

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE CITY OF RICHMOND

VIRGINIA STATE BAR EX REL  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
VSB DOCKET NO. 23-000-126715

Complainant,

v.

Case No. CL23000610-00

JOHN FITZGERALD KENNEDY

Respondent.

RECIPROCAL MEMORANDUM ORDER OF REVOCATION

THIS MATTER came to be heard on March 16, 2023 before a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of the Honorable Bonnie L. Jones, Judge of the Eighth Judicial Circuit, Chief Judge Designate ("Chief Judge"); The Honorable Dennis M. Martin, Judge of the Eleventh Judicial Circuit; and The Honorable Holly B. Smith, Judge of the Ninth Judicial Circuit (collectively, the "Three-Judge Circuit Court"). The Virginia State Bar appeared through Deputy Bar Counsel Edward J. Dillon. Respondent John Fitzgerald Kennedy ("Respondent") appeared and was represented by David Charles Masselli, Esq., and Sean William O'Connell, Esq.

The Chief Judge swore the court reporter and each member of the Three-Judge Circuit Court verified that he or she had no personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in this matter.

The matter came before the Three-Judge Circuit Court on the Rule to Show Cause

and Order of Summary Suspension and Notice of Hearing entered by the Virginia State Bar Disciplinary Board (the "Board") on December 29, 2022, to which was appended the District of Columbia Court of Appeals Opinion dated August 25, 2022 ordering that Respondent be disbarred from the practice of law in the District of Columbia. On January 10, 2023, Respondent filed an Answer and Demand that Further Proceedings be Conducted Pursuant to Va. Code § 54.1-3935 (the "Answer"). In his Answer, Respondent stated that reciprocal discipline should not be imposed based on:

Rules of Court, Part Six, Section IV, Paragraph 13-24(C)(2). The imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice;

Rules of Court, Part Six, Section IV, Paragraph 13-24(C)(3). The same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia; and

Rules of Court, Part Six, Section IV, Paragraph 13-24(C)(4). The misconduct found in the other Jurisdiction would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

Respondent will also present evidence that the proceedings before the District of Columbia Bar contained numerous procedural errors.

The proceedings before the Board were subsequently terminated, and the Virginia State Bar filed a Complaint, pursuant to Va. Code § 54.1-3935 and Part Six, Section IV, Paragraph 13-24 of the Rules of the Supreme Court of Virginia, in the Circuit Court of the City of Richmond requesting that a Rule to Show Cause be issued against Respondent. On February 6, 2023, the Circuit Court of the City of Richmond issued a Rule to Show Cause against Respondent ordering Respondent to appear on March 16-17, 2023 and show cause why the same discipline that was imposed by the District of Columbia should not be imposed, pursuant to Part Six, Section IV, Paragraph 13-24 of the Rules of the Supreme Court of Virginia, by the Three-Judge Circuit Court designated to hear this matter, or why Respondent should not otherwise be sanctioned in accordance

with the Rules of Court, Part Six, Section IV, Paragraph 13. On February 8, 2023, The Honorable S. Bernard Goodwyn, Chief Justice of the Supreme Court of Virginia, designated the Three-Judge Circuit Court to hear this matter.

At the hearing, as a preliminary matter, the Three-Judge Circuit Court determined that, pursuant to Va. Code § 54.1-3935, the procedures for disciplining, suspending, and disbarring attorneys set forth in Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia govern the procedural aspects of the hearing and that, pursuant to Part Six, Section IV, Paragraph 13-24 of the Rules of the Supreme Court of Virginia, the burden of proof for the existence of one or more of the grounds for dismissal or the imposition of lesser discipline set forth in Part Six, Section IV, Paragraph 13-24.C of the Rules of the Supreme Court of Virginia is clear and convincing evidence.

