

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JONATHAN PRESTON FISHER**

VS. B DOCKET NO. 21-000-122437

MEMORANDUM ORDER OF REVOCATION

A panel of the Virginia State Bar Disciplinary Board heard this matter on May 21, 2021, by video conference.¹ The panel consisted of Yvonne S. Gibney, Chair (“Chair”), Alexander Simon, Jennifer D. Royer, Robin J. Kegley, and lay member, Martha J. Goodman (the “Board” or the “Panel”). The Chair polled members of the Panel as to whether they were conscious of any personal or financial interest or bias which would preclude fair consideration of the matter before the Panel. Each member, including the Chair, replied in the negative and the hearing commenced.

Edward J. Dillon, Jr., Senior Assistant Bar Counsel, represented the Virginia State Bar (the “VSB” or the “Bar”). Respondent, Jonathan Preston Fisher (the “Respondent”), was present, participating by telephone, and proceeded *pro se*.

Beverly Lukowsky, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, 804-703-1222, Court Reporter, 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* (“Rules”), Part Six, Section IV, Paragraph 13-18.

¹ 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 remains in effect and will continue indefinitely, until it is revised or otherwise lifted by the Governor. In light of the Governor’s Executive Order 51, the Board convened the hearing via video conferencing using the Microsoft Teams platform, which provided the opportunity for members of the public to observe. The hearing was recorded and otherwise complied with the Virginia Freedom of Information Act regarding electronic meetings, found in Virginia Code § 2.2-3708.2, as supplemented by § 4-0.01(g) of Virginia House Bill 29, Chapter 1283 (2020).

The matter came before the Board upon the Notice of Show Cause Hearing for Failure to Comply with Paragraph 13-29 (“Notice”), and the attached Rule to Show Cause – Failure to Comply with Paragraph 13-29 and Pre-Hearing Order (“Show Cause and Pre-Hearing Order”) requiring Respondent to appear and show cause why his license to practice law in the Commonwealth of Virginia should not be further suspended or revoked for failing to comply with Part Six, Section IV, Paragraph 13-29 of the *Rules*.² Compliance with Paragraph 13-29 is a requirement of the Misconduct Summary Order entered on January 26, 2021 and Order entered on February 22, 2021 in which Respondent’s license was suspended for 60 days beginning February 1, 2021 (“Prior Order”). VSB Ex. 2 at 0026-0028 and 0042-0050.

At the beginning of the hearing Respondent moved for a continuance of the hearing. In support of the motion Respondent proffered that he had been voluntarily admitted to a “treatment center” in Arlington, Texas; that he wanted to retain counsel to represent him in this matter; that he intended to accept no new clients while the matter is pending; and that he wanted to be able to finalize certain matters involving pending and active litigation so that his clients would not be prejudiced.

The Bar objected to the motion based on evidence reflecting that Respondent had sufficient opportunity to engage legal counsel but had not done so. The Bar argued that the evidence further

² Part Six, §IV, ¶13-29 of the *Rules* states as follows:

After a Suspension against a Respondent is imposed by either a Summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph 13-29.

reflected that during the sixty-day suspension of his license to practice law between February 1 and April 2, 2021, Respondent had caused harm to his clients by not notifying them, opposing counsel, or the presiding judges in his clients' cases of the suspension of his license to practice law, as required by Paragraph 13-29, and by not arranging for his clients' cases to be handled by licensed attorneys, with the result that many of his clients were tried *in absentia* and found guilty. In support of its position, the Bar moved the admission of VSB Exhibits 15 through 21,³ to which Respondent did not object, and the exhibits were admitted.

The Board retired to private session to consider Respondent's motion and after its deliberation, the Board returned to the public hearing and announced that Respondent's motion was denied. The evidence reflecting the harm Respondent had already done to his clients during his suspension and the evidence of Respondent's opportunity and ability to engage legal counsel undercut the arguments offered in support of the motion. Further, the language of the Rule to Show Cause and Pre-Hearing Order provides that motions for continuances "shall be made promptly following first notice of the hearing date or the discovery of the circumstances giving rise to the motion or the motion will be denied." Respondent's last-minute motion failed to meet this requirement.

The hearing then proceeded with Respondent's opening statement during which Respondent stipulated that he had not complied with Part Six, Section IV, Paragraph 13-29 of the *Rules*, as he was required to do under the Prior Order. The Board accepted Respondent's stipulation and accordingly found that Respondent failed to show his compliance, by clear and convincing evidence, with Part Six, Section IV, Paragraph 13-29 of the *Rules* following the suspension,

³ Prior to the hearing in this matter VSB Exhibits 15 and 16 were placed under seal, on the motion of the Bar.

effective February 1, 2021, of his license to practice law in Virginia. Thereupon, the matter proceeded for the Board's determination of an appropriate sanction.

