

VIRGINIA:

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MELISSA D. JOHNSON

VSB Docket No. 23-060-126832

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On February 13, 2024, and April 4, 2024, meetings were held in this matter before a duly convened Sixth District Subcommittee consisting of Sheila H. Holmes, Esquire, Subcommittee Chair; Danny C. Yates, Esquire; and David Fagiano, Lay Member. During the meeting on April 4, 2024, the Subcommittee voted to approve an Agreed Disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The Agreed Disposition was entered into by the Virginia State Bar by Joseph M. Caturano, Jr., Assistant Bar Counsel; Melissa D. Johnson (“Respondent”); and Mary T. Morgan, Esquire, counsel for Respondent.

WHEREFORE, the Sixth District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia on January 15, 2020. At all times relevant hereto, Respondent has been licensed and in good standing with the Virginia State Bar.
2. Respondent practices trust and estate law, in combination with real estate law, as a solo practitioner in Gloucester, Virginia.
3. In March of 2022, William Pointer and Della Garrett, remainder beneficiaries of the James H. Pointer Family Trust (“Trust”) met with Respondent at Respondent’s office on issues pertaining to the Trust.

4. William Pointer and Della Garrett expressed concern to Respondent on the disposal of assets in the Trust and the potential financial exploitation of Wyolene S. Pointer, a retired 69-year-old widow who is the current sole trustee and sole beneficiary of the Trust.

5. During the office conference between William Pointer, Della Garrett, and Respondent, it was noted that the Wyolene S. Pointer was represented by Susanna B. Hickman (“Ms. Hickman”).

6. In fact, several years earlier, in September 2018, William Pointer, as a remainder beneficiary of the Trust, retained William H. Carmines (“Mr. Carmines”) as his counsel to address certain issues with Ms. Hickman, as counsel for Wyolene S. Pointer and the Trust. Respondent was unaware of these events.

7. From September 2018 to March 2022, Ms. Hickman and Mr. Carmines addressed issues on the administration of the Trust and exchanged documents pertaining to the Trust. There were allegations of financial exploitation of Wyolene S. Pointer, interference with Wyolene S. Pointer’s rights to assets in the Trust, and issues on the proper administration of the Trust. Respondent was unaware of these events.

8. In March 2022, prior to Respondent’s involvement, Ms. Hickman and Mr. Carmines specifically addressed Wyolene S. Pointer’s potential resignation as the sole trustee of the Trust. Respondent was unaware of these events.

9. In that regard, Ms. Hickman, as counsel for Wyolene S. Pointer, prepared and delivered to Mr. Carmines, as counsel for William Pointer, a document titled, “The James H. Pointer Family Trust Resignation, Release, and Indemnification of Trustee and Appointment of Successor Trustee” (“Hickman Draft Resignation”). Respondent was unaware of these events.

10. William Pointer refused to indemnify the Trustee.

11. In March 2022, William Pointer and Della Garrett met with Respondent and expressed concern to Respondent over the handling of assets in the Trust and the potential financial exploitation of Wyolene S. Pointer, among other things.

12. Respondent obtained the Hickman Draft Resignation from William Pointer and Della Garrett to review. Respondent was unaware of who drafted the Resignation, and William Pointer and Della Garrett claimed to not know who had drafted the document.

13. On April 7, 2022, Respondent met again with Della Garrett and William Pointer to further discuss the Trust and Wyolene S. Pointer as trustee.

14. On April 7, 2022, at the behest of Della Garrett and William Pointer, Respondent amended the Hickman Draft Resignation. Respondent deleted the indemnification provision and included language, in relevant part, that Wyolene S. Pointer “desires to resign as Trustee” and that William Pointer “accepts the trusteeship.”

15. On April 7, 2022, Respondent provided her amended Resignation and Acceptance of Trusteeship of the James H. Pointer Family Trust (“Respondent’s Amended Resignation”) to Della Garrett and William Pointer to review.

16. On April 7, 2022, after Della Garrett and William Pointer accepted the Respondent’s Amended Resignation, Respondent intended to accompany Della Garrett and William Pointer to Wyolene S. Pointer’s residence, for Wyolene S. Pointer to review and sign the Respondent’s Amended Resignation, without the involvement of Ms. Hickman.

17. On April 7, 2022, Respondent specifically recommended to Della Garrett and William Pointer that Respondent attend the meeting with Wyolene S. Pointer on the Respondent’s Amended Resignation, but Della Garrett and William Pointer instructed Respondent not to attend the meeting with Wyolene S. Pointer; instead, Della Garrett and William Pointer stated to Respondent that they would video record the meeting with Wyolene S. Pointer for Respondent.

