

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DENIS CHARLES ENGLISBY

VSB DOCKET NO. 22-032-123636

MEMORANDUM ORDER OF SUSPENSION

A panel of the Virginia State Bar Disciplinary Board (the “Board”) heard this matter on November 17-18, 2022. The panel consisted of Chair Designate Yvonne S. Gibney, David J. Gogal, Joseph D. Platania, John D. Whittington, and Tammy D. Stephenson, Lay Member. The Chair polled the members of the panel as to whether any of them was conscious 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.

Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, represented the Virginia State Bar (the “VSB”). The Respondent, Denis Charles Englisby (“Mr. Englisby” or “Respondent”), appeared in person and represented himself.

The court reporter, Beverly S. Lukowsky of Chandler & Halasz, Inc.; P.O. Box 9349; Richmond, Virginia 23227; (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

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

The matter came before the Board on the Subcommittee Determination (Certification) of the Third District Subcommittee, Section II, pursuant to Part 6, Section IV, Paragraph 13-18 of the *Rules*, involving misconduct charges against the Respondent. Prior to the proceedings and at the

final Pretrial Conference VSB Exhibits 1-15 were admitted into evidence by the Chair, without objection from the Respondent and Respondent's Exhibits 1, 2, 4, 5, 6, 8, and 11 were admitted into evidence.

The Board heard testimony from the following witnesses, who were sworn under oath: Linda Woods, Complainant; Amanda Sprouse (by video conference); Denis Englisby, Respondent; and Judge Sharon Jacobs. The Board considered the testimony and exhibits introduced by the parties, heard arguments of counsel, and met in private to consider its decision.

I. FINDINGS OF FACT

The Board made the following findings of fact based on clear and convincing evidence:

1. Mr. Englisby has been a member of the VSB since 1972.
2. On about March 2021, Nancy Paulette hired Mr. Englisby to represent her niece, Amanda Sprouse ("Ms. Sprouse"), in a contested custody and visitation case already pending in the Henrico County Juvenile and Domestic Relations District Court ("JDR Court") concerning Ms. Sprouse's twin three-year old children. Ms. Sprouse had initiated the case in 2019 when she filed petitions in the JDR Court seeking sole physical custody of the children and supervised visitation for their father, Ricardo Harvey ("Mr. Harvey" or the "father").
3. Sometime after filing the petitions, Ms. Sprouse relocated from Virginia to North Carolina with the children to live with family and escape Mr. Harvey's physical abuse of her. Ms. Harvey had been found guilty of protective order violations concerning Ms. Sprouse.
4. Once Mr. Englisby had been engaged to represent her, Ms. Sprouse provided him with information supportive of her desire to be awarded sole physical custody of the children and for Mr. Harvey to have supervised visitation of the children. Mr. Englisby

acknowledged that this was what Ms. Sprouse was seeking. If called as a witness Ms. Sprouse would be able to testify to Mr. Harvey's physical abuse of her and his protective order violations, the living and childcare arrangements Ms. Sprouse had established for the children in North Carolina, and the efforts she had made and was willing to make to facilitate Mr. Harvey's supervised visitations with the children.

5. In addition to the information Ms. Sprouse shared with Mr. Englisby at the time he was hired, Mr. Englisby received a call from the Guardian ad litem for the children, Linda Woods ("Ms. Woods"), who also shared background information with him about the case, with which she had been involved since December 2019.
6. Even though the case had been pending in the JDR Court for more than a year when he agreed to represent Ms. Sprouse, Mr. Englisby did not obtain copies of the file from the JDR Court, or from any other source, such as the Guardian ad litem for the children, Ms. Woods, or his client, Ms. Sprouse.
7. At the time Ms. Sprouse hired Mr. Englisby, the JDR Court had scheduled an evidentiary hearing in the case for June 23, 2021.
8. On June 21, 2021, Mr. Englisby called Ms. Sprouse and left her a voicemail stating:

Do not come to court on June 23rd. The guardian ad litem is on our side. Do not come to court. Okay, if you need something else to talk to me about I'm at 804-748-6300.
- Mr. Englisby had not reviewed or even seen the file when he gave Ms. Sprouse this instruction.
9. Mr. Englisby did not consult with Ms. Sprouse about the potential advantages or disadvantages of attending or testifying at the evidentiary hearing.
10. Ms. Sprouse followed Mr. Englisby's instruction and cancelled the day of personal

leave she had previously scheduled with her employer to attend the hearing. She remained in North Carolina where she reported for work and did not attend the June 23, 2021 evidentiary hearing in the JDR Court.