SANCTION

The Board received evidence and argument as to whether to impose a sanction of Revocation or an additional Suspension. In addition to VSB Exhibits 15-21 which had already been admitted, VSB Exhibits 1 through 14 and 22 were admitted without objection. The Board heard testimony from the following witnesses on behalf of the Bar, all of whom were sworn under oath: Robert Baker; Christopher Tuck, Esquire; Kimberly Brock; and Winston Glendon Burton. Respondent did not seek to introduce any exhibits into evidence and called no witnesses other than himself. The Respondent acknowledged on the record that although he had not been sworn under oath, he was obligated under the Rules of Professional Conduct to be truthful in the proceeding. On the Bar's motion, the witnesses, other than the Respondent, were excluded.

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

1. Respondent was licensed to practice law in the Commonwealth of Virginia on October 12, 2001. Respondent's disciplinary record includes a 60-day Suspension, effective February 1, 2021, and a Public Reprimand with terms, effective March 5, 2021. VSB Ex. 22. The Board imposed the Suspension based on Respondent's violations of the following Rules of Professional Conduct: 1.3(a) Diligence, 1.4(a) Communication, 1.15(b)(4) and (5) Safekeeping Property, 1.15(c)(2) and (4) Safekeeping Property Record-Keeping Requirements, 1.16(d) Declining or Terminating Representation, 3.4(g) Fairness to Opposing Party and Counsel, and 8.4(b) Misconduct. The Ninth District, Section One Subcommittee imposed the Public Reprimand based on violations of the following Rules of Professional Conduct: 1.3(a) Diligence, 1.4(a) and

(b) Communication, and 1.15(a) and (c) Safekeeping Property and Record-Keeping Requirements. The misconduct that was the subject of the Suspension and the Public Reprimand occurred over roughly a two-year period that began in September 2018 and affected twelve different clients.

2. On March 22, 2021 Virginia State Bar Investigator, Robert E. Baker, was assigned to investigate Respondent's compliance with the requirements of Paragraph 13-29 after the Bar received an email from Judge James R. McGarry, who expressed concerns that Respondent had not made the necessary arrangements for the handling of his clients' cases while his license was suspended. Baker thereafter interviewed at least 43 witnesses, including judges, clerks, commonwealth's attorneys, and clients of Respondent to determine the status of Respondent's compliance with Paragraph 13-29.

3. At least fourteen of Respondent's clients informed Baker that they had not received notice from Respondent before February 15, 2021 that Respondent's license had been suspended. Similarly, presiding judges and opposing counsel (primarily Commonwealth's Attorneys and Assistant Commonwealth's Attorneys) in cases in which Respondent was listed as counsel of record reported to Baker that they had not received notification of Respondent's suspension within the deadline imposed by Paragraph 13-29. Having failed to notify his clients of his suspension, Respondent also failed to make arrangements for the handling of his clients' legal matters in conformity with their wishes, as Paragraph 13-29 requires.

4. Respondent's failure to comply with the requirements of Paragraph 13-29 to notify his clients, the presiding judges, and opposing counsel of his suspension and his failure to make arrangements with his clients for the handling of their legal matters had detrimental consequences for the following clients, if not for many others:

a. Respondent failed to appear at the trial of Bryant Keith Prather on February 5, 2021.

The Smyth County General District Court convicted Mr. Prather *in absentia* and assessed a fine of \$60.00 and court costs. Nearly two months later Respondent sent Mr. Prather a text message that read:

Sorry for the delay. I've been dealing with some personal things and also had to serve a brief period of suspension. I was just able to return to work today. I tried to continue your case but it ended in a conviction and now I'm going to see about reopening it and getting it back on the docket. If I end up not able to get the charge amended for you I'll probably just offer you a refund. I know this has not gone as smoothly as I had hoped. Let me try to fix it. I apologize for my life issues causing you any inconvenience.

VS B Ex. 2 at 0114. Eventually, Respondent refunded Mr. Prather's legal fee.

b. Despite having an engagement agreement with Nicole Alexandra Fazekas to represent her in a matter in Giles County General District Court, Respondent failed to appear at her trial. The Court convicted Ms. Fazekas *in absentia* on February 16, 2021. Ms. Fazekas engaged the services of attorney Christopher Tuck to recover Ms. Fazekas's legal fee from Respondent, which Respondent eventually refunded. VS B Ex. 2 at 0166-0174.

c. Without notifying his client, Jon G. Moore, Respondent continued the trial of Mr. Moore's case in Smyth County General District Court, but then failed to appear for the trial, resulting in Mr. Moore being convicted *in absentia* and assessed a fine of \$200.00 and court costs on April 23, 2021. VS B Ex. 2 at 0064-0065 and 0116.

d. Respondent failed to appear at the trial of Vance Burres, for whom Respondent was counsel of record, in Halifax County General District Court. The Court reflected Respondent's absence with the notation "Fisher, J (FTA)" on the summons. VS B Ex. 2 at 0141. The Court convicted Mr. Burres *in absentia* on March 5, 2021 and assessed a fine of \$200.00 and court costs.

