

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DENIS CHARLES ENGLISBY

VSB DOCKET NO.
23-032-128726

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER was heard on January 26, 2024, before a panel of the Virginia State Bar Disciplinary Board (the “Board”) consisting of Kamala H. Lannetti, Chair, presiding, (“Chair”), Robin Kegley, Stephanie Cox, Alan S. Anderson, and Dr. Theodore Smith, Lay member. The Chair polled the members of the Board 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.

The Virginia State Bar (“VSB”) was represented by Paulo Franco, Assistant Bar Counsel (“Bar Counsel”). Denis Charles Englisby (“Respondent”), pro se, appeared in person and represented himself. The court reporter, Jennifer L. Thomas, of Chandler and Halasz, P.O. Box 1975, Mechanicsville, VA 23116, after being duly sworn, reported the hearing and transcribed the proceedings.

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

The matter came before the Board on the District Committee Determination for Certification by the Third District, Section II Subcommittee (hereinafter “District Committee Certification”), pursuant to Part 6, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia involving charges of misconduct by Respondent of violating Rules of

Professional Conduct Rules 3.4(j), 5.5(c), 8.1 (a)(b), and 8.4 (b)(c). At the Prehearing Conference VSB Exhibits 1-16 were admitted into evidence by the Chair, with objection from the Respondent as to Exhibit 16. Additionally at the Prehearing Conference the Chair admitted into evidence Respondents Exhibits A-K, M, O-P, and R with objection from the VSB as to Exhibits L, N, Q and S. Respondent's Exhibit T was admitted into evidence without objection. The Board heard testimony from the following witnesses, who were sworn under oath: James R. Orban ("Complainant"), Denis Englisby ("Respondent"), and Margaret Englisby. The Board considered the testimony and exhibits introduced by the parties, heard arguments of counsel, and met in private to consider its decision. The Respondent received proper notice of this proceeding as required by Part 6, Section IV, Paragraph 13-12 and 13-18.A of the Rules of the Virginia Supreme Court.

At the conclusion of the VSB's case Respondent made a Motion to Strike the evidence as to the allegations he violated Virginia State Bar Rules of Professional Conduct Rule 3.4 (j), 5.5 (c), and 8.4 (b), as set forth in the District Committee Certification. VSB opposed Respondent's Motion and after due deliberation, the Board denied the Motion to Strike. Following the close of all evidence Respondent did not renew his Motion to Strike.

I. FINDINGS OF FACT

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

1. Denis Englisby ("Respondent") was licensed to practice law in the Commonwealth of Virginia in 1972. Respondent's address of record with the Virginia State Bar was and continues to be Englisby & Slone, 10101 Iron Bridge Road, P.O. Box 85, Chesterfield, VA 23832. Respondent has also used the address of P.O. Box 85, Chesterfield, VA 23832 as his office address for mailings. On November 18, 2022, Respondent's license

to practice law was suspended for two years for Misconduct unrelated to the matters in this Memorandum of Order.

2. The Complainant, James R. Orban (“Complainant”), was represented by Respondent’s son, Mark E. Englisby, Esquire (hereinafter “MEE”), in a divorce proceeding initiated against Complainant’s wife in 2012. Several months after the divorce proceedings were filed, Complainant reconciled with his wife, and he directed MEE to dismiss the proceeding. Thereafter, Complainant and MEE had no further contact. Complainant testified that he believed that MEE was representing him and not Respondent or Respondent’s law firm.
3. The testimony and exhibits in this case indicate that MEE was associated with Respondent’s law firm, Englisby & Slone, periodically over the years. Additionally, MEE also maintained more than one solo practice law firm during this same time period. Court documents filed in Complainant’s divorce case in 2012 were signed by MEE as a member of Englisby & Slone, Respondent’s law firm. However, Respondent submitted invoices related to Complainant’s divorce case that indicate payment and fees due to MEE’s solo practice law firm at a different post office box than MEE’s law firm address.
4. Respondent’s wife, also a member of Respondent’s law firm, testified that MEE had not been associated with Respondent’s law firm for many years. The evidence establishes that at some point late in 2020 MEE was no longer a member of Respondent’s law firm in any manner and worked either by himself or with another law firm in the Richmond area.
5. Complainant testified that MEE agreed to handle his divorce proceedings for a flat fee of \$1,000.00, which Complainant paid by credit card. Complainant informed the VSB

Investigator in the Report of Investigation that he and MEE agreed to a flat fee of \$1,000 because that was all the money Complainant had due to his wife draining his accounts. Complainant testified that he did not pay any of the additional payments listed in the invoice sent to him by Respondent. After his case ended in 2012, Complainant was not contacted by MEE or Respondent until March 2023, eleven years later. He further testified that he remained at the same address for four years after directing MEE to dismiss the divorce proceeding and has had the same email address since 2011.

