

VIRGINIA :

IN THE CIRCUIT COURT FOR SHENANDOAH COUNTY

VIRGINIA STATE BAR EX REL.
SEVENTH DISTRICT COMMITTEE
VSB DOCKET NO. 23-070-129202

Complainant,

v.

Case No. CL 2400849-00

BRADLEY G. POLLACK,

Respondent.

FINAL JUDGMENT MEMORANDUM ORDER
(REVOCAATION)

THIS MATTER was heard on October 24, 2024 and October 25, 2024, 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 Dontae L. Bugg, Judge of the Nineteenth Judicial Circuit and Chief Judge Designate (“Chief Judge”), the Honorable David B. Franzen, Judge of the Sixteenth Judicial Circuit, and the Honorable Carroll A. Weimer, Jr., Judge of the Thirty-First Judicial Circuit (collectively, “the Court”).

Assistant Bar Counsel, Joseph M. Caturano, Jr., represented the Virginia State Bar (“VSB”). Bradley G. Pollack (“Respondent” or “Mr. Pollack”) having received proper notice, appeared in person throughout the proceedings and acted *pro se*. Raegan G. Millsap served as court reporter for the hearing.

The Chief Judge swore the court reporter, and each member of the Court verified that they had no personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial in this matter.

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued on July 25, 2024, against Respondent. The Rule directed Respondent to appear on October 24-25, 2024, 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 by a Subcommittee of the Seventh District Committee on June 20, 2024, of the VSB in accordance with Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia.

MISCONDUCT PHASE

The Court admitted into evidence VSB Exhibits 1-27 and 29-30, without objection, pursuant to the Pre-Hearing Order entered on August 22, 2024. Thereafter, both parties made opening statements.

The Court then received the testimony of the following witnesses for the VSB:

Tammy Barnett

Rachel Logan, Esquire

William Bland Allen, III, Esquire

Jason E. Ransom, Esquire

R. Keith Richards, Esquire

Ronald H. McCall

Lori Coffee.

The Court admitted VSB Exhibit 28 into evidence over the objection of Respondent. Thereafter, the VSB rested. Respondent moved to strike the VSB's evidence pursuant to Part Six, Section IV, Para. 13-18.J of the Rules of the Supreme Court of Virginia, which the Court denied.

The Court then received the testimony of Respondent in his case, and the following witnesses for Respondent:

Susan Mose, D.O.

Tiffany Bane

Linda Bertschinger

Reagan Bowman

Tara Bowman

Amanda DeShaies

Sarita Emmons

Suzanne Grubb

The Court admitted Respondent's Exhibits 1-7 into evidence over the objection of Assistant Bar Counsel. Thereafter, Respondent rested.

At the conclusion of all evidence in the Misconduct phase, both parties presented closing arguments to the Court, and the Court thereafter retired to deliberate.

Upon due deliberation and in consideration of the exhibits, witness testimony, the observations of the witnesses and determinations as to their credibility, and the arguments of counsel, the Court found that the VSB proved the following findings of fact by clear and convincing evidence:

FINDINGS OF FACT

1. Respondent, Bradley G. Pollack, was licensed to practice law in the Commonwealth of Virginia on October 2, 1985. VSB Ex. 1.A (page 5 of VSB Exhibits), and Ex. 29, Admitted by Respondent in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits).

2. On February 11, 2023, Ms. Kathleen Kearney and Tammy Barnett hired Respondent to address an issue with a reverse mortgage on the home of Ms. Kearney in Shenandoah County and to recover funds allegedly owed to Ms. Kearney from the proceeds of a winning lottery ticket, among other things. VSB Ex. 1.A, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Tammy Barnett.

