

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JASON EDWARD RHEINSTEIN

VS. DOCKET NO. 20-000-118005

MEMORANDUM ORDER

This matter came before the Virginia State Bar Disciplinary Board (the “Board”) for a hearing on June 25, 2021, upon the Rule to Show Cause and Order of Summary Suspension and Notice of Hearing (“Rule to Show Cause”) entered on May 27, 2021, against and duly served on Jason Edward Rheinstein, Esquire (“Respondent”) on May 27, 2021. Pursuant to Part 6, Section IV, Paragraph 13-24 of the *Rules of the Supreme Court of Virginia*, the Respondent’s license had been summarily suspended, effective June 4, 2021.

The hearing was held before the duly convened panel of the Board consisting of Sandra L. Havrilak, presiding Chair; Donita M. King; Steven B. Novey; Alexander Simon; and Nancy L. Bloom, Lay Member. The Virginia State Bar (the “Bar”) was represented at the hearing by Assistant Bar Counsel Laura A. Booberg (“Assistant Bar Counsel”). The Respondent represented himself throughout the process, including the hearing. The proceedings were recorded and reported by Lisa Wright, a registered professional reporter with Chandler & Halasz, PO Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after she was duly sworn by the Chair.

At the onset of the hearing, the Chair stated the following: On March 12, 2020, the Governor of Virginia declared a state of emergency regarding the novel coronavirus (COVID-19) pursuant to Executive Order 51. Therefore, because COVID-19 has rendered it unsafe for public bodies to assemble in person, the Virginia State Bar Disciplinary Board is meeting via

teleconference, with access provided to the public to observe. In addition, the meeting will be recorded, will be available for viewing on the Virginia State Bar's website, and it will otherwise comply with Virginia's Freedom of Information Act regarding electronic meetings, found in the Virginia Code, Section 2.2-3708.2, as supplemented by Section 4-0.01.g of Virginia House Bill 29, Chapter 1283 (2020).

The Chair also polled the members of the panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the *Rules of the Supreme Court of Virginia*.

In accordance with Part 6, Section IV, Paragraph 13-24 of the *Rules of the Virginia Supreme Court* (the "Rules"), the purpose of the hearing was to provide the Respondent with an opportunity to show cause, if any, by clear and convincing evidence, as to why the same discipline that was imposed upon him by the State of Maryland should not be imposed by the Board. Respondent was licensed to practice law within the Commonwealth of Virginia on September 10, 2007, and at all relevant times, had been an attorney licensed to practice law in the Commonwealth.

A prehearing conference call was held on June 23, 2021. Prior to the prehearing conference call, Respondent requested an extension of time to file his exhibit list and exhibits, which the Chair granted over the Bar's objection. The Bar was present at the prehearing conference call and represented by Assistant Bar Counsel Booberg. The Respondent was present, *pro se*, and participated in the hearing. The Chair issued rulings regarding the Bar's Objections

to Respondent's Exhibits and Witnesses and Respondent's Objections to the Witness and Exhibit lists filed by the Bar.

On the morning of the hearing on June 25, 2021, the Respondent filed an Emergency Motion for the Chair's Reconsideration of and/or Exceptions to the Relevance Determination of Select Exhibits Necessary to Support Due Process Arguments Pursuant to *Rule* 13-24.C.1 and Request for Hearing and a Memorandum of Points and Authorities in support thereof. During the hearing, the panel was polled to determine whether the Chair's decision should be reconsidered in whole or part and as to whether each had reviewed all the evidence submitted in connection with the case and the Motion. Each member of the panel affirmed that they had done so. The panel was then polled to determine whether each agreed with the Chair's pre-hearing ruling, and the panel was unanimous in affirming the ruling. During the hearing, the Respondent again raised his Motion, and the panel was polled for a second time, with the same result.

Pursuant to the Prehearing Conference Call Order, the Rule to Show Cause and Order of Summary Suspension and Hearing dated May 27, 2021 was received into evidence as Bar Exhibit 1. The Board also received into evidence the following Exhibits from the Bar: 1(a) Notice of the Court of Appeals of Maryland dated January 24, 2020; 1(b) Order and Opinion of the Maryland Court of Appeals dated January 24, 2020; (2) the Pre-Hearing Reciprocal Order dated May 27, 2021; and (3) the Membership Affidavit dated June 10, 2021, by the custodian of membership records for the Virginia State Bar. Respondent's Exhibits 2, 145-148, 150, 152-161, 165-173, 175-178, 184, 185 (supplemented with the complete transcript), 186-189, and 196-203 were also received into evidence.

