prior disciplinary record with the VSB) into evidence without objection from Respondent, withdrew Exhibit 78 and then rested.

Respondent then moved for the introduction of its Exhibits 1-33 the Court overruled the VSB's objection to the Exhibits on the grounds that they contained hearsay, self-serving statements and were cumulative. The Respondent thereafter called himself as a witness.

The VSB then recalled Amanda Drumheller in rebuttal.

Counsel for the VSB and Respondent presented argument regarding the sanctions to be imposed on Respondent for the misconduct found, and the Court recessed at the end of the day June 30, 2022, to deliberate, and ordered the parties to return on July 1, 2022, for the Court to announce its decision.

The parties appeared on July 1, 2022 at 9:00 a.m., and the Respondent was in court and present with his counsel when the Court announced its decision on the record.

DETERMINATION

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of Suspension (Six Months) with Terms of Respondent's license, effective July 30, 2022, which is set forth in the portion of the trial transcript attached hereto as Exhibit A.

Accordingly, it is hereby **ORDERED** that Respondent receive a Suspension of Six Months, with Terms, of his license to practice law in the Commonwealth of Virginia, effective on July 30, 2022.

Upon the termination of Respondent's suspension from the practice of law on January 31, 2023, Respondent shall retain a certified public accountant licensed in the Commonwealth of Virginia who shall issue a report every six months for a one-year period commencing January 31, 2023, to the Office of Bar Counsel certifying that his trust account is in compliance with Rule 1.15 of the Virginia Rules of Professional Conduct. The reports shall be due to the Office of Bar Counsel on or before August 30, 2023 and February 29, 2024.

If Respondent has not complied with the terms of this Memorandum Order or the CPA retained by Respondent finds that his trust account is not in compliance with Rule 1.15 of the Rules of Professional Conduct, the alternative sanction shall be a Certification for Sanctions Determination pursuant to Part 6, Section IV, Paragraph 13-18.O of the Rules of the Supreme Court of Virginia.

It is further **ORDERED** that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he 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 his care in conformity with the wishes of his clients. Respondent shall give such notice immediately and in no event later than 14 days of the

effective date of the suspension, and make such arrangements as are required herein as soon as practicable and in no event later than 45 days of the effective date of the suspension. Respondent shall also furnish proof to the VSB within 60 days of the effective date of the suspension 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 the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the VSB Disciplinary Board.

It is further **ORDERED** that the Clerk of the Disciplinary System of the Virginia State Bar shall assess all costs pursuant to Paragraph 13-9.E.

It is further **ORDERED** that the Clerk shall send a copy teste of this Memorandum Order to Respondent, Bradley Glenn Pollack, by certified mail, return receipt requested, to Bradley Glenn Pollack, 440 Main Street, Woodstock, Virginia 22664, his address of record with the VSB; to Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219, and to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219 and to Jeffery H. Geiger, Esquire at Sands Anderson PC, PO Box 1998, Richmond, VA 23218-1998.

The hearing was recorded both days by Raegan Millsap of Shenandoah Valley Reporting, LLC, telephone: 540-742-1096.

August 9, 2022

ENTERED:



The Honorable Penney S. Accarato
Chief Judge



The Honorable Edward K. Stein



The Honorable James A. Willett

I ask for this:

VIRGINIA STATE BAR

By: **Paulo E. Franco, Jr.** Digitally signed by Paulo E. Franco, Jr. Date: 2022.07.22 12:54:11 -0400

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SEEN AND OBJECTED TO: for the reasons stated on the record and in the pleadings, including (1) as to the determination of a violation of the Rules of Professional Conduct as to Rule 1.16(d) (21-070-120540), (2) the finding of harm absent evidence of same, (3) a finding of "potential" harm as to the allegations which is not in keeping with a finding of clear and convincing evidence of actual harm (21-070-120540), (4) as to the discipline imposed as being contrary to the evidence and the reasonable exercise of appropriate discretion, and (5) according improper weight to prior discipline:

By: _____

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Counsel for Respondent

**A True Copy Teste:
SARONA S. IRVIN, CLERK**

By: *Sarona S. Irvin* ^{Clerk} **D.C.**

08-09-2022