11. When Mr. Englisby arrived at the June 23, 2021 hearing, Ms. Woods asked him where Ms. Sprouse was. He told her and the sheriff that he did not know where Ms. Sprouse was, despite knowing that he had told Ms. Sprouse not to come to the hearing. He and Ms. Woods attempted to reach Ms. Sprouse by telephone but were unsuccessful.
12. After delaying the hearing for about an hour, the presiding judge, the Honorable Sharon Gregory Jacobs (“Judge Jacobs”), began the hearing.
13. Ms. Woods asked Mr. Englisby to request a continuance because of Ms. Sprouse’s absence. Despite having no witness or evidence to present in support of Ms. Sprouse’s custody petition and despite Ms. Woods’ request that he move for a continuance, Mr. Englisby did not seek a continuance. He did not disclose to Judge Jacobs that he had instructed Ms. Sprouse not to appear. He did not explain that Ms. Sprouse had been “expecting to be there” and was “very concerned that she needed to be there.”
14. With Ms. Sprouse unavailable to testify, Mr. Englisby could not and did not present any evidence of Ms. Sprouse’s living and childcare arrangements, the efforts she had made and was willing to make to facilitate Mr. Harvey’s visitation with the children, or Mr. Harvey’s criminal record – all evidence that was material to the custody and visitation dispute. Mr. Harvey, who was seeking sole custody of the children, was the only witness to testify. Mr. Englisby acknowledged that he “didn’t ask him a question,” nor did anyone else. There was no one to rebut Mr. Harvey’s testimony.
15. At the conclusion of the hearing, Judge Jacobs granted Ms. Sprouse and Mr. Harvey

shared physical custody of the children. Judge Jacobs also ordered Ms. Sprouse to transport the children to and from their parenting times with Mr. Harvey. These trips would involve 16 hours of driving for each visit. This outcome was not what Ms. Sprouse wanted or what Ms. Woods believed to be in the best interest of the children.

16. As set out in her written orders issued on June 23, 2021, Judge Jacobs based her ruling on several factors, including findings that Ms. Sprouse had not encouraged in-person contact between the children and Mr. Harvey and "... did not appear for the custody proceeding in Virginia." Specifically commenting on Ms. Sprouse's absence, the orders state: "Although she was represented by counsel, one would think that mother would want to be present for such an important legal proceeding."
17. Later in the evening after the hearing, Ms. Woods contacted Ms. Sprouse to find out why she did not appear. Ms. Sprouse informed her that Mr. Englisby had told her not to come to the hearing. Ms. Sprouse forwarded to Ms. Woods the voicemail message Mr. Englisby had left for her two days prior to the hearing.
18. The following day, on June 24th, Ms. Woods called Mr. Englisby and asked him if he had told Ms. Sprouse not to appear. Mr. Englisby, initially, did not acknowledge instructing Ms. Sprouse not to appear, but after Ms. Woods told him she had a copy of the voicemail message he had left Ms. Sprouse, he admitted he had done so. Mr. Englisby then told Ms. Woods he had forgotten he had told Ms. Sprouse not to come to the hearing. Ms. Woods asked Mr. Englisby to inform Judge Jacobs that he had instructed Ms. Sprouse not to attend the hearing. Ms. Woods also asked him to request a rehearing or reconsideration of Judge Jacobs' decision based on his having instructed Ms.

Sprouse not to appear at the evidentiary hearing.¹

19. Notwithstanding the foregoing events, including the findings of Judge Jacobs set out in the Orders, as noted in Paragraph 16 above, Mr. Englisby –
 - (a) never discussed the JDR Court’s findings with Ms. Sprouse or the options available for seeking relief from Judge Jacobs’ ruling;
 - (b) never pursued any such relief on her behalf in the JDR Court; and
 - (c) never disclosed to Judge Jacobs that he had instructed Ms. Sprouse not to appear at the June 23, 2021 hearing.
20. Instead Mr. Englisby, without consulting with Ms. Sprouse, noted an appeal on her behalf to the Henrico County Circuit Court on June 25, 2021. Mr. Englisby did not know at that time whether Ms. Sprouse was satisfied with Judge Jacobs’ rulings because he didn’t talk to her before he appealed the rulings. Instead, it was Ms. Woods that contacted Ms. Sprouse to inform her of the JDR Court’s decision. Ms. Sprouse “was devastated” by the ruling. It was “heartbreaking” to her.
21. On August 5, 2021, 43 days after the hearing and 41 days after filing the notice of appeal without Ms. Sprouse’s consent, Mr. Englisby sent Ms. Sprouse a letter informing her of the date for docket call at which a hearing date for the appeal would be scheduled. The letter also asked her if she wanted him to continue to represent her and requested her to make a payment of his outstanding fees if she wanted him to handle the appeal for her.
22. Ms. Sprouse subsequently terminated Mr. Englisby’s representation, and an Order of

¹ This conversation took place within the timeframe to seek relief from the ruling in the JDR Court.

