

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
VINCENT MARK AMBERLY**

VSB DOCKET NO. 06-053-1488

AMENDED ORDER OF ADMONITION WITH TERMS

THIS MATTER came on to be heard on the 16th day of November, 2007, before a panel of the Disciplinary Board consisting of James L. Banks, Jr., Chair, Glenn M. Hodge, John W. Richardson, Michael S. Mulkey, and Thaddeus T. Crump, Lay member. The Virginia State Bar was represented by Seth M. Guggenheim. The Respondent, Vincent Mark Amberly, appeared both personally and by his attorney, Timothy J. Battle. The 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. Tracy J. Johnson, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board of the District Committee Determination for Certification by the Fifth District Committee.

I. FINDINGS OF FACT

1. At all times relevant to the matters set forth herein, Vincent Mark Amberly, (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Mr. Martin B. Katz (hereafter "Complainant") instituted two lawsuits against the Respondent's clients in the Fairfax County, Virginia, General District Court. The Complainant and Respondent appeared in that Court on September 19, 2005, a return date on one of the cases.

3. In open Court on September 19, 2005, the Respondent handed the Complainant a copy of a Motion to Consolidate, and presented argument thereon to the Court. The Respondent stated to the presiding judge that the Respondent would be filing a Counterclaim, but he did not furnish a copy of the Counterclaim to the Court or to the Complainant on the occasion of the court appearance. Following their court appearance, the Respondent filed the Motion to Consolidate and a Counterclaim with the Clerk of the Court. The Counterclaim contained no certificate of service.

4. Later that same day, September 19, 2005, the Complainant requested a copy of the Counterclaim during a telephone call with the Respondent. On September 20, 2005, the Respondent sent the Complainant an e-mail, stating, among other things, that "I will forward to you a hard copy of the Counterclaim that we filed with the Court yesterday, and "I will be in touch with you shortly regarding the further status of the case."

5. On September 26, 2005, the Complainant sent the Respondent an e-mail stating, among other things, that he had not received the Counterclaim from the Respondent.

6. On September 30, 2005, the Respondent sent the Complainant an e-mail, stating as follows:

Attached please find the Counterclaim that we filed on behalf of the Trent Group, Inc. The details in this document are sufficient to constitute a Bill of Particulars, and put you on notice of your clients [sic.] claim against you.

7. On September 30, 2005, the Respondent mailed to the Complainant a copy of the Counterclaim containing the following certificate of service, signed by the Respondent:

I HEREBY CERTIFY that on the 19th day of September, 2005, a true and correct copy of the foregoing Counterclaim, was attempted delivery by hand to Martin B. Katz at the Courthouse, but he refused delivery, on the 30th of September, 2005, a true and correct copy of the foregoing Counterclaim, was delivered to Martin B. Katz, 9822 Hill Street, Kensington, MD 20895, and via electronic transmission or e-mail to the Plaintiff Martin Katz.

8. The Respondent made representation as contained in the foregoing certificate of service in open court on October 6, 2005, in response to Complainant's motion to dismiss the Counterclaim.

9. The Respondent's statements in the certificate of service that he attempted hand delivery of the Counterclaim to the Complainant, and that the Complainant refused such delivery, were false, and were made by the Respondent with knowledge of their falsity.

10. Despite the fact that Respondent did not furnish the Complainant with a copy of the Counterclaim before September 30, 2005, despite the contents of telephone conversations and e-mails between the Complainant and the Respondent wherein Complainant sought a copy of the Counterclaim and the Respondent promised to provide it, and notwithstanding the representation in the certificate of service set forth above, the Respondent made the following representation in a letter to Bar Counsel dated December 19, 2005:

On September 30, 2005, the day after the deadline the court had set of service my client's Bill of Particulars for the Counterclaim, Mr. Katz and I discussed whether or not I would be filing a Bill of Particulars and would instead rely upon the facts in the Counterclaim that I had given to him on the return day September 19th. At that time, Mr. Katz advised me that he had never received a copy of the Counterclaim. I told him that we had discussed the Counterclaim on numerous occasions and that I had handed it to him at the September 19th hearing, but he claimed that he never received it. I immediately sent him a copy of the Counterclaim via e-mail, as well as a copy via first class mail. ***

11. Respondent's representations to Bar Counsel, set forth above, were misleading in that they were calculated to induce Bar Counsel to conclude a) that Respondent had in fact furnished the Counterclaim with a copy of the Counterclaim on September 19, 2005, and b) that Respondent first learned from the Complainant on September 30, 2005, that Complainant did not have a copy of the Counterclaim.