6. Respondent testified that MEE maintained records that reflected that Complainant agreed to pay on an hourly basis for MEE's representation and that MEE's records for Complainant reflected an outstanding balance of \$1,041.00 (over the \$1,000 deposit) which had not been paid. (Respondent Exhibit J).
7. Respondent testified that although MEE was a good attorney, MEE was not good at collecting fees and many times over the years relied on Respondent to collect fees for MEE. Respondent testified that MEE's failure to properly manage his fee collection was a frequent matter of contention between Respondent and MEE. Respondent alleges that Complainant's overdue fees was one of the cases that Respondent was collecting fees on for MEE.
8. The first evidence of fee collection efforts directed to Complainant was set forth in VSB Exhibit 17, and consists of a 9/1/16 invoice sent in March 16, 2023 to Complainant at his now-current address. This invoice reflects the letterhead of "Englisby & Slone," with a mailing address of "Post Office Box 85, Chesterfield Courthouse Square, Chesterfield, Virginia 23832," and claimed an overdue amount of \$1,041 owed to MEE. Respondent testified that Post Office Box 85 has belonged to his law firm for over forty years.

9. Respondent further testified that he found the Complainant's invoice in MEE's file, but he was uncertain who prepared the invoice. Respondent further testified that he handwrote "16-March 23" on the face of the invoice and the notation "James – we just found you. Please start making at least 100/month starting this month – March – or we will have to sue you for \$1,041 plus court costs." The invoice was mailed on March 16, 2023. VSB Exhibit 17 also consists of an envelope addressed to Complainant at his current address and bearing the return address of "Englisby Law Firm, Post Office Box 85, Chesterfield Courthouse Square, Chesterfield, Virginia 23832" printed thereon. Included in the mailing was a white remittance envelope addressed to "Denis C. Englisby, Esq., P.O. Box 85, Chesterfield, VA." During the hearing, the actual envelopes were introduced into evidence as VSB Exhibits 17, 18 & 19.
10. Complainant testified that he never saw the September 1, 2016 ledger card or the August 10, 2016 invoice until he received the documents in VSB Exhibit 17.
11. Respondent testified that neither he nor MEE was able to locate Complainant due to Complainant's frequent change of address and emails, and therefore could not proceed with collecting overdue fees until 2023 when Complainant was located. The Board did not find this testimony to be credible in light of the fact that Complainant had testified that he had not moved often and had maintained the same email address.
12. Three days after mailing the March 16, 2023 invoice to Complainant, MEE passed away unexpectedly on March 19, 2023. Mike Tittermary, Esq., was appointed as the Receiver to handle MEE's accounts after his death and Respondent indicated that he sent any files he had regarding MEE's accounts to the Receiver. However, Respondent did continue to contact Complainant concerning fees allegedly owed to MEE after the Receiver had been

appointed. Respondent indicated that he did not represent MEE's estate.

13. On approximately April 1, 2023, Respondent mailed a second invoice to Complainant at his now-current address. (VSB Exhibit 18). That exhibit consists of an invoice to Complainant virtually identical to that contained in VSB Exhibit 17 with the exception that this invoice bears the handwritten date "1 Apr 23" and the following additional handwritten notation "I will have to sue you in May." Respondent acknowledged he made all handwritten notations on this invoice. The invoice was mailed to Complainant in an envelope identical to that of VSB Exhibit 17. The remittance envelope contained in VSB Exhibit 18 is green and is addressed to "Denis C. Englisby, Esq., Post Office 85, Chesterfield, VA 23832." The only difference between the March 16 mailing and the April 1 mailing was the color of the remittance envelope.
14. On April 29, 2023, Respondent sent a third mailing to Complainant at his now-current address. (VSB Exhibit 19). VSB Exhibit 19 is identical to VSB Exhibit 18 with the exception that the invoice bears the date "1 May 23" and does not include the handwritten notation "I will have to sue you in May."
15. Respondent testified that when he normally collected fees for MEE, he would enclose a yellow remittance envelope addressed to "Mark E. Englisby, Esq., Post Office 1782, Chesterfield, VA." He testified that the remittance envelopes he included with invoices to his clients were green and that he kept a supply of these yellow and green envelopes so he would be able to distinguish between MEE's receipts and those involving Respondent's clients.
16. At the time of the mailings to Complainant, Respondent's license to practice law had already been suspended for four months. Respondent testified that he mailed VSB

Exhibits 17, 18 and 19 after the November 18, 2022 Disciplinary Board order suspending his license for two years.

