

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF CULPEPER**

<b>VIRGINIA STATE BAR EX REL</b>	)	
<b>SEVENTH DISTRICT COMMITTEE</b>	)	
<b>VS</b>	)	
<b>B Docket No. 22-070-124469</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. CL22001481-00</b>
	)	
<b>ROBERT ADAM MAY, JR.</b>	)	
	)	
<b>Respondent.</b>	)	

**FINAL MEMORANDUM ORDER**

**THIS MATTER** was heard on March 15 and 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 Hon. Victoria A.B. Willis of the Fifteenth Judicial Circuit as Chief Judge Designate (“Chief Judge”), Michael R. Doucette of the Twenty-Fourth Judicial Circuit as Judge, and Darryl L. Funk of the Twenty-Sixth Judicial Circuit as Judge (collectively, “the Court”).

The Virginia State Bar (“VSB”) was represented by Paulo E. Franco, Jr. Respondent, having received proper notice, appeared in person at all times throughout the proceedings, and was represented by William W. Tunner and Peter S. Askin of the law firm of *ThompsonMcMullan, P.C.*

The Chief Judge swore the court reporter, and each member of the 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.

**WHEREUPON** a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or otherwise sanctioned by reason of the allegations of ethical misconduct set forth in the Certification issued on October 4, 2022 (“the Certification”) by a subcommittee of the Seventh District Committee of the VSB.

The Respondent requested and the Court granted a rule on witnesses, except for Clarissa Berry, the Complainant. She remained in the courtroom throughout the proceedings pursuant to Part 6, Section IV, Paragraph 13-18.K of the Rules of the Supreme Court of Virginia.

#### **MISCONDUCT PHASE**

The parties gave opening statements. The VSB moved into evidence without objection the following exhibits prior to calling witnesses: VSB Exhibits 1-6, 8, 10-12, 14, 16 and 18. The VSB ultimately withdrew its marked Exhibits 7 and 15. The VSB thereafter called the following witnesses:

1. Sgt. Shannon Dickson (VSB Ex. 9 was admitted subject to the stipulation that the court was free to not consider the top portion of the text message);
2. Lt. Bryan Seal
3. Ms. Ryane Wharton
4. Lt. Becky Jones (VSB Ex. 17 was admitted over objection)
5. The Hon. Eric L. Olsen (Exhibit 13 was admitted over objection)
6. Erica Gouchnour
7. Detective Johnny Thomas

8. David Jackson, VSB Investigator

9. The Hon. Dianne M. O'Connell

The VSB rested its case. Respondent thereafter moved to strike the alleged violations of Rules 1.7 (a)(2), 1.11 (b)(2), and Rule 8.4 (b) as charged in the Certification on the grounds that the VSB had failed to prove the violations by clear and convincing evidence. After hearing the arguments of counsel, the panel overruled the motion to strike.

Respondent thereafter testified on his own behalf, and Respondent moved into evidence his Exhibits 1-25 after the VSB withdrew its objections to Respondent Exhibits 7 and 17. Exhibit 18 was admitted subject to the Court not considering the extraneous material. Respondent thereafter rested and renewed his motion to strike. After hearing the arguments of counsel, the panel overruled the motion to strike on violations of Rules 1.7 (a)(2), , 1.11 (b)(2), and 8.4 (b). Counsel thereafter presented closing arguments.

Upon due deliberation and consideration of the parties' exhibits, witness testimony, and the arguments of counsel, the Court made the following findings of fact by clear and convincing evidence and then made the following conclusions of law with respect to the allegations in the Certification.

#### **FINDINGS OF FACT**

1. Respondent was admitted to the VSB in 2009. At all relevant times, Respondent was a member of the VSB (VSB Exhibit 4).
2. Respondent was employed as an Assistant Commonwealth's Attorney ("ACA") for Orange County (VSB Exhibits 1 and 2) from approximately March 2020 to March 2022.

