V I R G I N I A:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

BRENT LAVELLE BARBOUR **VSB DOCKET NO.: 16-102-106014**

ORDER OF REVOCATION

This matter came on to be heard on February 16, 2018, on the Subcommittee Determination and Certification from the Tenth District Subcommittee, before a panel of the Disciplinary Board ("hereinafter referred to as the Board") consisting of Sandra L. Havrilak, Second Vice Chair; Thomas R. Scott, Jr.; Yvonne S. Gibney; Michael J. Sobey; and Stephen A. Wannall, lay member. The Virginia State Bar was represented by Edward J. Dillon, Jr., Senior Assistant Bar Counsel (hereinafter referred to as "Bar Counsel"). The Chair called the case after the appointed time and Brent Lavelle Barbour (hereinafter referred to as "Respondent") was not present and was not represented by counsel. The Chair directed the Clerk to call for the Respondent three (3) times whereupon the Clerk exited the Courtroom and called for Respondent. The Clerk returned and reported no response. Seeing no reason to delay the proceedings, the Chair polled the members of the Board as to whether any of them was conscious of any personal or financial interest or bias that would preclude any of them from fairly hearing this matter and serving on the panel, to which each member, including the Chair, responded in the negative. The Chair swore in the court reporter for the proceeding, Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222.

All required notices were timely sent by the Clerk of the Disciplinary System to Respondent by certified mail, in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, §IV, Paragraph 13. .

A Prehearing Conference call was conducted on February 7, 2018. The Virginia State Bar (hereinafter referred to as "VSB") was present and represented by Bar Counsel; the Respondent was present, *pro se* and participated in the hearing. At no time, did he say he would not or could not attend the final hearing.

The Board received VSB Exhibits 1-23 as previously submitted pursuant to the Pre-Hearing Order without objection and proceeded to hear evidence. The Bar called David W. Jackson, VSB Investigator (hereinafter "Investigator Jackson"). The Bar further introduced Exhibit 24, Respondent's letter to the VSB, and Exhibit 25, a collective series of emails between the Respondent, the complainants, the Bankruptcy Court, and other individuals, without objection. All of the factual findings made by the Board were found to have been proven by clear and convincing evidence.

MISCONDUCT

In or around April 2014, Holly and Micah Repass (hereinafter "the Debtors") retained the services of Prince Law, LLC, (also known as and referred to as "Prince Law"), a firm located outside of Virginia, to represent them in a Chapter 7 bankruptcy filing in the United States Bankruptcy Court for the Western District of Virginia (hereinafter "the Bankruptcy Court"). According to Respondent, he was an independent contractor with Prince Law and earned one hundred twenty dollars ($120.00) per case at the time of the bankruptcy discharge. The Debtors' bankruptcy case was filed by Respondent on March 14, 2015, and was the first case Respondent

handled for Prince Law.[1] Around March 2015, the Debtors began communicating by phone and email with Respondent about their bankruptcy case. The Debtors never met Respondent in person. On March 14, 2015, Respondent electronically filed a Chapter 7 Bankruptcy Petition (hereinafter "Petition") and Schedules on behalf of the Debtors with the Bankruptcy Court.[2] The initial creditors' meeting, pursuant to 11 U.S.C. §341, was initially set for April 9, 2015. Respondent did not review the Petition with the Debtors before filing it electronically with the Bankruptcy Court and did not notify the Debtors of the filing of the Petition until March 16, 2015, when the Debtors received notice from the Bankruptcy Court that the Debtors' credit counseling certificate was outdated. Furthermore, Respondent did not obtain the signatures of either Debtor on a paper copy of the Petition prior to filing the Petition electronically with the Bankruptcy Court. Notably, Local Rule 5005-4 of the United States Bankruptcy Court for the Western District of Virginia provides that an attorney's electronic filing of a pleading with the Bankruptcy Court constitutes that attorney's

> [r]epresentation to the Court that the [attorney] is in possession of the paper original of such document duly signed (and, if applicable, under penalty of perjury) by all necessary parties prior to electronic filing of any document required under the Bankruptcy Code or Rules or this Court's Local Rules to bear the signature[s] of the part[ies] on whose behalf the document is filed, including specifically, the bankruptcy petition[.][3]

