

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
CHRISTOPHER BROUGHTON SHEDLICK**

VS Docket No. 20-053-116360

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER came to be heard on February 19, 2021 on the Subcommittee Determination (Certification) of the Fifth District, Section III Subcommittee, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Yvonne S. Gibney, Chair; Nancy L. Bloom, Lay Member; David J. Gogal; Robin J. Kegley; and Jennifer D. Royer. The Virginia State Bar (“VSB”) was represented by Elizabeth K. Shoenfeld (“Bar Counsel”). Respondent Christopher Broughton Shedlick (“Respondent”) was present and represented by Thai Nguyen. Jennifer Hairfield, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the outset of the hearing, the Chair stated the following:

On March 12, 2020, the Governor of Virginia declared a state of emergency regarding the novel coronavirus (COVID-19), pursuant to Executive Order 51. The state of emergency has been in place since March 12, 2020 and continues indefinitely, until revised or lifted by the Governor. Therefore, because COVID-19 has rendered it unsafe for public bodies to assemble in person, the Virginia State Bar Disciplinary Board will proceed with this hearing conducted via video conferencing, utilizing the Microsoft Teams platform, with access provided to the public to observe. In addition, the hearing will be recorded, and it will otherwise comply with Virginia’s Freedom of Information Act regarding electronic meetings, found in the Virginia Code, Section 2.2-3708.2, as supplemented by Section 4-0.01.g of Virginia House Bill 29, Chapter 1283 (2020).

The Chair polled the members of the panel as to whether any of them were conscious 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.

The Clerk of the Disciplinary System (“Clerk”) timely sent all legal notices of the date and place in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18.

Prior to the proceedings, pursuant to the Prehearing Conference Call Order dated February 10, 2021, the Chair admitted VSB Exhibits 1-13, without objection. The Chair excluded Respondent’s Exhibits 2-4 as evidence in the misconduct phase of the hearing, as they had not been timely filed.

Because Respondent stipulated to the alleged misconduct and underlying facts, the Board heard and received evidence only concerning the sanction to be imposed. The VSB offered into evidence Respondent’s disciplinary record, which was admitted into evidence, without objection, as VSB Exhibit 14. The Board heard testimony from the following witnesses who were sworn under oath: Christopher Broughton Shedlick, Respondent, and William Sterling, VSB Investigator. The Board considered the testimony and the exhibits, heard arguments of counsel, and met in private to consider the appropriate sanction.

MISCONDUCT

I. Stipulated Findings of Fact

In the Stipulations, dated and filed January 29, 2021, and admitted into evidence as Board Exhibit 1, the parties stipulated to the following facts:

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1994. At all relevant times, Respondent was a member of the VSB.
2. On or about July 12, 2019, Respondent overdrafted the Interest on Lawyers Trust Account (“IOLTA”) for C. Broughton Shedlick, PLLC by \$1,923.57.
3. On or about August 1, 2019, Respondent’s bank notified the VSB of the overdraft.

4. On August 5, 2019, the VSB sent a letter to Respondent enclosing a copy of the overdraft notice, explaining that the VSB considers the overdraft notice to constitute a bar complaint and asking Respondent to provide a written response within 21 days.

5. On September 9, 2019, the VSB issued a subpoena *duces tecum* to Respondent requesting the following records:

Copies of all files, records, reports, documents and electronically stored information related to your attorney trust account, including all paper and electronically stored records, including cancelled checks, cash receipts journals, cash disbursements journals, individual client subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations; that are in your possession, custody or control for the period of February 2018 through the present.

6. In response to the subpoena *duces tecum*, Respondent provided bank statements for the IOLTA for January 2018 through October 2019.

7. Respondent did not provide any cash receipts journals, cash disbursements journals, client subsidiary ledgers or evidence of reconciliations. Respondent later acknowledged that he did not have these records.

8. While the subpoena *duces tecum* was pending, Respondent replied to the bar complaint. Respondent asserted that on July 11, 2019, a deposit of \$2,328 was deposited erroneously into the operating account instead of the IOLTA.

9. A review of Respondent's IOLTA statements later revealed that on July 2, 2019, Progressive Insurance issued a \$2,328 check to Vy Tran and C. Roughton [sic] Shedlick PLLC. On July 9, 2019, this check was deposited into Respondent's operating account, and not the IOLTA, because Respondent's office used the wrong deposit slip. Two days later, on July 11, 2019, Respondent issued a \$2,328 check from the IOLTA to Seven Corners Health and Rehab, regarding Vy Tran. The recipient deposited this check the same day, causing the overdraft.

II. Stipulated Misconduct

The parties stipulated that the conduct set forth in the stipulated facts above constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct (“Rules” or “Rule”):

RULE 1.15 Safekeeping Property¹

...

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the pay or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

...

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

...

(3) Reconciliations.

(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

¹ On January 9, 2020, the Supreme Court amended Rule 1.15, and the amendments went into effect on March 15, 2020. Because the conduct in question occurred prior to March 15, 2020, the version of Rule 1.15 in effect prior to the recent amendment applies.