3. In December of 2020, Erica Gouchnour and James Post were arrested and subsequently indicted by a grand jury in Orange County for drug-related and weapons charges respectively. Respondent became the assigned prosecutor for both cases.

4. During the pendency of the drug charges, in May and June of 2021, Ms. Gouchnour reported that she was the victim of several crimes.

5. On May 6, 2021, for instance, Ms. Gouchnour reported that someone stole a motorcycle and dirt bikes out of her garage. The Sheriff's Office of Orange County responded but did not take further action.

6. On May 10, 2021, Ms. Gouchnour reported that an individual attacked her dog, damaged her property, and seized several tools from her property. The Sheriff's Office responded to find the individual still on the property. The Sheriff's Office did not arrest the individual or take further action.

7. In June 2021, Gouchnour was threatened, abducted, and held hostage at gunpoint by a dangerous individual. The Sheriff's Office of Orange County opened an investigation into Ms. Gouchnour's complaint concerning her abduction and eventually brought charges against the assailant.

8. Respondent assisted with the prosecution of the assailant and communicated with Ms. Gouchnour to learn more about the assault and other crimes against her.

9. On August 5, 2021, Ms. Gouchnour entered into a plea agreement on the drug charges against her. Respondent was the prosecutor assigned to the charges and plea agreement against Ms. Gouchnour. In exchange for the Commonwealth dismissing some

of the charges, Ms. Gouchnour entered into a deferred disposition (VSB Exhibit 12, Respondent Exhibit 12) on two of the charges. She pled guilty to the remaining charges.

10. The Circuit Court of Orange County held a hearing and entered the plea agreement from the bench. At the plea agreement hearing, Ms. Gouchnour was represented by court appointed counsel Kevin Smith, and Respondent appeared on behalf of the Commonwealth. The circuit court later memorialized its entry of the plea agreement in a sentencing order signed on October 25, 2021.

11. Subsequent to the August 5, 2021 plea hearing, Ms. Gouchnour was unable to appear at a preliminary hearing for the case being prosecuted against her assailant (Respondent Exhibit 14).

12. On August 20, 2021, Ms. Gouchnour sent Respondent an email stating why she did not attend the preliminary hearing of her assailant and requesting that Respondent contact her (Respondent's Exhibit 14). That case against the assailant was *nolle prossed* by another attorney in the Orange County Commonwealth Attorney's office (Respondent Testimony).

13. On August 23, 2021, Respondent sent Ms. Gouchnour a text message in response to the August 20, 2021 email (VSB Exhibit 2, Respondent's Exhibit 15).

14. In his opening text message, Respondent reminded Ms. Gouchnour that she was still under a deferred disposition, and asked her "What was going on?"

15. Ms. Gouchnour replied to Respondent's text message acknowledging the deferred disposition and also discussing the assault against her and her failure to appear at the preliminary hearing. Thereafter, Respondent sent another text message on August 23,

2021 to Ms. Gouchnour that he testified was thought-out and deliberate, before sending (Respondent Testimony).

16. On September 2, 2021, Ms. Gouchnour emailed Respondent stating that she did not wish to go forward with charges against the individual that assaulted her (Respondent Exhibit 16).

17. On November 20, 2021, Respondent reviewed a Passover Report issued by the Orange County Sheriff's Office ("OCSO"). The Passover Report was a document created by the OCSO that summarized 9-1-1 calls and encounters made by law enforcement responding to calls and complaints from citizens in Orange County. Respondent had access to the Passover Report by virtue of his position as ACA (VSB Exhibit 18, Respondent Exhibit 18).

18. The November 20, 2021 Passover Report indicated that Ms. Gouchnour had called law enforcement to report threats to her safety and life made by persons alleged to be members of the Aryan Brotherhood.

19. After reviewing the Passover Report, Respondent sent Ms. Gouchnour a text asking if she was okay (Respondent Exhibit 19).

20. Ms. Gouchnour answered Respondent's text by stating that she was not. In that same text message thread, Respondent advised that he would come to her house around 2 p.m.

