

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
RICHARD SCOTT GORDON**

VS B DOCKET NO. 20-010-117385

MEMORANDUM ORDER OF SUSPENSION

A panel of the Virginia State Bar Disciplinary Board (the “Board”) heard this matter on March 26, 2021, by video conference.¹ Panel members consisted of Yvonne S. Gibney, Chair, Tambera D. Stephenson, Lay Member; Michael J. Sobey, Jennifer D. Royer, and Robin J. Kegley. The Chair polled members of the Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude fair consideration of the matter before the Panel, to which inquiry each member, including the Chair, responded in the negative.

Shelley L. Spalding, Assistant Bar Counsel, represented the Virginia State Bar (the “Bar”). Respondent, Richard Scott Gordon (“Respondent”) was present without counsel.

Jennifer L. Hairfield, court reporter, Chandler and Halasz, Inc., Post Office Box 9349, Richmond, VA 23227, (804) 730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding.

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

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 First District Subcommittee Determination (Certification) of the Virginia State Bar. Prior to the proceedings, pursuant to the Prehearing Conference Call Order dated March 17, 2021, the Chair admitted VSB Exhibits 1-26, without objection. On March 17, 2021, the Bar and the Respondent entered into written stipulations of fact and *Rule* violations (“Stipulations”), which were admitted into evidence as Board Exhibit 1.

As a result of the Stipulations, and with the agreement of the parties, the Board heard and received evidence only concerning the sanction to be imposed. The Respondent was sworn under oath and testified in his behalf. The Board considered the parties’ arguments, the testimony of Respondent, and the exhibits, including Respondent’s disciplinary record, and met in private to consider the appropriate sanction to be imposed.

MISCONDUCT

Stipulated Findings of Fact

In the Stipulations the parties stipulated to the following facts:

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1973. At all relevant times, Respondent was a member in good standing of the VSB.
2. From June 2016 through April 19, 2018, Respondent represented DK&A Cleaning (“DK&A”) in a breach of contract case against Blueridge General Incorporated (“BGI”) in Newport News General District Court. Franklin Dale Boone (“Mr. Boone”) retained Respondent on behalf of DK&A.
3. On October 13, 2019, Mr. Boone wrote Respondent: “Richard, I need a letter saying you’re no longer my attorney, as well as a copy of everything in DKA file. Thanks.”
4. On November 20, 2019, the VSB received Mr. Boone’s Complaint, alleging that Respondent didn’t give him enough heads up about his case, then closed the case and stopped

answering Mr. Boone's calls and emails. Mr. Boone also complained that he could not get his file back from Respondent. The VSB repeatedly attempted to resolve the complaint informally. By letters dated November 21, 2019 and December 5, 2019, VSB's intake counsel requested Respondent respond to Mr. Boone's Complaint. Respondent did not respond to either letter. On December 12, 2019, the VSB's intake counsel again wrote to Respondent and advised that the matter was being assigned to bar counsel for investigation because of Respondent's failure to respond or correct the situation.

5. On December 13, 2019, bar counsel notified Respondent that the VSB was opening a preliminary investigation of Mr. Boone's Complaint. Bar counsel forwarded Mr. Boone's Complaint to Respondent, requesting a response within 21 days. Respondent did not respond to the bar complaint.

6. On January 6, 2020, bar counsel followed-up with Respondent via email: "there is a matter pending in my office to which you have not submitted a written response. Please advise if you intend to do so." The same day Respondent responded "I am currently in California and will attend to this first thing next week. Your patience will be greatly appreciated." Respondent still did not respond to the bar complaint. On January 24, 2020, bar counsel followed-up with Mr. Gordon advising that the bar had not received a response and stating "[i]f you intend to respond, please do so no later than January 29, 2020." Respondent still did not respond to the bar complaint.

7. On February 4, 2020, Mr. Boone's complaint was referred to the district committee for investigation. Bar Counsel also issued a subpoena duces tecum seeking production of Respondent's file related to his representation of Mr. Boone. Respondent's response to the subpoena was due February 25, 2020. The VSB received no response to the subpoena and

followed-up with Respondent on February 28, 2020. Respondent still did not respond to the subpoena.

