

VIRGINIA:

BEFORE THE FIRST DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF

STERLING HARRISBE WEAVER, SR.

VSB DOCKET NO. 18-010-112743

DISTRICT COMMITTEE DETERMINATION
PUBLIC ADMONITION WITH TERMS

This matter came to be heard on February 6, 2020, upon a Charge of Misconduct filed by the First District Committee of the Virginia State Bar, before a panel of the First District Committee (the "Committee") consisting of Steven Farrell Shames (the "Chair"), Lisa Marie Moore, Anne Graham Bibeau, Jeffrey Hugh Gray, and Lonnie Dixon Leatherbury, Lay Member. The Virginia State Bar (the "VSB") was represented by Christine M. Corey, Assistant Bar Counsel ("Assistant Bar Counsel"). The Respondent Sterling H. Weaver, Sr. ("Respondent") was present and represented himself. Stacy Gonzales, court reporter, Biggs & Fleet, (757) 622-2049, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair called the case at the appointed time, and Assistant Bar Counsel and Respondent confirmed they were ready to proceed. Respondent, the witnesses present, and the Court Reporter were sworn in by the Chair at the start of the hearing. The witnesses were excluded until they were called. Bar witnesses who arrived later during the hearing were sworn in prior to testifying before the Committee. Prior to the hearing, during the Prehearing Conference Call, VSB Exhibits 1-13 were admitted without objection and Respondent's Exhibits 1-11 were admitted without objection. During the VSB's case in chief, a *de bene esse* deposition was read into the record and, upon request

of Assistant Bar Counsel, and hearing no objection by Respondent, the Committee agreed the deposition would be part of the record of the proceedings.

FINDINGS OF FACT

The Committee makes the following findings of fact on the basis of clear and convincing evidence:

1. Respondent was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant to the conduct set forth herein.
2. In November 2017, Tony Spivey (“Complainant”) was arrested and charged with Disregarding a Highway Sign, Eluding Police, Driving with a Suspended License, Possession of a Firearm by a Convicted Felon, and Possession with Intent to Distribute Marijuana.
3. In January 2018, Complainant’s father retained Respondent to represent Complainant. Complainant’s father paid Respondent \$1,500 towards a flat fee of \$5,500 for the five criminal charges.
4. Respondent met with Complainant once on February 2, 2018, before the preliminary hearing that was scheduled for February 16, 2018. On February 15, 2018, Respondent agreed to a continuance in Complainant’s case. Complainant alleged that Respondent did not discuss the continuance or provide an explanation to Complainant prior to agreeing to the continuance. The preliminary hearing was continued to April 27, 2018.
5. After the case was continued, Complainant and his father called Respondent’s office without response.

6. On March 21, 2018, Respondent received a substitution order from another attorney hired by Complainant's family.
7. Complainant and his father tried to contact Respondent for a refund of unearned fees, but received no response from Respondent.
8. Complainant sent a bar complaint to the VSB on May 15, 2018, which was received by the bar on June 1, 2018. Complaint complained about the lack of communication from Respondent and Respondent's failure to refund any of the fees paid to him.
9. The VSB Intake department attempted to proactively address Complainant's bar complaint and sent letters to Respondent on June 8, 2018 (via e-mail) and June 19, 2018 (via e-mail and regular mail). VSB Intake did not receive a response. VSB Intake opened the bar complaint against Respondent on June 28, 2018.
10. On July 2, 2018, Respondent sent a late response to VSB Intake regarding the complaint. The letter to VSB Intake included a copy of a letter Respondent sent to Complainant on July 2, 2018, explaining that he would not provide a refund of any fees to Complainant. Respondent provided his "Flat Fee Agreement for Representation Ending in Circuit Court" and a "Pre-Bill" with the letter to Complainant.
11. During the bar investigation, the VSB learned that Respondent deposited the \$1,500 fee into an account that he called his "holding" account ending in -5811 at BB&T. The -5811 account is a Business Value 200 account and not a trust account.

12. Respondent deposited credit card payments from clients and wire transfers from the courts for court-appointed work in the -5811 account. Respondent also deposited Complainant's unearned fee in this account.
13. Respondent's records indicate, and Respondent told the VSB investigator, that he transferred the \$1,500 flat fee from his "holding" account to his personal account by February 1, 2018, less than two weeks after receiving the funds. Respondent told the VSB investigator, and he testified to the Committee, that he believed he had earned the \$1,500 by February 1, 2018, and so he transferred it to himself.
14. The VSB charged Respondent with violations of Rules 1.4(a) Communication, 1.5(b) Fees, 1.15(a)(1), (a)(3)(i)-(ii), (b)(4), and (b)(5) Safekeeping Property.

MISCONDUCT

After the presentation of evidence and argument by Assistant Bar Counsel and Respondent, the Committee recessed to deliberate the allegations of misconduct. Upon reconvening the hearing, the Chair announced that the Committee found the following rule violations by clear and convincing evidence: Rules 1.15(a)(1), (a)(3)(i)-(ii), and (b)(5). The Chair announced that the Committee found that the following rule violations were not proven by clear and convincing evidence: Rules 1.4(a), 1.5(b), and 1.15(b)(4).