18. Although Respondent was aware that Ms. Hickman represented Wyolene S. Pointer, having previously obtained a copy of the Trust from Ms. Hickman, Respondent permitted her clients to meet directly with Wyolene S. Pointer, a represented party, without the involvement of Ms. Hickman, her counsel, and for Respondent’s clients to present the Respondent’s Amended Resignation to Wyolene S. Pointer to review and sign.

19. On April 7, 2022, Della Garrett and William Pointer presented the Respondent’s Amended Resignation to Ms. Pointer in her home to sign, stating to Wyolene S. Pointer, in relevant part,

Owen Pointer: “We need to get you to sign this.”

Della Garrett: “This is for the farm.”

Della Garrett: “... Mrs. Hickman sent Owen a piece of paper that said that you were resigning as trustee and that we were to hold everyone harmless for anything that transpired in the past.

And Owen is willing to take over trusteeship to take a little bit of worry and stuff off of your shoulders ... Nobody’s going to steal anything from you ... But things are disappearing ...”

Della Garrett: “And all that says is that you relinquish trusteeship of Jimmy’s trust ...”

Della Garrett: “And you don’t need to share that you did this.”

20. On April 7, 2022, Wyolene S. Pointer signed Respondent’s Amended Resignation. As Ms. Hickman was unaware of the Respondent’s Amended Resignation and the meeting on April 7, 2022, Ms. Hickman did not attend.

21. On April 7, 2022, as reflected by a video recording, Della Garrett and William Pointer presented Respondent’s Amended Resignation to Wyolene S. Pointer to sign. Wyolene S. Pointer does not recall signing the Respondent’s Amended Resignation. Della Garrett and William Pointer then provided Respondent with Respondent’s Amended Resignation, signed by

Wyolene S. Pointer, and the video recording upon which Respondent notarized the signature of Wyolene S. Pointer despite having not been present when Wyolene S. Pointer signed the document, and having no proof of identification of the signer, in violation of Va. Code § 47.1-15.

22. Respondent falsely stated upon the Resignation, “The foregoing instrument was acknowledged before me this 7th day of April, 2022 by Wyolene S. Pointer, Trustee.”

23. Following, on April 19, 2022, Respondent sent correspondence to Ms. Hickman, with the signed and notarized Respondent’s Amended Resignation, stating, in relevant part,

Pursuant to the terms of the James H. Pointer Family Trust, Wyolene S. Pointer has resigned as Trustee ... William Owen Pointer has accepted Trusteeship. Please find enclosed a copy of the fully executed resignation and acceptance. Please reach out to us to facilitate the transition.

24. Shortly thereafter, Ms. Hickman instituted a declaratory judgment action on behalf of the Trustee and is questioning the enforceability of the Respondent’s Amended Resignation.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following

• provisions of the Rules of Professional Conduct:

In representing Della Garrett and William Pointer, by permitting Della Garrett and William Pointer to communicate about the subject of the representation, specifically, the potential resignation of the Trustee directly with the Trustee, a person that Respondent knew to be represented by another lawyer in the matter, and by and through the Respondent’s Amended Resignation, that was intentionally delivered to the opposing party through Respondent’s clients, without the involvement of the opposing party’s lawyer, Respondent violated Rule 4.2; and

By knowingly assist, or by knowingly induce another to do so, or to do so through the acts of another, by having the Respondent’s Amended Resignation presented to the Trustee to sign through her clients, without Ms. Hickman, in violation of Rule 4.2, Respondent violated Rule 8.4(a).

Rule 4.2 Communication with Persons Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]

By committing a deliberately wrongful act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness to practice law, including, but not limited to, making a false representation upon the Respondent’s Amended Resignation, that the Trustee appeared before the Respondent and acknowledged her signature when the Trustee did not, and by deliberately violating the Virginia Notary Act, through a wrongful act that reflects adversely on the lawyer’s honesty, trustworthiness, and fitness to practice law, in violation of Va. Code § 47.1-15, constituting official misconduct, Respondent violated 8.4(b).

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[.]

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the Agreed Disposition, it is the decision of the

Subcommittee to impose a Public Reprimand with Terms. The terms are:

1. NO FURTHER MISCONDUCT

For a period of one (1) year following the entry of this Subcommittee Determination, Respondent will not engage in any conduct that violates the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.


