

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
MIKRE-MICHAEL AYELE**

VSB DOCKET NO. 06-041-0284

ORDER OF SUSPENSION

This matter came on to be heard on December 16, 2005, before a panel of the Virginia State Bar Disciplinary Board (the "Board") composed of James L. Banks, Chair, V. Max Beard, lay member, Sandra L. Havrilak, Robert E. Eicher, and Bruce T. Clark.

The Virginia State Bar ("VSB") was represented by Seth M. Guggenheim, Assistant Bar Counsel. Mire-Michael Ayele (the "Respondent") appeared *pro se*. Donna Chandler, Registered Professional Reporter, of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, having been duly sworn by the Chair, reported the hearing and transcribed the proceedings.

The Chair inquired of the members of the panel whether any of them had any personal or financial interest or any bias which would preclude, or could be perceived to preclude, their hearing the matter fairly and impartially. Each member of the panel and the Chair answered the inquiry in the negative.

The matter came before the Board on a District Committee Determination (Certification) of the Fourth District – Section I Committee of the VSB.

Bar Counsel and the Respondent stated that they were prepared to proceed and waived the Chair's explanation of the hearing procedure. Bar Counsel and the Respondent presented opening statements.

VSB Exhibits 1 through 6 were admitted without objection.

Bar Counsel stated that, in accordance with the provisions of the Subcommittee's Private Reprimands in VSB Docket No. 05-041-0381 and in VSB Docket No. 05-041-0524, respectively, the Respondent had stipulated the Findings of Fact and admitted the violations of the Rules of Professional Conduct as alleged in the Certification to the Board. Bar Counsel presented no further evidence. The Respondent presented his own testimony. Bar Counsel and the Respondent presented closing argument.

As to VSB Docket No. 05-041-0381:

I. Findings of Fact

Upon consideration of the evidence presented and arguments of Bar Counsel and the Respondent, the Board finds that the following facts have been proved by clear and convincing evidence, to wit:

1. At all times relevant hereto the Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. After having engaged the Respondent for other immigration matters in 1998, Tigist T. Debebe (hereafter "Complainant") again retained the Respondent on March 16, 2000. According to a written retainer agreement of that date, Respondent was to "process a relative petition for Complainant and her children by Complainant's husband, a motion for remand with the Board of Immigration Appeals and an adjustment application with the Immigration Court."
3. At a hearing conducted in Complainant's matter before an immigration judge on September 9, 2003, the Respondent was instructed by the judge to file a "waiver" document within the following ten days. The judge also noted in writing on a notice in the file: "212i waiver application due 9/19/03".

4. Notwithstanding the oral directive and written notation of the judge the Respondent failed to file the required document, as required. Such failure led to entry of a deportation order, denial of Complainant's application to adjust status, and cancellation of a scheduled hearing. Subsequent to these rulings adverse to the Complainant, she telephoned the Respondent repeatedly, but he failed to return her calls.

5. The Respondent filed a "Motion to Reopen," together with the required waiver, and representation was assumed by successor counsel.

6. During the course of an investigation conducted by the Virginia State Bar, the Respondent attributed his failure to respond to Complainant's calls to stress and depression.

II. Misconduct

The Certification to the Board alleges, and the Respondent admitted in the Subcommittee's Private Reprimand, a violation of the following Rules of Professional Conduct, to wit:

RULE 1.3 Diligence

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

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.

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]

III. Disposition

Upon consideration of the foregoing, following deliberation in closed session, the Board reconvened in open session, and the Chair announced the Board found that the VSB had proved by clear and convincing evidence a violation of Rule 1.3(a), Rule 1.4 (a), and Rule 1.16(a) as alleged in the Certification.

