

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
KEVIN MICHAEL BRUNICK**

VS B Docket No. 20-022-117276

MEMORANDUM ORDER

THIS MATTER came to be heard on February 19, 2021, on the Subcommittee Determination for Certification by the Second District, Section II Subcommittee of the Virginia State Bar, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Thomas R. Scott, Jr., 2nd Vice Chair; Donita M. King; Kamala H. Lannetti; Michael J. Sobey; and Tammy D. Stephenson, Lay Member. The Virginia State Bar (the “VSB”) was represented by Assistant Bar Counsel Christine M. Corey (“Assistant Bar Counsel”). The Respondent Kevin Michael Brunick (hereinafter “the Respondent”) was present and appeared *pro se*. Beverly Lukowsky, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the onset of the hearing, the Chair stated the following: On March 12, 2020, the Governor of Virginia declared a state of emergency regarding the novel coronavirus (COVID-19) pursuant to Executive Order 51. The state of emergency has been in place since March 12, 2020 and continues indefinitely, until revised or lifted by the Governor. Therefore, because COVID-19 has rendered it unsafe for public bodies to assemble in person, the Virginia State Bar Disciplinary Board is meeting via teleconference utilizing the Microsoft Teams platform, with access provided to the public to observe. In addition, the meeting will be recorded, will be available for viewing on the Virginia State Bar’s website, and it will otherwise comply with Virginia’s Freedom of Information Act regarding electronic meetings, found in the Virginia Code, Section 2.2-3708.2, as supplemented by Section 4-0.01.g of Virginia House Bill 29, Chapter 1283 (2020).

At the outset of the hearing, the Chair polled the members of the panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia.

VSB Exhibits 1-10 were admitted into evidence by the Chair, without objection from the Respondent. All of the factual findings of misconduct were made by stipulation of the parties and adopted by the Board as having been found to have been proven by clear and convincing evidence.

THE BOARD'S FINDINGS

Pursuant to the joint stipulation of facts and misconduct, the Board finds as follows:

1. Respondent was admitted to the Virginia State Bar ("VSB") in 1979. At all relevant times, Respondent was a member of the VSB.
2. On or about October 31, 2019, Edward R. Cuffee ("Mr. Cuffee") filed a bar complaint against Respondent alleging that he had not heard from Respondent regarding a 2013 "medical incident" and that they were supposed to go to trial in July 2019. Mr. Cuffee stated that when he went to Respondent's office to meet with him, he was unable to talk to Respondent. Mr. Cuffee also alleged that he had called Respondent and sent him emails but that Mr. Cuffee had no contact from Respondent for six months.
3. It became apparent during the VSB investigation that Mr. Cuffee retained Respondent for two separate legal matters: a 2013 slip-and-fall case and a personal injury case stemming from a 2018 automobile accident. Both legal matters were contingency fee representations, but Respondent only had a written fee agreement for the 2018 case.

4. On December 9, 2019, the VSB mailed the bar complaint to Respondent and requested a written response within 21 days. Pursuant to Rule of Professional Conduct 8.1 (c), the letter also indicated that Respondent had 21 days to respond to the complaint and the request for a response constituted a lawful demand for information from a disciplinary authority.
5. Respondent did not provide a response to the complaint as part of the preliminary investigation and the complaint was referred to the District Committee for further investigation.
6. The VSB investigator contacted Respondent on May 14, 2020, and Respondent subsequently provided his case files regarding Mr. Cuffee to the VSB prior to his interview.
7. One file involved the 2013 slip and fall case and the other file involved the 2018 automobile accident.
8. When the VSB investigator asked Respondent why he did not respond to the bar complaint, Respondent told the investigator that he had no rational reason for not responding to the VSB and that he would accept the punishment from the VSB concerning the complaint. Respondent also told the bar investigator that he would provide additional details in a letter to the VSB on Monday, May 18, 2020.
9. Respondent did not send a letter to the VSB on May 18, but after further inquiry, Respondent forwarded a letter to the VSB on May 28, 2020.
10. In his letter, Respondent explained that he did not respond to the complaint because he was resigned to the fact that his conduct did not conform to the rules and standards of conduct required by the Virginia State Bar.
11. Regarding the slip and fall case, Respondent admitted to the VSB investigator 1) that he agreed to represent Mr. Cuffee on the case; 2) that he told Mr. Cuffee that he was pursuing the case even though he was not pursuing the case; 3) that he misled Mr. Cuffee by continuing to tell him there was no problem with the statute of limitations when that was a lie and the statute of limitations precluded him from going forward on the case; and, 4) that, when Mr. Cuffee brought

him medical bills related to his injuries, Respondent personally paid the bills and led Mr. Cuffee to believe Mr. Cuffee would be reimbursed after the case was settled and money was received on the case.