3. In that regard, Mr. Pollack prepared a written agreement with Ms. Kearney and Ms. Barnett stating, in part,

It appearing that Kathleen E. Kearney is in excellent mental health but her physical health has been declining rapidly;
It appearing that Kathleen E. Kearney may have a claim against the Kearney Trust, the Kearney Limited Partnership and/or her brother, Michael Kearney or others, for proceeds from a winning lottery ticket from 2001; and

It appearing that Kathleen E. Kearney and Tammy Barnett would like to engage the services of Bradley G. Pollack, Attorney at Law, to attempt to secure funds from the Kearney Trust, the Kearney Limited Partnership, and/or her brother, Michael Kearney or others, for proceeds from the winning lottery ticket; and

WHEREFORE, Kathleen E. Kearney and Tammy Barnett hereby retain the services of Bradley G. Pollack to secure as much funds as he is able from the Kearney Trust, the Kearney Limited Partnership and/or her brother, Michael Kearney or others, for proceeds from her winning lottery ticket on a contingency basis whereby attorney Pollack will be entitled to keep 40% of all monies secured[.]

VSB Ex. 7, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), and testimony of Tammy Barnett.

4. On July 6, 2023, Ms. Kearney executed a General Durable Power of Attorney prepared by Mr. Pollack, appointing Mr. Pollack her agent and attorney-in-fact. It appears from the evidence at the time of signing, Mr. Pollack was not present and only had an employee of the Department of Social Services present to witness and notarize Ms. Kearney's

signature. VSB Ex. 10, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), and testimony of Bradley G. Pollack.

5. The Power of Attorney granted Mr. Pollack the authority to act for Ms. Kearney, in part, on all financial matters, including but not limited to, real estate and personal property transactions, to deposit and withdraw sums of money into or from any bank, encumber real property, create, amend, or terminate trusts, partnerships and corporations, employ accountants and investment counsel. VSB Ex. 10, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits).

6. On July 12, 2023, Ms. Kearney revoked the Power of Attorney to Mr. Pollack. VSB Ex. 11, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits) and testimony of R. Keith Richards, Esquire. Ms. Kearney issued a Notice of No Trespass upon Respondent, stating to Respondent, in relevant part,

You ... are notified not to trespass, enter upon, or in any manner come onto any of the property owned, leased, or rented by Kathleen E. Kearney.

* * *

Nor are you to assault, attack, threaten, intimidate, or harass or in any manner annoy Kathleen E. Kearney. This notice also forbids any telephone calls to Kathleen E. Kearney.

If you commit any of the above forbidden acts, you will be prosecuted to the fullest extent of the applicable criminal laws of the Commonwealth of Virginia.

VSB Ex.12, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibit Binder) and testimony of R. Keith Richards, Esquire.

7. The Revocation and the Notice of No Trespass were prepared for Ms. Kearney by Attorney R. Keith Richards. VSB Ex. 12, pages 82-83 of VSB Exhibits, and testimony of R. Keith Richards, Esquire. Ms. Kearney indicated to Mr. Richards that she was afraid of Mr.

Pollack and that she did not want Respondent to act on her behalf or to have any further involvement with Mr. Pollack. Testimony of R. Keith Richards, Esquire.

8. Mr. Pollack testified that he received the Revocation and Notice of No Trespass from the law office of Mr. Richards on July 13, 2023. VSB Ex. 12, page 82 of VSB Exhibits, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), and testimony of Bradley G. Pollack.

9. Mr. Pollack sent email correspondence to Mr. Richards and others on that same date, July 13, 2023, stating, in part, that he “will soon file a petition for the appointment of a guardian and/or conservator for Kathleen E. Kearney.” VSB Ex. 27, page 178 of VSB Exhibits, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits) and testimony of Bradley G. Pollack and R. Keith Richards, Esquire.

10. On July 18, 2023, Respondent circulated a draft petition to Mr. Richards and others that indicated that he intended to file with the Clarke County Circuit Court the draft petition that identified Mr. Richards as agent for Ms. Kearney in paragraph 6 of the petition. VSB Ex. 27 (pages 185-187 of VSB Exhibits), Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), and testimony of R. Keith Richards, Esquire, and Bradley G. Pollack.