8. On March 16, 2020, bar counsel filed a Notice of Noncompliance and Request for Interim Suspension of Respondent's license. On April 1, 2020, Respondent filed a Petition for Hearing in response to the Notice of Noncompliance and provided documents responsive to the subpoena.² Accordingly, on April 2, 2020, the VSB withdrew its Notice of Noncompliance and Request for Interim Suspension.

9. On May 13, 2020, Mr. Boone requested the VSB provide him with a copy of his file as he needed photographs in that file in order to refile his case and still had not obtained a copy from Respondent. With Respondent's permission, the VSB provided Mr. Boone with a copy of the materials Respondent produced in response to the subpoena. When asked by the VSB's investigator why he did not return the file to Mr. Boone, Respondent conceded that he had no good reason, and noted that it would have been expensive to copy the entire file.³ The Respondent believed that he possessed copies of photographs that were provided to him by the Complainant.

Stipulated Misconduct

The parties stipulated that the conduct set forth in the stipulated facts above constitutes misconduct in violation of the following provisions of the *Rules*:

RULE 1.16 Declining Or Terminating Representation

...

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination,

² The Interim Suspension of Respondent was not processed immediately upon expiration of the 10-day period due to emergency orders of the Supreme Court of Virginia, Executive Orders of the Governor or Virginia and disruptions in mail service related to COVID-19.

³ In response to the VSB's subpoena, Respondent produced 461 pages.

the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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[.]

THE BOARD'S FINDINGS

Based upon the evidence presented, including the above stipulations and the exhibits, the Board finds, by clear and convincing evidence, that the Respondent's conduct constitutes misconduct in violation of *Rules 1.16(e)* and *8.1(c)*.

SANCTION

The Board considered the evidence presented and argument of the parties as to the appropriate sanction to be imposed upon the findings of *Rule* violations recited above, including aggravating and mitigating factors. A certification of Respondent's disciplinary record in Virginia,

VSB Exhibit 26, reported the following seven prior disciplinary matters, reflecting a pattern of similar misconduct over more than twenty years:

On May 25, 1990 Respondent received a Private Reprimand, without terms, for violating DR 2-108(D)⁴ [replaced by *Rule 1.16(d) Declining or Terminating Representation*], by not refunding unearned fees after his client terminated Respondent's services; DR 6-101(B) [replaced by *Rule 1.3(a) Diligence*], for failing to attend promptly to the matter for which Respondent was retained; and DR 6-101(C) [replaced by *Rule 1.4(a) Communication*], for failing to keep the client reasonably informed about the matters which Respondent had undertaken. In addition, the District Committee that issued the Private Reprimand observed that Respondent had not filed a written response to his client's complaint with the Bar as provided for in the Disciplinary Rules.

Respondent received a Private Admonition without Terms on February 14, 2008, for violating *Rule 1.3(a) Diligence* and *Rule 1.4(a) Communication*, for failing to respond to his client's multiple attempts to contact Respondent, and for violating *Rule 8.1 Bar Admission and Disciplinary Matters*, for failing to respond to communications from the Bar, and failing to respond to the Bar's subpoena for his file in connection with the Bar's investigation into a complaint filed by his client.

Respondent received a Public Reprimand on March 26, 2010 for again violating *Rule 1.3(a) Diligence*, *Rule 1.4(a) Communication*, and *Rule 8.1 Bar Admission and Disciplinary Matters*.

On May 18, 2011, Respondent received a Private Admonition with Terms for violating *Rule 1.1 Competence* and *Rule 1.3(a) Diligence* as a result of his failure to file reports with the Commissioner of Accounts and to diligently conclude the estate for which he served as executor.

⁴ The Disciplinary Rule ("DR") violations identified in support of the May 25, 1990 Private Reprimand issued to Respondent are based on the former Virginia Code of Professional Responsibility ("CPR"), which the *Rules of Professional Conduct* replaced on January 1, 2000. The *Rule* to which each identified CPR violation corresponds is noted inside brackets for ease of reference.