Judge Black entered an Order on March 16, 2015 advising that no credit counseling certificate had been filed with the Petition to confirm that the Debtors had taken the requisite course within one hundred eighty (180) days prior to filing and further advised that if the error was not cured in fourteen (14) days the case would be dismissed.[4] The deficiency notice alerted Respondent to

1 VSB Ex. 4, at 5.
2 VSB Ex. 4, Attach. 2.
3 Local Rule 5005-4(B), Bankr. W.D. Va.
4 VSB Ex. 4, Attach. 6.

ask for a certificate from the Debtors by email on March 23, 2015. On March 31, 2015, Respondent filed certificates of credit counseling showing that the Debtors received credit counseling on March 27, 2015, which was a date *after* the filing of the Petition.

On April 1, 2015, the case was dismissed by Order because the certificates were not dated within the one hundred eighty (180) days *prior* to filing.[5] Despite the case being dismissed, Respondent did not inform the Debtors that the case was dismissed, but rather led them to believe they were to attend a meeting of creditors that had been rescheduled from April 9, 2015, to a date in May 2015. While the Debtors believed their case was continued, Respondent wrote a letter to the Court asking the Court to reconsider its dismissal order and did not file a formal motion with the Court asking the same.[6] The Court treated the letter as a motion for reconsideration and set the matter for a hearing on May 21, 2015.[7] At some point thereafter, Respondent informed the Debtors that they would need to be in court on May 21, 2015, for what the Debtors believed was their initial meeting of creditors. At no point did Respondent inform the Debtors that the case was already dismissed and that the May 21, 2015, meeting was actually a hearing for reconsideration; nor did Respondent show the Debtors the letter that he wrote to the Judge on the Debtors' behalf.[8]

Frustrated with the progress of their case and Respondent's handing of the case, the Debtors emailed their point of contact at Prince Law, Attorney Searns. Searns spoke with Respondent and was informed through Respondent that the court hearing was in a week and that Respondent communicated with the Debtors about that fact. Searns noted to the Debtors that the important objective was that the bankruptcy case was filed when, in reality, it was not.

5 VSB Ex. 4, Attach. 6; *See* 11 U.S.C. §109(h).
6 VSB Ex. 12.
7 VSB Ex. 13.
8 VSB Ex. 19, at 22, 23.

At 4:51 a.m. on May 21, 2015, the morning of the reconsideration hearing, Respondent emailed the Debtors and advised them that he was not feeling well and would have to reschedule their court date.[9] The Debtors advised Respondent that they had already taken off work and could not reschedule, as they could not arrange any more time off until the summer. Respondent did not alert the Court to his illness in advance of the hearing; and, therefore, no one appeared for the hearing before the Court. As such, the Court denied the motion for reconsideration and issued a Show Cause Order against Respondent for his failure to appear, which was set for a hearing on June 8, 2015.[10]

On June 8, 2015, Respondent informed the Debtors that that he would contact them "later today" to give them a new court date. This was the last communication the Debtors had with Respondent. There is no evidence that Respondent told the Debtors that their case was dismissed or that he told the Debtors he was under a Show Cause Order in connection with the case.

Searns informed the Debtors on June 8, 2015 that Respondent "properly notified the [C]ourt when he was ill, but they did not enter it into their system which caused the problem."[11] In fact, Respondent had given no such notice to the Court until the Court inquired into the whereabouts of Respondent and the reason for this absence. It is also evident from Searns's interaction with the Debtors that Respondent never informed Searns that the hearing was for reconsideration or that it was ultimately denied due to Respondent's failure to alert the Court of his illness.

