

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ALFRED LINCOLN ROBERTSON, JR.

VS. Docket No. 19-051-116059

MEMORANDUM ORDER OF SUSPENSION

I. INTRODUCTION

A panel of the Virginia State Bar Disciplinary Board (“Board”) heard this matter on June 25, 2021, by video conference.¹ The panel consisted of Yvonne S. Gibney, Chair; Stephanie G. Cox; Kamala H. Lannetti; Jeffrey L. Marks; and Reba H. Davis, Lay Member. At the outset of the hearing, the Chair inquired of the panel members of the Board whether any of them had any personal or financial interest or bias which would preclude him or her from fairly hearing this matter. All panel members responded in the negative.

Renu M. Brennan, Bar Counsel, represented the Virginia State Bar (“VSB” or “Bar”). Timothy J. Battle, Esq., represented the Respondent, Alfred Lincoln Robertson, Jr., Esq., (“Respondent”), who was present and participated.

Beverly Lukowsky, court reporter, Chandler & Halasz, Inc., P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the proceedings.

¹ On March 12, 2020, the Governor of Virginia declared a state of emergency regarding the novel coronavirus (COVID-19) pursuant to Executive Order 51. The state of emergency has been in place since March and continues indefinitely, until revised or lifted by the Governor. 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. In addition, the meeting will be recorded, will be available for viewing on the Virginia State Bar’s website, and 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 Clerk of the Disciplinary System (“Clerk”) timely sent all legal notices of the date and place in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia (“Rules”).

The matter came before the Board on the Subcommittee Determination (Certification) of the Fifth District Subcommittee, pursuant to Part Six, Section IV, Paragraph 13-18 of the Rules. Prior to the hearing at the Prehearing Conference the Chair admitted VSB Exhibits 1-30, without objection from the Respondent. The Chair also admitted Respondent’s Exhibits 1 and 2, as redacted following the Prehearing Conference, without objection from the VSB.

Respondent’s counsel objected – on the grounds that there was insufficient time for review – to 138 pages of new material the VSB sent to the Respondent the evening before the hearing. Because these materials consisted of legal authorities, including copies of three Virginia statutes, a Supreme Court of Virginia decision, and a number of disciplinary orders issued by the Disciplinary Board and District Committees, and a chart summarizing the Bar’s evidence, the materials were received by the Board as a demonstrative exhibit during closing arguments.

II. MISCONDUCT PHASE

The Board heard opening statements from the parties, received the exhibits, and heard testimony from the following witnesses, both of whom were sworn under oath: David G. Fennessy, VSB Investigator, and the Respondent. At the close of the Bar’s evidence, the Board overruled the Respondent’s motion to strike as to violations of Rules 1.3 and 1.4. The Board took under advisement the motion to strike as to the violation of Rule 8.1(c). At the close of the Respondent’s evidence the Board overruled the Respondent’s renewed motion to strike as to all

three Rule violations. Following closing arguments by counsel for the parties, the Board retired to deliberate.

A. FINDINGS OF FACT

The Board made the following findings of fact by clear and convincing evidence.

1. At all relevant times, Respondent was a member of the VSB. He has been a member of the VSB since April 21, 2000.

2. In a letter dated June 25, 2019, the Court of Appeals of Virginia (“CAV”) notified the VSB that Respondent was counsel of record for the appellants in three criminal appeals that had been dismissed on procedural default grounds: *Roman Anthony Byrd v. Commonwealth*; *William Vincent O’Regan, IV v. Commonwealth*; and *Ubaldo Sanchez Gordiano v. Commonwealth*.

a. *Roman Anthony Byrd v. Commonwealth*:

Respondent was court-appointed to represent Roman Anthony Byrd on appeal following Mr. Byrd’s conviction in the Circuit Court of Fairfax County of two drug offenses for which he was sentenced to an active period of one year, as reflected in a Sentencing Order issued on March 25, 2010. Respondent filed a notice of appeal but then “forgot about it.” The filing deadline for the petition for appeal was August 2, 2010. The CAV dismissed the appeal on August 7, 2010 after Respondent failed to file a petition for appeal by the filing deadline.

