

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF)
CHRISTOPHER JASON AGRESTO)
Respondent) VSB DOCKET NOS.: 10-070-081587
) 11-070-085415

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER came on to be heard on November 18, 2011 before a panel of the Virginia State Bar Disciplinary Board consisting of Thomas R. Scott, Jr., Chair, presiding, Richard J. Colten, Timothy A. Coyle, J. Casey Forrester, and Jody D. Katz, lay member. The Virginia State Bar was represented by Marian L. Beckett, Assistant Bar Counsel. The Respondent, Christopher Jason Agresto, appeared in person late and was represented by counsel, Gregory T. Hunter. The Chair polled the members of the Board as to whether any of them had any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, and each member responded that there were no such conflicts. The court reporter for the proceeding, Teresa L. McLean of Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, telephone: (804) 730-1222, after duly being sworn, reported the hearing and transcribed the proceedings.

As to VSB Docket No. 10-070-081587, this matter came before the Board on the Subcommittee Determination for Certification by a Subcommittee of the Seventh District of the Virginia State Bar.

I. FINDINGS OF FACT

The exhibits of the Virginia State Bar were previously admitted without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Christopher Jason Agresto, [hereinafter "the Respondent"], has been an attorney licensed to practice law in the Commonwealth of Virginia. His practice includes representation of criminal defendants.

2. The Virginia State Bar received information from the Court of Appeals that the Respondent failed to timely file a Petition for Appeal in three cases for which he was counsel of record. The clients were Alwyn John Colman, Jr., Curtis Lamont Murray, and John Linwood Grant.

As to client Alwyn John Colman, Jr.:

3. Mr. Colman engaged the Respondent on February 20, 2007 to represent him on charges of possession of a controlled substance. A flat fee of \$1,000 was paid on behalf of Mr. Colman.

4. The Respondent represented the client at a preliminary hearing, and when the case was certified to a Grand Jury, he filed a Motion to Dismiss, a Motion to Suppress Evidence, and was counsel for a bench trial, following which the client was convicted.

5. The Respondent informed his client that he had a right to appeal, which the client then requested. The Respondent filed a Notice of Appeal per his client's request.

6. The record from the Circuit Court of Fairfax County was filed with the Court of Appeals on October 7, 2008.

7. The Respondent did not ensure the timely delivery of the transcripts of the lower court proceeding, or in the alternative, provide a statement of facts as required by Court of Appeals Rule 5A:8.

8. The Respondent filed a Motion to Extend the Time to File the Record. The Motion was denied as it was not timely filed.

9. The Court of Appeals dismissed the case on December 5, 2008 on the grounds that no Petition for Appeal was filed within the time permitted.

10. As his defense, the Respondent informed Virginia State Bar Investigator Donald Lange during an interview conducted on July 28, 2010, that he was not hired to perfect an appeal. He was unable to produce proof that he had informed his client that the appeal had been dismissed but stated he believed he had told Mr. Colman of the dismissal via telephone.

11. During the July 28, 2010 interview, the Respondent admitted that he failed to obtain leave of court to withdraw as counsel of record, but stopped working on the case. The Respondent was unable to produce proof that he had informed his client that he would not represent him for the appeal.

As to client Curtis Lamont Murray:

12. The Respondent was court appointed to represent Mr. Murray.

13. The Respondent filed a Notice of Appeal but took no action thereafter.

14. The record from the Circuit Court of Loudoun County was filed with the Court of Appeals on May 11, 2009.

15. The Respondent did not ensure the timely delivery of the transcripts of the lower court proceeding, or in the alternative, provide a statement of facts as required by Court of Appeals Rule 5A:8.

16. The Court of Appeals dismissed the case on July 7, 2009 on the grounds that no Petition for Appeal was filed within the time permitted.

17. At the time of the events in question, the Respondent managed his own calendar and tickler system. He admits he failed to calendar the deadline for the Petition for Appeal.

18. The Respondent admits he did not inform his client, orally or in writing, that the appeal had been dismissed.

As to client James Linwood Grant:

19. The Respondent was court appointed to represent Mr. Grant regarding a charge of attempted unlawful wounding.

20. At his client's request, the Respondent filed a Notice of Appeal. The Respondent states he then withdrew from the case as he thought that there were no appealable issues. The Respondent was not able to provide proof of leave of court to withdraw. He did not file an Anders brief prior to withdrawal as counsel.

21. The record from the Circuit Court of Loudoun County was filed with the Court of Appeals on August 4, 2009.

22. The Respondent did not ensure the timely delivery of the transcripts of the lower court proceeding, or in the alternative, provide a statement of facts as required by Court of Appeals Rule 5A:8.

23. The Court of Appeals dismissed the case on September 28, 2009 on the grounds that no Petition for Appeal was filed within the time permitted. At the time of dismissal, the Respondent was still counsel of record.

As to clients Colman, Murray and Grant:

24. The Respondent admits that he failed to attempt to notify his client that the appeal had been dismissed.

25. A letter containing the complaint was sent from the Virginia State Bar to the Respondent on October 28, 2009. The letter included the following language:

Pursuant to Rule of Professional Conduct 8.1 (c), you have a duty to comply with the bar's lawful demands for information not protected by Rule 1.6. As part of my preliminary investigation of the complaint, I demand 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.