12. Regarding the automobile accident case, Respondent told the VSB investigator 1) that he believed the case was a good liability case; 2) that he drafted a Complaint to be filed with the court, but never filed it; and, 3) that the statute of limitations expired in January 2020.

13. Respondent told the VSB investigator that he did not communicate with Mr. Cuffee from April 2019 through the filing of the bar complaint on October 31, 2019.

14. The VSB investigator spoke with Mr. Cuffee's wife regarding the bar complaint because Mr. Cuffee passed away on April 1, 2020.

15. Mrs. Cuffee told the VSB investigator 1) that Mr. Cuffee called and left messages for Respondent which he never returned; 2) that her husband scheduled an appointment to meet with Respondent at his office and he was not there; and 3) that, on some occasions, Mr. Cuffee scheduled an appointment with Respondent and then Respondent's office staff would call and cancel before the scheduled appointment.

II. STIPULATIONS OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

As found in the agreed findings of fact, paragraph 12.

RULE 1.3 Diligence (a) A lawyer shall act with reasonable diligence and promptness in

representing a client.

As found in the agreed findings of fact, paragraphs 11 and 12.

RULE 1.4 Communication (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

As found in the agreed findings of fact, paragraphs 2, 10, 13, and 15.

RULE 1.8 Conflict of Interest: Prohibited Transactions ***** (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

As found in the agreed findings of fact, paragraph 11.

RULE 8.1 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;

As found in the agreed findings of fact in paragraphs 5 and 9.

RULE 8.4 Misconduct It is professional misconduct for a lawyer to: ***** (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

As found in the agreed findings of fact, paragraphs 11 and 12.

SANCTIONS PHASE OF HEARING

Having found misconduct as alleged in the certification by stipulation, the Board then provided the VSB and the Respondent the opportunity to provide additional evidence regarding

aggravating and mitigating factors applicable to the appropriate sanction to be imposed. VSB Exhibit 11, the Respondent's disciplinary history, was admitted without objection from the Respondent. The argument presented by the VSB during the sanctions phase addressed the Respondent's prior disciplinary record and his pattern of behavior. Respondent acknowledged the serious nature of the misconduct and stated that he had become involved in an area of practice with which he was not skilled. He stated he was ready to accept whatever sanction the Board felt appropriate.

Respondent has a limited disciplinary record, consisting of two (2) Private Reprimands with Terms in 1998 and 2003. The Respondent complied with the terms in both cases. The Board noted as mitigating factors: 1) Respondent's significant experience in the practice of law, 2) the fact that the prior offenses were remote in time and unrelated in the manner of misconduct, and 3) the Respondent was cooperative with the investigation.

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 presented by Bar Counsel on behalf of the VSB, upon review of the exhibits presented by Respondent, upon Respondent's testimony and argument of Respondent and Bar Counsel, the Board reconvened and announced that during its deliberation and in determining the appropriate sanction to impose, the Board considered the mitigating and aggravating factors set forth herein above as well as the American Bar Association's Standards for Imposing Lawyer Sanctions.¹

Upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by majority vote of the Board, that Respondent's license to

¹ ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015).

practice law in the Commonwealth of Virginia be suspended for a period of thirty (30) days effective February 22, 2021 at 5 pm. Further, it is ORDERED that the Respondent shall not commit any further misconduct for a period of two years, beginning February 19, 2021.

Should the Respondent be found to have committed a Rule violation in that period, an alternative sanction of suspension of his license for a period of eighteen (18) months shall be imposed. Further, it is ORDERED that the Respondent shall complete an addition two hours of CLE in Ethics during the current reporting period. This requirement shall be in addition to the standard requirement and shall not be available to be carried over into the following year.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section § IV, ¶ 13-29 of the *Rules of Supreme Court of Virginia*. Respondent shall forthwith give notice by certified mail, of the suspension 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. 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 suspension, 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 additional sanctions for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part 6, Section, § 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 by certified mail, return receipt requested, with the Virginia State Bar, and a copy shall be hand-delivered to Christine M. Corey, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED this 3rd day of March, 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Thomas R. Scott, Jr., 2nd Vice Chair