The four grounds for dismissal or the imposition of lesser discipline are:

1. The record of the proceeding in the other Jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;
2. The imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice;
3. The same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia; or
4. The misconduct found in the other Jurisdiction would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

See Part Six, Section IV, Paragraph 13-24.C of the Rules of the Supreme Court of Virginia.

At the onset of the hearing, the Three-Judge Circuit Court heard opening statements by Respondent and the Virginia State Bar and received into evidence, by

agreement of counsel, Respondent's exhibits 1 through 212 and the Virginia State Bar's exhibits 1 through 10, including all subparts. During Respondent's presentation of evidence, the Three-Judge Circuit Court received the testimony of Respondent. After Respondent rested, the Virginia State Bar presented no additional evidence. The Three-Judge Circuit Court then heard closing arguments by Respondent and the Virginia State Bar and retired to deliberate.

Upon due deliberation and consideration of exhibits, witness testimony, and argument of counsel, the Three-Judge Circuit Court found that none of the four grounds set forth in Part Six, Section IV, Paragraph 13-24.C of the Rules of the Supreme Court of Virginia had been proven by clear and convincing evidence and, therefore, that the same discipline imposed on Respondent by the District of Columbia shall be imposed on Respondent in the Commonwealth of Virginia.

The Three-Judge Circuit Court stated some of the reasons for its finding on the record. These reasons included, but were not limited to, that, while Respondent presented evidence that he had a good motive and provided a significant amount of legal services to his clients, the evidence established that Respondent did not disclose to his clients the total settlement amount or the amount of attorney's fees his firm was receiving and that Respondent intentionally misappropriated the clients' money: "We heard argument today that these were not clients' funds as a matter of law. We disagree with that, that these were settlement funds and they were -- excuse me, they were client funds and they had to be distributed according to the rules. He made the determination which was dishonest. There was an intentional misappropriation of client money." The Three-Judge Circuit Court also stated that there were 10 violations of the Rules of Professional

Conduct and that Respondent did not specifically address these violations at the hearing in this reciprocal matter.

Accordingly, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is revoked as of January 6, 2023.

The Three-Judge Circuit Court also found that Respondent had previously complied with the notice provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia.

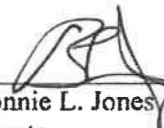
It is further ORDERED that, pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

It is further ORDERED that the Clerk of this Court shall send a copy teste of this Reciprocal Memorandum Order of Revocation to John Fitzgerald Kennedy, Kennedy & Dolan, 200A Monroe St Ste 220, Rockville, Maryland 20852; and by regular mail to David Charles Masselli, Respondent's counsel, David Charles Masselli P.C., 4113 Cherry Hill Road, Arlington, Virginia 22207; Sean William O'Connell, Respondent's Counsel, 4113 Cherry Hill Road, Arlington, Virginia 22207; Edward James Dillon, Jr., Deputy Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026; and Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

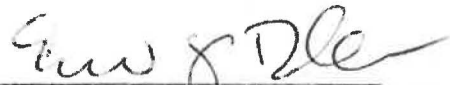
The hearing was recorded by Chandler and Halasz, Stenographic Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, Telephone 804-730-1222.

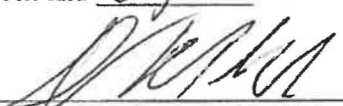
This Order is the final judgment of this Court as provided by Rule 5:21(b)(2)(ii) of the Rules of the Supreme Court of Virginia.

ENTERED this 20<sup>th</sup> day of April, 2023

  
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The Honorable Bonnie L. Jones  
Chief Judge Designate

Virginia State Bar:

  
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Seen and Objected to for the reason set forth on the attached  
 two pages

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Seen and Objected to by Respondent for the reasons set forth below:

1. The Court incorrectly assigned the burden of proof by clear and convincing evidence in this matter to the Respondent rather than to the Complainant, notwithstanding contrary authority in *Livingston v. Virginia State Bar*, 286 Va. 1, 10, 744 S.E.2d 220 (2013) and *Morrissey v. Va. State Bar ex rel. Third Dist. Comm.*, 297 Va. 467, 474, 829 S.E.2d 738, 743 (2019).
2. The Court improperly sustained Complainant's First Objection to Respondent's Witness List, to wit: "The Virginia State Bar objects to the testimony of Mr. Kennedy to the extent it constitutes an attempt to "relitigate any issues of fact which were expressly or implicitly decided" in the District of Columbia or otherwise constitutes improper extrinsic evidence under Part Six, Section IV, Paragraph 13-24 of the Rules of the Supreme Court of Virginia" (hereinafter "relitigating."
3. Based on the Court's error in improperly sustaining Complainant's First Objection to Respondent's Witness List the Court improperly sustained objections by Complainant to Respondent's evidence, thereby preventing Respondent from adducing evidence to show errors made in the District of Columbia proceeding.
4. Based on the Court's error in improperly sustaining Complainant's First Objection to Respondent's Witness List, the Court improperly sustained objections by Complainant which prevented Respondent from adducing evidence to prove mitigating factors.
5. The Court erred in upholding and accepting the finding of the District of Columbia that Respondent had improperly utilized, diverted or stolen client funds when the record in the District of Columbia disciplinary proceeding and the record before the Court showed that the Arbitrator had ruled that attorneys' fees received by Respondent were separate and distinct from recoveries by Respondent's clients.
6. The Court erred in finding that "[t]here was an intentional misappropriation of client money" when the record in the District of Columbia disciplinary proceeding and the record before the Court contained numerous rulings by the Arbitrator in the underlying proceeding which eliminated many of the Plaintiffs claims and severely limited the potential recovery of the remaining Plaintiffs as established by those records and by Respondent's testimony.
7. The Court erred in finding that "[t]here was an intentional misappropriation of client money" when the record in the District of Columbia disciplinary proceeding and the record before the Court contained numerous rulings by the Arbitrator in the underlying proceeding which eliminated many of the Plaintiffs claims and severely limited the potential recovery of the remaining Plaintiffs and Respondent's un rebutted testimony established that as a result of the aforementioned rulings of the Arbitrator, the amount each client actually received and recovered was at least the amount any client was entitled to and in most cases more.
8. At the pretrial phase, the Court improperly ruled that the Respondent would be prohibited from presenting a detailed defense after Complainant had filed its Complaint. Rather,

the Court improperly ruled that Respondent was required to provide his detailed defenses with its demand for the three-judge panel, before the Complaint was filed.

9. The Court issued its determination to disbar Respondent despite the fact that Respondent had shown, by clear and convincing evidence that the record in the District of Columbia proceeding and the proceeding before the Court demonstrated that Respondent had, in fact, performed substantial work which justified his fees well in excess of that which he received in the underlying case at issue.

10. The Court issued its determination despite the fact that Respondent had shown, by clear and convincing evidence that the record in the District of Columbia proceeding demonstrated that he had, in fact, performed work which justified a fee well in excess of that which he received in the case at issue and that the District of Columbia had improperly found that the fee he received was unconscionable and that specific finding in the District of Columbia disciplinary proceeding was without basis in the record.

11. At numerous instances during the hearing, the Court improperly limited the presentation of evidence by Respondent on errors, including errors in law, in the District of Columbia disciplinary proceeding by granting objections based on its erroneous ruling sustaining Complainant's First Objection to Respondent's Witness List

12. At numerous instances during the hearing, the Court improperly limited the presentation of evidence by Respondent on mitigating factors, including, among other matters, testimony that would have demonstrated how the award to each of his clients was calculated or their agreement to such amounts.

13. In the brief hearing, the Court did not adequately consider the record in the underlying District of Columbia proceeding and the record in the case before it and it denied Respondent's request that the parties be allowed to file post-hearing briefs.

14. Neither the Order or the statement by the Court from the bench sets forth the ten rules which Respondent was alleged to have violated.