PROCEDURAL HISTORY

The Respondent was admitted to the Maryland Bar on December 15, 2005.¹ On February 17, 2015, the Attorney Grievance Commission (hereinafter “Petitioner”) filed a Petition for Disciplinary or Remedial Action (hereinafter referred to as the “Maryland Petition”) against the Respondent related to his representation of two individuals challenging a confessed judgment based upon a default on a \$200,000.00 construction loan.² The Maryland Petition charged Respondent with violating Maryland Rules of Professional Conduct 1.1, 3.1, 3.2, 3.4, 4.4, and 8.4.³ The Petitioner served Respondent with the Petition, First Set of Interrogatories, and First Request for Production of Documents on April 22, 2016.⁴ Respondent did not file an Answer or respond to discovery at that time, but instead filed “Respondent’s Motion to Dismiss Petition for Disciplinary or Remedial Action for Failure to State a Claim and Lack of Ripeness; or in the Alternative, Motion for More Definite Statement; and Request for Hearing” on May 12, 2016.⁵ Prior to that Motion being ruled upon, Respondent filed a Notice of Removal to the U.S. District Court for the District of Maryland on May 23, 2016.⁶ On March 17, 2017, the federal court remanded the proceeding to state court, finding that it did not have jurisdiction.⁷ On June 8, 2017, following the remand and after a hearing on the 2016 Motion to Dismiss, Judge Harris of the Anne Arundel Circuit Court denied Respondent’s Motion to Dismiss and set the deadline for discovery for August 8, 2017.⁸ The hearing for the matter was set for six days to begin on September 30, 2017.⁹

¹ VSB Exhibit 1b at VSB EXH 005 0006.

² *Id.* at VSB EXH 005 0008.

³ *Id.*

⁴ *Id.* at VSB EXH 005 0010.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at VSB EXH 005 0011.

⁸ *Id.* at VSB EXH 005 0012.

⁹ *Id.* at VSB EXH 005 0015.

On July 19, 2017, Petitioner filed a Motion for Sanctions and Order of Default.¹⁰ On July 20, 2017, Respondent filed a late Answer to the same, asserting fourteen affirmative defenses and asked that the initial Petition be dismissed.¹¹ Respondent also served discovery on the Petitioner and asked that the Motion for Sanctions be dismissed on the basis that the prior discovery was rendered invalid by his first removal.¹² On August 3, 2017, Judge Harris denied the Motion for an Order of Default but permitted the Motion for Sanctions to be heard at trial. On September 2, 2017, Respondent filed a second Notice of Removal to the U.S. District Court for the District of Maryland.¹³ In response to the Petitioner’s Emergency Motion for Remand for Lack of Federal Jurisdiction on September 20, 2017, the U. S. District Court judge remanded the case to state court.¹⁴ The Respondent then appealed to the U.S. Court of Appeals for the Fourth Circuit, which affirmed the remand on February 5, 2019.¹⁵ On May 17, 2019, the Maryland Court of Appeals granted Petitioner’s Motion to Lift Stay and For Appropriate Relief.¹⁶ The case was assigned to Judge Klavans of the Anne Arundel County Circuit Court who scheduled a hearing to take place over the course of six days on July 1, 2019.¹⁷

Respondent’s Maryland counsel communicated an intent to name multiple witnesses and an expert not previously disclosed on June 6, 2019.¹⁸ On June 12, 2019, Petitioner filed another Motion for Sanctions on the basis of Respondent’s failure to meaningfully respond to discovery.¹⁹ Respondent then served Petitioner with his “Answers to Petitioner’s Renewed First Set of Interrogatories” and “Respondent’s Response to Petitioner’s Renewed First Request for

¹⁰ *Id.*

¹¹ *Id.* at VSB EXH 005 0016-VSB EXH 005 0017.

¹² *Id.* at VSB EXH 005 0017.

¹³ *Id.* at VSB EXH 005 0018.

¹⁴ *Id.* at VSB EXH 005 0019.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at VSB EXH 005 0020.

