

VIRGINIA:

BEFORE THE FIFTH DISTRICT, SECTION III COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
THOMAS J. ROBL

VS B Docket No. 22-053-124907

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On August 23, 2023, a hearing in this matter was held before a duly convened Fifth District Committee, Section III panel consisting of Daniel H. Aminoff, Lay Member; Robert M. Worster, III, Member; Daniel L. Swanwick, Member; Kiah D. Spinks, Member; and Kevin L. Leahy, Chair Presiding (collectively, “the Committee”).

Respondent Thomas J. Robl (“Respondent”) appeared in person with counsel, Thomas Plofchan. Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar (“VSB”). The proceedings were transcribed by John Weaver of Rudiger & Green, (703) 331-0212.

The Chair swore the court reporter and each member of the Committee verified that he or she has no personal or financial interest that may affect or be reasonably perceived to affect his or her ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Charge of Misconduct issued against Respondent setting forth allegations that Respondent violated Virginia Rules of Professional Conduct 1.3(a) and 1.3(b).

The Committee admitted the VSB’s exhibits 1-33 without objection. The Committee also admitted Respondent’s Exhibits 1-33 and 37 without objection. During the hearing, VSB Exhibits 34 and 35 were marked for identification but not admitted.

The Committee imposed a rule on witnesses.

Prior to the hearing, Respondent's counsel moved to continue the hearing based on the non-appearance of his witness, Steven Krieger. The motion was denied. After the Committee ruled on the motion, Mr. Krieger appeared. After the VSB rested, Respondent's counsel decided not to call Mr. Krieger and released him from any subpoena.

The parties made opening statements. The Committee then received the testimony of Respondent, Complainant Mekdelawait Habtemariam, and VSB Investigator William Sterling. The VSB then rested.

At the conclusion of the VSB's case in chief, Respondent's counsel made a motion to strike. After considering the evidence and argument of counsel, the Committee unanimously denied the motion to strike as to Virginia Rules of Professional Conduct 1.3(a) and (b).

The Committee received the testimony of Casey Stevens and Respondent for Respondent. Respondent's counsel renewed his request to present expert testimony from Mr. Stevens, but after hearing argument from the parties, the VSB's objection to Mr. Stevens's expert testimony was sustained. Mr. Stevens testified as a fact witness only. Respondent's counsel also renewed his request to present expert testimony from David Rothrock. After hearing argument from the parties, the VSB's objection to Mr. Rothrock's expert testimony was sustained. After the testimony of Mr. Stevens and Respondent, Respondent rested.

Respondent renewed his motion to strike at the conclusion of Respondent's evidence. After hearing argument from the parties, the Committee unanimously denied the motion to strike as to Virginia Rule of Professional Conduct 1.3(a) and, by majority decision, sustained the motion to strike as to Rule 1.3(b).

The Committee then heard closing arguments by counsel and retired to deliberate.

Findings of Fact

Upon due deliberation and consideration of the exhibits, witness testimony, and argument of counsel, the Committee found that the VSB proved by clear and convincing evidence the following facts:

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1989. At all relevant times, Respondent was a member of the VSB.
2. On November 16, 2018, Complainant Mekdelawit Habtemariam (“Complainant”) signed a representation agreement with Respondent and paid Respondent a \$1,500 advanced legal fee. A copy of the representation agreement was admitted into evidence as VSB Ex. 4. The representation agreement stated that Respondent was representing Complainant regarding “collection of money from Richard Kramer AKA Richard Anthony Johnson (ex-husband).”
3. The collection of funds related to a loan that Complainant made to her then-husband in 2011. No written loan agreement existed. Although the parties divorced in 2014, the ex-husband continued making sporadic payments on the loan until January 2017. When Complainant retained Respondent in November 2018, she provided Respondent with documentation reflecting that she had not received a payment from her ex-husband since January 2017. *See* VSB Exs. 13 and 14.
4. Respondent represented that on November 21, 2018, he issued an invoice to Complainant for 8.7 hours of work. VSB Ex. 9. The invoice included time entries for drafting a complaint, drafting a rule to show cause, and drafting interrogatories and requests for production to Mr. Kramer. The invoice reflected a balance due of \$1,980.
5. Respondent testified that he had planned to contact the ex-husband to attempt to resolve the matter out of court. However, Respondent did not send any demand letters or draft pleadings to Complainant’s ex-husband.
6. On September 16, 2021, Respondent filed a lawsuit complaint on Complainant’s behalf in the Loudoun County Circuit Court. VSB Ex. 17. Respondent alleged that Complainant’s ex-husband “breached the contract between the parties in July 2019,” even though no payments had been made since January 2017 and Respondent testified that he believed the breach of contract date was November 1, 2018. Respondent testified that the reference to July 2019 was a typographical error.
7. The lawsuit complaint identified Kramer’s address as 6413 Little Branch Road, North Richland Hills, Texas 76182-4516. Respondent testified that, at the time he filed the complaint, he knew this was not a valid address because there is no 6413 Little Branch Road in North Richland Hills, Texas.
8. On October 28, 2021, Respondent sent Complainant a letter enclosing the September 16, 2021 complaint and unserved interrogatories and requests for production. VSB Ex. 24.

9. Respondent testified that he did not send a demand letter or file a complaint sooner because (1) Complainant did not provide him with an accurate address for Mr. Kramer; and (2) Complainant had not paid his November 2018 invoice.
10. Respondent's file did not contain any communications to Complainant in which he requested an address.
11. Respondent told VSB Investigator William Sterling that he asked Complainant for an address when he went to the Hair Cuttery, which was where Complainant worked. Complainant testified, however, that she did not work at the Hair Cuttery between July 2019 and January 2022. Complainant also testified that Respondent did not ask her to find an address for her ex-husband.
12. The only communication in Respondent's file requesting additional money from Complainant was the November 2018 invoice, which Complainant testified she never received. VSB Ex. 33. Respondent did not send any follow-up invoices. Complainant testified that Respondent never asked her for additional money.
13. On February 3, 2022, Complainant filed her bar complaint. VSB Ex. 27.
14. On March 4, 2022, Respondent filed a motion for leave to withdraw citing a conflict of interest. VSB Ex. 29. Respondent told VSB Investigator Sterling that the bar complaint was the basis of the conflict of interest. Respondent did not tell Investigator Sterling that non-payment was a reason he was withdrawing.
15. On March 18, 2022, the Court entered an order allowing Respondent to withdraw. VSB Ex. 30.

Misconduct

Based on the foregoing facts, the Committee found that the VSB proved by clear and convincing evidence that Respondent violated the following Virginia Rule of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

Sanction

Having found that Respondent violated Virginia Rule of Professional Conduct 1.3(a), the Committee continued to the sanctions phase of the proceedings. The VSB introduced a

Certification of Respondent's disciplinary record in Virginia as VSB Exhibit 36, which was admitted after an error was corrected, as noted on the Exhibit. The VSB then rested.

Respondent introduced the testimony of Respondent.

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

Public Reprimand

After due consideration of the evidence as to mitigation and aggravation and other arguments of counsel, the Committee reconvened to announce its sanction of a Public Reprimand, effective August 23, 2023.

Pursuant to Part Six, Section IV, Paragraph 13-9.E of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System must assess costs.

ENTERED THIS 20th DAY OF OCTOBER 2023
FIFTH DISTRICT, SECTION III COMMITTEE, VIRGINIA STATE BAR,

By 
Kevin L. Leahy, Chair Designate

Robert M. Worster III

Robert M. Worster, III, Member



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Daniel L. Swanwick, Member



Kiah D. Spinks, Member


Daniel H. Aminoff (061 24, 2023 07:30 CDT)

Daniel H. Aminoff, Lay Member