On June 9, 2015, the Debtors had a conversation with Searns, where the Debtors learned from either Searns, or from another source coupled with Searns's confirmation, that their case

9 VSB Ex. 19, at 23.
10 VSB Ex. 20, Attach. 6.
11 VSB Ex. 20, Attach. 7.

was dismissed. In addition, Searns advised the Debtors of a new attorney, Barry Proctor, who would be managing their case, as it was apparent that Respondent could not handle the case.[12] Based on statements at the meeting of creditors, Debtors reviewed their petition, schedules, and related documents regarding their bankruptcy filing on June 17, 2015, over the phone with Proctor.[13] Through Proctor, the Debtors were finally able to receive a discharge order on September 29, 2015.[14]

Respondent appeared at the Show Cause hearing, and the Court ordered him to retake Electronic Case Filing training with the Court and certify that he read the local rules of practice of that Court, all within three months.[15] Respondent failed to do either, and his filing privileges in the Court were revoked. Pursuant to that September 11, 2015 Order, Respondent could apply for reinstatement of such privileges after one (1) year.[16]

On February 17, 2016, the Bankruptcy Court conducted an evidentiary hearing concerning, in part, Respondent's handling of the Debtors' bankruptcy case. By Memorandum Opinion, entered May 5, 2016, the Bankruptcy Court concluded that Respondent violated Bankruptcy Rule 9011(b) by failing to review the Petition with the Debtors before filing it electronically and by filing the Petition electronically without having obtained the Debtors' signature on a paper copy of the Petition. Bankruptcy Rule 9011(b) generally states that when an attorney presents a pleading to a bankruptcy court, the attorney is representing that the pleading

12 VSB Ex. 20, Attach. 8.
13 At the Show Cause Hearing, one of the Debtors attended the Hearing and stated, "The biggest reason why I made the attempt to come before the Court today is I want to [en]sure that Mr. Proctor is not gonna receive penalties or anything else. His office was great. All of my issues came with Prince Law Firm and Brent Barker."
VSB Ex. 2 at 12.
14 VSB Ex. 5, at 16.
15 VSB Ex. 4, Attach. 1, at 13.
16 VSB Ex. 5, at 14.

has evidentiary support.[17] Moreover, the Bankruptcy Court noted that the requisite disclosure filed by Respondent disclosed that "[Respondent is] the attorney for the above-named debtor," and that "[f]or legal services, [Respondent has] agreed to accept $1,500.00" and "[p]rior to the filing of this statement [Respondent] received $1,500.00."[18] Additionally, the disclosure provided "[Respondent has] not agreed to share the above-disclosed compensation with any other person unless they are members and associates of [Respondent's] law firm." The Court concluded that the Petition and Schedules in the Debtors' case were prepared entirely by Prince Law, an out-of-state law firm, with minimal, if any, input from Respondent. Furthermore, the Bankruptcy Court found, "[The agreements between Prince Law and Respondent were] sham transactions with no purpose other than to skirt the fee sharing disclosure obligations in both the Bankruptcy Code and Bankruptcy Rules."[19] "There was no purpose to the Class B Agreements other than to hide the ball on who was actually doing the work, where it was being done, and how the fees were shared, all in an attempt to fit within the disclosure exception set forth in Bankruptcy Rule 2016(b)."[20]

In addition, the Bankruptcy Court also found that Respondent had misrepresented the status of the bankruptcy case to the Debtors by failing to inform them of the filing of the Petition

17 Bankruptcy Rule 9011(b) states:
REPRESENTATIONS TO THE COURT. By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,-
(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. Fed. R. Bankr. P. 9011(b).
18 VSB Ex. 4, Attach. 1, at 18.
19 VSB Ex. 5 at 20.
20 VSB Ex. 5 at 21.

and failing to review the Petition with the Debtors prior to filing.[21] Additionally, Respondent did not inform the Debtors of the dismissal of the case and misled the Debtors into believing that the May 21, 2015 hearing was for the Debtors' initial meeting of creditors. Respondent did not inform the Debtors that the Court was actually holding the May 21, 2015 hearing for a reconsideration of the dismissal of the case. He also did not inform the Debtors that he had not properly notified the Court that he would be absent and because of his absence, the Court denied the reconsideration request. Lastly, Respondent failed to respond to the Show Cause Order issued by the Bankruptcy Court.