11. On July 21, 2023, Respondent filed the Petition with the Court stating that he was "Attorney in Fact" for Ms. Kearney, and that the “name, location, and post office address of agent designated under purported durable power of attorney of which the respondent is the principal was Bradley G. Pollack, Attorney at Law, 440 North Main Street, Woodstock, Virginia 22664.” The filed Petition did not

match the circulated draft as it made no mention to Mr. Richards. VSB Ex. 13, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), and testimony of Bradley G. Pollack.

12. The Petition filed by Mr. Pollack was never served. Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 12 of VSB Exhibits), Testimony of Bradley G. Pollack.

13. Mr. Pollack testified under oath that the purpose of filing the Petition was to delay the sale of Ms. Kearney's house. At the time of filing, Ms. Kearney was suffering from physical frailty and at times her mental condition was in question and her conduct on a number of occasions contradicted prior decisions. Testimony of Bradley G. Pollack.

14. Mr. Pollack proposed in the Petition that he be appointed Guardian and Conservator for Ms. Kearney by the Court. VSB Ex. 13, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits). The Petition had attached as Exhibit 2 a copy of the Power of Attorney signed by Ms. Kearney on July 6th. VSB Ex. 13. Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), Testimony of Bradley G. Pollack.

15. The Petition did not reference the Revocation or attach a copy of the Revocation. VSB Ex. 13, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Bradley G. Pollack and William Bland Allen, III, Esquire.

16. In the Petition filed with the Court, Mr. Pollack failed to state that he was subject to a Notice of No Trespass, issued by Ms. Kearney approximately one (1) week prior to filing the

Petition with the Court. VSB Ex. 13, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Bradley G. Pollack and William Bland Allen, III, Esquire.

17. Between the time of the receipt of the Revocation of the Power of Attorney and Notice of No Trespass, Mr. Pollack made no efforts to contact Ms. Kearney. Testimony of Bradley G. Pollack.

18. On August 15, 2023, William B. Allen, III, counsel for Ms. Kearney in the litigation filed a Motion to Dismiss. VSB Ex. 15. The Motion to Dismiss stated that the Power of Attorney was revoked on July 12, 2023, and that Ms. Kearney was evaluated on July 28, 2023, and was found to have the appropriate insight and judgment regarding her legal and financial affairs. VSB Ex. 15, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of William B. Allen, III.

19. On August 21, 2023, the Court appointed Jason E. Ransom, Esquire as Guardian *Ad Litem* for Ms. Kearney in the pending litigation. VSB Ex. 16, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Jason E. Ransom, Esquire.

20. On September 13, 2023, Mr. Ransom propounded discovery upon Respondent, seeking information on Respondent's allegations in the Petition. VSB Ex. 19, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Jason E. Ransom, Esquire.

21. Mr. Pollack testified that he received and reviewed the discovery requests on that day, September 13, 2023. Testimony of Bradley G. Pollack.

22. The following day, on September 14, 2023, Respondent nonsuited the Petition. VSB Ex. 20, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Bradley G. Pollack, Jason E. Ransom, Esquire, and William B. Allen, III.

23. On September 20, 2023, Mr. Ransom filed a motion for the payment of fees and costs for his work in the litigation. VSB Ex. 21, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Jason E. Ransom, Esquire. In preparation for the hearing on the payment of fees and costs to Mr. Ransom, Respondent issued subpoenas to witnesses, and on January 28, 2024, Respondent or his agent negotiated a check from Respondent's general checking account to the Clarke Circuit Court, identifying himself as "Bradley G. Pollack, Attorney at Law." VSB Ex. 24, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Bradley G. Pollack. At the time, Respondent's law license in the Commonwealth of Virginia was suspended. Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), Testimony of Bradley G. Pollack.

24. On February 28, 2024, the Clarke County Circuit Court entered an Agreed Final Order in which Mr. Ransom's fees and costs were to be paid by the Respondent. VSB Ex. 25, Admitted by Mr. Pollack in Answer to Certification, VSB Ex. 1.B (page 11 of VSB Exhibits), testimony of Jason E. Ransom, Esquire and testimony of William B. Allen, III.