The Committee finds by clear and convincing evidence that Respondent violated Rule 1.15(a)(1), which states in relevant part, "[a]ll funds received or held by a lawyer or law firm on behalf of a client ... other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts..." The Committee

finds that Respondent did not have an identifiable trust account into which he deposited his client's unearned fees. The Committee finds that Respondent deposited clients' unearned fees paid by credit card into a business checking account at BB&T and not a trust account. Respondent referred to the account as his "holding account" and kept unearned fees paid by credit card in the "holding account" until he felt he had earned the fees.

The Committee finds by clear and convincing evidence that Respondent violated Rule 1.15(a)(3)(i)-(ii), which states in relevant part, "[n]o funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows: (i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or (ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests." The Committee finds that Respondent deposited unearned client fees paid by credit card into his "holding account" along with earned fees from court appointed work, thereby commingling clients' unearned fees with Respondent's funds.

The Committee finds by clear and convincing evidence that Respondent violated Rule 1.15(b)(5), which states that "[a] lawyer shall 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." The Committee finds that Respondent disbursed Complainant's unearned fees to himself prior

to earning the funds. Complainant hired Respondent for representation in five criminal matters and Respondent charged Complainant a flat fee of \$5,500 for representation through Circuit Court. Complainant paid a deposit on the fee in the amount of \$1,500. Respondent disbursed all of the funds paid by Complainant to himself as earned fees less than two weeks after receiving the funds and prior to visiting the Complainant or representing him at the preliminary hearing.

The Committee finds that there was not clear and convincing evidence that Respondent violated Rule 1.4(a), which states “a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” Complainant testified by *de bene esse* deposition that Respondent visited him for five minutes at the jail and thereafter, did not communicate with him further during the representation. Complainant testified that he made several phone calls on his account to Respondent’s office that went unanswered. Documents provided by the Chesapeake Correctional Center corroborate these calls. Complainant sent Respondent a letter asking Respondent to speak with him about the case. Respondent told the VSB investigator that he saw no reason to respond to the letter. Respondent testified that Complainant wanted him to file a motion that was frivolous and Respondent would not file the motion. Respondent testified that he met with Complainant at the jail on February 2, 2018 for an hour to discuss his case and that it was not a five-minute visit. The Committee finds Complainant is not credible and as such, finds there is not clear and convincing evidence of a violation of Rule 1.4(a).

The Committee finds that there was not clear and convincing evidence that Respondent violated Rule 1.5(b), which states that “[t]he 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.” Complainant’s father testified that Respondent did not explain the fee to him, but told him the \$1,500 was a deposit. Respondent testified that he sent the fee agreement to Complainant at the jail. Complainant testified that he received the fee agreement, but Respondent did not explain the fee agreement to him. The Committee finds there is not clear and convincing evidence of a violation of Rule 1.5(b).

The Committee finds that there was not clear and convincing evidence that Respondent violated Rule 1.15(b)(4), which states that a lawyer shall “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.” Complainant alleged that Respondent did very little in furtherance of his case and that Respondent should refund part of the fee paid by Complainant. Respondent testified that he earned the \$1,500 paid by Complainant during the representation that lasted approximately two months and that when determining his fee on a quantum meruit basis, he believed that a reasonable hourly rate for an attorney with his years of experience was \$500 per hour. The Committee finds that Respondent’s fee was reasonable and he did not need to give Complainant a refund of any portion of the \$1,500 fee paid by Complainant upon the termination of the representation. As such, there was no violation of Rule 1.15(b)(4).

SANCTIONS PHASE OF HEARING

After the Committee announced its findings by clear and convincing evidence that Respondent committed violations of Rules 1.15(a)(1), (a)(3)(i)-(ii), and (b)(5), the Committee received evidence and heard argument regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed. The Committee received Respondent's disciplinary record (VSB Exhibit 14) without objection from Respondent. Respondent's disciplinary record includes a Public Reprimand with Terms in November 1997 based on violations of Rules 8.4(b) Misconduct, 1.6(a) Confidentiality of Information, 1.7 Conflict of Interest, and 1.3(c) Diligence.

DISPOSITION

At the conclusion of the sanctions phase of the proceeding, the Committee recessed to deliberate. Having heard the evidence and argument, the Committee hereby imposes on Respondent a **PUBLIC ADMONITION WITH TERMS**. The terms include the following: Respondent shall attend a Continuing Legal Education ("CLE") Program on trust accounting procedures and a CLE Program on Fee Dispute Resolution. These CLE programs shall not apply to Respondent's annual CLE requirement, but shall be in addition to the annual CLE requirements. Respondent shall also be subject to random audits of all of his firm accounts for one year from the date of this Memorandum Order. Respondent shall attend the aforementioned CLE programs within one year of this Memorandum Order and shall certify his attendance to Assistant Bar Counsel.

If any of the terms are not met by the date set forth herein, the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-

16.BB of the Rules of the Supreme Court of Virginia.¹ 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.

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his Virginia State Bar address of Record at Sterling Harrisbe Weaver, Sr., P.O. Box 543, Portsmouth, VA 23705-0543, by certified mail, return receipt requested, and shall hand-deliver a copy to Christine M. Corey, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED: 3/3/20

FIRST DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR

By



Steven F. Shames, Esquire, Acting Chair

¹ On February 6, 2020, the panel adjourned without determining the alternative sanction as required by Pt. 6, § IV, Para. 13-16.BB. The panel reconvened on February 28, 2020 to determine the alternative sanction.