In the Bankruptcy Court's Memorandum Opinion and subsequent Order, the Bankruptcy Court revoked Respondent's privileges to practice before the Bankruptcy Court, fined Respondent two thousand five hundred dollars ($2,500), and ordered Respondent to pay the two thousand five hundred dollar ($2,500) fine within sixty (60) days. As of the date of this hearing, the Respondent had not paid the fine.[22]

In March 2017, Investigator Jackson spoke with Respondent about Respondent's conduct and actions throughout the Debtors' case. Respondent stated that the Debtors were "all over me from day one" and it did not start out well.[23] The Debtors "called and called and called."[24] He also stated that he had a lot of emails from the Debtors, but when Investigator Jackson asked for copies of the emails along with records of his calls, Respondent stated that his cell carrier was Sprint and that he did not have detailed billing. Furthermore, "[Respondent] did not have any written notes, call log or otherwise memorialize the telephone calls."[25] Respondent admitted that

21 *Id*.
22 VSB Ex. 4, at 8.
23 VSB Ex. 4.
24 VSB Ex. 4, at 6.
25 *Id*.

he did not review the schedules or anything else with the Debtors, only noting that he spoke briefly with them to ensure all assets were listed.

Respondent told Investigator Jackson that he never met the Debtors in person, but would have met them in court if he had attended any of the hearings. In his report, Investigator Jackson noted that on February 10, 2016, during an in-person interview, Respondent stated to Virginia State Bar Investigator Albert Rhodenizer that he had met with the Debtors in person and discussed the Bankruptcy case along with examining documents that the Debtors brought.[26]

Regarding the signature on the Petition, Respondent said that "he did not type anyone's name into a signature space; whatever got forwarded to him [from Prince Law] is what he filed."[27] When Investigator Jackson asked if Respondent was aware of the requirement for the signature on the Petition, Respondent stated, "I've seen it done a couple different ways actually . . ." and further added, "The way it was presented to me was [Prince Law sends me] a complete file, all [I] need to do is file it."[28]

In his letter to the VSB, Respondent claimed that the Debtors were a very involved party to the whole affair and were actively involved every step of the way.[29] Respondent also claimed the Bankruptcy Court notified the Debtors of all pleadings and notices;[30] however, it is clear from the emails Respondent produced with the Bankruptcy Court that the Debtors were not informed every step of the way by the Court.[31]

26 VSB Ex. 4.
27 VSB Ex. 4, at 6-7.
28 VSB Ex. 4, at 7.
29 VSB Ex. 24.
30 *Id*.
31 VSB Ex. 25.

Investigator Jackson testified that Respondent failed to provide to the VSB the agreement that he signed with Prince Law, despite the VSB's request for it.[32] Investigator Jackson further testified that throughout the entire investigation and disciplinary process, Respondent was non-compliant and refused to cooperate with the VSB.[33] The VSB took the position that Respondent's agreement with Prince Law was the same as the one Proctor had with Prince Law.

Lastly, Respondent failed to pay the two thousand five hundred dollar ($2,500) fine to the Bankruptcy Court because he believes that he will never file another Bankruptcy case again; and, therefore, should not have to pay the fine. He also stated that he would not pay the fine unless the VSB told him to pay it.[34]

RULING

The Board took into account all of the evidence presented, including the Respondent's letter to the Bar received into evidence as VSB Exhibit 24 and the collective series of emails between the Respondent, the Debtors, the Bankruptcy Court, and other individuals, received into evidence as VSB Exhibit 25, and for the reasons more particularly set forth below, the Board finds, by clear and convincing evidence, that Respondent's conduct, as set forth herein, constitutes misconduct in violation of Rules 1.1, 1.3(a), 1.4(a), 1.4(b), 3.4(d), and 8.4(c).

Rule 1.1

The Board finds by clear and convincing evidence that Respondent took actions in violation of Rule 1.1, Competence. Pursuant to Rule 1.1, a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill,

32 In the Matter of Brent Lavelle Barbour, Feb. 16, 2018 (testimony of Investigator Jackson).
33 *Id*.
34 VSB Ex. 4, at 7.

thoroughness, and preparation reasonably necessary for the representation.[35] It also includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. Notwithstanding, a lawyer need not have special training or prior experience to handle legal problems of a type of which the lawyer is unfamiliar. A lawyer can provide adequate representation in a wholly novel field through necessary study, and a newly admitted lawyer can be just as competent as a practitioner with a great deal of experience.[36] Additionally, a lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation.[37]