THE BOARD'S FINDINGS

Based upon the evidence presented, including the above stipulations and the exhibits, the Board finds, by clear and convincing evidence, that the Respondent's conduct constitutes misconduct in violation of Rules 1.15(c)(1); Rule 1.15(c)(2); 1.15(d)(3) and 1.15(d)(4) of the Rules.

Rule 1.15(c)(1) requires a lawyer to keep, *inter alia*, cash receipts and disbursements journals for each trust account which reflect, at a minimum, identification of the client matter for each transfer of trust funds to or from an account.

Rule 1.15(c)(2) requires a lawyer to keep, *inter alia*, a subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust.

Rule 1.15(d)(3) deals with the reconciliations required for trust accounts, including (i) on a quarterly basis, the balance for each client; (ii) on a monthly basis, the cash balance reflected on the cash receipts journal, cash disbursements journal, trust account checkbook and trust account bank statement; and (iii) on a quarterly basis, the cash balance with the subsidiary ledger. These reconciliations are to be approved by a lawyer in the firm to ensure that the amounts on the firm's books agree with the funds in the firm's trust account. Respondent had no records to document that he performed any of the reconciliations required by Rule 1.15(d)(3).

Rule 1.15(d)(4) requires the purpose of all receipts and disbursements of trust funds reported in the trust journals to be fully explained and supported by adequate records. Respondent produced no such records.

SANCTION

In the sanction phase of the hearing, the Board received argument and evidence as to the appropriate sanction to be imposed upon the findings of Rule violations recited above, including

aggravating and mitigating factors. The VSB introduced Exhibit 14, a certification of Respondent's disciplinary record in Virginia, which reflected two prior disciplines.

In a May 27, 2009 Subcommittee Determination Respondent received a Public Reprimand with Terms for violating Rules 5.3 (Responsibilities Regarding Non-Lawyer Assistants), 5.4 (Professional Independence of a Lawyer), 5.5 (Unauthorized Practice of Law), 7.1 (Communications and Advertising Concerning a Lawyer's Services), and 7.5 (Firm Names and Letterheads). Included in the Terms imposed with this Public Reprimand was the requirement that Respondent certify as true and accurate "that he is solely responsible for, and conducts, monthly and quarterly reconciliations of his law firm trust account, and that he holds sole signatory authority over that account."

In a May 11, 2018 Agreed Disposition Public Reprimand with Terms Respondent received another public reprimand with terms for violations of Rule 1.15. The terms imposed with the public reprimand required Respondent to: (1) review Rule 1.15 and the VSB publication Lawyers and Other People's Money, 5th Edition, by August 31, 2018; (2) enroll and attend 6 hours of continuing legal education in the substantive area of trust accounting and/or law office management, by August 31, 2018; and (3) submit to a random review of his trust account records by a VSB investigator or other agent of the VSB within the next 12 months for the purpose of ascertaining his compliance with the escrow account maintenance and record-keeping requirements of Rule 1.15.

The Board also heard testimony from Respondent. He acknowledged that despite having responsibility for his law firm trust accounts since 2003, he has not changed his practices to comply with Rule 1.15. He made no change in 2018 after entering into the Agreed Disposition and he made no change in the late summer of 2019 when he received the VSB's notice of his most recent

trust account violation (VSB Exhibit 2). He only recently began to take steps to bring his practice into compliance with Rule 1.15 because he had been “too busy” to make the changes sooner. Respondent acknowledged that he had read Lawyers and Other People’s Money in 2018, as required, and again in December 2020. He further acknowledged that the publication contains escrow account record-keeping and accounting forms for conducting the reconciliations required by Rule 1.15. He admitted he could have adopted the forms for use in his firm’s accounting practices but chose not to. Despite these resources and his encounters with the VSB’s disciplinary system, Respondent faulted the VSB for never contacting him for a random review of his trust accounts.

The Board also heard testimony from VSB Investigator William Sterling, who estimated that about half of the cases he investigates for the VSB involve Rule 1.15 violations. He did not know how many of them resulted in disciplinary suspensions.

In his opening statement and in his closing argument, Respondent’s counsel asserted that a suspension would violate Respondent’s due process rights, that it would violate the 8th Amendment’s prohibition of excessive fines, and claimed that there was no precedent for imposing a suspension for trust accounting violations. Respondent’s counsel conceded, though, that Respondent had presented no evidence in support of these contentions.

DISPOSITION

After hearing evidence and argument relating to an appropriate sanction, the Board recessed to deliberate. The Board considered as mitigating factors that (1) Respondent expressed remorse, (2) he did not have a dishonest or selfish motive, (3) there was no wrongful intent or apparent harm to clients, and (4) he was partially cooperative with the Bar’s investigation. The Board considered as aggravating factors that (1) Respondent has been in practice for 27 years and

has been responsible for handling his clients' money and for supervising his firm's trust accounts for over 17 years; (2) he had been previously disciplined, including the recent Public Reprimand with Terms for Rule 1.15 trust account violations; and (3) the Public Reprimand with Terms for the same misconduct involved in this case did not cause him to come into compliance.