The Disciplinary Board suspended the Respondent's license to practice law for three months on February 22, 2012 for violating *Rule 1.3(a)-(c) Diligence*, for failing to act with reasonable diligence and promptness when representing a client, intentionally failing to carry out a contract of employment entered into with a client for professional services, and intentionally prejudicing or damaging a client during the course of the professional relationship; for violating *Rule 1.4(a)-(c) Communication*, for failing to keep a client reasonably informed about the status of a matter and promptly complying with reasonable requests for information, failing to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, and failing to inform the client of facts pertinent to the matter and of communication from another party that may significantly affect settlement or resolution of the matter; and for violating *Rule 3.4(e) Fairness to Opposing Party and Counsel*, for making a frivolous discovery request or failing to make reasonably diligent efforts to comply with a legally proper discovery request by an opposing party. Also relevant to the Board's decision to impose the three-month suspension was Respondent's failure to provide a written answer to the bar complaint, as required by *Rule 8.1(c)*.

On March 21, 2013, Respondent received a Private Admonition without Terms for violating *Rule 1.4(a) and (c) Communication*, for failing to keep a client reasonably informed about the status of a matter, failing to promptly comply with requests for information, and failing to inform the client of facts pertinent to the matter and communications from another party that may significantly affect settlement or resolution of the matter.

Respondent received a Public Reprimand without Terms, effective May 1, 2014, for violating *Rule 1.3(a) Diligence* and *Rule 3.4(d) Fairness to Opposing Party and Counsel*, for failing to timely file trustee accountings required by law, and as ordered by the Circuit Court, with

respect to three real property foreclosure sales; and for violating *Rule 8.1(c) Bar Admission And Disciplinary Matters*, for failing to respond to the three resulting bar complaints.

DISPOSITION

During opening statements, Bar counsel and Respondent proposed as an appropriate sanction a 90-day suspension of Respondent's license. Respondent further requested the Board to consider delaying the effective date of the sanction imposed to April 7, 2021 to enable Respondent to conclude a matter set for hearing on March 30, 2021. The Bar did not object to the proposed delayed effective date.

After considering the exhibits and statements, including the disposition proposed by the parties, the Board recessed to deliberate. The Board was guided by Standard 8.0 of the Annotated Standards for Imposing Lawyer Sanctions (ABA 2015), which addresses appropriate sanctions in cases involving prior discipline. Respondent's prior disciplinary history reflects repeated misconduct in failing to communicate with clients and failing to exercise diligence in client representation. More concerning to the Board, however, was Respondent's repeated flouting of the Bar's authority and its efforts to investigate complaints brought against Respondent. Respondent's lack of cooperation with the Bar's investigations factored in the disciplinary actions taken against him in 1990, 2008, 2010, 2012, 2014, and in the present matter.

The Board considered as mitigating factors (1) that the Respondent had no dishonest or selfish motive, and (2) the Respondent eventually cooperated with the Bar in reaching Stipulations and a proposed disposition. The Board considered as aggravating factors (1) the Respondent's prior disciplinary record evidencing a pattern of similar misconduct relating to Communication, Diligence, and failure to respond to lawful demands for information from the VSB, and (2)

Respondent's considerable experience, having been licensed to practice law in the Commonwealth of Virginia since 1973.

After due deliberation, the Board reconvened and announced its decision as follows:

It is **ORDERED** that Respondent's license to practice law in the Commonwealth of Virginia be **SUSPENDED** for a period of **NINETY DAYS**, effective March 26, 2021.

It is further **ORDERED** that, as directed in the Board's March 26, 2021 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the 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 14 days of the effective date of the suspension, March 26, 2021, and make such arrangements as are required herein within 45 days of the effective date of the suspension. Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension 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 March 26, 2021 Respondent shall submit an affidavit to that effect to the Clerk within 60 days of the effective date of the suspension. 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 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 Six, § IV, ¶ 13-9 E. of the *Rules of the Supreme Court of Virginia*, the Clerk shall assess all costs against the Respondent.

It is further **ORDERED** that the Clerk shall mail an attested copy of this Memorandum Order of Suspension to Respondent by electronic mail, certified mail, return receipt requested and first-class mail to Richard S. Gordon, PLC, 9286 Warwick Blvd, Suite 1-C, Newport News, Virginia 23607; and by electronic mail to Shelley L. Spalding, Assistant Bar Counsel, Virginia State Bar.

ENTERED this 8th day of April 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney, Chair