Relevant factors for determining whether a lawyer employs the requisite knowledge and skill in a particular matter include: the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question.[38] In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be necessary in some circumstances, but it is not required.[39]

Respondent admitted that he was not well-versed in bankruptcy cases; however, he noted that he did have previous experience from law school courses, and he had recently filed a bankruptcy case two (2) months prior to taking the Debtors' case.[40] Although the Rule provides that Respondent did not need specialized training to take the Debtors' case or need to be knowledgeable in bankruptcy cases, the Rule also provides that Respondent could have provided

35 Va. Rules of Prof'l Conduct Rule 1.1.
36 Va. Rules of Prof'l Conduct Rule 1.1, Cmt. 2.
37 Va. Rules of Prof'l Conduct Rule 1.1, Cmt. 4.
38 Va. Rules of Prof'l Conduct Rule 1.1, Cmt. 1.
39 *Id*.
40 VSB Ex. 4, at 5.

competent representation for the Debtors through necessary study. The Board finds that the Debtors' case was neither particularly intricate nor difficult, and through adequate preparation, Respondent could have sufficiently represented the Debtors. It is clear to the Board that Respondent made no effort to even familiarize himself with the Federal Rules of Bankruptcy Procedure. The fact that Respondent admitted to Investigator Jackson that he took forms prepared by Prince Law and filed them without ever reviewing the material is enough to show Respondent's violation of Rule 1.1.[41] Regarding the absent signature, despite the fact that even a quick glace would have alerted Respondent to the issue, Respondent acknowledged that he did not even review the documents. Respondent should have also been aware that the Debtors needed a credit counseling certificate prior to the filing of the Petition, as he had handled a bankruptcy case within the previous two (2) months. Even if Respondent was a complete novice to the Bankruptcy Court, a quick review of the requirements for a bankruptcy case to be dismissed would have revealed that the Debtors needed a credit counseling certificate prior to filing the Petition. Lastly, Respondent should have filed a formal Motion to Reconsider rather than sending a mere letter to the Bankruptcy Judge; and, more importantly, Respondent should have appeared to argue the issue when the court treated his letter as a Motion to Reconsider.

In sum, Respondent's conduct that violated Rule 1.1 includes: his failure to review the Petition with the Debtors; his failure to obtain the Debtors' signatures on paper prior to filing the Petition electronically; his failure to ensure that the Debtors had a credit counseling certificate dated within one hundred eighty (180) days prior to the filing of the Petition; his writing a letter to the Judge for reconsideration with the Bankruptcy Court instead of a formal motion; and, his failure to notify the Debtors that their bankruptcy case was dismissed.

41 VSB Ex. 4, at 5.

Rule 1.3

The Board finds by clear and convincing evidence that Respondent took actions in violation of Rule 1.3(a), Diligence. Pursuant to Rule 1.3(a), a lawyer shall act with reasonable diligence and promptness in representing a client.[42] Moreover, a lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and a lawyer may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.[43]

Respondent acknowledged to Investigator Jackson that the Debtors constantly called and emailed inquiring as to their case. When Investigator Jackson asked for documentation from Respondent to show that he was diligent in his representation of the Debtors' case, he was unable to produce any written notes, call log, or otherwise memorialized evidence of his telephone calls with the Debtors. Furthermore, Respondent was not diligent in his efforts to review any documents that he filed on the Debtors' behalf, as he never reviewed any documents with the Debtors, nor did he, himself, review them before filing. Even a brief review of the Debtors' case would have revealed that the Debtors failed to attain their needed credit counseling certificate. The Board finds that Respondent's most egregious conduct was his failure to communicate with the Debtors that their case had been dismissed due to Respondent's ineptness. Respondent furthered his deceit toward the Debtors when he declined to inform the Debtors that the May 21, 2015 hearing was for a reconsideration of the case; and, once again, when he did not communicate to the Debtors that the Bankruptcy Court had denied the reconsideration request.

42 Va. Rules of Prof'l Conduct Rule 1.3(a).
43 Va. Rules of Prof'l Conduct Rule 1.3, Cmt. 1.

For the reasons previously set forth, the Board unanimously finds that Respondent is in violation of Rule 1.3(a).

