

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JASON MICHAEL BRENEMAN**

**VS. DOCKET NOS. 24-060-130673
24-060-131147**

MEMORANDUM ORDER OF REVOCATION

This matter came to be heard on November 15, 2024, before the Virginia State Bar Disciplinary Board (“The Board”) comprised of David J. Gogal, Esquire (the Chair), Robin Kegley, Esquire, Reiss F. Wilks, Esquire, Mary Beth Nash, Esquire, and Tammy D. Stephenson, Lay Member. The Virginia State Bar (“the Bar”) was represented by Jessica C. Beatty, (“Assistant Bar Counsel”). Jason Michael Breneman (“the Respondent”), *pro se*, failed to appear in person or by counsel. Stephanie Martin, Court Stenographer with Farnsworth and Taylor Reporting, LLC, Richmond, Virginia, (804) 749-4277, having been duly sworn, reported the hearing.

The Chair convened the hearing by calling the case in the hearing room designated on the Notice of Hearing. The Assistant Clerk called the name of the Respondent three times in the hallway adjacent to the hearing room, with no response. The Respondent did not answer or appear for the hearing, or provide any explanation for his absence. Further, The Chair asked the Clerk to state on the record all methods by which the Respondent had been provided notice of the hearing, which included: first-class, certified, and electronic mail to Respondent’s address of record. Further, notices were also provided to Respondent via a secondary electronic mail address that was provided to Assistant Bar Counsel during the course of the investigation.

The Chair inquired of the panel members if any of them had a personal or financial interest or any other bias which would preclude or could be perceived to preclude their

adjudication of the matter fairly and impartially. Each member of the panel answered in the negative.

The matter came before the Board pursuant to a Certification of misconduct by the Sixth District Subcommittee on August 13, 2024. The Sixth District Subcommittee certified violations of Rules: 1.3, 1.4, 1.15, 1.16, 5.5, 8.1, and 8.4 for VSB Docket No.: 24-060-130673 (Complainant William Walton). Further, the Sixth District Subcommittee certified violation of Rules 1.3, 1.4, 1.15, 1.16, 5.5, 8.1, and 8.4 in VSB Docket No.: 24-060-131147 (Complainant Yuri Sotov). All legal notices of the date and place were sent in a timely manner by the Clerk of the Virginia State Bar (“Clerk”) in the manner prescribed by the Supreme Court of Virginia Part Six, Section IV, Paragraph 13-20 of the Rules of Court to the Respondent’s Address of Record with the Bar.

The following persons testified as witnesses for the Bar: William Walton, Yuriy Sotov, and Irina Sotova. Respondent was not present to cross examine any of these witnesses. Bar Counsel tendered Exhibits 1- 44, which were admitted into evidence. Exhibit 2 was a revised copy of the original certification of the Sixth District Subcommittee; the only difference in the revised copy was that both VSB Docket numbers for the cases were reflected accurately on the revised copy. Exhibit 44 contained a certification of the Clerk regarding Respondent’s prior disciplinary records. Exhibit 44 was introduced during the sanction phase of the hearing.

The two cases, which will be addressed separately, arose out of similar fact patterns. The affected clients retained Respondent to undertake specific actions and pleadings; Respondent failed to do so; Respondent failed to return unearned legal fees and failed to provide any reason for his failure to do so.

FINDINGS OF FACT

VSB Docket No. 24-060-130673 (Complainant William Walton)

1. On or about April 13, 2023, William and Laurie Walton (“the Waltons”) retained Respondent to represent them in a contract dispute with a pool company for which he billed \$2600 as an "earnable retainer," to be billed at \$175 per hour for dispute resolution services only.
2. On April 17, 2023, Ms. Walton paid Respondent \$2,600 by credit card.
3. On May 16, 2023, Respondent sent a demand letter to a representative of the pool company. The letter demanded payment of \$78,652.83, plus the production of certain documents.
4. The pool company did not respond favorably, and the matter remained unresolved.
5. On July 20, 2023, Ms. Walton paid Respondent an additional \$2,600 to file a Warrant in Debt against the pool company. Respondent assured Ms. Walton in an August 11, 2023 email that he “absolutely” could file the Warrant in Debt on their behalf against the pool company.
6. Respondent did not prepare the Warrant in Debt.
7. On October 1, 2023, Respondent emailed Mr. Walton. Respondent apologized for his lack of communication. He then said that his office "is not accepting new civil litigation cases" and he recommended another attorney to pursue litigation on the Waltons' behalf.
8. On October 4, 2023, Mr. Walton replied to Respondent, stating that he would "take another direction" and that "we would like to arrange for the refund of the retainer paid to secure your services."
9. Respondent did not reply to the request for a refund; he did not refund the Waltons' funds.
10. On October 10, 2023, Respondent's license to practice law was administratively suspended for failure to pay his VSB dues. Respondent's license remained suspended until November 6, 2023.
11. During this administrative suspension, Respondent never notified the Waltons that his license to practice law was suspended.
12. During November 2023, Mr. Walton made numerous attempts to persuade Respondent to return the \$2600 fee paid for the Warrant in Debt and/or provide an accounting for the legal fees, to no avail.
13. Respondent never provided the promised accounting to Mr. and Ms. Walton; he never