As to VSB Docket No. 05-041-0524:

IV. Findings of Fact

Upon consideration of the evidence presented and argument of Bar Counsel and the Respondent, the Board finds that the following facts have been proved by clear and convincing evidence, to wit:

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On March 16, 2003, Mr. Asrat A. Cheru (hereafter "Complainant") retained the Respondent to represent him in immigration matters. The Respondent was paid the sum of \$3,000.00 for such representation.
3. During the course of the representation before the United States Court of Appeals for the Fourth Circuit, the Respondent failed to file timely a docketing statement, counsel of record form, and disclosure statement, as a consequence of which the Complainant's case was dismissed on May 28, 2003.
4. Subsequently, the Court permitted the Complainant's case to be reopened and he was granted leave to file a docketing statement out of time. However, on January 6, 2004, the Court issued a notice advising that the Complainant had committed a briefing default, and establishing that a brief was due on or before the 15th day thereafter.

5. The Respondent failed to file the required brief on Complainant's behalf, and the Court terminated the case of January 30, 2004, based on the default.

6. The Respondent failed to advise the Complainant in a timely and accurate manner concerning the status of his case; failed to return all but one of Complainant's calls; and failed to notify him that the matter had been dismissed, which fact Complainant only learned by making a personal trip to the Courthouse.

7. The Complainant subsequently engaged new counsel, who succeeded in having the Court reopen the matter.

8. During the course of an investigation conducted by the Virginia State Bar, the Respondent attributed to stress and depression his failures of diligence in attending to the case and his failure to respond to Complainant's calls.

V. Misconduct

The Certification to the Board alleges, and the Respondent admitted in the Subcommittee's Private Reprimand, a violation of the following Rules of Professional Conduct, to wit:

RULE 1.3 Diligence

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

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.

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client[.]

VI. Disposition

Upon consideration of the foregoing, following deliberation in closed session, the Board reconvened in open session, and the Chair announced the Board found that the VSB had proved by clear and convincing evidence a violation of Rule 1.3(a), Rule 1.4 (a), and Rule 1.16(a) as alleged in the Certification.

VII. Sanction

The Chair called for evidence in aggravation or mitigation of the misconduct found. VSB Exhibits 7, 8 and 9 were admitted without objection, showing the Respondent's disciplinary record of three dismissals with terms. The Respondent presented no evidence. Bar Counsel and the Respondent presented argument.

Bar Counsel argued that, though the misconduct found was not egregious, the Respondent had not complied with the terms of the Subcommittee's Private Reprimands and had exhibited a lax attitude in his failure to (a) comply and, in fact, had continued to represent clients when he represented that he was "taking a break" from practicing law and would place himself on the "Disabled and Retired Members" class of Bar membership, and (b) refund \$3,000 to Asrat A. Cheru by the agreed date of payment or thereafter..

The Respondent testified that after the Private Reprimands he undertook two uncontested divorce cases and had only one remaining immigration case that he would transfer. He further testified that, although he had been unable to reimburse \$3,000 to his client, as provided in the Private Reprimand, he intended to do so.

The Respondent testified that he had decided on his own to take a break from practicing law because immigration law procedures had been expedited beyond his ability to comply, which

had stressed and overwhelmed him. The Board observes that a lawyer who is unable to service his clients' needs does not serve their interests competently and diligently.

The Board notes the testimony of the Respondent before the District Committee that he suffered from depression during the period relevant to his misconduct. In his testimony before the Board, however, the Respondent referred to being "stressed" and his practice being "out of control." He did not present competent evidence of depression or of any condition constituting an impairment in mitigation of the misconduct found.

Following deliberation in closed session, the Board reconvened in open session. The Chair announced the Board's decision that the Respondent should be suspended from the practice of law for one year and one day effective December 16, 2005. Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for one year and one day effective December 16, 2005.

It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. 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 Bar within 60 days of the effective day 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 the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13(M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

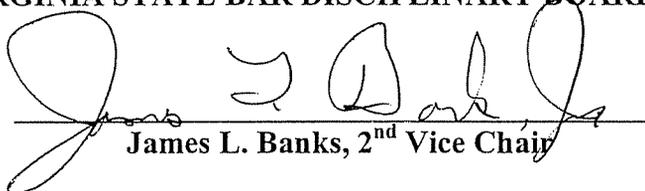
It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being 22 South Old Glebe Road #B5, Arlington, Virginia 22204, by certified mail, return receipt requested, and by regular mail to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia 22314-3133..

Enter this Order this 30th day of December, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____


James L. Banks, 2nd Vice Chair