25. The Order of the Court included language that the Petition was filed in good faith and for the benefit of the Respondent. VSB Ex. 25, testimony of Bradley G. Pollack.

FINDINGS OF MISCONDUCT

Based on the foregoing Findings of Fact, the Court further found that the VSB proved by clear and convincing evidence that such conduct by Mr. Pollack violated the following Virginia Rules of Professional Conduct:

Rule 3.3(a)(1): Candor Toward the Tribunal: The Court found that Mr. Pollack violated Rule 3.3(a)(1) by knowingly and intentionally

- (1) making false statements of fact to the Clarke County Circuit Court in the Petition to appoint a Guardian and a Conservator for Ms. Kearney,
- (2) identifying himself as attorney-in-fact for Ms. Kearney,
- (3) failing to disclose to the Clarke County Circuit Court that the Power of Attorney had been revoked by Ms. Kearney at the time of the filing of the Petition, and
- (4) omitting any reference to the Revocation and the Notice of No Trespass.

Rule 4.1(a): Truthfulness in Statements to Others: The Court further found that Mr. Pollack violated Rule 4.1(a) by presenting a check to the Clarke County Circuit Court for the fee to serve subpoenas upon witnesses which indicated that Mr. Pollack was “Attorney at Law” at the time Mr. Pollack was suspended from the practice of law.

Rule 8.4(b) and (c): Misconduct: The Court further found that Mr. Pollack violated Rule 8.4, subsections (b) and (c), by

- (1) making false statements to the Clarke County Circuit Court in a pleading,
- (2) omitting material facts from a pleading, and

(3) seeking the appointment as Guardian and Conservator for Ms. Kearney when such appointment was wholly inappropriate and unreasonable under the circumstances.

Dismissal of Rule 3.1: Meritorious Claims and Contentions:

The Court found that the VSB failed to prove by clear and convincing evidence that Mr. Pollack violated Rule 3.1, regarding meritorious claims or contentions.

SANCTIONS PHASE

The Court then convened the sanctions phase of the proceeding on October 25, 2024. The Court received the testimony of Tammy Barnett on behalf of the VSB. The Court received into evidence over Respondent's objection VSB Ex. 31, a Certification of Mr. Pollack's prior disciplinary record in Virginia.

The Court also received the testimony of Mr. Pollack on the sanction to be imposed and received Respondent's Ex. 8 over the VSB's objection.

Assistant Bar Counsel presented argument and Mr. Pollack presented argument on his own behalf.

At the conclusion of evidence and argument in the sanctions phase, the Court took the matter under advisement. The Court then deliberated and considered all the evidence on the appropriate sanction to be imposed, including the prior disciplinary record of Mr. Pollack, as well as the arguments of Mr. Pollack and Assistant Bar Counsel.

DETERMINATION

Having considered the misconduct found, and after due consideration of the evidence presented in mitigation and aggravation, and having considered the arguments of Mr. Pollack and Assistant Bar Counsel, the Court reconvened and announced its sanction of **REVOCATION** of Mr. Pollack's license to practice law in the Commonwealth of Virginia, effective October 25,

2024.

In deciding to revoke Mr. Pollack's law license, the Court relied on Mr. Pollack's disciplinary record and Mr. Pollack's failure to understand and appreciate his misconduct and the gravity of his misconduct. The Court stated, in part, as follows:

In considering [the] evidence, the Court also considered the disciplinary record of the Respondent, Mr. Pollack, which includes three (3) prior suspensions, two (2) reprimands, one (1) of which was public and the other private, and as of note for this panel that two (2) of the suspensions occurred in the last two (2) years, with one (1) being active as of today.

In the disciplinary records, of note for the Court, that one (1) of the Orders notes that, mentions that, after rendering its findings upon Respondent, he still thereafter did not understand or appreciate the gravity of the unprofessional nature of his conduct.