refunded any portion of the second \$2600 fee paid by the Waltons.

14. On December 3, 2023, Mr. Walton filed a Bar complaint against Respondent.
15. Respondent was provided with all due process to respond to the Complaint and participate in the Bar's investigation; he failed to avail himself of this process.
16. Respondent did not respond to a properly-issued subpoena for the Waltons' file and related records.
17. On March 26, 2024, the Bar filed a Notice of Noncompliance and Request for Interim Suspension ("Notice of Noncompliance") with the Disciplinary Board. The Notice of Noncompliance advised Respondent that if he did not demand a hearing within 10 days following service, an interim suspension would be imposed until he complied with the subpoena.
18. Respondent still did not produce the subpoenaed documents or otherwise respond to the Notice of Noncompliance.
19. On April 9, 2024, the Disciplinary Board entered an Interim Suspension Order suspending Respondent's license until he fully complies with the subpoena.
20. As of the date of this hearing, Respondent's license remains suspended for failure to respond to the subpoena.
21. Respondent's only attempt to participate in the Bar's investigation was a phone call with Assistant Bar Counsel wherein Respondent reported that he was pursuing another career. He offered no explanation for his acts and omissions with regard to the Waltons' case.

VSJ Docket No. 24-060-131147 (Complainant Yuriy Sotov)

22. In April 2023, Complainant Yuriy Sotov retained Respondent to investigate and pursue post-conviction relief on behalf of their son, who was incarcerated.
23. Respondent charged Mr. Sotov a \$5,000 flat fee for post-conviction review and \$3,000 as a "retainer" to seek post-conviction relief.
24. On April 1, 2023, Mr. Sotov paid Respondent \$8,000 by check.
25. Between that time and November 7, 2023, the Sotovs made multiple attempts to contact Respondent to get an update on their son's case.
26. Respondent has not communicated with Mr. Sotov since November 7, 2023.
27. Respondent met with Mr. Sotov's son once and sent him one letter; Respondent did not undertake any other efforts on behalf of Mr. Sotov's son to file any pleadings for post-conviction relief.
28. Respondent never refunded any portion of the fee paid by Mr. Sotov.

29. On January 29, 2024, Mr. Sotov filed a Bar complaint against Respondent.
30. Respondent was provided with all due process to respond to the Complaint and participate in the Bar's investigation; he failed to avail himself of this process.
31. On February 2, 2024, Bar counsel issued a subpoena *duces tecum* to Respondent requesting production of Respondent's entire file regarding Mr. Sotov and/or his son. Respondent did not respond to the subpoena or offer any explanation for his failure to do so.
32. On March 26, 2024, Bar counsel filed a Notice of Noncompliance and Request for Interim Suspension ("Notice of Noncompliance") with the Disciplinary Board. The Notice of Noncompliance advised Respondent that if he did not demand a hearing within 10 days following service, an interim suspension would be imposed until he complied with the subpoena.
33. Respondent still did not produce the subpoenaed documents or otherwise respond to the Notice of Noncompliance.
34. On April 9, 2024, the Disciplinary Board entered an Interim Suspension Order suspending Respondent's license until he fully complies with the subpoena.
35. Respondent did not respond to the Bar Investigator's attempts to contact him about the investigation.

MISCONDUCT (Walton matter)

RULE 1.3(a) Diligence

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

William and Laurie Walton retained Respondent in April 2023 to assist in obtaining relief from a construction company with regard to faulty installation of a pool at the Waltons' home. The Board found by clear and convincing evidence that Respondent violated Rule 1.3. The evidence demonstrates that Respondent filed a detailed demand letter with the pool company in May 2023. However, when the pool company failed to respond, the Waltons paid an additional \$2,600.00 fee to Respondent to file a Warrant in Debt. Notwithstanding his representation that he would file a Warrant in Debt, Respondent failed to do so and failed to provide any reasonable explanation for his failure to do so. As such Respondent violated Rule 1.3 (a).