¹⁹ *Id.*

Production of Documents, Electronically-Stored Information and Property.”²⁰ This was in spite of the fact that Petitioner’s discovery requests were the same ones issued in 2016.²¹ On June 24, 2019, Respondent filed his Opposition to Petitioner’s Motion for Sanctions and/or Motion in *Limine* arguing that the initial discovery did not survive his repeated attempts at removal.²² On June 27, 2019, the trial court (hereinafter “Judge Klavans”) granted the Petitioner’s Motion for Sanctions and request for default, resulting in the admission of the averments in the Maryland Petition, striking Respondent’s Answer to the Maryland Petition, precluding Respondent from calling any witnesses at the hearing, and precluding Respondent from presenting any evidence or testimony which would contradict the Maryland Petition.²³ Following Respondent’s Motion for Reconsideration, which Judge Klavans denied, Judge Klavans issued his Findings of Facts and concluded that Respondent violated Maryland Rules 1.1, 3.1, 3.4, 4.4 and 8.4.²⁴ The Maryland Court of Appeals affirmed this decision and disbarred the Respondent in Maryland on January 24, 2020.²⁵

As a result of Respondent being disbarred from the practice of law in the State of Maryland, the Board issued a Rule to Show Cause and Order of Summary Suspension and Notice of Hearing on May 27, 2021, pursuant to Part 6, § IV, ¶ 13-24.B of the *Rules*.²⁶ The Board served the Rule to Show Cause, along with the Notice of the Court of Appeals of Maryland dated January 24, 2020 and the Order and Opinion of the Court of Appeals of Maryland, on the Respondent by certified mail, as required by the *Rules*. Part 6, § IV, ¶ 13-24.C of the *Rules* provides that, within fourteen days of the date of mailing, the Respondent must file a

²⁰ *Id.* at VSB EXH 005 0021.

²¹ *Id.*

²² *Id.* at VSB EXH 005 0023.

²³ *Id.* at VSB EXH 005 0025.

²⁴ *Id.* at VSB EXH 005 0028.

²⁵ VSB Exhibit 1b.

²⁶ VSB Exhibit 1.

written response addressing one or more of the following grounds for dismissal or imposition of lesser discipline set forth in the *Rules*:

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.

Respondent filed his Response to Notice and Order of Temporary Suspension on June 10, 2021. In it, Respondent asserted each of the four grounds for dismissal or imposition of lesser discipline. Pursuant to Part 6, § IV, ¶ 13-24.G of the *Rules*, the Respondent bears the burden of proof to establish the existence of one or more of these grounds by clear and convincing evidence. The *Rule* “does not permit the respondent attorney to relitigate any issues of fact which were expressly or implicitly decided in the foreign jurisdiction.” *Cummings v. Virginia State Bar*, 233 Va. 363, 367 (1987).²⁷ However, the Respondent is permitted to offer extrinsic evidence of any grounds for defense asserted for the specific purposes of demonstrating one of the grounds of defense. *Id.*

²⁷ Much of the case law regarding reciprocal proceedings was decided under a substantially similar version of Paragraph 13-24.C. To the extent that such opinions are not contradicted by the new version of the *Rule*, the Board finds that case law controlling.

THE BOARD'S FINDINGS

At the hearing on June 25, 2021, the Board heard approximately seven hours of testimony, primarily from the Respondent. Respondent's argument was that the Board should retry the underlying disciplinary matter as well as the underlying cases that led to the disciplinary matter. The Board declined to do so in reliance on the cases of *Cummings v. Virginia State Bar*, 233 Va. 363 (1987) and *Tidewell v. Virginia State Bar*, 262 Va. 548 (2001), wherein the Supreme Court held that an attorney may not relitigate any issues of fact which were expressly or implicitly decided in the foreign jurisdiction. The Board also considered the purpose of reciprocal discipline proceedings, which it finds to be "to protect the public in the various states in which a lawyer is licensed by an efficient yet fair means of recognizing one jurisdiction's decision that a lawyer has committed misconduct, while affording assurance to the lawyer that due process was observed in the original jurisdiction and acceding to the second jurisdiction's important role in setting the generally appropriate level of discipline for a given ethical violation."²⁸ Accordingly, as required by the *Rules*, the Board relied upon the findings of fact contained in the Opinion of the Maryland Court of Appeals, and incorporates those findings herein.²⁹

This left for the Board the issue of whether Respondent had proven, by clear and convincing evidence, the existence of one of the factors set forth in Part 6, § IV, ¶ 13-24.C of the *Rules*, as well as the consideration of any extrinsic evidence supporting Respondent's argument with respect to each of said factors. *See Cummings*, 233 Va. at 367.