21. After having dinner together, the Sheriff's Office responded to Ms. Gouchnour's house, but, finding no other persons there, left her house.

22. Upon his arrival, Respondent learned from Ms. Gouchnour that a man named Philip MoneyMaker was one of the men at her house threatening her. Recognizing

that Ms. Gouchnour was in fear, Respondent volunteered to stay with Ms. Gouchnour at her house. He brought two personal firearms that he owned with him to her house. Respondent stayed the night but slept on the couch.

23. Later that evening into the morning of November 21, 2021, Respondent sent a text message to Sgt. Shannon Dickson of the OCSO asking if Sgt. Dickson was aware of any outstanding warrants for Moneymaker, the person who had previously threatened Ms. Gouchnour (VSB Exhibit 9). Respondent had Sgt. Dickson's telephone number by virtue of his status as ACA for Orange County.

24. On the evening of November 23, 2021, Respondent sent a text message to Lt. Bryan Seal of the OCSO to "call him." Respondent had Lt. Seal's telephone number by virtue of his status as ACA for Orange County (VSB Exhibit 8, Respondent Testimony).

25. Lt. Seal called Respondent as requested. Respondent advised that Ms. Gouchnour had received a video of Moneymaker threatening her safety, and Respondent asked Lt. Seal if he could come to her house and take a look (VSB Exhibit 8, Testimony of Lt. Seal).

26. Lt. Seal and Sgt. Dickson arrived at the house and reviewed the video, which showed Moneymaker making gestures that implied threats. They advised what Ms. Gouchnour's options were, including scheduling an appointment with the Orange County victim/witness assistance program, known as "SAFE" (VSB Exhibit 8).

27. After Lt. Seal and Sgt. Dickson left her residence, Respondent stayed behind. Later that evening, Respondent and Ms. Gouchnour had a sexual encounter (Testimony of Ms. Gouchnour and Respondent).

28. In the morning hours of November 24, 2021, Lt. Seal received a phone call from Deputy Hopkins of the OCSO advising that Respondent had contacted her requesting that extra patrols near Ms. Gouchnour's residence (VSB Exhibit 8).

29. Lt. Seal reached out to Respondent by text at 2:31 a.m. expressing his concerns about Respondent's conduct (VSB Exhibit 8).

30. Respondent texted back to Lt. Seal that nothing was going on between himself and Ms. Gouchnour. At the time he wrote to Lt. Seal, Respondent had a sexual encounter with Ms. Gouchnour earlier that night. (VSB Exhibit 8).

31. The panel received into evidence and considered the exact date of romantic involvement between Respondent and Ms. Gouchnour. (VSB Exhibits 1 and 2).

32. Early the following morning, Respondent called Ryanne Wharton, the SAFE Officer with Sheriff's Office of Orange County (VSB Exhibit 8).

33. Ms. Wharton then met with Ms. Gouchnour and explained to her the various resources and options that SAFE could make available to her (VSB Exhibit 8).

34. Ms. Gouchnour did not want any of the resources offered to her and left the SAFE office with Respondent (VSB Exhibit 8), who arrived at the SAFE office towards the end of the interview.

35. That morning, Respondent advised the Commonwealth's Attorney for Orange County, Diana O'Connell, that he had been at Mr. Gouchnour's house to provide protection from threats made against her life. He did not disclose that they had been intimate with each other the night before (Respondent Testimony).

36. That evening, Respondent obtained a hotel room for Ms. Gouchnour in Staunton, Virginia and drove her there. (Respondent Testimony). Ms. Gouchnour testified



that Respondent told her he needed to leave for blocks of time during the evening so that he could tell anyone that asked that he did not spend the night. Gouchnour stayed at the hotel from November 24-26, 2021. During the stay, Respondent and Ms. Gouchnour had sexual intercourse.

37. After they drove back together from Staunton, Respondent and Ms. Gouchnour continued their relationship. From that point forward, Ms. Gouchnour stayed at Respondent's house, and Respondent allowed her to use his car (Testimony of Ms. Gouchnour and Respondent).