RULE 1.4(a) Communication

A lawyer shall keep a client reasonably informed about the status of a matter and promptly reply with reasonable requests for information.

The evidence presented showed that the Waltons contacted the Respondent several times by telephone, text message, and email from August 2023 through November 2023 to ascertain the status of their case. However, Respondent failed to update the Waltons on their case and further, failed to provide information requested with regard to the accounting for the second \$2,600.00 retainer paid to Respondent. As a result of this the Board found by clear and convincing evidence that Respondent violated Rule 1.4(a).

RULE 1.15 (b)(3) Safekeeping Property

A lawyer shall maintain complete records of all funds, securities, and other properties of client coming into the possession of the lawyer and render appropriate accountings to the client regarding them.

Based on the evidence presented Respondent failed to provide any records of the manner in which he deposited the Walton's retainer funds into a trust account or an appropriate account. Further, notwithstanding several requests by the Waltons, Respondent failed to provide any appropriate accounting to the Waltons for the manner in which he billed for activities covered by the retainer. The evidence indicates that Respondent took no action on the Waltons' behalf for which he could have earned any portion of the second \$2600 retainer. He failed to return the funds as requested by the Waltons. The Board finds by clear and convincing evidence that Respondent violated Rule 1.15(b)(3).

RULE 1.15 (b)(4) Safekeeping Property

A lawyer shall promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive.

The Board finds by clear and convincing evidence that notwithstanding the Waltons' requests, Respondent failed to return the Waltons' second advance fee payment and failed to provide an

accounting for any legal activity for which he could have earned the second fee. The Board finds by clear and convincing evidence that Respondent violated Rule 1.15(b)(4).

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

Respondent's license to practice law was administratively suspended as of October 2023. He did not notify the Waltons of this administrative suspension; he did not file or attempt to file the Warrant in Debt; he did not refund the second \$2,600.00 retainer fee paid for such. Respondent did not advise the Waltons of other remedies available to them nor did he recommend that they seek new counsel. The Board finds by clear and convincing evidence that Respondent violated Rule 1.16.

RULE 8.1(c) Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:
(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

In this case, Respondent did not comply with Intake Counsel's requests of December 5 or December 19, 2023, that Respondent communicate with the Waltons about their request for a refund of unearned fees. Respondent did not reply to the Complaint filed by the Waltons. Respondent did not comply with the subpoena served upon him by the Bar for his file materials. Respondent's license was administratively suspended for his failure to comply with the Bar's subpoena; he failed to show cause why he had not complied. Respondent did not reply to attempts made to contact him by the Bar investigator, Ron McCall. The Board finds by clear and convincing evidence that Respondent violated Rule 8.1(c).

RULE 8.4(a) Misconduct

It is professional misconduct for a lawyer to:

(a) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law[.]

As set forth above, Respondent accepted a retainer from the Waltons; he failed to perform any legal work for which he could have earned the fees; and he failed to return the fees. The Board finds by clear and convincing evidence that Respondent violated Rule 8.4(a).

After taking into account all of the evidence, the Board finds that the Bar did not prove by clear and convincing evidence that the Respondent violated Rules 5.5 (c) or 8.1(d) in the Waltons' case.

MISCONDUCT (Sotov matter)

RULE 1.3(a) Diligence

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

Yuri and Irina Sotov hired Respondent to represent their son, who was incarcerated, in a post-conviction relief petition. Post-conviction relief petitions are time-sensitive matters. Respondent accepted a total of \$8,000.00 from the Sotovs: \$5,000.00 for post-conviction review of the case and \$3,000.00 retainer for legal work. Although Respondent had one meeting with the Sotovs' son, he did not file any pleadings seeking post-conviction relief on behalf of their son; he did not offer any reason for his failure to do so. The Board finds by clear and convincing evidence Respondent violated Rule 1.3(a).

RULE 1.4(a) Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Mr. and Mrs. Sotov testified that Respondent did not respond to their emails or phone calls for updates on their son's case. Based on their communications with their son, Respondent had one brief meeting with their son and sent him one letter. Otherwise, Respondent did not provide

updates to their son about the status of the petition for post-conviction relief. Further, Respondent never communicated to the Sotovs' son that he had not filed a petition for post-conviction relief. The Board finds by clear and convincing evidence that Respondent violated Rule 1.4(a).

RULE 1.15(b)(4) Safekeeping Property

(b) Specific Duties. A lawyer shall:

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive[.]