With respect to the alleged deprivation of Respondent's due process rights, the Supreme Court of Virginia recently confirmed that an attorney's due process rights in the context of disciplinary proceedings are limited to receiving notice of the charges and an opportunity to be heard. Virginia State Bar v. Baumann, 299 Va. 80, 845 S.E.2d 528, 534 (2020). Because Respondent received notice of the charge against him and an opportunity to be heard, he has been afforded all required due process.

Likewise, the imposition of a suspension of Respondent's license – one of the possible sanctions provided for under the disciplinary rules (Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia) – would not violate Respondent's 8th Amendment right to be free from "excessive fines," as he alleges. A disciplinary rule is presumed to be constitutional and Respondent has offered no evidence to overcome that presumption. Baumann, 845 S.E.2d at 533. Moreover, the determination of a sanction that is within the limits of Paragraph 13 is a matter within the discretion of the Board. Gibbs v. Virginia State Bar, 232 Va. 39, 348 S.E.2d 209 (1986).

The suspension of a license for Rule 1.15 violations, particularly following recent discipline for the same offense, is, as noted above, a matter within the Board's discretion, and is consistent with guidance provided under Standard 4.12 of the Annotated Standards for Imposing Lawyer Sanctions (ABA 2015).²

² Despite Respondent's contention that no other Virginia attorneys have been suspended for violating Rule 1.15, there are many Board decisions imposing suspensions for such violations, which can be accessed on the VSB's website. See, e.g., In re: Kmetz, VSB Docket No. 19-000-116040; In re: Del Sordo, VSB Docket No. 18-053-110776.

After due deliberation and review of the stipulations, exhibits, and testimony of the witnesses, the Board reconvened and announced its decision as follows:

It is **ORDERED** that Respondent's license to practice law in the Commonwealth of Virginia be **SUSPENDED** for a period of **THREE MONTHS**, effective February 19, 2021, with the following terms:

1. Within thirty days of the effective date of the Summary Order, February 19, 2021, Respondent shall engage the service of a CPA (Certified Public Accountant) who has been pre-approved by Bar Counsel and who will certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct ("Rule 1.15"), to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15. If the CPA determines that Respondent is in compliance with Rule 1.15, the CPA shall notify Respondent and Bar Counsel. If the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA shall notify Respondent in writing of the measures Respondent must take to bring himself into compliance with Rule 1.15. The CPA's review and written findings shall be completed no later than April 2, 2021. Respondent shall provide the CPA with a copy of this Order at the outset of his engagement of the CPA.

2. Respondent shall be obligated to pay when due the CPA's fees and costs for services, including provision to the Bar and to Respondent of information concerning this matter.

3. If the CPA determines Respondent is NOT in compliance with Rule 1.15, Respondent shall have 45 days within which to bring himself into compliance following the date the CPA issues a written statement of the measures Respondent must take to comply with Rule 1.15. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the 45-day period, to determine whether Respondent has brought himself into compliance as required. The CPA shall thereafter certify in writing to Bar Counsel and to Respondent either that Respondent has brought himself into compliance with Rule 1.15 within the 45-day period, or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the 45-day period shall be considered a violation of the terms set forth herein.

4. Unless an extension is granted by Bar Counsel for good cause to accommodate the CPA's schedule, the terms specified in paragraphs 1, 2, and 3 shall be completed no later than May 19, 2021.

5. On or before November 19, 2021, the CPA engaged pursuant to paragraph 1 shall reassess Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15. In the event the CPA determined that Respondent has NOT remained in compliance with this Rule, such non-compliance will be considered a violation of the terms set forth herein.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all terms and conditions are not met by the deadlines imposed above, the Board shall impose as an alternative disposition an additional three-month suspension, which shall run consecutive to the first three-month suspension. In the event of alleged noncompliance with the terms, a hearing will be convened upon an order for the Respondent to show cause why the alternative disposition should not be imposed. At such hearing, the Respondent shall have the burden of proving compliance or good cause for the alleged noncompliance by clear and convincing evidence.

It is further **ORDERED** that, as directed in the Board's February 19, 2021 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, 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 within 14 days of the effective date of the suspension, February 19, 2021, and make such arrangements as are required herein within 45 days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within 60 days of the effective day 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 February 19, 2021 Respondent shall submit an affidavit to that effect to the Clerk within 60 days of the effective day of the suspension. 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 a sanction of Revocation or additional Suspension for failure to comply with the requirements of Paragraph 13-29.

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

It is further **ORDERED** that the Clerk shall mail an attested copy of this Memorandum Order of Suspension to Respondent by certified mail, return receipt requested at 6408-R Seven Corners Place, Falls Church, Virginia 22044, and by electronic mail to Respondent's counsel, Thai Hong Nguyen and Elizabeth K. Shoenfeld, Assistant Bar Counsel.

ENTERED this 8th day of March 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney, Chair