Respondent eventually refunded the legal fee paid by Mr. Burrell. VSB Ex. 2 at 0067-0069 and 0141; VSB Ex. 4 at 0281-0282.

e. Despite having an engagement agreement with Harleen Kaur to represent her in a matter in Montgomery County General District Court, Respondent did not notify her that the trial of her case had been continued to March 18, 2021. When neither Respondent nor Ms. Kaur were present that day, the Montgomery County General District Court issued a Rule to Show Cause against Ms. Kaur for her failure to appear. Respondent eventually refunded the legal fee paid by Ms. Kaur. VSB Ex. 2 at 0195-0210.

f. Cesar Pena retained Respondent to represent him in three matters in the Henry County General District Court. One of Mr. Pena's cases was scheduled for March 22, 2021 before Judge James R. McGarry. When Respondent did not appear in court that day Judge McGarry sent an email to the Bar that advised the following:

I am sorry to report that attorney Jonathon Fisher had a case on my docket this morning in Henry County General District Court. The Defendant's name is Cesar Pena. Knowing that [Respondent] is currently under a 60 day suspension, I expected another attorney to appear with the defendant, but that did not happen. Mr. Fisher had not made any contact with our clerk's office to reschedule the case. The Defendant appeared and said he had not heard from Mr. Fisher and expected that Mr. Fisher would be representing him today. The case was continued so that the Defendant could arrange for legal representation.

VSB Ex. 2 at 0073. Judge McGarry's knowledge of Respondent's suspension came from a Bar publication – not from Respondent. VSB Ex. 2 at 0058-0059.

g. Respondent represented Clarissa Wilcox in Smyth County Circuit Court in an appeal of a Smyth County General District Court conviction. Three days before the trial date Respondent notified the Court of his suspension and moved to withdraw as counsel for Ms. Wilcox. The Court granted the motion, but Respondent did not notify Ms. Wilcox that he no longer represented her, nor did he notify her of the March 29, 2021 trial date. Smyth County Circuit Court

issued a Rule to Show Cause against Ms. Wilcox for her failure to appear on March 29, 2021. VSB Ex. 2 at 0065-0066 and 0248-0250.

h. When neither Respondent nor his client, Vincent Frimpong-Manso, appeared for a hearing on February 9, 2021 in Montgomery County Circuit Court, the Court issued a Rule to Show Cause against Mr. Frimpong-Manso for his failure to appear. In a letter faxed a month later to Judge K. Mike Fleenor, Jr. and Judge Robert M. D. Turk, Respondent belatedly advised them of his suspension and stated:

Regarding the failure to appear on February 9, I will accept the blame for that. In dealing with my own issues I neglected to take care of that in a timely fashion. He [Mr. Frimpong-Manso] was not informed by me of the need to appear.

VSB Ex. 11a, 11b, 11c, and 11d at 0314-0317.

5. Respondent sent his client, Curtis Mitchell, a letter advising Mr. Mitchell of Respondent's suspension about one week before Mr. Mitchell's March 2, 2021 hearing in the Chesapeake General District Court. Respondent refunded \$2,000.00 of the \$5,000.00 fee paid by Mr. Mitchell. This refund was insufficient for Mr. Mitchell to retain substitute legal counsel and he is now represented by court-appointed counsel. VSB Ex. 14 at 0337-0338 and 0361-0399.

6. Kimberly Ann Brock retained Respondent in October 2020 and paid Respondent a retainer of \$4,000. Respondent arranged for a hearing previously scheduled for December 2020 in her case in Montgomery County General District Court to be continued to February 1, 2021. Respondent then stopped communicating with Ms. Brock. Ms. Brock attempted on multiple occasions to contact Respondent by telephone, text, and email prior to her February 1, 2021 hearing. Respondent finally sent her a text on January 30, 2021 indicating that the hearing would be continued. After police came to her home on February 5, 2021 to post service of a notice of the new hearing date, Ms. Brock tried unsuccessfully to reach Respondent and then googled

Respondent's name and discovered that his license had been suspended. Respondent emailed Ms. Brock on February 11, 2021 and told her he was "having problems and going through a lot," that his license had been suspended, and that he had an attorney who would handle her case. Ms. Brock told Respondent that she had "already found another attorney" and requested Respondent to refund the legal fees she had paid him. Respondent refused, explaining that "he was not going to pay her money to get another attorney to get the same deal he got." Ms. Brock did not know what deal Respondent might have obtained. Respondent had not kept her informed about the status of her case and never discussed any possible defenses that she might raise in her case. Respondent has not refunded any portion of the fees Ms. Brock paid to Respondent despite Ms. Brock having obtained a \$4,000 default judgment against him on April 8, 2021 in Montgomery County General District Court. VSB Ex. 3 at 0279-0280.