Respondent accepted \$8,000.00 from the Sotovs on behalf of their son. Because Respondent failed to cooperate with the Bar's investigation, it is unclear whether he deposited any of these funds into a trust account. Respondent failed to provide an accounting for any portion of the \$8,000.00 he deemed earned fees. Respondent failed to return any of the \$8,000.00 to the Sotovs despite their request that he do so. The Board finds by clear and convincing evidence that Respondent violated Rule 1.15(b)(4).

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

As set forth above, Respondent failed to give notice to the Sotovs' son that he had not filed a petition for post-conviction relief; he failed to account for work done to earn any portion of the \$8,000.00 earned; and he failed to return the unearned fees. Respondent failed to notify the Sotovs or their son that his license had been administratively suspended. Further, Respondent did not advise the Sotovs or their son of any other post-conviction remedies available. The Board finds by clear and convincing evidence that Respondent violated Rule 1.16.

RULE 8.1(c) Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

In this case, Respondent did not comply with Intake Counsel's requests of December 5 or December 19, 2023, that Respondent communicate with the Sotovs about their request for a refund of unearned fees. Respondent did not reply to the Complaint filed by the Sotovs. Respondent did not comply with the subpoena served upon him by the Bar for his file materials. Respondent's license was administratively suspended for his failure to comply with the Bar's subpoena; he failed to show cause why he had not complied. Respondent did not reply to attempts made to contact him by the Bar investigator, Ronald McCall. The Board finds by clear and convincing evidence that Respondent violated Rule 8.1(c).

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law[.]

As set forth above, Respondent accepted legal fees from the Sotovs, but failed to earn those fees, failed to return the fees, and failed to provide an accounting to explain how the fees might have been earned. The Board finds by clear and convincing evidence that Respondent violated Rule 8.4.

The Board finds that the Bar did not prove by clear and convincing evidence that Respondent violated Rules 5.5(c) or 8.1(d).

IMPOSITION OF SANCTION

Thereafter, the Board received further evidence and argument from the Bar in support of the sanction advocated by the Bar: revocation. The Bar cited multiple aggravating factors in support of this sanction, including Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed.

The Chair announced the sanction as Revocation. The Board found that multiple aggravating factors apply to Respondent's case, including his prior disciplinary record, his failure to cooperate in the Bar's investigation and failure to respond to the Bar, the Respondent's refusal to acknowledge the wrongful nature of his conduct with regard to the Waltons and the Sotov family, the vulnerability of the victims, Respondent's experience in the practice of law which negates any possibility that these were the mistakes of inexperienced counsel, and Respondent's indifference to making restitution to the Walton and Sotov families. The Board found that no mitigating factors apply in either case. Irina Sotov described the experience with the Respondent as "terrible." She testified that she was "so upset" because Respondent made promises but did not help their son or return their money. Taking into account all of these aggravating factors, the nature of Respondent's misconduct, and the significant harm to his clients, the Board is compelled to impose the sanction of Revocation to protect the public and the integrity of the Bar.

Accordingly, it is ORDERED that the license of Jason Michael Breneman to practice law in the Commonwealth of Virginia is revoked, effective November 15, 2024.

It is further ORDERED that, as directed in the Board's November 15, 2024, Summary Order in this matter, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. As of the time of the Revocation, Respondent's license was administratively suspended. The Respondent shall forthwith give notice by certified mail, of the Revocation of license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent 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 immediately and in no event later than 14 days of the effective date of the Summary Order, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days of the effective date of the Revocation. The Respondent shall also furnish proof to the Clerk of the Disciplinary System of the Virginia State Bar within 60 days of the effective date of the Revocation that such notices have been timely given and such arrangements have been made for the disposition of matters.

It is further ORDERED that if the 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 60 days of the effective day of the Revocation. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein. The burden of proof shall be on the Respondent to show compliance. If the Respondent fails to show compliance the requirements of subparagraph 13-29, the Board may consider such failure to comply if and when Respondent applies for reinstatement to the Bar.

It is further ORDERED that pursuant to Part 6, Section IV, Paragraph 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the respondent.

It is further ORDERED that an attested copy of this Order be mailed by the Clerk of the Disciplinary System to the Respondent by electronic, first-class and certified mail, return receipt requested, to his address of record with the Virginia State Bar, being COTULaw, P.O. Box 405, Ashland, VA 23005, and a copy by electronic mail to Jessica C. Beatty, Assistant Bar Counsel.

ENTERED this 5th day of December 2024.

VIRGINIA STATE BAR DISCIPLINARY BOARD



David J. Gogal, Chair