2. MCLE

Within six (6) months of the service of the Subcommittee Determination in this matter, Respondent will complete six (6) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward her Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent will certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Assistant Bar Counsel, promptly following her attendance of each such CLE program(s).

If any of the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.F-G of the Rules of the Supreme Court of Virginia. 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 Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR


Sheila H. Holmes, Esquire
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on the 8th day of April 2024, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Melissa D. Johnson, Respondent, at 6517 Main Street, P.O. Box 339, Gloucester, Virginia 23061-0339, Respondent's last address of record with the Virginia State Bar, and Mary T. Morgan, Esquire, counsel for Respondent, at 4646 Princess Anne Road, Unit 104, Virginia Beach, Virginia, 23462, and by email at mary@infinitylawva.com.


Joseph M. Caturano, Jr.
Assistant Bar Counsel

VIRGINIA:

**BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
MELISSA D. JOHNSON**

VS **Docket No. 23-060-126832**

**AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS**

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Joseph M. Caturano, Jr., Esquire, Assistant Bar Counsel; Melissa D. Johnson (“Respondent”); and Mary T. Morgan, Esquire, counsel for Respondent; hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia on January 15, 2020. At all times relevant hereto, Respondent has been licensed and in good standing with the Virginia State Bar.
2. Respondent practices trust and estate law, in combination with real estate law, as a solo practitioner in Gloucester, Virginia.
3. In March of 2022, William Pointer and Della Garrett, remainder beneficiaries of the James H. Pointer Family Trust (“Trust”) met with Respondent at Respondent’s office on issues pertaining to the Trust.
4. William Pointer and Della Garrett expressed concern to Respondent on the disposal of assets in the Trust and the potential financial exploitation of Wyolene S. Pointer, a retired 69-year-old widow who is the current sole trustee and sole beneficiary of the Trust.
5. During the office conference between William Pointer, Della Garrett, and Respondent, it was noted that the Wyolene S. Pointer was represented by Susanna B. Hickman.
6. In fact, several years earlier, in September 2018, William Pointer, as a remainder beneficiary of the Trust, retained William H. Carmines as his counsel to address certain issues with Ms. Hickman, as counsel for Wyolene S. Pointer and the Trust. Respondent was unaware of these events.
7. From September 2018 to March 2022, Ms. Hickman and Mr. Carmines addressed issues on the administration of the Trust and exchanged documents pertaining to the Trust.

There were allegations of financial exploitation of Wyolene S. Pointer, interference with Wyolene S. Pointer's rights to assets in the Trust, and issues on the proper administration of the Trust. Respondent was unaware of these events.

8. In March 2022, prior to Respondent's involvement, Ms. Hickman and Mr. Carmines specifically addressed Wyolene S. Pointer's potential resignation as the sole trustee of the Trust. Respondent was unaware of these events.

9. In that regard, Ms. Hickman, as counsel for Wyolene S. Pointer, prepared and delivered to Mr. Carmines, as counsel for William Pointer, a document titled, "The James H. Pointer Family Trust Resignation, Release, and Indemnification of Trustee and Appointment of Successor Trustee" ("Hickman Draft Resignation"). Respondent was unaware of these events.

10. William Pointer refused to indemnify the Trustee.

11. In March 2022, William Pointer and Della Garrett met with Respondent and expressed concern to Respondent over the handling of assets in the Trust and the potential financial exploitation of Wyolene S. Pointer, among other things.

12. Respondent obtained the Hickman Draft Resignation from William Pointer and Della Garrett to review. Respondent was unaware of who drafted the Resignation, and William Pointer and Della Garrett claimed to not know who had drafted the document.

13. On April 7, 2022, Respondent met again with Della Garrett and William Pointer to further discuss the Trust and Wyolene S. Pointer as trustee.

14. On April 7, 2022, at the behest of Della Garrett and William Pointer, Respondent amended the Hickman Draft Resignation. Respondent deleted the indemnification provision and included language, in relevant part, that Wyolene S. Pointer "desires to resign as Trustee" and that William Pointer "accepts the trusteeship."

15. On April 7, 2022, Respondent provided her amended Resignation and Acceptance of Trusteeship of the James H. Pointer Family Trust ("Respondent's Amended Resignation") to Della Garrett and William Pointer to review.

16. On April 7, 2022, after Della Garrett and William Pointer accepted the Respondent's Amended Resignation, Respondent intended to accompany Della Garrett and William Pointer to Wyolene S. Pointer's residence, for Wyolene S. Pointer to review and sign the Respondent's Amended Resignation, without the involvement of Ms. Hickman.