7. Ms. Brock engaged attorney Christopher Tuck to assist her with recovering the legal fee she paid to Respondent. Mr. Tuck contacted Respondent by letter and requested Respondent to refund the fee paid by Ms. Brock. When Respondent refused to refund the full amount of the fee paid by Ms. Brock, Mr. Tuck filed a Warrant in Debt and obtained a judgment on behalf of Ms. Brock in the amount of \$4,000.00. Respondent has not satisfied the judgment.

8. Mr. Tuck also assisted Nicole Alexandra Fazekas with obtaining a refund of the legal fee she paid Respondent. Respondent refunded Ms. Fazekas's legal fee in response to Mr. Tuck's request.

9. Winston Glendon Burton, a resident of Texas, retained Respondent to represent him in September 2020 on a matter in Smyth County General District Court that was scheduled to be heard on November 5, 2020. Respondent continued Mr. Burton's case from November 5, 2020 to March 5, 2021. Just prior to his March 5, 2021 hearing Mr. Burton attempted to reach Respondent

at his office telephone number and heard a recording that the number was no longer in service. Mr. Burton was able to leave a voicemail on Respondent's cell phone, however. Sometime later after Respondent did not return Mr. Burton's call, Mr. Burton contacted the Clerk's Office of the Smyth County General District Court and was advised that Respondent "had been disbarred" and that Mr. Burton had been convicted *in absentia* on April 1, 2021 and assessed a fine of \$500.00 and court costs. Mr. Burton has not requested Respondent to refund the \$750 legal fee Mr. Burton paid because he hoped Respondent would still go to court and represent him. Burton has since sought the assistance of another attorney. VSB Ex. 2 at 0108, 0255-0256.

10. Respondent alluded to having a PTSD diagnosis but offered no supporting documentation.

DISPOSITION

After hearing evidence and argument, the Board recessed to deliberate. The Board found that the evidence amply demonstrated that Respondent's failure to comply with Paragraph 13-29's requirements inflicted harm to a broad swath of his clients. Respondent offered nothing to even attempt to explain his flagrant flouting of the requirements of the Prior Order. It is apparent that during his 60-day suspension, Respondent continued to engage in the same patterns of misconduct – failing to act with reasonable diligence and promptness in representing his clients and failing to keep his clients reasonably informed about the status of a matter – for which his license had been suspended and for which he received a public reprimand.

In consideration of Respondent's knowing violation of the terms of the Prior Order and the injury his violation caused to many clients, the Board was guided by Standard 8.1 of the Annotated Standards for Imposing Lawyer Sanctions (ABA 2015), which provides that "[d]isbarment is generally appropriate when a lawyer intentionally or knowingly violates the terms of a prior

disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession.”

Following its deliberation in closed session the Board reconvened in open session and announced that it had unanimously found that Respondent’s license to practice law in the Commonwealth of Virginia should be revoked effective immediately.

Accordingly, it is **ORDERED** that Respondent’s license to practice law in the Commonwealth of Virginia is hereby **REVOKED** effective May 21, 2021.

It is further **ORDERED** that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the *Rules*. Respondent shall forthwith give notice by certified mail, of the Revocation 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 in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the Revocation and make such arrangements as required herein within 45 days of the effective date of the Revocation. Respondent shall furnish proof to the Bar within 60 days of the effective date of the Revocation that such notices have been timely given and such arrangements made for disposition of matters.

It is further **ORDERED** that if Respondent is not handling any matters on the effective date of Revocation, May 21, 2021, 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. All issues concerning adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of

Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent by certified mail, return receipt requested and by regular mail to his address of record with the Virginia State Bar, The Fisher Law Firm, P.C., P.O. Box 1118, Blacksburg, Virginia 24062, and by electronic mail to Edward Dillon, Jr., Senior Assistant Bar Counsel.

Entered this 15th day of June 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: **Yvonne S. Gibney**
Yvonne S. Gibney, Chair

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**Clerk of the Disciplinary System
Virginia State Bar**