

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JEFFREY ELLIS GONZALEZ-PEREZ

VSB DOCKET NO. 04-041-1164

ORDER OF SUSPENSION

THIS MATTER came on to be heard on May 20, 2005, before a duly convened panel of the Disciplinary Board consisting of James L. Banks, Jr., Acting Chair, Glenn M. Hodge, Ann N. Kathan, H. Taylor Williams, IV, and W. Jefferson O'Flaherty, Lay Member. The Virginia State Bar was represented by Seth Guggenheim, Assistant Bar Counsel. The Respondent, Jeffrey Ellis Gonzalez-Perez (the "Respondent") did not appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The Acting Chair polled the members of the Board Panel as to whether any of them was conscious 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.

Donna T. Chandler, court reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings. All required notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

This matter came before the Board on the Subcommittee Determination (Certification) issued on September 8, 2004 by a duly convened subcommittee of the Fourth District Section I Committee.

I. FINDINGS OF FACT

On January 26, 2005, the Board entered a Pre-Hearing Order, which among other things, set deadlines for filing witness lists and exhibits. The Pre-Hearing Order was served on the Respondent by the Clerk of the Disciplinary System. The Respondent did not file any exhibits or witness lists. Furthermore, as set forth in the Certification Regarding Stipulations filed by Bar Counsel, the VSB, despite the exercise of due diligence and the making of a good faith effort to secure the Respondent's cooperation in entering into stipulations, was unsuccessful in procuring any stipulations. The VSB's exhibits, designated as Exhibits 1 through 5, were admitted without objection during the pre-hearing conference conducted by telephone on May 11, 2005. The Respondent failed to attend the pre-hearing conference. The VSB's exhibits, designated as Exhibits 6 through 7, were admitted without objection by the Board at the hearing on this matter.

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar is Suite 700, 2111 Wilson Boulevard, Arlington, Virginia 22201. The respondent received proper notice of these proceedings, as well as the related proceedings as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

2. The Respondent's license to practice law in the Commonwealth was suspended on October 15, 2001, for non-payment of annual dues and for noncompliance with the mandatory filing requirements regarding professional liability insurance certification.

3. The Respondent's license to practice law in the Commonwealth was suspended on

June 5, 2003, for his failure to comply with the Mandatory Continuing Legal Education requirements.

4. The Respondent's license to practice law in the Commonwealth was forfeited on March 29, 2004, for non-payment of annual dues and for noncompliance with the mandatory filing requirements regarding professional liability insurance certification.

5. As certified by the Office of Bar Counsel for the District of Columbia on April 15, 2004, the Respondent was admitted to practice law in the District of Columbia on March 9, 1998. His license to practice law in the District of Columbia was suspended on September 30, 2003, for nonpayment of dues.

6. On October 21, 2003, the Virginia State Bar received a Complaint from Nirmal R. Kumar (hereafter "Complainant"), respecting an immigration matter handled by the Respondent on behalf of the Complainant and the company which had formerly employed the Complainant.

7. On November 6, 2003, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold and underlined text, the following: "Please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

8. On January 21 and 27, 2004, a Virginia State Bar investigator left telephone messages for the Respondent. On February 2, 2004, the investigator sent the Respondent a letter, requesting that he contact the investigator and that he respond to the Bar Complaint. On February 11, 2004, the investigator again wrote to the Respondent requesting that he contact the investigator.

9. Having received no reply from the Respondent to any of the telephone messages and letters left for and sent to the Respondent, the investigator caused a subpoena to be issued to the Respondent. The Respondent appeared pursuant to the subpoena on March 31, 2004, and acknowledged to the investigator that he had received the phone messages and letters from the investigator.

10. During the interview conducted on March 31, 2004, the Respondent stated to the investigator that he maintains his license to practice law in the District of Columbia for purposes of practicing immigration law. The Respondent's statement was false at the time it was made inasmuch as his license to practice law in the District of Columbia was suspended on September 30, 2003, for nonpayment of dues, as aforesaid.

11. During the time when his licenses to practice law in both Virginia and the District of Columbia were suspended, the Respondent nonetheless held himself out as an attorney authorized to practice law by, among other things,

a. listing himself as an attorney upon a building directory where he was maintaining office space at 2111 Wilson Boulevard, Suite 700, Arlington, Virginia 22201; and

b. causing receptionist(s) to answer his phone with the greeting "Law Offices of Jeffrey Gonzalez-Perez."

12. During the time when his licenses to practice law in both Virginia and the District of Columbia were suspended, the Respondent nonetheless practiced law by performing immigration law services on behalf of one or more employees of Optimos, Inc., of Chantilly, Virginia.

13. During the Respondent's interview conducted on March 31, 2004, by the Virginia State Bar investigator, it was revealed that Respondent had retained in trust the sum of \$238.24 since

May 9, 2001, with regard to Complainant's immigration matter. The Respondent had not refunded that sum to the Complainant, despite Respondent's having stopped performing services on behalf of the Complainant in or around March of 2003.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

RULE 5.5 Unauthorized Practice Of Law

- (a) A lawyer shall not:
 - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

RULE 7.5 Firm Names And Letterheads

- (a) A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, website, or a similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive. A trade name may be used by a lawyer in private practice if it does

not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1 and 7.2.

RULE 8.1 Bar Admission And Disciplinary Matters

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

- (a) knowingly make a false statement of material fact;
- (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[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.15, 1.16, 7.5, 8.1(a), 8.1(c), 8.4(b), and 8.4(c). However, the Bar did not prove by clear and convincing evidence that Respondent had violated Rule 5.5.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as a two (2) year suspension of the Respondent's license to practice law in the Commonwealth of Virginia with such suspension effective immediately.

The Board's unanimous sanction decision is based upon the totality of the circumstances. First, the Board finds that the VSB has gone to great lengths to try and communicate with the Respondent and to make sure that he had every opportunity to appear at and participate in these proceedings. In fact, the VSB even attempted to serve the Respondent with a subpoena for the hearing and on May 13, 2005, after making several service attempts, the Arlington County Sheriff posted the subpoena at the Respondent's apartment complex. From the Respondent's utter lack of participation and communication in this matter it appears to the Board that the VSB is more concerned about the Respondent's law license than the Respondent is. Also, the Board took into consideration the fact that the Respondent has no previous disciplinary record and that the evidence shows that the Respondent took a high degree of care in representing the client referenced above.

Accordingly, it is ORDERED that the license of Respondent, Jeffrey Ellis Gonzalez-Perez, to practice law in the Commonwealth of Virginia is hereby suspended for two (2) years effective May 20, 2005.

It is further ORDERED that the 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 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 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.

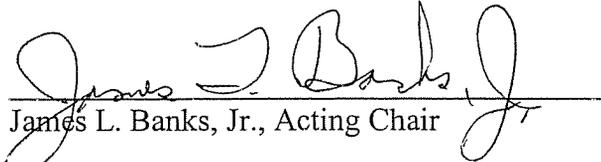
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required 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 2111 Wilson Boulevard, Suite 700, Arlington, Virginia 22201, by certified mail, return receipt requested, and by regular mail to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

ENTERED this 20th day of June 2005

VIRGINIA STATE BAR DISCIPLINARY BOARD



James L. Banks, Jr., Acting Chair