From the testimony here and most of the disciplinary record follows a similar refrain. There have been a number of reasons put forward by Mr. Pollack as to why the conduct of others or the outcome of something else somehow excuses or justifies his conduct. In the sanctions phase of this trial alone, he made statements such as, "I didn't know I was doing anything wrong," "the guy wasn't hurt," "I didn't think that I had done anything wrong," "no one has ever suffered from any action I've ever taken," or "these are all procedural things and technical violations."

In reference to these proceedings, Mr. Pollack's own words are that he did not, he doesn't think that his conduct here was "egregious at all." He stated that he thought he was Ms. Kearney's power of attorney, but somehow qualified it by the use of the word "purported" and that this is minimal and *de minimis*, and that the only harm caused was a delay in the closing on the sale of the home of Ms. Kearney, and that his actions here are worthy of public reprimand.

The evidence and argument and demeanor of Mr. Pollack in Court make it abundantly clear to this Court that Mr. Pollack does not understand the impact of his actions, the harm done to the public perception of the profession or the need to protect the public against such conduct.

No harm, no foul is not the standard when it comes to attorney ethics. The fact that a client did not suffer any prejudice to her legal rights is not sufficient to exonerate the Respondent and that is directly from the matter of Maddy v. District Committee, 205 Va. 652, 139 S.E. 2d 56 (1964).

Accordingly, it is hereby ORDERED that Mr. Pollack's license to practice law in the Commonwealth of Virginia be, and the same hereby is, REVOKED, effective October 25, 2024.

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 must forthwith give notice by certified mail, return receipt requested, of the Revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent must also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of his clients. Respondent must give such notice immediately and in no event later than 14 days from the effective date of the Revocation, and make such arrangements as are required herein as soon as practicable and in no event later than 45 days from the effective date of the Revocation. Respondent must also furnish proof to the VSB within 60 days of the effective date of the Revocation 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 Revocation, Respondent must submit an affidavit to that effect to the Clerk of the Disciplinary System of the VSB. Issues concerning the adequacy of the notice and arrangement required by Paragraph 13-29 must be determined by the VSB Disciplinary Board, which may impose a sanction of Suspension or Revocation for failure to comply with these requirements.

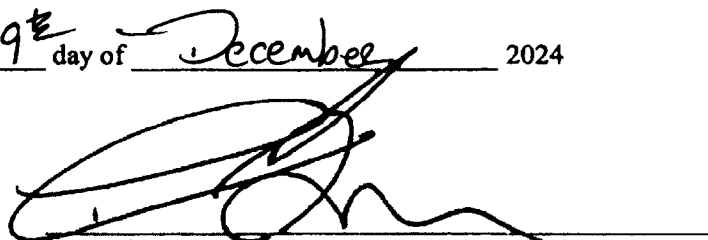
It is further ORDERED that the Clerk of the Disciplinary System of the VSB must assess all costs pursuant to Paragraph 13-9.E.

It is further ORDERED that the Clerk must send a copy teste of this order to Bradley G. Pollack, Respondent, at 440 North Main Street, Woodstock, Virginia 22664; and to Joseph M. Caturano, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 E. Main St., Suite 700, Richmond, VA 23219; and to Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 E. Main St., Suite 700, Richmond, VA 23219.

These proceedings were transcribed by Raegan G. Millsap, Shenandoah Valley Reporting, LLC, 187 River Road, Stanley, Virginia 22851 and at shenrept@yahoo.com.

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 19th day of December 2024



Honorable Dontae L. Bugg, Designated Chief Judge
Judge of the Nineteenth Judicial Circuit of Virginia

Honorable David B. Franzen
Judge of the Sixteenth Judicial Circuit of Virginia

Honorable Carroll A. Weimer, Jr.
Judge of the Thirty-First Judicial Circuit of Virginia

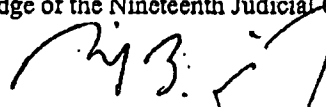
It is further ORDERED that the Clerk must send a copy tests of this order to Bradley G. Poffack, Respondent, at 440 North Main Street, Woodstock, Virginia 22664; and to Joseph M. Caturano, Jr., Assistant Bar Counsel, Virginia State Bar, 1111 E. Main St., Suite 700, Richmond, VA 23219; and to Joanne Fronfelter, Clerk of the Disciplinary System, Virginia State Bar, 1111 E. Main St., Suite 700, Richmond, VA 23219.