12. At all times relevant hereto, Vincent Mark Amberly's address of record

with the Virginia State Bar has been Vincent Mark Amberly, c/o Litman Law, 3717 Columbia Pike, Arlington, Virginia 22204. The respondent received proper notice of this proceeding as required by Part Six, Section IV, paragraph 13 (E) and (I)(a) of the Rules of the Virginia Supreme Court.

13. The Complainant, Martin B. Katz, hereinafter referred to as “complainant”, was present at all times.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 3.3, Rule 4.1, Rule 8.1, and Rule 8.4.

III. DISPOSITION

Disposition was made after review of the foregoing findings of fact, and after review of exhibits 1 through 12 presented by Bar Counsel on behalf of the VSB and exhibits admitted as respondent’s 1 through 7. Disposition was also made after evidence adduced from witnesses presented on behalf of the Virginia State Bar and upon evidence presented by the Respondent in the form of his own testimony. At the conclusion of all of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation of the Board reconvened and stated its finding as follows:

1. The Board determined that the Bar proved by clear and convincing evidence a violation of Rule 3.3 of the Rules of Professional Conduct, Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal.

2. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of Rule 4.1 of the Rules of Professional Conduct, Truthfulness

In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law.

3. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of Rule 8.1 of the Rules of Professional Conduct, Bar Admission and Disciplinary Matters.

An Applicant for admission, 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:

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

4. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of Rule 8.4 of the Rules of Professional Conduct, Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law [.]

Therefore, the Board received further evidence of aggravation and mitigation from the Bar and from Counsel for the Respondent, including the absence of a prior disciplinary record. Admitted was a certification from the State Bar and a proffer of Respondent's counsel that Respondent has not been the subject of any previous disciplinary action during the period of time that he has been licensed to practice law.

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 sanctions which should be imposed and the Chair announced the terms of the sanctions as follows:

Accordingly, it was ORDERED that the Respondent receive an Admonition with Terms.

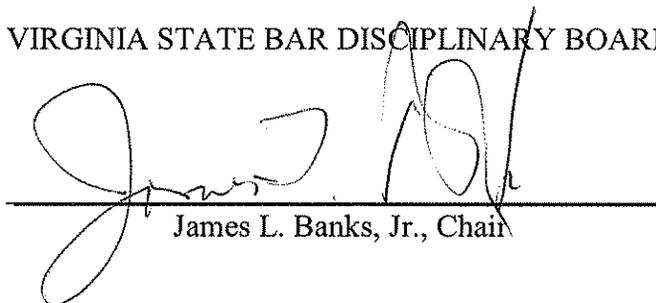
The Respondent, Vincent Mark Amberly, is to complete three hours of Continuing Legal Education on the topic of Virginia Procedure for which no continuing legal education credit is to be sought. The Respondent is to complete three hours of Continuing Legal Education on ethics for which no continuing legal education is to be sought. Both of these courses are to be completed within one year of the date of this Order which is November 16, 2007. Failure to comply with the terms of this Order will result in a hearing to determine what sanctions are appropriate.

It is further ORDERED that pursuant to Part Six, Section IV, paragraph 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 the Respondent, Vincent Mark Amberly, c/o Litman Law, 3717 Columbia Pike, Arlington, Virginia 22204, by certified mail, return receipt requested, and by regular mail to Timothy J. Battle, Counsel for the Respondent, 524 King Street, P.O. Box 19631, Alexandria, Virginia 22314, and to Seth M. Guggenheim, Senior Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia 22314-3133.

ENTER THIS ORDER THIS 3rd DAY OF JANUARY, 2008.

VIRGINIA STATE BAR DISCIPLINARY BOARD



James L. Banks, Jr., Chair