After receiving the evidence and hearing the arguments of Respondent and Assistant Bar Counsel, the Board adjourned to deliberate and consider the evidence. For the reasons set forth

²⁸ See *Grievance Administrator v. Michael R. Carithers, Jr.* P 45614, Case No. 11-95-RD, Attorney Discipline Board of the State of Michigan (2014).

²⁹ See generally VSB Exhibit 1(b).

herein, the Board found that Respondent had failed to show cause by clear and convincing as to why the Board should not impose the same discipline imposed by the State of Maryland. In reaching its conclusion, the Board considered the evidence presented, including all exhibits of the Respondent, to which the Board gave due weight and the arguments of the Bar and of Respondent. The Board notes that, although the Respondent vigorously argued in support of the admission of his exhibits, many of the exhibits admitted failed to support his case and, in fact, supported the case of the Bar.

- I. The Respondent failed to show, by clear and convincing evidence, that 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.

In advancing this ground for dismissal, Respondent made five arguments: (1) the Maryland Court disbarred him on the basis of misconduct with which he was not charged; (2) the Maryland Court imposed a harsh sanctions order depriving him of due process; (3) the Maryland Court refused to take judicial notice of the recording of the hearing; (4) the Maryland Court deemed Respondent to have admitted unsupported conclusory statements as the result of the sanctions order; and (5) the Maryland Court accepted as true allegations beyond the scope of the what was deemed admitted by the sanctions order.

First, Respondent contends the Maryland Court disbarred him on the basis of misconduct with which he was not charged. This argument was not supported by the Petition for Disciplinary or Remedial Action in the Maryland case or the Opinion and Order of the Court of Appeals of Maryland. The Maryland Petition charged Respondent with violating Maryland Rules of Professional Conduct 1.1, 3.1, 3.2, 3.4, 4.4, and 8.4.³⁰ The Maryland Petitioner withdrew the Rule 3.2 allegation.³¹ Judge Klavans concluded that Respondent violated Maryland Rules 1.1,

³⁰ VSB Exhibit 1.

³¹ VSB Exhibit 1(b) at VSB EXH 005 0028.

3.1, 3.4, 4.4, and 8.4.³² The Court of Appeals of Maryland affirmed that finding as to all of the Rule violations.³³ There were no Maryland Rule violations found by Judge Klavans, or affirmed by the Maryland Court of Appeals, which were not charged in the initial Maryland Petition.

As part of his argument, Respondent also argues that he was wrongfully found to have violated Rule 8.4 because, in Petitioner's Answers to Respondent's Corrected First Set of Interrogatories in the underlying Maryland case, in response to Interrogatory No. 28, which requested that Petitioner "Identify each and every misrepresentation or false statement that you allege was made by the Respondent and which you intend to prove at trial in support of your allegation that the Respondent violated MLRPC 8.4(c)," Petitioner stated, "Petitioner does not allege that the Respondent made misrepresentations or false statements."³⁴ Upon review of said Interrogatories, the Board concluded that Respondent failed to include in his question every basis for a finding of misconduct under MLRPC 8.4. The Petitioner answered the question asked; and, Respondent's failure to ask a sufficiently complete question is not the basis for a finding of a lack of due process. Moreover, Respondent, himself, presented a chart produced by the Petitioner with their discovery responses outlining the specific evidence and case law supporting each rule violation charged, including Rule 8.4.³⁵ Accordingly, the Board finds that Respondent had sufficient notice of the basis for the charges set forth in the Petition.

Second, Respondent contends that the Maryland Court of Appeals imposed a harsh sanctions order, depriving him of due process. Virginia Rule 13-24.C requires the Respondent to show that the proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process. Respondent's central argument for this ground for dismissal is that the

³² *Id.*

³³ *Id.* at VSB EXH 005 0063-VSB EXH 005 0075.

³⁴ Respondent's Exhibit 196.