These proceedings were transcribed by Raegan G. Millsap, Shenandoah Valley Reporting, LLC, 187 River Road, Stanley, Virginia 22851 and at shenrept@yahoo.com.

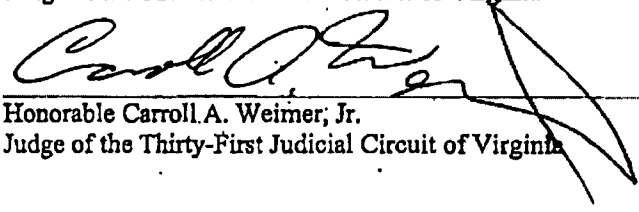
This Order is the final judgment of this Court as provided by Rule 5:21(b)(2)(ii) of the Rules of the Supreme Court of Virginia.

ENTERED this _____ day of _____ 2024

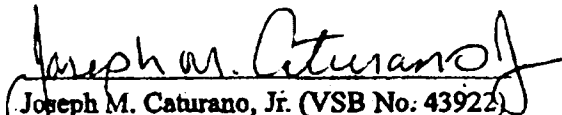
Honorable Dontae L. Bugg, Designated Chief Judge
Judge of the Nineteenth Judicial Circuit of Virginia



Honorable David B. Franzen
Judge of the Sixteenth Judicial Circuit of Virginia



Honorable Carroll A. Weimer, Jr.
Judge of the Thirty-First Judicial Circuit of Virginia


Joseph M. Caturano, Jr. (VSB No: 43922)

Assistant Bar Counsel

Virginia State Bar

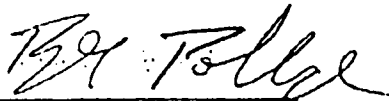
1111 E. Main St., Suite 700

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(804) 775-9410

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**SEEN AND OBJECTED TO AS OUTLINED IN THE ATTACHED
OBJECTIONS/MOTION FOR RECONSIDERATION:**



Bradley G. Pollack

Respondent, pro se

440 North Main Street

Woodstock, Virginia 22664

(540) 335-4712

bpollack@gmail.com

VIRGINIA: BEFORE THE CIRCUIT COURT OF SHENANDOAH COUNTY

**VIRGINIA STATE BAR EX REL
SEVENTH DISTRICT COMMITTEE
VSB Docket No. 23-070-129202**

v.

Case: CL 24000-849

BRADLEY G. POLLACK.

**OBJECTIONS/MOTION TO RECONSIDER
FINAL JUDGMENT MEMORANDUM ORDER**

1. The Three-Judge Circuit Court was impaneled pursuant to § 54.1-3935 of the Code of Virginia (1950). Nonetheless, that section violates Article VI, Section 7, of the Constitution of Virginia, which requires that “Each judge of a trial court of record shall during his term of office reside within the jurisdiction of one of the courts to which he was appointed or elected...,” thus depriving this Court of jurisdiction.

2. The Certification issued by a Subcommittee of the Seventh District Committee of the Virginia State Bar on June 20, 2024, was not in accordance with Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia as set forth in the Motion to Dismiss filed herein.

3. Pollack did not admit that the purported revocation of the power of attorney on July 12, 2024, was effective. This power of attorney, the second that

Kathleen Kearney had signed in Pollack's favor, was a durable power of attorney, and "the authority of my agent and attorney-in-fact shall not terminate if I become disabled, incompetent or incapacitated," which Pollack believed she had become at the time Kearney signed the purported revocation.

4. Pursuant to Virginia Code § 64.2-1600 "'Durable,' with respect to a power of attorney, means not terminated by the principal's incapacity" and "'Incapacity' means inability of an individual to manage property or business affairs because the individual: 1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions..." which was the very issue that Pollack submitted the Clarke County Circuit Court for its determination.