In conclusion, Respondent's conduct that violated Rule 1.3(a) includes: his failure to meet and discuss with the Debtors the process and to review the paperwork before filing; his failure to obtain the Debtors' signatures on paper prior to filing the Petition electronically; his failure to ensure that the Debtors had a credit counseling certificate dated within one hundred eighty days (180) of the filing of the Petition; and, his failure to communicate with the Debtors about the dismissal of their bankruptcy case.

Rule 1.4

The Board finds by clear and convincing evidence that Respondent took actions in violation of Rule 1.4(a) and (b), Communication. Pursuant to Rule 1.4(a) and (b), a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information; and, a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued; to the extent the client is willing and able to do so.[44] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication; however, a lawyer may not withhold information to serve the lawyer's own interests or convenience.[45]

Respondent did not reasonably inform the Debtors about the status of their case, nor did he promptly comply with reasonable requests for information from the Debtors. In fact, the

44 Va. Rules of Prof'l Conduct Rule 1.4, Cmt. 5.
45 *Id*.

Board finds that in most circumstances, Respondent failed to even communicate at all with the Debtors. Although Rule 1.4 provides that a lawyer may delay information to the clients if there is reason to know that the clients would react imprudently, it further states that a lawyer may not withhold information to serve his own interests. In the current case, the Board finds that there was no evidence that the Debtors would have acted imprudently to any information communicated to them by Respondent. Moreover, in most circumstances, Respondent did not delay in reiterating information to the Debtors, he failed to inform the Debtors of any information altogether. Respondent did not inform the Debtors of their matter due to Respondent's own self-interest and convenience, a direct violation of the Rule. He lied and deceived the Debtors presumably because he did not want to notify them of the mistakes he made in the case and the fact that the case had been dismissed as a result.

Due to Respondent's failure to communicate, the Debtors were unable to make any informed decision regarding the representation. This occurred even after the Debtors' multiple telephone calls and emails to Respondent asking about the matter. Respondent failed to answer or acknowledge the Debtors, so the Debtors were forced to contact Prince Law for information about the case.

In conclusion, Respondent's conduct that violated Rule 1.4(a) and (b) includes: his failure to communicate with the Debtors about the status of the bankruptcy case; his failure to inform the Debtors of the subject matter of the May 21, 2015 hearing; his failure to inform the Debtors of the dismissal of the case by the Bankruptcy Court; and, his denied Motion to Reconsider.

Rule 3.4

The Board finds by clear and convincing evidence that Respondent took actions in violation of Rule 3.4(d), Fairness to Opposing Party and Counsel. Pursuant to Rule 3.4(d), a

lawyer shall not knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding. The legal system depends upon voluntary compliance with court rules and rulings in order to function effectively.[46] Thus, a lawyer generally is not justified in consciously violating such rules or rulings.[47] However, paragraph (d) allows a lawyer to take measures necessary to test the validity of a rule or ruling, including open disobedience.[48]

The Bankruptcy Court ordered Respondent to pay a fine of two thousand five hundred dollars ($2,500), which Respondent failed to do. Although Rule 3.4(d) states that a lawyer may take measures to test the validity of a ruling, including open disobedience, the Board finds that this exception is not applicable to Respondent. The Bankruptcy Court had just cause to sanction Respondent due to his misleading of clients, failure to respond to the Show Cause Order, and failure to appear in Bankruptcy Court to explain his actions. Respondent failed to pay the fine, not to challenge the Order, but because Respondent did not want to pay it. He stated to Investigator Jackson that he was never going to work on bankruptcy cases again, so there was no need for him to pay the fine.[49] He further stated that the only way he would pay the fine would be if the Bar told him to pay it. The Board finds Respondent's attitude toward a direct court order to be repugnant, and Respondent is in direct violation of Rule 3.4(d) as he knowingly disobeyed a ruling of a tribunal.