³⁵ Respondent's Exhibit 198.

sanctions order itself was a denial of due process. However, the Respondent had more than adequate notice and multiple opportunities to be heard on the merits of the underlying Petition. Respondent failed to respond substantively to the Petition until after the first Motion for Sanctions was filed. Respondent did not meaningfully respond to any of the discovery requests until almost three years after they were initially served. He removed the substance of the state proceeding to federal court on two different occasions, and after each, the case was remanded back to state court. Yet, after multiple motions to reconsider and raising his argument in the Maryland Court of Appeals, Respondent argues that the proceedings leading to his Maryland disbarment were lacking in notice and opportunity to be heard. That argument is not borne out by the procedural history of the case and Respondent's own actions.

Judge Klavans, the trial judge in the disciplinary matter, found various discovery violations and imposed sanctions upon the Respondent, which resulted in the admission of the averments in the Petition, the striking of the Respondent's Answer to the Petition and the inability of the Respondent to present testimony from his proposed experts.³⁶

Judge Klavans further found that Respondent's reason for the violation – his contention that removing it to federal court negated discovery obligations in state court – lacked any basis in the law and noted that Respondent's 99-page Answer and 12,000-page “document dump” served on Bar Counsel in the summer of 2017 did little to provide Petitioner with “adequate notice of defenses, potential witnesses and documents.”³⁷ Rather, it put the burden on Petitioner to answer her own Interrogatories and Requests for Production of Documents.³⁸ Judge Klavans found that Petitioner was “greatly prejudiced” by Respondent's discovery failures, which, if left unchecked, would have operated to reward Respondent for “his willful and deliberate conduct in avoiding

³⁶ *Id.* at VSB 005 0028.

³⁷ *Id.* at VSB EXH 005 0034.

³⁸ *Id.* at VSB EXH 005 0034-VSB EXH 0050035.

discovery.”³⁹ Judge Klavans concluded that neither a postponement nor continuance could remedy the prejudice both Petitioner and the court faced.⁴⁰

On appeal, the Maryland Court of Appeals found that Respondent’s discovery violations were egregious, noting, in particular, that Respondent provided responses to Petitioner’s Interrogatories and Request for Production of Documents nearly thirty-seven months after they had been served upon him, nearly twenty-two months after discovery had become due, and only twenty-six days prior to the hearing. The Maryland Court of Appeals, quoting Judge Klavans, found Respondent’s untimely responses to be “too little and much too late,” noting that:

Respondent’s willful and deliberate course of conduct to subvert the discovery process is also clearly demonstrated from the styling of Respondent’s eleventh-hour responses to the discovery requests: “Respondent’s Answers to petitioner’s **Renewed** First Set of Interrogatories” (emphasis added), and “Respondent’s Response to Petitioner’s **Renewed** First Request for Production of Documents, Electronically Stored Information and Property” (emphasis added), were served upon Petitioner on June 13, 2019. Petitioner’s discovery requests were not renewed. To the contrary, they had been propounded on April 22, 2016.⁴¹

Regarding Respondent’s contention that he had no duty to respond to Bar Counsel’s Interrogatories or Request for Production of Documents because his duty to disclose was “nullified” when he removed the matter to federal court, the Maryland Court of Appeals held that the federal court cannot “nullify” state discovery requests which retain viability upon remand.⁴² Therefore, the Maryland Court of Appeals found the trial court did not abuse its discretion in imposing the sanctions for discovery violations.⁴³

The sanctions imposed by the Maryland Court were the result of Respondent’s repeated attempts to avoid an actual substantive hearing on the merits of the case, first by removing it to

³⁹ *Id.* at VSB EXH 0050035.

⁴⁰ *Id.*

⁴¹ *Id.* at VSB EXH 005 0026 (emphasis in original).

⁴² *Id.* at VSB EXH 005 0042.

⁴³ *Id.* at VSB EXH 005 0043.

federal court, and second by failing to timely respond to discovery. Respondent's testimony on this process and the actual events leading to the sanctions do not dispute this. Rather, at the hearing before the Board, the Respondent repeated the same argument he advanced to Judge Klavans and the Maryland Court of Appeals – that the federal removals terminated any discovery requests, and he was not required to meaningfully respond. That argument is not credible to the Board.