5. Pursuant to Virginia Code § 64.2-2002(B)(5)(a) "A petition for the appointment of a guardian, a conservator, or both, shall state ... The name, place of residence or location, and post office address of any agent designated under a durable power of attorney or an advance directive of which the respondent is the principal..." which Pollack complied with, yet he appropriately qualified the power of attorney as being "purported."

6. Pollack's petition also properly alleged that Kearney was "an

incapacitated person” pursuant to Virginia Code § 64.2-1600 because he believed that she was:

“incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.”

7. Such is consistent with this Court’s finding in paragraph 13 of the above Memorandum Order that “At the time of filing, Ms. Kearney was suffering from physical frailty and at times her mental condition was in question and her conduct on a number of occasions contradicted prior decisions.”

8. The overwhelming evidence in the case was that Kathleen Kearney was not afraid of Respondent, left him several friendly voicemails that were played for the Court, and asked others for his assistance.

9. Although Kearney was evaluated on July 28, 2023, by a physician's assistant who put in writing that Kearney had the appropriate insight and judgment regarding her legal and financial affairs, the physician’s assistant did not testify in this matter. Her boss, Dr. Susan Moose, did and testified that the physician’s assistant *disavowed* her previous opinion.

10. *“By filing a Petition seeking to have himself appointed as Ms. Kearney's Guardian and Conservator without any medical evidence, nine (9) days after she revoked Respondent's Power of Attorney and issued a Notice of No Trespass to Respondent, Respondent”* was found by this Court above to **not violate** Virginia Rule of Professional Conduct 3.1. (“A lawyer shall not bring ... a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous which includes a good faith argument for an extension, modification or reversal of existing law.”)

11. As the Clarke County Circuit Court similarly found that Pollack had filed the guardianship petition in “good faith and for the benefit of” Kathleen Kearney, Pollack was candid to that Court, and made no statements to that Court in the petition to appoint a guardian and a conservator for Ms. Kearney that were knowingly and intentionally false.

12. Mr. Pollack did not violate Virginia Rule of Professional Conduct 4.1(a) by presenting a check to the Clerk of the Circuit Court of Clarke County for the fee to serve subpoenas upon witnesses that indicated that Mr. Pollack was an "Attorney at Law" at the time Mr. Pollack was suspended from the practice of law. If Pollack were presenting himself as an attorney at law, he would have issued the subpoenas himself. The fee for subpoenas was merely written and

signed by Pollack's assistant on an old operating account check that still had attorney-at-law on the heading. Pollack was still an attorney at law, he was just temporarily suspended and inactive at the time. The writing of the check to the Clerk of the Circuit Court of Clarke County was not meant to lead that Clerk, who knew Pollack was suspended, to believe that he was practicing law.

13. As the Circuit Court of Clarke County found that Mr. Pollack filed the petition for guardianship "in good faith and for the benefit of" Kathleen Kearney, he did not violate Virginia Supreme Court Rule 8.4(b) or (c). He complied with Virginia Code § 64.2-2002(B), made no false statements to the Clarke County Circuit Court in the petition for guardianship, and left no material facts from it. Furthermore, the overwhelming testimony in Court was that his appointment as guardian and conservator for Ms. Kearney would have been appropriate and reasonable.

14. Pollack's first suspension was initiated by a complaint generated by a case in which Pollack was attempting to set aside a fraudulent deed drafted and notarized by a Shenandoah County Commonwealth's Attorney who was later elected to the Shenandoah County Juvenile and Domestic Relations District Court bench. The Commonwealth's Attorney drafted the deed for two mentally disabled brothers to sign which sold their 116-acre farm near an interstate

intersection for less than \$800 an acre when the same attorney had represented the Shenandoah County School Board the year before in purchasing an adjoining parcel of land for \$10,000 per acre. The note the Commonwealth's Attorney had the purchasers sign was without interest and was not secured by a deed of trust. The validity of that transaction is still not settled, and one of the brothers continues to reside on the farm since Pollack won an unlawful detainer on his behalf in 1995.