Withdrawal relieving Mr. Englisby as her counsel was entered in the Henrico County Circuit Court on August 26, 2021.

23. On August 31, 2021, Ms. Woods filed a bar complaint against Mr. Englisby regarding these events.
24. In his written answer to the bar complaint dated September 20, 2021, Mr. Englisby claimed he instructed Ms. Sprouse not to appear at the June 23, 2021 hearing because he believed it was only a “pre-trial, ten or fifteen-minute hearing, and [he] did not think she needed to come from North Carolina for that limited purpose.” (VSB Ex. 7) He further claimed that on the day of the hearing just two days later, he did not remember telling Ms. Sprouse not to appear, but that he was “looking for her to appear,” and that when he realized it was an evidentiary hearing, he made the unilateral “tactical” decision to proceed in her absence because the father was unrepresented and Ms. Woods and the Court-Appointed Special Advocate “were on [his] side with their recommendations,” among other reasons.² He also further explained that he only remembered that he had told Ms. Sprouse not to appear after he returned to his office and his “office” reminded him of this.
25. Mr. Englisby affirmed the statements in his September 20, 2021 letter during his interview with the bar investigator on April 21, 2022. (VSB Ex. 8).
26. In his testimony before the Board, however, Mr. Englisby changed his story, as reflected in his responses to Bar Counsel:

A ...[O]nce I found out it was a contested two-hour hearing, I was trying to get her [Ms. Sprouse] on the phone so we could get her – and I didn’t know where she was. I’m trying to get her on the phone so we could at least have the Court listen to her testimony on the phone.

² Ms. Woods denies telling Mr. Englisby she would be recommending that Ms. Sprouse be awarded physical custody of the children.

Q You said you were expecting her to show up at the hearing; right?

A I was expecting her to show up at the hearing, but I told her not to because – she seemed very concerned that she needed to be there. I think she was expecting to be there. I was telling her not to be there.

...

Q That's not what you said to the Bar, is it? You said you were looking for her to appear because you told the Bar that you had forgotten you told her not to come?

A Okay. Well, my explanation under oath is what I just told you.

In response to questioning from the Board, Mr. Englisby further testified:

Ms. Stephenson: You told Mom not to come?

Mr. Englisby: Correct.

Ms. Stephenson: But you knew the sheriff and everybody was asking Where is your client, and you kept saying –

Mr. Englisby: Yes, ma'am.

Ms. Stephenson: -- you don't know, ...

...

Ms. Stephenson: But you knew that she was told not to come?

Mr. Englisby: Yes.

27. On October 14, 2021, Mr. Englisby filed a warrant in debt against Ms. Sprouse for unpaid fees of \$1,536, which included fees for his appearance at the hearing on June 23, 2021. (VSB Ex. 14).

28. At the appeal hearing before the Circuit Court of Henrico County on February 7, 2022, the circuit court judge did not take evidence from the pro se parties, but instead brokered a resolution that modified the transportation provisions of the June 23, 2021 JDR Court orders, which remain a part of the record in the case, including Judge Jacobs' negative

factual findings concerning Ms. Sprouse. In short, Ms. Sprouse never had an opportunity to present the facts in support of her petition for custody.

II. NATURE OF MISCONDUCT

The Board finds the conduct of Mr. Englisby set forth above constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

By failing to represent Ms. Sprouse competently and diligently, including instructing her not to appear at the evidentiary hearing and proceeding in her absence without having performed a reasonable amount of preparation and having no ability to present evidence on her behalf, Mr. Englisby violated:

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.

By failing to represent Ms. Sprouse competently and diligently, including instructing her not to appear at the evidentiary hearing and proceeding in her absence without having performed a reasonable amount of preparation and having no ability to present evidence on her behalf and by not discussing with Ms. Sprouse the findings of Judge Jacobs set out in Paragraph 16 above or consulting with Ms. Sprouse regarding her options for pursuing relief from Judge Jacobs' ruling or pursuing any such relief in the JDR Court, Mr. Englisby violated:

RULE 1.3 Diligence

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

By telling the children's Guardian ad litem, Ms. Woods, at the June 23, 2021 hearing that he did not know where Ms. Sprouse was when he knew he had told Ms. Sprouse not to attend the hearing, and by telling Ms. Woods later that he had forgotten he had told Ms. Sprouse not to come to the hearing and had done so because he mistakenly believed it was only a "10 or 15-minute" pre-trial hearing, Mr. Englisby violated:

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law;

By not disclosing to Judge Jacobs and/or Ms. Woods he had instructed Ms. Sprouse not to appear at the evidentiary hearing, which allowed for an adverse inference that Ms. Sprouse had chosen not to attend due to a lack of interest in or respect for the proceeding, Mr. Englisby violated:

RULE 1.3 Diligence

...