Four months later, in December 2010, Mr. Byrd wrote letters to the CAV stating that he had discovered, when he contacted the trial court following his release from incarceration in September 2010, that his appeal had been dismissed. His letters to the CAV also conveyed a request for help in further pursuing his appeal. In response to his letters the CAV sent a letter on December 28, 2010, copied to Respondent, which suggested the option of pursuing a delayed

appeal. Respondent did not thereafter pursue a delayed appeal, however, nor did he take any other action to further pursue the appeal to protect Mr. Byrd's appellate rights. Respondent had not notified Mr. Byrd of the dismissal of the appeal, as Mr. Byrd noted in his letter to the CAV, and Respondent did not communicate with Mr. Byrd at any time about his rights to further pursue his appeal after its dismissal.

b. *William Vincent O'Regan, IV v. Commonwealth*

Respondent represented William Vincent O'Regan, IV on appeal following Mr. O'Regan's conviction in the Circuit Court of Fairfax County of burglary and maiming, for which he was sentenced to an active period of incarceration of 20 years, as reflected in a Sentencing Order issued on May 31, 2011. At his client's request Respondent filed a notice of appeal of Mr. O'Regan's conviction on June 30, 2011. He did not pay attention to the deadline for filing the petition for appeal and missed the deadline. The CAV subsequently dismissed the appeal on November 10, 2011 as a result.

Respondent did not notify Mr. O'Regan of the dismissal of his appeal or of his rights to further pursue his appeal. Respondent did not pursue a delayed appeal or take any other action to further pursue the appeal or to protect Mr. O'Regan's appellate rights.

c. *Ubaldo Sanchez Gordiano v. Commonwealth*

Respondent was court-appointed to represent Ubaldo Sanchez Gordiano in an appeal of Mr. Gordiano's conviction in the Circuit Court of Prince William County of aggravated sexual battery and indecent liberties with a child, for which he was sentenced to an active period of incarceration of five years and 18 months, as reflected in a Sentencing Order issued on November 27, 2018. Respondent filed a notice of appeal on December 26, 2018 and later filed a motion for an extension of time to file transcripts when he encountered difficulties obtaining the

trial transcript. He then failed to file the transcripts, which was essential to the appeal, and he failed to file the petition for appeal by the April 8, 2019 filing deadline. As a result, the CAV dismissed the appeal on May 20, 2019.

Respondent did not pursue a delayed appeal or take any other action to further pursue the appeal or otherwise protect Mr. Gordiano's appellate rights. Respondent did not notify Mr. Gordiano of the dismissal of his appeal or of his rights to further pursue his appeal.

3. The VSB sent a copy of the June 25, 2019 letter from the CAV ("Complaint") to Respondent at his last address of record with the VSB by cover letter dated July 1, 2019, demanding that he file a written answer to the Complaint within 21 days. The letter specifically warned Respondent that –

This request constitutes a lawful demand for information from a disciplinary authority pursuant to Rule 8.1(c) of the Virginia Rules of Professional Conduct, and the Bar requests that you submit a written answer to the complaint within 21 days of the date of this letter. . . .

Failure to respond in a timely manner to this and other lawful demands from the Bar for information about the complaint may result in the imposition of disciplinary sanctions.

4. Respondent did not file a written answer to the Complaint within 21 days or at any time thereafter. Despite the unequivocal warning in the VSB's letter, Respondent contends he did not need to provide an answer because "an answer to a complaint in the Virginia Disciplinary System is optional." See VSB Ex. 2 at 59-0011.

5. Respondent was cooperative with VSB Investigator David Fennessey when interviewed on July 13, 2020, over a year after the VSB's request for him to respond in writing to the Complaint. Respondent later filed a written Response to the Subcommittee Determination (Certification) on December 7, 2020.