38. On December 8, 2021, Sgt. Dickson executed an arrest warrant for Ms. Gouchnour's probation violation, which arose out of her failure to report and appear before a probation officer in September 2021. Sgt. Dickson arrested Ms. Gouchnour while she was driving Respondent's vehicle. (VSB Exhibit 14 and Respondent's Exhibit 21). Respondent was not in the vehicle when Sgt. Dickson stopped it.

39. During her encounter with Sgt. Dickson, Ms. Gouchnour requested at various times that the other passenger in Respondent's car call Respondent (VSB Exhibit 14). Ms. Gouchnour gave this instruction because she felt that Respondent was her boyfriend at the time and not because she expected Respondent to get her out of jail (Gouchnour testimony).

40. During her arrest on December 8, 2021, Ms. Gouchnour told Sgt. Dickson at 1:29 of Exhibit 14, that Respondent had called to check about her probation status to see what was going on.

41. At the hearing in the instant matter, Ms. O'Connell testified that she knew that Respondent was aware of a major violation report regarding Ms. Gouchnour shortly before the December 8, 2021 arrest.

42. Respondent testified that he knew a major violation was coming and purposefully did not look for it.

43. Ms. Gouchnour was denied bond after her arrest and detained in jail (Respondent Exhibit 21, Testimony of Ms. Gouchnour).

44. While she was incarcerated, mail sent to Ms. Gouchnour was monitored (Testimony of Lt. Becky Jones).

45. Ms. Gouchnour testified that Respondent sent her the mail contained in VSB Exhibit 17, and that the pseudonym that Respondent used for the return address was based on character from her favorite movie.

46. Ms. O'Connell suspended Respondent from his duties on December 17, 2021. The Circuit Court of Orange County later entered an order appointing a special prosecutor in Ms. Gouchnour's case was appointed on January 10, 2022 (Respondent Exhibit 23).

47. On January 11, 2022, a woman named JB was arrested in Stafford County on charges of felony DUI/3<sup>rd</sup>, hit and run, refusal and obstruction of justice (VSB Exhibit 13). At the time, Respondent and JB were in a romantic relationship.

48. During all times relevant, Respondent was employed as an ACA with the Orange County Commonwealth Attorney's Office.

49. Pursuant to the charges, JB had a scheduled bond hearing in the General District Court of Stafford County on January 27, 2022. Her defense attorney was Reginald Henderson.

50. After consulting with Henderson, Respondent drafted a letter addressed to the General District Court of Stafford County. In the letter, Respondent offered to be a third-party custodian of JB if released on bond. In the letter, Respondent gives his personal contact information. The letter contains no reference to Respondent's then position as an ACA in Orange County.

51. Respondent sent the letter to Henderson for potential use at JB's bond hearing using his official Orange County email address.

52. At the January 27, 2022 bond hearing, Henderson appeared on behalf of JB and decided to admit the letter into evidence.

53. The Commonwealth was represented by Eric Olsen, the duly elected Commonwealth Attorney ("CA") for Stafford County (VSB Exhibit 13, Testimony of Mr. Olsen). CA Olsen recognized Respondent's name in the letter and the pretrial report and knew Respondent to be an ACA of Orange County (VSB Exhibit 13, Testimony of Mr. Olsen).

54. At the end of the hearing, the Court denied bond.

55. CA Olsen, knowing Respondent to be a member of the Commonwealth Attorney's Office of Orange County wrote to CA O'Connell on January 27, 2022, to advise her of Respondent's involvement with JB's case and the letter he had written on her behalf (VSB Exhibit 13).

56. CA O'Connell acknowledged having received Mr. Olsen's letter of January 27, 2022. (Testimony of Ms. O'Connell).

57. Respondent voluntarily terminated his employment with the Orange County Commonwealth's Attorney's Office in March of 2022 (Respondent Testimony).

