

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE CITY OF RICHMOND

VIRGINIA STATE BAR, EX REL.  
THIRD DISTRICT, SECTION III COMMITTEE  
VSB DOCKET NO. 17-033-107835

v.

Case No. CL2018-4882-8

ROBERT RICHARD KAPLAN, JR.

FINAL JUDGMENT MEMORANDUM ORDER

This Cause came to be heard on the 11<sup>th</sup> day of December, 2018 by a Three-Judge Circuit Court impaneled by the Supreme Court of Virginia on October 18, 2018, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of the Honorable Joel C. Cunningham, Retired Judge of the Tenth Judicial Circuit, the Honorable Michael E. McGinty, Judge of the Ninth Judicial Circuit, and the Honorable Joseph M. Teefey, Jr., Judge of the Eleventh Judicial Circuit and designated Chief Judge of the Three-Judge Circuit Court.

Assistant Bar Counsel Elizabeth K. Shoenfeld represented the Virginia State Bar ("VSB"). Respondent Richard J. Kaplan, Jr., having received proper notice of the proceeding, appeared with his counsel Michael J. Rigsby.

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 subcommittees of the Third District Committee, Section III, of the VSB.

The Court received VSB Exhibits 1-11 without objection and Respondent's Exhibits 1-12 and 15 without objection. The Court also received the parties' Stipulation of Facts.

The Court received the testimony of the following witnesses for the VSB: Respondent, Patricia Tzannakos and VSB Investigator Cam Moffatt.

The VSB's evidence established that on or about December 9, 2015, Patricia Tzannakos hired Respondent's law firm to represent her regarding corporate matters. VSB Ex. 3. As part of the representation, Respondent began preparing documents rescinding the sale of stock in Ms. Tzannakos's company. On January 29, 2016, Ms. Tzannakos sent Respondent an email asking him to "Please hold off on . . . working on the rescission documents." VSB Ex. 5. On February 1, 2016, Respondent emailed Ms. Tzannakos to inquire whether "we should continue preparation of rescission doc's pursuant to my last e-mail?" VSB Ex. 6. That same day, Ms. Tzannakos replied: "Please put everything on hold for another week or so until I can come up with a financial plan. I will keep you posted when my plan is complete." VSB Ex. 6.

On February 5, 2016, Respondent e-mailed Ms. Tzannakos a letter terminating her as a client. VSB Ex. 7. His letter stated that "given your instructions for our Firm to stand down and do nothing further, there appears to be nothing further for our Firm to do but formally withdraw from this engagement. Our services on your behalf, therefore are terminated as of the date of this letter." Respondent continued: "My office will be providing you shortly a series of memoranda which memorialize our Firm's advice to date concerning your exposure under the securities laws, as well as the government contracting laws." VSB Ex. 7.

On February 16, 2016, Respondent emailed two memoranda to Ms. Tzannakos. VSB Ex. 8.

On February 25, 2016, Respondent emailed Ms. Tzannakos with a bill for his law firm's time through the end of January 2016. VSB Ex. 9.

On August 16, 2016, Respondent emailed Ms. Tzannakos with a bill for his law firm's time through the end of February 2016. VSB Ex. 10. The bill for the month of February 2016 alone was \$14,680. All of the \$14,680 was billed after Ms. Tzannakos had asked Respondent to "put everything on hold . . . ." VSB Ex. 6. More than \$9,000 of the \$14,680 was billed after Respondent had sent Ms. Tzannakos a letter terminating her. Time entries for the month of February 2016 included several hours for legal research.

At the close of the bar's evidence, Respondent made a motion to strike and counsel argued the matter. Upon deliberation, the Court denied the motion to strike and held that the bar could proceed on its allegation that Respondent had violated Virginia Rule of Professional Conduct ("RPC") 1.5(a).

The Court received the testimony of the following witnesses for Respondent: Respondent, David Adams and Clayton Lazenby, after which Respondent rested.

Therefore counsel made closing arguments and the Court retired to deliberate. Upon due deliberation, and consideration of the exhibits, witness testimony and the arguments of counsel, the court found that the bar proved by clear and convincing evidence that Respondent violated Rule 1.5(a) of the Virginia Rules of Professional Conduct with regard to the billing for work performed after Ms. Tzannakos instructed Respondent to stop work and after Respondent terminated Ms. Tzannakos as a client. Rule 1.5(a) provides:

**RULE 1.5     Fees**

(a)     A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

In support of its ruling, the Court found that Respondent's billing of Ms. Tzannakos was unreasonable because he had continued billing her after she had told him to stop work and after he had terminated her as a client.

Having found that Respondent had engaged in ethical misconduct, the Court continued to the sanctions phase of the proceedings. The VSB introduced a Certification of Respondent's disciplinary record as VSB Exhibit 16. The Certification revealed that Respondent had no disciplinary record. The VSB then rested. Respondent did not introduce any additional evidence during the sanctions phase. 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.

After due consideration of the evidence as to mitigation and aggravation and other arguments of counsel, the Court reconvened to announce its sanction of a Public Admonition.

Accordingly, it is hereby ORDERED that Respondent has received a Public Admonition.

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

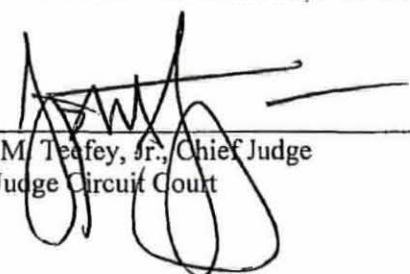
It is ORDERED that a copy teste of this Order shall be served by the Clerk of the Court upon Respondent, Robert R. Kaplan, Jr., by certified mail, return receipt requested, at Kaplan Voekler Cunningham & Frank, PLC, 1401 E Cary St, P.O. Box 2470, Richmond, VA 23218-2470, his last address of record with the VSB; and send a copies teste by regular mail to Michael L. Rigsby, Esq., P.O. Box 29328, Henrico, VA 23242, Respondent's Counsel; to Elizabeth K. Shoenfeld, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026; and to DaVida M. Davis, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

These proceedings were transcribed by Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone number 804-730-1222.

AND THIS CAUSE IS ENDED.

ENTERED THIS 16<sup>TH</sup> DAY OF JANUARY 2019

CIRCUIT COURT FOR THE CITY OF RICHMOND

  
\_\_\_\_\_  
Joseph M. Teehey, Jr., Chief Judge  
Three-Judge Circuit Court

Seen:



Elizabeth K. Shoenfeld, Assistant Bar Counsel



Michael Rigsby, Respondent's Counsel

Objected to on the grounds  
that the underlying complaint  
constitutes a fee dispute over which  
the Virginia State Bar has no  
jurisdiction.