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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM

VIRGINIA STATE BAR EX REL
FIFTH DISTRICT, SECTION III COMMITTEE
VSB Docket No. 19-053-114898

v.

Case No. CL19-8533

David Barney Wilks.

FINAL JUDGMENT MEMORANDUM ORDER

THIS MATTER came to be heard on February 27, 2020 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 Randall G. Johnson, Jr., Judge of the Fourteenth Judicial Circuit; the Honorable Thomas J. Wilson, IV, Judge of the Twenty-Sixth Judicial Circuit; and the Honorable Susan L. Whitlock, Judge of the Sixteenth Judicial Circuit and designated Chief Judge ("Chief Judge") of the Three-Judge Circuit Court (collectively, "the Court").

Senior Assistant Bar Counsel Elizabeth K. Shoenfeld represented the Virginia State Bar ("VSB"). Respondent David B. Wilks ("Respondent"), having received proper notice of the proceeding, appeared with his counsel, Jeffrey Hamilton Geiger.

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 allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Fifth District Committee, Section III, of the VSB.

Misconduct Phase

The Court accepted the following Stipulations, which the parties had entered into prior to the hearing:

1. At all relevant times, Respondent has been a member in good standing of the Virginia State Bar and licensed to practice law in the Commonwealth of Virginia.
2. For approximately thirty years, Respondent has practiced in the area of tax law, general business law, and trust and estate planning and administration.
3. Respondent held a power of attorney for, and created a revocable trust for the benefit of, Jaqueline Rayner, who is blind and requires a caregiver. The trust made monthly payments into a Branch Banking & Trust ("BB&T") bank account, which Respondent held in an "As Trust For" capacity. Respondent used Rayner's BB&T Bank account to pay certain expenses for J.R. Respondent also had a personal account at BB&T.
4. Between June 5, 2018, and January 25, 2019, Respondent made 17 transfers totaling \$10,995.71¹ from Rayner's account to Respondent's personal account for his personal use and benefit via a BB&T mobile app or an online transfer.
5. The withdrawals that Respondent made from Rayner's account to his personal account, as well as the deposits that Respondent made from his personal account to Rayner's account, are itemized in the chart below:

¹ It is acknowledged that a transfer of \$84.00 on January 25, 2019, was a mistake and was immediately refunded to the account from the Respondent's personal account prior to the actual transfer being debited from the account.

Date	Withdrawal from J.R. Acct	Deposit to J.R. Account	Method (Mobile/Online)	Balance owed to J.R.
6/5/2018	\$1,500.00	\$0.00	BB&T M-App	\$1,500.00
6/27/2018	\$500.00	\$0.00	BB&T M-App	\$2,000.00
7/5/2018	\$0.00	\$1,500.00	BB&T M-App	\$500.00
9/14/2018	\$750.00	\$0.00	BB&T M-App	\$1,250.00
9/18/2018	\$500.00	\$0.00	BB&T M-App	\$1,750.00
9/21/2018	\$0.00	\$1,250.00	BB&T M-App	\$500.00
10/23/2018	\$800.00	\$0.00	BB&T M-App	\$1,300.00
10/26/2018	\$400.00	\$0.00	BB&T M-App	\$1,700.00
10/30/2018	\$8.21	\$0.00	BB&T M-App	\$1,708.21
10/31/2018	\$0.00	\$408.21	BB&T M-App	\$1,300.00
11/6/2018	\$800.00	\$0.00	BB&T M-App	\$2,100.00
11/8/2018	\$889.09	\$0.00	BB&T M-App	\$2,989.09
11/14/2018	\$1,000.00	\$0.00	BB&T M-App	\$3,989.09
11/20/2018	\$863.41	\$0.00	BB&T Online Transfer	\$4,852.50
11/27/2018	\$500.00	\$0.00	BB&T M-App	\$5,352.50
11/29/2018	\$250.00	\$0.00	BB&T M-App	\$5,602.50
12/13/2018	\$1,200.00	\$0.00	BB&T M-App	\$6,802.50
12/21/2018	\$650.00	\$0.00	BB&T Online Transfer	\$7,452.50
12/24/2018	\$300.00	\$0.00	BB&T M-App	\$7,752.50
12/31/2018	\$0.00	\$4,000.00	BB&T M-App	\$3,752.50
1/25/2019	\$84.00	\$0.00	BB&T M-App	\$3,836.50
1/28/2019	\$0.00	\$84.00	BB&T Online Transfer	\$3,752.50
1/31/2019	\$0.00	\$3,752.50	BB&T Online Transfer	\$0.00
Totals	10,994.71	10,994.71		

6. Respondent did not advise Rayner of any of these transfers and did not obtain her authorization to transfer the money to himself.

7. In December of 2018, a bookkeeper for Respondent's law firm discovered certain transfers had been made, which were recorded as transfers "to David B. Wilks" with "DBW Error" noted next to each withdrawal. The bookkeeper asked Respondent about these transfers. Respondent told the bookkeeper, "Oh yes, I need to put that back."
8. The bookkeeper also provided Respondent's law partners, Randolph Douglas Frostick and Vazrik Rick Nishanian, with a list of the transactions between Rayner's account and Respondent's personal account.
9. Respondent met with Frostick and Nishanian, first in early January 2019, and, then, with Frostick, Nishanian and Kristina Spitler on January 31, 2019. At the first meeting, Respondent stated that the transactions were mistaken. At the second meeting, Respondent initially maintained that the transfers were mistakes ~~from~~ ^{from} using his mobile app. Frostick asked if Respondent had enough funds in his personal bank account to cover the withdrawals at the time he made them, and Respondent said he did. When Frostick asked to see Respondent's bank statements, Respondent admitted that the transfers were unauthorized loans and not mistakes. Respondent left the meeting so that Frostick, Nishanian and Spitler could discuss the situation. Respondent then returned to the meeting and showed them the bank statement demonstrating that he had fully reimbursed Rayner's account (which was the \$3,752.50 payment).
10. Respondent met, thereafter, with Rayner to both notify her of the transactions and to apologize to her for the transgressions.