17. On April 6, 2023, Complainant filed a complaint with the VSB after learning that MEE had died and feeling threatened by Respondent's correspondence regarding unpaid fees. Complainant alleged that Respondent was trying to extort him for fees that he, the Respondent, had not earned. At the hearing before the Board, Complainant testified that he thought Respondent was using his position as an attorney to collect fees that he was not entitled to.
18. As Respondent and Bar Counsel agree that Complainant's disputed fee belonged to MEE, the Board finds that the disputed fee belonged solely to MEE and not to Respondent or Respondent's law firm. Accordingly, Respondent would not have been collecting fees owed by Complainant to him or his own firm, which would have been allowable during his suspension.
19. Respondent testified that after his suspension he did not consider his efforts to collect client fees to be the practice of law and he was surprised by the VSB charge of unauthorized practice of law.
20. Upon receipt of the District Committee Certification, Respondent reviewed VSB's pamphlet entitled "FAQs For Lawyers Under a Suspension or Revocation Imposed by Disciplinary Board" (Respondent's Exhibit P). It was at this time that Respondent concluded that he might have a defense to the current proceedings. Respondent asserts that because he was operating as a "paralegal" to MEE when he mailed VSB Exhibits 17, 18 and 19 to Complainant, then he was not in violation of the terms of his suspension because he was not acting as a member of his law firm. Accordingly, he did not believe

that he was engaging in the unauthorized practice of law under paragraph 4 of Respondent's Exhibit P.

21. At no time did the Respondent represent, either orally or in writing, to Complainant that he was a paralegal working for MEE or MEE's firm. VSB Exhibits 17, 18 and 19 do not bear any notation reflecting Respondent was working as a paralegal.
22. Respondent never informed Complainant that he was suspended from practicing law in Virginia. Respondent's name on the envelopes sent to Complainant included the title "Esq." Complainant testified that he believed that Respondent was authorized to practice law when he sent the threatening letters and attempted to collect fees.

II. NATURE OF MISCONDUCT

The following conduct by Respondent was found by clear and convincing evidence to constitute misconduct in violation of the following provisions of the Rules of Professional Conduct:

1. **Rule 3.4 Fairness to Opposing Party and Counsel**

A lawyer shall not:

* * * * *

(j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take any other action on behalf of a client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

The Board finds that the following actions by Respondent violated Rule 3.4(j)

A. Threatening litigation against Complainant to collect an alleged debt that did not belong to Respondent or his firm.

B. Using stationery and letterhead that implied that Respondent was authorized to practice law when his license was suspended.

C. Attempting to collect a debt in violation of the Federal Debt Collection Act, 15 U.S. Code §1692e (3)¹.

D. Attempting to collect a debt when the statute of limitations had expired.

2. **Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law**

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assist another in doing so.

The Board finds that the following actions by Respondent violated Rule 5.5(c):

A. Taking actions, while his license to practice law was suspended, to collect an alleged debt owed to MEE or MEE's firm and not to Respondent or Respondent's law firm.

B. Using letterhead and envelopes which bore both Respondent's name, the title "Esq.", and the name of Respondent's law firm without clearly stating Respondent's license to practice law was suspended or that Respondent was employed as a paralegal.

3. **Rule 8.1 Misconduct**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist, or induce another to do so, or do so through the acts of another;

The Board finds that the following actions by Respondent violated Rule 8.1 (a):

A. Attempting to collect a debt in violation of the Fair Debt Collection Practices Act, 15 U.S. Code § 1692e.

¹ 15 U.S. Code §1692e provides "A debt collector may not use any false, deceptive, or misleading representation or means in connection with any debt. Without limiting the general application of the foregoing, the following conduct is in violation of this section:

* * *

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

B. Engaging in the unauthorized practice of law in violation of Va. Code §54.1-3904.

4. Rule 8.4 – Misconduct

It is professional misconduct for a lawyer to

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness to practice law

The Board finds that the following actions by Respondent violated Rule 8.4 (b):

A. While suspended from practicing law, threatening to take actions to collect an alleged debt owed to MEE or MEE’s firm not to Respondent or Respondent’s law firm.

