

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE COUNTY OF PRINCE WILLIAM

VIRGINIA STATE BAR EX REL
FIFTH DISTRICT COMMITTEE
VSB Docket No. 21-052-122107

v.

Case No. 22-4967

JAMES MCMURRAY JOHNSON.

FINAL JUDGMENT MEMORANDUM ORDER

THIS MATTER came to be heard on October 21, 2022 by 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 Bruce D. Albertson, Judge of the Twenty-Sixth Judicial Circuit; the Honorable Rondelle D. Herman, Judge of the Fourteenth Judicial Circuit; and the Honorable James C. Clark, Judge of the Eighteenth Judicial Circuit and designated Chief Judge (“Chief Judge”) of the Three-Judge Circuit Court (collectively, “the Court”).

Senior Assistant Bar Counsel Elizabeth K. Shoenfeld represented the Virginia State Bar (“VSB”). Respondent James McMurray Johnson, having received proper notice of the proceeding, appeared in person and was represented by Bernard J. DiMuro.

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

WHEREUPON a hearing was conducted upon the Rule to Show Cause issued against Respondent. The Rule directed Respondent to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked or otherwise

sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a Subcommittee of the Fifth District Committee, Section II, of the VSB.

Misconduct Phase

The Court admitted VSB Exhibits 1-48 and Respondent's Exhibits 1-4 into evidence without objection.

Both parties made opening statements. The Court received the testimony of VSB Investigator David Jackson and Complainant Lisa Robertson for the VSB, after which the VSB rested.

Respondent moved to strike the VSB's evidence. After considering the evidence and the argument of the parties, the Court denied the motion.

The Court received the testimony of Jessica Zelaya and Respondent for Respondent.

Both parties made closing arguments.

Upon due deliberation and consideration of the exhibits, witness testimony, and argument for the parties, the Court made the following findings of fact:

1. Respondent was admitted to the Virginia State Bar ("VSB") on April 27, 2007. At all relevant times, Respondent was a member of the VSB. Respondent's Answer, ¶ 1.
2. On or about October 24, 2014, Complainant Lisa Robertson hired Respondent to represent her in a medical malpractice case. The alleged medical malpractice related to a September 24, 2014 Restylane injection that Robertson received at a spa. The injection allegedly caused a bacterial infection and nerve damage. Respondent's Answer, ¶ 2.
3. In September 2016 -- almost two years after he accepted Robertson's case and just before the two-year statute of limitation expired -- Respondent provided information about Robertson's case to Melissa King, a nurse associated with Mednick Associates.¹ Respondent's Answer, ¶ 3.
4. Respondent's file contained no information regarding the outcome of his correspondence with Ms. King. No one associated with Mednick Associates provided an expert opinion

¹ Mednick Associates identifies itself as "the leading medical expert witness firm for malpractice and VA disability attorneys."

regarding Robertson's case. Respondent's Answer, ¶ 4. Respondent testified that he did not progress with Mednick Associates because they offered him an expert gynecologist and he was looking for an expert dermatologist. Respondent acknowledged that Mednick Associates never told him that they did not have a dermatologist available, and that he did not recall this exchange when he was interviewed by VSB Investigator Jackson.