The Respondent further argued that the Petitioner was not sanctioned for their alleged failure to fully and completely respond to his discovery requests; however, the Respondent presented no evidence that he pursued the Petitioner's discovery deficiencies, if they did, in fact, exist. The Respondent's failure to pursue his case does not amount to a lack of due process.

Third, Respondent contends the Maryland Court of Appeals denied him due process by not taking judicial notice of recordings of the underlying hearing. This argument is a variation on the same theme he advances regarding the sanctions generally. Respondent is essentially claiming that because there is potentially evidence that may have contradicted the Findings of Fact by Judge Klavans, the Respondent was denied due process when the Court failed to take judicial notice of that evidence. This argument ignores the fact that Judge Klavans, as a sanction, found all of the averments in the Maryland Petition to be true. The Respondent is again asking the Board to set aside Judge Klavans's sanction and the Maryland Court's affirmance as a denial of due process. Because Respondent had notice and the opportunity to be heard – including, but not limited to, offering that recording in a timely discovery response – the Board does not find this to be so lacking in notice and opportunity to be heard as to constitute a denial of due process.

Fourth, Respondent claims the Maryland Court denied him due process by deeming conclusory facts admitted. Respondent made this same argument to the Maryland Court of

Appeals, which found, “It may not be appropriate in many cases to sanction a party who has committed a discovery violation by deeming that party to have admitted the ultimate issue in the case and essentially defaulted the case. Nevertheless, in the context of this case, [Respondent] fails to articulate why summary statements, that express a factual inference without stating the underlying facts on which the inferences is based should be treated differently than other factual averments admitted as a result of a discovery sanction.”⁴⁴ The Maryland Court of Appeals affirmed Judge Klavans’s opinion, deeming admitting the averments as being within his sound discretion.⁴⁵ Respondent also raised this argument before the Board and, taking the findings of the Maryland Court of Appeals into consideration, the Board found the argument to lack merit. Again, that was the very nature of the sanction imposed by Judge Klavans. Because the Board does not find that those sanctions were a denial of due process, it does not find Respondent’s argument persuasive.

Fifth, Respondent asserts that the Maryland Court of Appeals deemed admitted “New Allegations” that were not in the Findings of Fact made by Judge Klavans. However, the Maryland Court of Appeals quoted almost the entirety of the Findings of Fact and Ruling of Judge Klavans. Further, the opinion clearly addressed each of the Rule violations found by Judge Klavans. The Board does not find this to be so lacking in notice and opportunity to be heard as to constitute a denial of due process, in fact the Board finds that the Respondent had ample notice and opportunity to be heard to satisfy due process.

The Board rejects each of the arguments advanced by the Respondent and finds that Respondent failed to show by clear and convincing evidence that the proceedings in Maryland were so lacking in notice and opportunity to be heard as to constitute a denial of due process.

⁴⁴ *Id.* at VSB EXH 005 0035, footnote 17 (internal quotation marks and citations omitted).

⁴⁵ *Id.* at VSB EXH 005 0035.

II. The Respondent failed to show, by clear and convincing evidence, that the imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice.

In reaching its determination, the Board is bound by the same proof as the Maryland Court of Appeals, meaning the factual conclusions and averments are taken as true from Judge Klavans's Findings of Fact. The central argument of Respondent with respect to this factor was that there is an "infirmity of proof" in the underlying allegations; and, that for the Board to revoke his license to practice law based upon that proof would result in an injustice.

First of all, this Board does not find an infirmity of proof. In fact, if anything, the evidence is overwhelming that the Respondent violated the Rules charged and, if presented to this Board, the same or equivalent discipline would have been imposed. As the Supreme Court of Virginia has stated, "A proceeding to discipline an attorney is not a criminal proceeding and the purpose is not to punish him but to protect the public." *Seventh Dist. Committee of Virginia State Bar v. Gunter*, 212 Va. 278, 284 (1971).

In support of his argument, Respondent points to his diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and he presented a report prepared by Richard A. Ratner, M.D., P.A., which the Board received into evidence as Respondent's Exhibit 203.⁴⁶ Upon reviewing the report, the Board found that it failed to support Respondent's argument. In fact, Dr. Ratner found that Respondent was not "in any way incompetent psychologically or cognitively to practice law."⁴⁷ He further found that Respondent was a very bright individual and found ways to get around or compensate for the inherent difficulties of coping with an

⁴⁶ Respondent's Exhibit 203.