26. The Respondent admits that he failed to provide a response to the bar complaint.

27. On May 7, 2010, a subpoena *duces tecum* was issued to the Respondent commanding the production of

Copies of 1) all files, records and reports; and 2) all trust account and operating account records, including cancelled checks, cash receipts journals, cash disbursements journals, subsidiary ledgers,

bank statements, deposit tickets and evidence of reconciliations, in your possession, custody or control, relating to your representation of Alwyn John Colman, Jr., Curtis Lamont Murray and John Linwood Grant in their appeals to the Virginia Court of Appeals,

The subpoena also informed the Respondent that should he fail to respond to the subpoena, he would be liable to a rule or attachment as in cases of contempt, and subject to sanctions, including interim suspension by the Virginia State Bar Disciplinary Board.

28. The Respondent failed to respond to the May 7, 2010 subpoena *duces tecum*.

29. On May 26, 2010, Assistant Bar Counsel Alfred L. Carr sent correspondence to the Respondent reminding the Respondent that he had not produced documents in response to the subpoena. Mr. Carr requested that the documents be produced by June 7, 2010.

30. The Respondent failed to respond to Mr. Carr's May 26, 2010 letter.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.

- (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.

RULE 1.16 Declining or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

- (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 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.

...

As to VSB Docket No. 11-070-085415, this matter came before the Board on the Subcommittee Determination for Certification by a Subcommittee of the Seventh District of the Virginia State Bar.

I. FINDINGS OF FACT

The exhibits of the Virginia State Bar were previously admitted without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Christopher Jason Agresto, [hereinafter "the Respondent"], has been an attorney licensed to practice law in the Commonwealth of Virginia. His practice includes representation of criminal defendants.
2. The Virginia State Bar received information from the Court of Appeals that the Respondent failed to timely file a Petition for Appeal for which he was counsel of record. The client involved was Susan Aleida Urquia-Ferrara.
3. The Respondent was court appointed to represent Ms. Urquia-Ferrera on charges of distribution of cocaine. The charges were based on two separate sales to a confidential informant. Ms. Urquia-Ferrera pled guilty to one count and the remaining count was *nolle prosequi*.
4. On February 2, 2010, Ms. Urquia-Ferrera was sentenced to eight years in prison with six years suspended. The sentencing order was entered on March 9, 2010. Ms. Urquia-Ferrera requested that the Respondent file an appeal on her behalf. On March 26, 2010, the Respondent filed a Notice of Appeal. He took no further action thereafter.
5. The Respondent admits that he failed to prepare an order to have the trial transcripts prepared, that he did not prepare a Statement of Facts in the alternative, and that the record was sent to the Court of Appeals with neither.

6. The Court of Appeals dismissed the case on August 13, 2010, on the grounds that no Petition for Appeal had been filed within the time permitted by Rule 5A:12(a). The Respondent admits that he failed to file a Petition for Appeal.

7. The Respondent admits he did not inform his client, orally or in writing, that the appeal had been dismissed or that she could file a writ of *habeas corpus*.

8. A letter containing the complaint was sent from the Virginia State Bar to the Respondent on March 9, 2011. The letter included the following language:

Pursuant to Rule of Professional Conduct 8.1 (c), you have a duty to comply with the bar's lawful demands for information not protected by Rule 1.6. As part of my preliminary investigation of the complaint, I demand 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.

9. The Respondent admits that he failed to provide a response to the Bar complaint.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.
- (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.

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.

...

III. DISPOSITION

After review of the forgoing findings of fact, the exhibits presented by Bar Counsel on behalf of the Virginia State Bar, and the evidence from witnesses presented on behalf of the Bar and from the Respondent, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its findings as follows:

1. The Board determined that in VSB Docket No. 10-070-081587, the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.1, 1.3(a), 1.4(a) and (c), 1.16(c) and (d), and 8.1(c).

2. The Board determined that in VSB Docket No. 11-070-085415, the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.1, 1.3(a), 1.4(a) and (c), and 8.1(c).

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including Respondent's prior disciplinary record and the Respondent's recent felony conviction in the U.S. District Court for the Eastern District of Virginia for conspiracy to commit wire fraud. The Board recessed to determine what sanctions 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 suspension of the Respondent's license for a period of five (5) years.

Accordingly, it is ORDERED that the license of the Respondent, Christopher Jason Agresto, be suspended as of November 18, 2011.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client(s). 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 date of the suspension if 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 of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge court.

It is further ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by certified mail to Christopher Jason Agresto at his last address of record with the Virginia State Bar at P.O. Box 1589, Leesburg, Virginia; and by first class mail to his counsel, Gregory T. Hunter, 2055 N. 15th Street, Suite 302, Arlington, Virginia 22201; and shall hand-deliver a copy to Marian L. Beckett, Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 13th day of December, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Thomas R. Scott, Jr.
Thomas R. Scott, Jr., Chair

Dissenting Opinion by Mr. Colten and Mr. Forrester:

We agree with the findings of fact and the findings of misconduct made by the Board in these cases, but we respectfully disagree with the Board's sanction of a five-year suspension. The Board heard evidence of the Respondent's recent felony conviction in the U.S. District Court for the Eastern District of Virginia. Although the Respondent's felony conviction was not the subject of these cases, we submit that it was properly considered as an aggravating factor. In reviewing the Respondent's conduct in these cases, his prior disciplinary record, and the recent aggravating factor of a felony conviction for criminal conspiracy, we respectfully submit that the appropriate sanction is a revocation of the Respondent's license to practice law.