B. FINDINGS OF MISCONDUCT

Based on the evidence presented, as set forth in the findings of fact, the Board finds, by clear and convincing evidence, that such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

Respondent violated Rule 1.3(a) in all three cases when, after filing notices of appeal, Respondent failed to file petitions for appeal and otherwise perfect the appeals and later failed to take mitigating steps once he received notice from the CAV that the appeals had been dismissed.²

Respondent violated Rule 1.3(b) when he failed to perform the duties he had undertaken for his clients as court-appointed counsel. Respondent acknowledged that he knew what was required of him to perfect his clients' appeals, the options that existed for protecting his clients'

² The Board found Respondent's reliance on Pickus v. Virginia State Bar, 232 Va. 5, 248 S.E.2d 202 (1986) to be misplaced. His argument that the Pickus decision supports the proposition that "[d]isciplinary issues arise only if there is a pattern of neglect," (see VSB Ex. 2 at 059-0009), ignores the Pickus Court's holding. The Pickus Court affirmed the one-year suspension the Disciplinary Board imposed as a sanction for Pickus's mishandling of three separate real estate transactions. In explanation for its support of the Disciplinary Board's action the Court stated:

[Pickus] not only failed to satisfy the prior liens in all three cases but also failed in one instance to obtain title insurance. Neglect, according to ABA Informal Op. 1273, supra, 'involves indifference and a consistent failure to carry out the obligations which the lawyer has assumed to his client or a conscious disregard for the responsibility owed to the client.' . . . We think this definition describes Pickus' actions with complete accuracy.

232 Va. at 13, 348 S.E.2d at 207. The Respondent, like Pickus, engaged in the same misconduct with respect to the three separate matters for which he had been appointed or engaged as counsel. His misconduct (the failure to perfect his clients' appeals, protect his clients' appeal rights, and communicate with his clients) that is the subject of the Complaint, like Pickus's mishandling of the three real estate matters, "amply establishes [his] neglect of legal matters entrusted to him." 232 Va. at 12, 348 S.E.2d at 207.

appeal rights following the dismissals of their appeals, and the procedure for withdrawing as counsel of record. It is evident from Respondent's failure to file a motion for delayed appeal on behalf of Mr. Byrd – after the CAV specifically advised him of that option in its December 28, 2010 letter – that Respondent's conduct was intentional.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.**
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.**
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.**

Respondent violated Rule 1.4(a) in all three cases when he failed to notify his clients that their appeals had been dismissed and again when he failed to explain to them the options that existed for remedying the procedural error.

Respondent violated Rule 1.4(b) in all three cases when he failed to inform his clients at any time of the status of their appeals. Mr. Byrd's letters to Fairfax Circuit Court requesting the Court to help him with his appeal and to appoint an attorney to represent him, well after Respondent had been appointed to represent Mr. Byrd and the CAV had dismissed the appeal, demonstrate that Respondent did not provide Mr. Byrd with information necessary to allow him to make decisions regarding his appeal.

Respondent violated Rule 1.4(c) in all three cases when he failed to inform the clients that their appeals had been dismissed and of the options available for correcting the error.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

. . .

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Respondent violated Rule 8.1(c) when he did not file a response to the Complaint from the CAV after being notified of the Complaint through the VSB's July 1, 2019 letter to him. Although Respondent argued that he eventually cooperated with the VSB investigation a year later when he met with VSB Investigator David Fennessey to discuss the Complaint, Respondent's failure to respond promptly in writing to the Complaint, as specifically directed in the VSB's letter, was a violation of his obligations under Rule 8.1(c), and his subsequent cooperation did not cure his noncompliance. His refusal to respond to the Complaint prohibited the VSB from promptly determining whether the Complaint should be dismissed or further investigated, thereby delaying the VSB's ability to protect the public.

III. SANCTION PHASE

After the Board announced its finding by clear and convincing evidence that the Respondent had violated Rule 1.3(a) and (b), Rule 1.4(a), (b) and (c), and Rule 8.1(c), it received further evidence and argument as to the appropriate sanction to be imposed.

The Board admitted VSB Exhibit 31 (the Respondent's Disciplinary Record), which reflected seven previous disciplinary matters for which Respondent had been sanctioned between April 2009 and December 2019. The prior disciplinary sanctions – two private admonitions, four public reprimands, and a sixty-day suspension – were based on findings that Respondent had violated Rules 1.3(a), 1.4(a), (b) and (c), and 8.1(c), among others. Two of the matters for which

he had been sanctioned involved the Respondent's mishandling of appeals to the CAV. His disciplinary record also reflected that Respondent had not responded to the complaints in three of the matters and consequently his May 2016 public reprimand included a term that required him to "timely respond to any and all complaints filed against him with the Bar that are sent to him with a demand that he so respond."