B. Using letterhead and envelopes which bore both Respondent’s name and the name of Respondent’s law firm but did not clearly state Respondent’s license to practice law was suspended or that Respondent was employed as a paralegal for another law firm.

C. Using the word “Esq” follows Respondent’s name² to imply that Respondent was authorized to practice law.

D. Continuing to handle MEE’s accounts after a Receiver had been appointed to handle MEE’s accounts.

5. 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.

² Based on common usage it is fair to state that if the title “Esquire” appears after the person’s name, that person may be presumed to be a lawyer. The only ethical question posed by the use of the title “Esquire” by lawyers acting in a non-legal capacity is whether such use is misleading. Forman Opinion 1994-1995 New York City Bar Association.

The Board finds that the following actions constitute violations of Rule 8.4 (c):

- A. While suspended from practicing law, threatening to take actions to collect an alleged debt owed to MEE or MEE's firm not to Respondent or Respondent's law firm.
- B. Using letterhead and envelopes which bore both Respondent's name and the name of Respondent's law firm but did not clearly state Respondent's license to practice law was suspended or that Respondent was employed as a paralegal for another law firm.
- C. Using the word "Esq" follows Respondent's name³ to imply that Respondent was authorized to practice law.
- D. Continuing to represent to Complainant that he was authorized to handle MEE's accounts after a Receiver had been appointed to handle MEE's accounts.

III. IMPOSITION OF SANCTIONS

After the Board announced its findings by clear and convincing evidence, it received further evidence and argument in aggravation and mitigation from the VSB and Respondent, including Respondent's prior disciplinary record which was received into evidence as VSB Exhibit 20. The Board recessed to deliberate what appropriate sanction to impose upon its findings of Respondent's misconduct in violation of the Rules of Professional Conduct.

The Board received testimony, and arguments, from both Respondent and Bar Counsel.

In mitigation, Englisby addressed several personal concerns, including the medical and

³ Based on common usage it is fair to state that if the title "Esquire" appears after the person's name, that person may be presumed to be a lawyer. The only ethical question posed by the use of the title "Esquire" by lawyers acting in a non-legal capacity is whether such use is misleading. Forman Opinion 1994-1995 New York City Bar Association.

psychological situation of his sister, and the financial burden of such to him, as well as the death of his son in 2023. He further alluded to his mistaken belief that he could be a paralegal during his suspension and that he could therefore have been in compliance with the terms of his suspension.

Respondent's disciplinary record reflects that he has been disciplined seven times since 1984, ranging from private dismissals *de minimis* to a suspension for a term of two years effective November 18, 2022.

The Board also considered the following additional aggravating factors: 1) Respondent's prior disciplinary record, with all but one of the proceedings occurring since 2005; 2) Respondent's multiple offenses over that period of time; 3) the seriousness of Respondent's recent violations; 4) Respondent's substantial experience of 50+ years in the practice of law; and 5) Respondent's lack of remorse and refusal to acknowledge the wrongful nature of his misconduct, including his assertion that he was functioning as a paralegal in pursuing to collect the disputed debt.

Following due deliberation and review of the exhibits, testimony, and arguments counsel and Respondent, the Board reconvened in open session and announced that by unanimous vote found that Respondent's license to practice law in the Commonwealth of Virginia be **SUSPENDED** for a period of **THREE YEARS**, effective January 26, 2024. Such Suspension shall run concurrently with the prior **TWO-YEAR SUSPENSION**, effective November 18, 2022, as ordered by the Disciplinary Board on December 12, 2022.

It is further **ORDERED** that, as directed in the Board's January 26, 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. The Respondent shall forthwith give notice

by certified mail, of the THREE-YEAR 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, January 26, 2024, 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 of the Disciplinary System of the Virginia State Bar 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 his Suspension, January 26, 2024, 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 Suspension, January 26, 2024. 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 subparagraph 13-29.

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 the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent electronically, by certified mail, return receipt requested, and by regular first-class mail and to his address of record with the Virginia State Bar, being 10101 Iron Bridge Road, P.O. Box 85, Chesterfield, Virginia 23832-0085.

ENTERED this 8th day of March 2024

VIRGINIA STATE BAR DISCIPLINARY BOARD



Kamala H. Lannetti, Chair