*W
Judge*

11. Frostick and Nishanian reported Respondent's conduct to the bar, and the bar opened an investigation. Respondent supported the reporting of his conduct to the bar and the accuracy of the report.

12. In response to the bar investigation, the Respondent admitted that:

I have compromised my reputation by my actions last fall by undertaking the unethical transfers from my client's account. I undertook what I knew to have been impermissible and inexcusable actions, improperly motivated by what I perceived at the time to have been a dire financial circumstance. While I made regular re-payments and knew that I would fully restore [] all of the withdrawals such that they would not negatively affect the client's ability to meet her monthly financial needs, I also know that these actions are ethically impermissible and without justification.

13. Respondent admitted that at certain times when he transferred money from Rayner's account to his personal account, he did not have enough money in his personal accounts to repay Rayner.

14. Respondent cooperated in all respects with the bar's investigation.

15. Frostick and Nishanian confirm that all accounts affiliated with Respondent have been audited and there are no other suspect transactions.

16. Respondent does not have a disciplinary record.

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

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.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

Respondent confirmed that he had entered into these stipulations voluntarily and not as a result of any undue influence.

The Court also received VSB Exhibits 2-3 and 5-28 without objection and Respondent's Exhibits 1-4 without objection.

As a result of the Stipulations entered into by the parties, the Court found, by clear and convincing evidence, that Respondent had violated the following Virginia Rules of Professional Conduct:

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.

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(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

Sanctions Phase

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

The Court received the testimony of the following witnesses for the VSB: David Wilks, Vazrik Rick Nishanian, and Jacqueline Rayner. The Court also received VSB Exhibit 29, a certification of Respondent's lack of a disciplinary record, which was admitted without objection. The VSB rested after presentation of this evidence.

The Court received the testimony of the following witnesses for Respondent: Tracey A. Lenox, Elizabeth Munro von Keller, John Gray, Jacques Cayere, Jr., Terrill Woolsey, and David Wilks, after which Respondent rested.

Counsel for the VSB and Respondent then presented argument regarding the sanction to be imposed on Respondent for the misconduct found, and the Court recessed to deliberate.

Determination

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of a Two-Year Suspension of Respondent's license to practice law in the Commonwealth of Virginia, effective on February 27, 2020.

The Court found and considered the following aggravating factors in making its determination:

1. Vulnerability of the victim;
2. Experience in the practice of law;

3. The number of transactions Respondent made from Rayner's account;
4. Respondent's untruthfulness when confronted by his law partners;
5. Respondent had months to think about his actions;
6. Respondent's use of Rayner's funds for his personal benefit; and
7. In light of Respondent's experience, it was clear to the panel that his actions were not a mistake.

The Court also found and considered the following mitigating factors in making its determination:

1. Respondent's cooperation with the proceedings;
2. Respondent's respect in the legal community;
3. Respondent's use of his area of expertise to assist others;
4. Respondent's full restitution to the victim;
5. Respondent's lack of any disciplinary record; and
6. Respondent's expression of remorse.

After the sanction was announced, Respondent's counsel requested that the Court delay the effective date of the sanction. The Court responded that a delay had been considered and rejected in the interest of public protection.

Accordingly, it is hereby ORDERED that Respondent receive a Two-Year Suspension of his license to practice law in the Commonwealth of Virginia, effective on February 27, 2020.

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 within 14 days of the effective date of the suspension, 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 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 at 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.

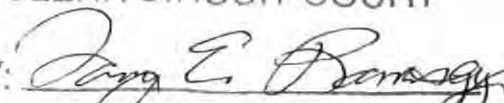
It is further ORDERED that the Clerk shall send a copy teste of this Memorandum Order to Respondent, David Wilks, by certified mail, return receipt requested, at 8567-D Sudley Road, Manassas, Virginia 20110, his address of record with the VSB; to the Honorable DaVida M. Davis, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219; to Respondent's counsel Jeffrey H. Geiger, Sands Anderson PC, 1111 E. Main Street, Suite 2400, Richmond, Virginia 23219; and to Elizabeth Shoenfeld, 1111 E. Main Street, Suite 700, Richmond, Virginia 23219.

The hearing was recorded by Michelle L. Donath, Rudiger, Green & Kerns Reporting Service, 4116 Leonard Drive, Fairfax, Virginia 22030, Telephone 703-591-3136.

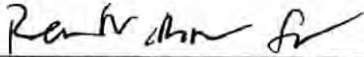
ENTER: 3 / 20 / 2020


The Honorable Susan L. Whitlock
Chief Judge

A COPY TESTE:
PRINCE WILLIAM COUNTY
CLERK CIRCUIT COURT

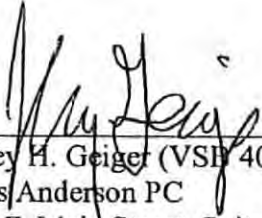
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Seen and objected to as to the determination of the
sanction based upon the argument, the evidence and
the record before the Court:



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