Rule 8.4

The Board finds by clear and convincing evidence that Respondent took actions in violation of Rule 8.4(c), Misconduct. Pursuant to Rule 8.4(c), it is professional misconduct for a

46 Va. Rules of Prof'l Conduct Rule 3.4, Cmt. 3a.
47 *Id.*
48 *Id*.
49 VSB Ex. 4, at 8.

lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on the lawyer's fitness to practice law.[50] A lawyer may, nevertheless, refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists.[51]

Starting at the initial filing of the Bankruptcy Petition Respondent lied to the court. He never met with his clients (the Debtors) before filing the petition; he never obtained their signature on the Petition and lied regarding his clients' knowledge and involvement in the process. Also, throughout his representation of the Debtors, Respondent continuously deceived and misled them. Not only did Respondent fail to inform the Debtors that their case had been dismissed, but he also failed to notify the Debtors of the true purpose of the May 21, 2015 hearing. When the case was dismissed, he lied to the Debtors and said that the case was continued from April 9, 2015 to a date in May 2015. While the Debtors believed that the case was continued, Respondent drafted a letter to the bankruptcy judge asking for leniency in the Debtors' case and requesting the Judge to reconsider dismissing the case. At no time did Respondent alert the Debtors to the fact that their case was dismissed or show them the letter that Respondent wrote to the Judge seeking reconsideration. The Respondent lied about his failure to appear and intentionally violated two Orders of the Bankruptcy Court. The Board finds that Respondent's scheming to cover up his mistakes is a clear violation of Rule 8.4(c).

In sum, for the foregoing reasons Respondent's conduct has violated Rule 8.4(c).

SANCTIONS PHASE OF HEARING

After the Board announced its findings by clear and convincing evidence that the Respondent had committed the Rule violations charged in the Certification, it received further

50 Va. Rules of Prof'l Conduct Rule 8.4.
51 Va. Rules of Prof'l Conduct Rule 8.4, Cmt. 4.

evidence regarding aggravating and mitigating factors applicable to the appropriate sanction of the Respondent. The VSB relied upon VSB Exhibit 26 concerning Respondent's prior disciplinary record, thereafter resting its case.

PRIOR MISCONDUCT

Respondent was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant to the conduct set forth herein; and, the Respondent was employed in the private practice of law at The Barbour Law Firm, PLLC.

On April 12, 2016, the Ninth District Subcommittee of the Virginia State Bar found that Respondent had committed a violation of Rule 1.3 of the Rules of Professional Conduct and imposed a Dismissal for Exceptional Circumstances pursuant to Part 6, § IV, ¶ 13-15(B)(1)(d) of the Rules of Supreme Court of Virginia due to Respondent's ongoing health concerns. A Dismissal for Exceptional Circumstances is a finding that Respondent has engaged in misconduct, but there exist exceptional circumstances mitigating against further proceedings. A Dismissal for Exceptional Circumstance issued by a Subcommittee is a private disposition that creates a Disciplinary Record pursuant to Part 6, §IV, ¶ 13-1 of the Rules of Supreme Court of Virginia. The conduct that led to the finding consisted of Respondent's failure to appear in court on behalf of his clients on eight (8) separate occasions, those being:

1. On or about May 21, 2015, Respondent failed to appear for a hearing set before the United States Bankruptcy Court for the Western District of Virginia.
2. On or about September 8, 2015, Respondent failed to appear for a hearing set before the United States Bankruptcy Court for the Western District of Virginia.
3. On or about October 13, 2015, Respondent failed to appear for a hearing in a criminal matter set before the Lynchburg Circuit Court.
4. On or about October 14, 2015, Respondent failed to appear for a hearing in a criminal matter set before the Lynchburg Circuit Court.

5. On or about October 19, 2015, Respondent failed to appear for a hearing in a criminal matter set before the Roanoke City Circuit Court.
6. On or about October 22, 2015, Respondent failed to appear for a hearing in a criminal matter set before the Campbell County Circuit Court.
7. On or about October 27, 2015, Respondent failed to appear for a hearing in a criminal matter set before the Roanoke City Circuit Court.
8. On or about November 6, 2015, Respondent failed to appear for a hearing in a criminal matter set before the Roanoke City Circuit Court.