⁴⁷ *Id.* at RESP 09457.

attentional diagnosis.⁴⁸ The Board was not persuaded that Respondent's diagnosis would mitigate the sanctions to be imposed by Virginia.

As such, the Board finds that Respondent failed to show, by clear and convincing evidence, that the imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice.

III. The Respondent failed to show, by clear and convincing evidence, that the same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia.

Respondent was found to have violated Maryland *Rules of Professional Conduct* 1.1, 3.1, 3.4, 4.4, and 8.4. Each of the Maryland Rules that Respondent was found to have violated has an analogous, and almost identical, Virginia Rule.⁴⁹ Therefore, the underlying conduct of Respondent would certainly be grounds for disciplinary action and for the same or equivalent discipline in Virginia. Accordingly, the Board finds that Respondent failed to show, by clear and convincing evidence, that such violations would not be grounds for disciplinary action or the same or equivalent discipline in Virginia.

IV. The Respondent failed to show, by clear and convincing evidence, that the misconduct found in the other Jurisdiction would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia.

Respondent was found guilty of violating Maryland *Rule* 1.1 (Competence), Maryland *Rule* 3.1 (Meritorious Claims and Contentions), Maryland *Rule* 3.4 (Fairness to Opposing Party and Counsel), Maryland *Rule* 4.4 (Respect for Rights of Third Persons), and Maryland *Rule* 8.4 (Misconduct). It is important to remember that the Respondent bears the burden to prove by clear and convincing evidence that the underlying conduct as adjudged in Maryland would warrant the imposition of substantially lesser discipline in Virginia. Respondent argues that the Board would

⁴⁸ *Id.* at RESP 09457.

⁴⁹ Compare Md. R.P.C. 1.1 with Va. R.P.C. 1.1; Md. R.P.C. 3.1 with Va. R.P.C. 3.1; Md. R.P.C. 3.4 with Va. R.P.C. 3.4. Md. R.P.C. 4.4 with Va. R.P.C. 4.4; and Md. R.P.C. 8.4 with Va. R.P.C. 8.4.

not deal as harshly with such conduct and, on a first offense, would merely suspend and not revoke his license. In support of his argument, he points to prior disciplinary case law in which a violation or violations of one or more of the *Rules* led to some sanction less than revocation. However, the Board finds that multiple Rule violations often lead to revocation; and Respondent's specific conduct as set forth in the findings of the Maryland Court of Appeals, would certainly warrant revocation in a Virginia misconduct proceeding. Respondent has failed to demonstrate by clear and convincing evidence that, for the adjudged Rule violations, he would have been subject to the *substantially* lesser discipline that the fourth factor requires.

Because the Board does not find that the Respondent has established the existence of one or more of the grounds set forth in Paragraph 13-24.C by clear and convincing evidence, it does not reach the phase of the proceeding set forth in Paragraph 13-24.H. As required by Paragraph 13-24.C, the Board imposes the same sanction against the Respondent as that imposed by the State of Maryland.

Accordingly, it is ORDERED that Respondent, Jason Edward Rheinstein's license to practice law in the Commonwealth of Virginia is hereby REVOKED, effective immediately.

It is further ORDERED that Respondent must comply with the requirements of Part 6, §IV, ¶ 13-29 of the *Rules*. The Respondent shall forthwith give notice by certified mail of the revocation of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care and conformity with the wishes of his clients. The Respondent shall give such notice within fourteen (14) days of the effective date of this order, and he shall make such arrangements as are required herein within forty-five (45) days of the effective date of the

revocation. The Respondent shall also furnish proof to the Bar within sixty (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 pursuant to Part Six, Section IV, Paragraph 13-29.E of the *Rules of the Supreme Court of Virginia*, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that a certified true copy of the Order of the Court of Appeals of Maryland, Misc. Docket AG No. 77, dated January 24, 2020, be attached to this Order of Revocation, and made a part hereof.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Jason Edward Rheinstein, at his address of record with the Virginia State Bar, P.O. Box 1369, Severna Park, Maryland, 21146, by certified mail, return receipt requested, and hand deliver a copy of this Order to Laura A. Booberg, Assistant Bar Counsel, at the Virginia State Bar, 111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

Entered: July 22, 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Sandra L. Havrilak

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Sandra L. Havrilak, Presiding Chair