5. On September 23, 2016, Respondent filed a complaint on behalf of Robertson and against Parma Centre for Health Medicine, the doctor, and the doctor's medical practice in the Circuit Court for Prince William County. Respondent's Answer, ¶ 6.
6. Pursuant to Va. Code § 8.01-20.1, before requesting service of process in a medical malpractice case, the plaintiff must first procure a certification from a duly qualified professional stating that the practitioner violated the standard of care and the violation proximately caused the plaintiff's injuries. This certification is often referred to as a "certificate of merit." Respondent's Answer, ¶ 7.
7. When Respondent filed the lawsuit, he did not have the required certificate of merit. Pursuant to Va. Code § 8.01-275.1, the deadline for service of process was September 23, 2017. Respondent's Answer, ¶ 7.
8. Prior to the September 23, 2017 deadline to serve the defendants, Respondent engaged in unsuccessful efforts to secure a certificate of merit, as follows:
 - On May 24, 2017, Respondent emailed Joe Flynn, Case Manager for American Medical Forensic Specialists ("AMFS"), seeking assistance in finding an expert witness for Robertson's case. VSB Ex. 21.
 - On May 25, 2017, Flynn emailed Respondent and provided what Flynn called an Expert Services Agreement package. Flynn indicated that Respondent needed to sign the Expert Service Agreement to proceed. Respondent did not sign the service agreement and did not make any payments to AMFS. VSB Ex. 22. At the hearing, Respondent testified that AMFS offered him an expert gynecologist and not dermatologist. Respondent acknowledged that AMFS never told him that they did not have a dermatologist available, and that he did not recall this exchange when he was interviewed by VSB Investigator Jackson.
 - On June 14, 2017, Respondent emailed Flynn again, stating that he needed an expert dermatologist. Respondent's file contained no record of a response from Flynn. VSB Ex. 23.
 - Respondent's office manager, Jessica Zelaya, called dermatology and gynecology² offices in Virginia, the District of Columbia and Maryland. Ms.

² The doctor who performed Robertson's injections was a gynecologist.

Zelaya's notes indicated that she left voicemail messages but did not speak with any doctors. VSB Ex. 9.

- On or about June 15, 2017, Respondent spoke to a doctor who had treated Respondent's wife. The doctor told Respondent that he does not do plaintiff's work. VSB Ex. 24.
9. Respondent did not acquire a certificate of merit before September 23, 2017 deadline to serve the defendants, and therefore Respondent could not and did not serve any of the defendants. Respondent's Answer, ¶ 9.
 10. After Respondent missed the deadline to serve process, the only option to continue Respondent's case was to nonsuit and then re-file within the six-month tolling provision of Va. Code § 8.01-229. Respondent's Answer, ¶ 10.
 11. Respondent did not take further action to attempt to secure an expert witness for Robertson's case until 2019, as follows:
 - On June 16, 2019, Respondent contacted Flynn again and inquired whether Flynn had any dermatology experts with experience with Restalyne injections. VSB Ex. 26. Respondent's file did not contain a response from Flynn. VSB Ex. 9.
 - On September 19, 2019, Respondent's office manager contacted the office of Dr. David Berry. On or before December 19, 2019, Dr. Berry notified Respondent's office that he would not assist with Robertson's case. VSB Exs. 27-31.
 12. Meanwhile, on September 26, 2019 – three years after the complaint was filed and two years after the deadline to serve the defendants passed -- Respondent filed a motion for nonsuit. The court entered a nonsuit order on October 1, 2019. Respondent's Answer, ¶ 12.
 13. On May 18, 2020, Respondent re-filed Robertson's case.³ Respondent's Answer, ¶ 13.
 14. On or about November 20, 2020, Respondent withdrew as Robertson's counsel because Respondent's license to practice law was suspended. Respondent's Answer, ¶ 14.
 15. Between re-filing Robertson's case on May 18, 2020 and withdrawing on November 20, 2020, Respondent's file did not contain any evidence that he took any action to obtain an expert. VSB Ex. 9.

³ Under ordinary circumstances, Respondent would have had to re-file Robertson's case on or before April 1, 2020 pursuant to the six-month tolling provision of Va. Code § 8.01-229. However, because of the Supreme Court of Virginia's emergency orders regarding the COVID-19 pandemic, Respondent's May 18, 2020 re-filing was timely.