Furthermore, Respondent failed to provide any advance notice to the courts for his absences or give any reason for his absences. On September 11, 2015, the United States Bankruptcy Court for the Western District of Virginia entered an Order suspending Respondent from filing bankruptcy petitions in that Court for a period of one (1) year. In or about December 2015, the Campbell County Circuit Court fined Respondent one hundred dollars ($100) for his failure to appear for a hearing. Around December 2015, the Roanoke City Circuit Court took under advisement for a period of six (6) months two (2) Rules to Show Cause previously issued against Respondent for his unexplained absences from court hearings. Respondent did admit to the VSB that he had missed several court hearings without advance notice to the court. He stated that he suffers from health issues and that those health issues were a contributing factor to his failure to attend the multiple court hearings and his failure to give advance notice. Only after the Bar took action against Respondent did he acknowledge the seriousness of his failures to appear and has since spoken with many of the judges regarding his absences and his ongoing health problems.

The Board received testimony from Investigator Jackson and argument of Bar Counsel as to aggravating and mitigating factors, particularly a pattern of misconduct and a refusal on the part of Respondent to acknowledge wrongdoing. Other than Respondent's letter to the Bar Counsel (VSB Exhibit 24) that the Board accepted as his Answer there was no evidence offered

in mitigation. In that letter, the Respondent states that he he has been battling congestive heart failure; however, he did not produce any medical evidence in support of that claim, nor was the letter submitted under oath. The Board did take notice of the fact that although the Respondent previously received a Dismissal for Exceptional Circumstances, no evidence was offered as to the exceptional circumstance. Moreover, Respondent's disciplinary record is replete with instances of the same conduct that resulted in that dismissal and, clearly, persisted in this case. The Board then retired to deliberate.

During the Board's deliberation, the Board looked to the American Bar Association's Standards for Imposing Lawyer Sanctions for guidance on the appropriate sanction to impose and the factors to be considered in imposing sanctions.[52] According to the ABA Standards, disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party or causes a significant or potentially significant adverse effect on the legal proceedings.[53] While the Board took into consideration all of the Rule violations, the Board was particularly concerned about Respondent's violation of Rule 8.4(c) by engaging in conduct that involved dishonesty and misrepresentation to his clients and the court, which reflects adversely on his ability to practice law.

DISPOSITION

At the conclusion of the evidence in the sanctions phase of this proceeding, the Board recessed to deliberate. After due deliberation and review of the foregoing findings of fact, upon review of Exhibits 1-26 presented by Bar Counsel on behalf of the VSB, upon the testimony

[52] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015).
[53] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 289 (2015).

from the witness presented on behalf of the VSB, upon Respondent's letter to the Bar, and upon Respondent's failure to attend the hearing, the Board reconvened and stated its finding that, when considered together, Respondent's pattern of violations over such a *limited* period of time, along with his prior disciplinary record, demonstrate a serious failure to uphold his duties to his clients and the profession. Furthermore, the Board takes into consideration the fact that Respondent failed to attend his own disciplinary hearing. The Board noted that Respondent's failure to attend his own disciplinary hearing even after he had taken part in the pre-hearing conference, without explanation, is similar conduct to his failure to attend court without so much as a courtesy call to the court. This further exhibits his lack of remorse or appreciation of the serious nature of this misconduct. The Board also notes that Respondent has not taken action to rectify his conduct and prevent future violations.

Therefore, upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by unanimous vote of the Board, that the Respondent's license to practice law in the Commonwealth of Virginia be REVOKED effective February 16, 2018.

It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation 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. The 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 fourteen (14) days of the effective date of the revocation and make such arrangements as are required herein within forty-

five (45) days of the effective date of the revocation. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the revocation 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 revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective day of the revocation. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9(E) of the Rules of Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all 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 address of record with the Virginia State Bar, The Barbour Law Firm, 107 Widgeon Court, Lynchburg, Virginia 24503, by certified mail, return receipt requested, and by hand delivery to Edward J. Dillon, Senior Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 15th day of March, 2018.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Sandra L. Havrilak

Digitally signed by Sandra L. Havrilak
DN: cn=Sandra L. Havrilak, o, ou, email=slhavrilak@havrilaklaw.com, c=US
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Sandra L. Havrilak, Second Vice Chair