17. On April 7, 2022, Respondent specifically recommended to Della Garrett and William Pointer that Respondent attend the meeting with Wyolene S. Pointer on the Respondent's Amended Resignation, but Della Garrett and William Pointer instructed Respondent not to attend the meeting with Wyolene S. Pointer; instead, Della Garrett and

William Pointer stated to Respondent that they would video record the meeting with Wyolene S. Pointer for Respondent.

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21. On April 7, 2022, as reflected by a video recording, Della Garrett and William Pointer presented Respondent's Amended Resignation to Wyolene S. Pointer to sign. Wyolene S. Pointer does not recall signing the Respondent's Amended Resignation. Della Garrett and William Pointer then provided Respondent with Respondent's Amended Resignation, signed by Wyolene S. Pointer, and the video recording upon which Respondent notarized the signature of Wyolene S. Pointer despite having not been present when Wyolene S. Pointer signed the document, and having no proof of identification of the signor, in violation of Va. Code § 47.1-15.

22. Respondent falsely stated upon the Resignation, "The foregoing instrument was acknowledged before me this 7th day of April, 2022 by Wyolene S. Pointer, Trustee."

23. Following, on April 19, 2022, Respondent sent correspondence to Ms. Hickman, with the signed and notarized Respondent's Amended Resignation, stating, in relevant part,

Pursuant to the terms of the James H. Pointer Family Trust, Wyolene S. Pointer has resigned as Trustee ... William Owen Pointer has accepted

Trusteeship. Please find enclosed a copy of the fully executed resignation and acceptance. Please reach out to us to facilitate the transition.

24. Shortly thereafter, Ms. Hickman instituted a declaratory judgment action on behalf of the Trustee and is questioning the enforceability of the Respondent's Amended Resignation.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provision of the Virginia Rules of Professional Conduct:

In representing Della Garrett and William Pointer, by permitting Della Garrett and William Pointer to communicate about the subject of the representation, specifically, the potential resignation of the Trustee directly with the Trustee, a person that Respondent knew to be represented by another lawyer in the matter, and by and through the Respondent's Amended Resignation, that was intentionally delivered to the opposing party through Respondent's clients, without the involvement of the opposing party's lawyer, Respondent violated Rule 4.2; and

By knowingly assist, or by knowingly induce another to do so, or to do so through the acts of another, by having the Respondent's Amended Resignation presented to the Trustee to sign through her clients, without Ms. Hickman, in violation of Rule 4.2, Respondent violated Rule 8.4(a).

Rule 4.2 Communication with Persons Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

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It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another[.]

By committing a deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law, including, but not limited to, making a false representation upon the Respondent's Amended Resignation, that the Trustee appeared before the Respondent and acknowledged her signature when the Trustee did not, and by deliberately violating the Virginia Notary Act, through a wrongful act that reflects adversely on the lawyer's honesty, trustworthiness, and fitness to practice law, in violation of Va. Code § 47.1-15, constituting official misconduct, Respondent violated 8.4(b).

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[.]

III. PROPOSED DISPOSITION

Therefore, Assistant Bar Counsel, Melissa D. Johnson, Respondent, and Mary T. Morgan, Esquire, counsel for Respondent, tender to a Subcommittee of the Sixth District Committee for its approval the Agreed Disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Sixth District Committee.

1. NO FURTHER MISCONDUCT

For a period of one (1) year following the entry of this Subcommittee Determination, Respondent will not engage in any conduct that violates the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.

2. MCLE

Within six (6) months of the service of the Subcommittee Determination in this matter, Respondent will complete six (6) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward her Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent will certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Assistant Bar Counsel, promptly following her attendance of each such CLE program(s).

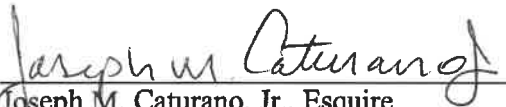
If any of the terms are not met, Respondent agrees that the District Committee shall certify this matter for a sanction determination pursuant to Part 6, § IV, ¶ 13-15.F-G of the Rules of the Supreme Court of Virginia.

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.


If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR


Joseph M. Caturano, Jr., Esquire
Assistant Bar Counsel, Virginia State Bar


Melissa D. Johnson, Respondent


Mary T. Morgan, Esquire
Counsel for Melissa D. Johnson