16. Respondent never prepared or sent a settlement demand on Robertson's behalf. Respondent's Answer, ¶ 16.
17. During the representation, Robertson called Respondent several times to express frustration regarding Respondent's lack of communication and the lack of progress on her case. For example, Respondent's internal records reflected that:
 - On or about March 29, 2017, Robertson called Respondent's office. Robertson said she had two phone calls scheduled with Respondent and Respondent had not called her for either of her scheduled appointments. VSB Ex. 39.
 - On or about December 26, 2017, Robertson called Respondent. Robertson said that she needed answers and was tired of making phone calls. VSB Ex. 41.
 - On or about August 15, 2018, Robertson called Respondent and left a message. Robertson said that she wanted to meet with Respondent in person because her case was taking way too long. VSB Ex. 42.
 - On or about January 2, 2019, Robertson called Respondent and said that it was urgent that he call her. Robertson was very distressed. VSB Ex. 43.
 - On or about July 16, 2019, Robertson left a message for Respondent stating that the case was taking too long. Robertson also inquired about whether a medical expert was found. VSB Ex. 44.
 - On or about February 3, 2020, Robertson called Respondent to speak with him about her case. Robertson said that Respondent had told her that she would hear from him after the holidays. VSB Ex. 45.

Findings Regarding Rule Violations

The Court determined that the VSB had proven, by clear and convincing evidence, that Respondent violated Virginia Rules of Professional Conduct 1.3(a) and 1.4(a). The Court acknowledged conflicts in the evidence presented by the VSB and Respondent but found that the VSB's witnesses were more credible than Respondent's witnesses.

RULE 1.3 Diligence

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

The Court adopted the allegations in the Subcommittee Certification, finding that Respondent failed to take reasonable, prompt action to secure an expert witness, failed to submit a settlement demand, and otherwise failed to take substantive action regarding Robertson's case for six years.

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.

The Court adopted the allegations in the Subcommittee Certification, finding that Respondent failed to keep Robertson informed regarding the status of her case, missed scheduled appointments with Robertson, and required her to make frequent phone calls to Respondent's office to receive information about her case.

Sanctions Phase

The Court then proceeded to the sanctions phase of the proceeding.

The VSB introduced a certification of Respondent's disciplinary record. The Court admitted the certification without objection as VSB Exhibit 49.

The Court received Respondent's own testimony for Respondent.

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

Determination

After due consideration of the evidence as to mitigation and aggravation and argument of counsel, the Court reconvened to announce its sanction of a 90-day suspension with terms of Respondent's license to practice law in the Commonwealth of Virginia. In making its ruling, the Court identified aggravating factors of Respondent's pattern of misconduct, the vulnerability of

Respondent's client, and the troubling indifference Respondent showed to her needs. The Court also found that because the case resulting in Respondent's prior suspension was close in time to the current case, it did not know for sure whether Respondent had learned from his prior discipline.

The terms are as follows:

For a period of two years following the termination of Respondent's suspension, Respondent will not engage in any conduct that violates any provisions of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which Respondent may be admitted to practice law. The terms contained in this paragraph will be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct referred to above, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.

Upon satisfactory proof that the terms have been met, this matter shall be closed. If Respondent violates the terms, however, a one-year and one-day suspension of Respondent's license to practice law in the Commonwealth of Virginia shall be imposed pursuant to Part Six, Section IV, Paragraph 13-18.O of the Rules of Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Paragraph 13-9.E of the Rules of Supreme Court of Virginia.

Accordingly, it is hereby ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is suspended for 90 days, with terms, effective on November 20, 2022.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of Supreme Court of Virginia. Respondent shall

forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to any clients for whom he is currently handling matters, and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice immediately and in no event later than 14 days after the effective date of the suspension, and make such arrangements as are required herein as soon as is practicable and in no event later than 45 days after the effective date of the suspension. Respondent shall also furnish proof to the VSB within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

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

It is further ORDERED that the Clerk shall send a copy teste of this Memorandum Order by certified mail, return receipt requested, to Respondent James McMurray Johnson, Johnson Law Firm, PC, 13478 Minnieville Rd Ste 204, Woodbridge, VA 22192, Respondent's last address of record with the Virginia State Bar, and by regular mail to the counsel of record, and the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

The hearing was recorded by Alyssa Bowman of ICR/Rudiger & Green, 8551 Rixlew Lane, Manassas, Virginia 20109.

ENTER: 1123/23



The Honorable James C. Clark
Chief Judge Designate

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