### **CONCLUSIONS OF LAW**

For the reasons stated from the bench by the Chief Judge, as announced in open court with Respondent and his counsel present as well as counsel for the VSB, the Court made the following conclusions of law.

By using resources available to him by virtue of his employment as an ACA with Orange County, Respondent engaged in a non-waivable conflict of interest by cohabitating and having a sexual relationship with a criminal defendant that he had been assigned to prosecute. The Court concluded that the VSB proved by clear and convincing evidence that Respondent violated Rule 1.7 (a)(2) as charged in the Certification.

By communicating via text message on August 23, 2021 with Ms. Gouchnour about matters related to her deferred disposition, at a time that he knew she was represented by counsel, the Court concluded that the VSB proved by clear and convincing evidence that Respondent violated Rule 4.2 as charged in Certification.

The Court found that the VSB did not prove by clear and convincing evidence the charges of Rules 1.11(b)(2) and 8.4 (b) and those charges are therefore dismissed.

### **IMPOSITION OF SANCTIONS**

The Court then proceeded to the sanctions phase of the proceeding. The VSB and Respondent presented opening statements.

The VSB incorporated by reference all of the exhibits introduced and the testimony elicited during the Misconduct phase of the hearing and then called Clarissa Berry, the Commonwealth's Attorney of Madison, Virginia and the Complainant in this case. Thereafter, the VSB rested its case in the Sanctions phase of the hearing.

Respondent likewise incorporated all of his exhibits and testimony introduced during the Misconduct phase and then called Lynn Gainsbeck, Andre Gainsbeck, David Jenkins, and Beverly Jenkins (by telephone) as character witnesses.

The VSB provided the Court with Respondent's prior disciplinary history with the VSB.

Counsel for the VSB and Respondent presented argument regarding the sanction to be imposed on Respondent for the misconduct found, and the Court recessed to deliberate.

#### **DETERMINATION**

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of Suspension of ONE YEAR with Terms of Respondent's license, effective May 1, 2023.

Accordingly, it is hereby **ORDERED** that Respondent receive a Suspension of One Year, with Terms, of his license to practice law in the Commonwealth of Virginia, effective on May 1, 2023. Respondent is hereby **ORDERED** to undergo a mental health evaluation within 90 days of May 1, 2023 and to abide by any recommendations that are made. Respondent shall provide the VSB with a copy of the recommendations made by the mental health evaluation within 30 days of the report being issued. Respondent shall be prohibited from being readmitted to the practice of law until such time that he has provided the VSB

proof that he is in compliance with the recommendations set forth in the evaluation and recommendations contained in the mental health evaluation.

It is further **ORDERED** that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Respondent shall forthwith give notice by certified mail, return receipt requested, 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 immediately and in no event later than 14 days of the effective date of the suspension, and make such arrangements as are required herein as soon as practicable and in no event later than 45 days of the effective date of the suspension. Respondent shall also furnish proof to the VSB within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

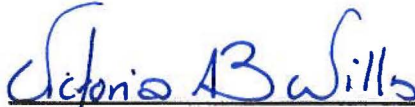
It is further **ORDERED** that if Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the VSB Disciplinary Board.

It is further **ORDERED** that the Clerk of the Disciplinary System of the Virginia State Bar shall assess all costs pursuant to Paragraph 13-9.E.

It is further **ORDERED** that the Clerk shall send a copy teste of this Memorandum Order to Respondent, Robert Adam May, Jr., by certified mail, return receipt requested, to Sentinel Law, STE 105, 15191 Montanus Drive, Culpeper, Virginia 22701, his address of record with the VSB; to Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219, and to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, VA 23219 and to William W. Tunner, Esquire at Thompson McMullen, P.C.

The proceedings were transcribed by Kay Adderly of Cavalier Reporting and Videography, 415 Fourth Street, NE, Suite 4, Charlottesville, Virginia 22902.

ENTERED THIS 28 DAY of April, 2023



Victoria A.B. Willis, Chief Judge for the Court

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