15. By the time the Assistant Bar Counsel came to Woodstock to dig up more baseless dirt on Pollack in that matter, Pollack had recently run for the Virginia House of Delegates railing against a landfill the mafia had set up in Page County to illegally accept hazardous waste. After Pollack lost, he was appointed to the Virginia Waste Management Board by his former boss, Governor Mark Warner. In an effort to protect Marvin Bush, who the mafia sold the landfill to, Warner illegally removed Pollack from the Virginia Waste Management Board. Accordingly, Pollack had litigation pending against Governor Warner and Marvin Bush's company at the time.

16. Pollack's Woodstock colleagues were happy to oblige to give the Assistant Bar Counsel anything they could, as they have continued to do in the ensuing twenty-two years. Nonetheless, for what Pollack was awarded a

two-year suspension, the Assistant Bar Counsel had offered to settle for a 30-day suspension.

17. One VSB Docket was for failing to timely file the reports involved in the matter of *POLLACK v. ALLEN*, 266 Va. 118, 581 S.E.2d 198 (2003), which Pollack won.

18. Pollack was also erroneously found to have violated Virginia Rule of Professional Conduct 3.4(d), by walking out of the Shenandoah County Juvenile and Domestic Relations District courtroom of the judge he had recently been litigating against in the matter outlined in paragraph 14 above when summoned to do so by a bailiff sent by the Shenandoah County Circuit Court.

19. Pollack was erroneously found to have violated Virginia Rule of Professional Conduct 3.4(a) for informing the parents of an alleged victim of assault and battery that his client could swear out similar charges against their daughter, which resulted in the Commonwealth's Attorney dropping the charges against his client.

20. Pollack was erroneously found to have violated the Virginia Rules of Professional Conduct by mentioning to two co-defendants of his client in a breaking and entering case that they had the right to remain silent.

21. Pollack was erroneously found to have violated Virginia Rule of Professional Conduct 4.3(b) by preparing an affidavit for an alleged assault and battery victim to sign exculpating his defendant client. Showing complete transparency, Pollack had even copied the Assistant Commonwealth's Attorney on his correspondence to the alleged victim requesting that she sign the affidavit.

22. Pollack's second suspension came after the three complaints filed in that matter against Pollack were dismissed. He was suspended for six months for admitting to depositing money he subsequently earned directly in his operating account instead of having it flow through his trust account first. The American Bar Association recommends a Public Admonition for such an accounting oversight. He was also disciplined for delaying the return of some funds while he was requesting the client, the client's attorney, the client's family, and the Virginia State Bar to assist in resolving the fee dispute.

23. Pollack agreed to his third suspension. That complaint was filed by the Virginia Court of Appeals when a case that the Clerk of the Court of Appeals mistakenly added Pollack's name to as counsel was dismissed for failure to file a brief. Although Pollack was never appointed appellate counsel by the Virginia Court of Appeals or the Shenandoah County Circuit Court, he forwarded emails he started receiving from the Clerk of the Circuit Court of Appeals to his former

client. She had successfully noted the appeal on her own and was successful in her application for filing *in forma pauperis*. Pollack offered to help her with the filing of a brief, but she emailed Pollack that she had already filed it. Pollack agreed to a nine-month suspension only because he could have checked to see if his former client had filed the brief she told Pollack that she had filed. Pollack was also ill and could not handle the rigors of a trial at that time.

24. Pollack's Public Reprimand was for writing to a Bar subcommittee member that the subcommittee proceeding was illegitimate in light of the member's previous relationship with Pollack's client.

25. Pollack's Private Reprimand was for entering into a business transaction with a sophisticated client without putting in writing his obvious opportunity to seek the advice of independent counsel and get the client's consent in writing. Nonetheless, Pollack honored all terms of the agreement with the client, which worked out in the client's best interests.

26. Pursuant to Virginia Supreme Court Rule 4:15(d), "Oral argument on a motion for reconsideration ... will be heard orally only at the request of the court."

Respectfully submitted,

By BGL

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