The Respondent's mitigation evidence included his own testimony and testimony from the following Virginia attorneys who testified under oath about the respect Respondent enjoys as an immigration attorney and criminal defense attorney and as a knowledgeable consultant and teacher on immigration matters: Vernon D. Gutjahr, Meghan A. Matulka, Jeffrey F. Mangeno, and Ivan Yacub. Most of these witnesses were not familiar with the Respondent's disciplinary record. The Respondent testified, in addition, that he had handled appeals in 200-300 cases in which there had been no procedural defaults, except for the three appeals at issue in this proceeding and the appeals that were the subject of the private admonitions he received in 2009 and 2010. He has purchased a new immigration software program to assist him in managing case deadlines. Although he claimed he did not notice the July 1, 2019 letter from the VSB when it arrived, and became aware of the Complaint when VSB Investigator Fennessy mentioned it to him in an informal conversation months later, Respondent acknowledged that even that did not cause him to respond to the Complaint.

At the conclusion of the evidence in the sanction phase of the proceeding, the Board recessed to deliberate. The Board found Respondent's misconduct represents a failure to uphold his duties to his clients, to the public, to the legal system, and to the profession. The Board found that Respondent's misconduct was knowing. As a result of his misconduct Respondent's clients suffered injury or potential injury in that they were denied the opportunity, or hampered

in the ability, to remedy the procedural errors, to further protect their appeal rights, or to retain other legal counsel to assist them with their appeals. Accordingly, the Board was guided in its deliberation by Standard 4.42 of the Annotated Standards for Imposing Lawyer Sanctions (ABA 2015), which states that “[s]uspension is generally appropriate when: (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client; or (b) a lawyer engages in a pattern of neglect [that] causes injury or potential injury to a client.” The aggravating and mitigating factors set forth in the ABA Standards provided further guidance.

The Board found the following aggravating factors: Respondent’s extensive discipline history which included Rule 1.3, Rule 1.4, and Rule 8.1 violations and underlying misconduct that was similar to the misconduct at issue here; the clients whose appeals Respondent mishandled were vulnerable in that they were incarcerated; and Respondent is an experienced attorney who has practiced law for over two decades.

The Board found the following mitigating factors: there was no evidence that Respondent had a dishonest or selfish motive; the Respondent demonstrated a cooperative attitude toward the proceeding and the Board; the Respondent enjoys a reputation as caring and respectful of his clients and generous with his time when other attorneys seek advice on immigration matters, in particular; and Respondent has undertaken efforts to obtain case management software.

IV. DISPOSITION

After due deliberation and review of the foregoing findings of fact, the exhibits, the testimony of the Respondent and the other witnesses, and argument of counsel, the Board reconvened in open session and announced that Respondent’s license should be suspended for one year and one day.

Accordingly, it is **ORDERED**, by unanimous vote of the Board, that the Respondent's license to practice law in the Commonwealth of Virginia be, and it hereby is, **SUSPENDED** effective June 25, 2021, for a period of one year and one day.

It is further **ORDERED** that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules. The Respondent shall forthwith give notice by certified mail, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the VSB within 60 days of the effective date of this suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the 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 at the VSB within 60 days of the effective date of the suspension. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Board, which may impose an additional sanction of Revocation or Suspension for failure to comply with the requirements of this subparagraph.

It is further **ORDERED** that pursuant to Part Six, § IV, ¶ 13-9 E of the Rules, the Clerk shall assess all costs against the Respondent.

It is further **ORDERED** that the Clerk shall forward an attested copy of this Order to the Respondent, Alfred Lincoln Robertson, Jr., Robertson Law Office, PLLC, 6575 Edsall Road,

Springfield, VA 22151, by certified mail, return receipt requested, and by regular and electronic mail; and a copy by electronic mail to Timothy J. Battle, counsel for Respondent, and to Renu M. Brennan, Bar Counsel.

This Order is final.

ENTERED THIS 16th DAY OF JULY 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney, Chair