

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MICHAEL J. BIDDINGER,

VS B Docket No. 10-060-083612

ORDER OF REVOCATION

This matter came on to be heard on November 18, 2011, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Martha JP McQuade, First Vice-Chair, presiding; William H. Atwill, Jr.; Samuel R. Walker, Tyler E. Williams, III, and Robert W. Carter, Lay Member. The Virginia State Bar was represented by Kathryn R. Montgomery, Deputy Bar Counsel. The Respondent, Michael J. Biddinger, failed to appear in person or by counsel.

Angela N. Sidener, court reporter, Chandler & Halasz; P.O. Box 9349; Richmond, Virginia 23227 (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

All required notices had been sent by the Clerk of the Disciplinary System to the Respondent by Certified Mail, return receipt requested, in accordance with Paragraphs 13-18 C and 13-12 C of Section Six, Part IV of the Rules of the Supreme Court of Virginia at Michael J. Biddinger, Esq. PC; P.O. Box 2027; Spotsylvania, Virginia 22553-2027, Respondent's address of record with the Virginia State Bar (see Bar Exhibit A, tab 1). The envelope containing the Notice of Hearing dated April 13, 2011 was returned to the Clerk, bearing the following notice: "Return to Sender/Not Deliverable As Addressed/Unable to Forward." Additionally, notices were sent by the Clerk of the Disciplinary System to the Respondent by regular mail to P.O. Box 2332; Woodbridge, Virginia 22195-2332 and 231 King George Rd.; Georgetown, South Carolina 29440, possible additional addresses associated with the Respondent.

The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent's name three times in the adjacent hall. The Respondent did not answer or appear.

The Chair then polled the members of the Board panel to ascertain whether any member had a personal or financial interest or bias which would preclude him or her from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

Procedural History

The matter came before the Disciplinary Board upon the Subcommittee Determination (Certification) of the Sixth District Subcommittee dated March 21, 2011, pursuant to Paragraph 13-18 of the Rules.

VSB Exhibit A, tabs 1 through 19 and tab 2A were admitted without objection.

Findings of Fact

After due deliberation, and having considered the testimony of Salman P. Cheema, Esq., the Complainant Imtiaz Ahmed and Bar Investigator Donald L. Lange; the Exhibits made part of the record; and all argument presented, the Board found that the following had been shown by clear and convincing evidence:

1. Michael J. Biddinger (hereinafter, the "Respondent") was licensed to practice law in the Commonwealth of Virginia on or about October 11, 1995.
2. Complainant filed or caused to be filed the bar complaint on or about April 22, 2010.
3. During the pendency of this bar complaint, Respondent's address of record with the Virginia State Bar has been Michael J. Biddinger, Esq., P.C.; P.O. Box 2027; Spotsylvania, Virginia 22553-2027.
4. Prior to the filing of the bar complaint, Respondent represented the Complainant and his wife in a child custody matter.
5. Complainant and his wife lost custody of the child.
6. Complainant wished to appeal the decision, using another attorney.
7. Complainant requested his client file from Respondent, but Respondent did not provide the file, despite assuring Complainant that he would do so. Complainant was

unable to pursue an appeal of the unfavorable decision with another attorney without providing that attorney with a copy of Complainant's client file with Respondent.

8. On or about April 22, 2010, Complainant filed a bar complaint, alleging that he had been trying to obtain his client file from Respondent for three months without success. Complainant had spoken with Respondent, and Respondent had given him several excuses for not sending the file. Complainant believes that Respondent has moved to South Carolina.

9. By letter dated May 3, 2010, Intake Counsel with the Virginia State Bar advised Respondent of the bar complaint and instructed Respondent to send to Complainant the client file by May 12, 2010 in order to avoid a formal ethics inquiry. The letter was sent to Respondent's address of record with the Virginia State Bar.

10. Respondent did not respond to the bar's May 3, 2010 letter.

11. By letter dated May 24, 2010 to Respondent, Intake Counsel noted Respondent's failure to respond and asked Respondent to contact the bar within 5 days. This letter was sent to Respondent's address of record with the Virginia State Bar.

12. Respondent did not respond to the bar's May 24, 2010 letter.

13. By letter dated June 17, 2010, Assistant Bar Counsel sent Respondent a copy of Complainant's complaint and demanded a response within 21 days. The bar advised Respondent that he had an ethical duty to comply with the bar's lawful demands for information, pursuant to Rule 8.1(c) of the Rules of Professional Conduct. This letter was sent to Respondent's address of record with the Virginia State Bar.

14. Respondent did not respond to the bar's June 17, 2010 letter.

15. By letter dated July 29, 2010, Assistant Bar Counsel advised Respondent that the complaint had been referred to the Sixth District Committee for a full investigation. The bar advised Respondent that he had an ethical duty to comply with the bar's lawful demands for information, pursuant to Rule 8.1(c) of the Rules of Professional Conduct. This letter was sent to Respondent's address of record with the Virginia State Bar.

23. By letter dated October 22, 2010, the Clerk of the Disciplinary System sent the suspension order by regular mail to Respondent at his last address of record with the Virginia State Bar. The Clerk also mailed the order to an address in Fredericksburg, Virginia that the bar had learned might be associated with the Respondent. (See Bar Exhibit A, part 19)

24. Despite numerous attempts to contact Respondent, the bar's investigator has been unable to conduct an interview of the Respondent.

25. At this time, Respondent's address of record with the Virginia State Bar remains Michael J. Biddinger, Esq., P.C., P.O. Box 2027, Spotsylvania, Virginia 22553-2027.

26. At this time, Respondent's license to practice law remains suspended, and Respondent has not sent to Complainant the client file.

Misconduct

The Board further found that the Respondent, Michael J. Biddinger, did, in fact, violate the provisions of Rules 1.16(e) and 8.1(d) of the Rules of Professional Conduct.

Sanction

Thereafter, after receiving argument on proposed sanctions, as well as factors in aggravation or mitigation, including the Respondent's prior disciplinary record, and after due deliberation, the Board found as follows: The following factors of aggravation set forth under section 9.2 of the Standards for Imposing Lawyer Discipline were present: (a) prior disciplinary offenses, (c) a pattern of misconduct, (e) bad faith obstruction of the disciplinary proceedings by intentionally failing to comply with rules or orders of the disciplinary agency, (g) refusal to acknowledge wrongful nature of conduct, (h) vulnerability of victim, (i) substantial experience in the practice of law, and (j) indifference to making restitution. The Board was unable to identify any factors of mitigation under 9.32. Under the totality of circumstances in this case, the appropriate sanction is revocation.

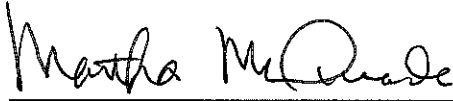
By this Memorandum Order, and in accordance with the Summary Order entered November 18, 2011, it is ORDERED that the license of the Respondent, Michael J. Biddinger, is hereby REVOKED effective November 18, 2011.

It is further ORDERED that, pursuant to Part 6, §IV, ¶13-9 (E)(1) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by Certified Mail, to Respondent at his last address of record with the Virginia State Bar, that is, at Michael J. Biddinger, Esq., P.C.; P.O. Box 2027; Spotsylvania, Virginia 22553-2027, and hand deliver a copy to Kathryn R. Montgomery, Deputy Bar Counsel, 707 East Main Street, Suite 1500; Richmond, Virginia 23219.

ENTERED December 13, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By 
Martha JP McQuade, 1st Vice-Chair