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

By not discussing with Ms. Sprouse the findings of Judge Jacobs set out in Paragraph 16 above or consulting with Ms. Sprouse regarding her options for pursuing relief from Judge Jacobs' ruling or pursuing any such relief in the JDR Court, Mr. Englisby violated:

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued ...

By not discussing with Ms. Sprouse the findings of Judge Jacobs set out in Paragraph 16 above or consulting with Ms. Sprouse regarding her options for pursuing relief from Judge Jacobs' ruling or pursuing any such relief in the JDR Court, Mr. Englisby violated:

RULE 1.4 Communication

...

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Because Ms. Sprouse's non-appearance at the evidentiary hearing was a basis for the JDR Court's findings and ruling, a significant risk existed that Mr. Englisby's continued representation of Ms. Sprouse was materially limited by his personal interest in not revealing his instruction to Ms. Sprouse not to appear at the hearing, a personal interest that conflicted with Ms. Sprouse's interest in that information being revealed in a request for relief from Judge Jacobs' ruling in the JDR Court. By continuing to represent Ms. Sprouse once the JDR Court issued its orders on June 23, 2021, Mr. Englisby violated:

RULE 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

...

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

By making the inaccurate statements in his written answer to the bar complaint and during his interview with the bar investigator set out in Paragraph 24 above, Mr. Englisby violated:

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:

- (a) knowingly make a false statement of material fact ...

The Board found insufficient evidence to support a finding of a violation of Rule 3.3(a)(1).

III. SANCTION

After the Board announced its findings by clear and convincing evidence, it received further evidence and argument from the Bar and Respondent regarding aggravating and mitigating factors applicable to the appropriate sanction for the misconduct underlying the violations of the Rules of Professional Conduct, including Mr. Englisby's prior disciplinary record.

The Board received testimony of both Denis Englisby and Margaret Englisby. Mr. Englisby addressed some personal concerns, including concerns for his staff should he receive a suspension or revocation of his license. Ms. Englisby spoke of Mr. Englisby's extensive mentorship of other attorneys, including herself.

Mr. Englisby's disciplinary record reflects that he has been disciplined six times since 1984, ranging from private dismissals de minimis to public reprimands with terms. The most recent of these was imposed in November 2021. Mr. Englisby attempted to minimize his disciplinary record by claiming that none of the clients involved had been hurt by his misconduct, a claim that was not supported by the disciplinary record.

The Board considered as mitigating factors that Mr. Englisby was at least partially cooperative with the Bar's investigation.

The Board considered the following to be aggravating factors: (1) Mr. Englisby's prior disciplinary record, which included two matters involving violations of one of the same rules he violated in this case; (2) his multiple offenses; (3) a pattern of making decisions for this and other

clients without communicating with them; (4) his dishonest or selfish motive in not wanting to disclose his responsibility for his client not appearing for the JDR Court hearing; (5) the vulnerability of the victim of his misconduct, his client, and the harm done to her; (6) his substantial experience of 50 years in the practice of law; and perhaps most importantly, (7) his lack of remorse and refusal to acknowledge the wrongful nature of his misconduct, including his assertion that it was the children's Guardian ad litem and not he who had failed to adequately represent his client.

IV. DISPOSITION

Following deliberation of the appropriate sanction, the Board reconvened and announced its decision. Having considered the evidence presented and argument of counsel, it is

ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be SUSPENDED for a period of TWO YEARS, effective November 18, 2022.

It is further ORDERED that, as directed in the Board's November 21, 2022 Amended Summary Order in this matter, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13-29 of the *Rules*. The Respondent shall forthwith give notice by certified mail, of the TWO YEARS 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. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice immediately and in no event later than 14 days of the effective date of the Suspension, November 18, 2022, 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 Suspension. The Respondent shall also furnish proof to the Clerk within 60 days of the effective date of the

Suspension 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 November 18, 2022, he shall submit an affidavit to that effect to the Clerk within 60 days of the effective date of the Suspension. 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 Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of Paragraph 13-29.

It is further ORDERED that pursuant to Part 6, Section IV, Paragraph 13-9.E of the *Rules*, the Clerk shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent by certified mail, return receipt requested, and by regular first-class mail to his address of record with the Virginia State Bar: 10101 Iron Bridge Road, P.O. Box 85, Chesterfield, Virginia 23832; and a copy by electronic mail to Elizabeth K. Schoenfeld, Senior Assistant Bar Counsel.

ENTERED this 12th day of December 2022.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney, Chair Designate