

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
RICHARD ANTHONY BEDNAR**

VS **Docket Nos.** **09-052-078586**
 09-052-079643
 09-052-079974
 10-052-081160

MEMORANDUM ORDER

These matters came on March 23, 2011, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Richard Anthony Bednar, based upon the Certification of a Fifth District—Section II Subcommittee of the Virginia State Bar. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Mr. Robert W. Carter, lay member, Paul M. Black, Pleasant S. Brodnax, III, Sandra L. Havrilak, and William E. Glover, presiding.

Seth M. Guggenheim, representing the Bar, and the Respondent, Richard Anthony Bednar, presented an endorsed Agreed Disposition, entered into on March 16, 2011, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Terry S. Griffith, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it is the unanimous decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant to the facts set forth herein, Richard Anthony Bednar (“Respondent”) was an attorney licensed to practice law in the Commonwealth of Virginia, subject to an interim suspension for noncompliance with a subpoena *duces tecum* as set forth below.

As to VSB Docket No. 09-052-078586:

2. Daniel Wade McCollum (“Complainant”) retained the Respondent in May of 2007 with regard to an issue relating to the Complainant’s military discharge. The Complainant paid the Respondent’s firm a total of \$2,400.00, comprised of an initial advanced fee of \$400.00 for the Respondent’s evaluation of the matter, and a subsequent payment of an advanced fee of \$2,000.00 to file an application with the with the Naval Discharge Review Board.

3. Initially, the Respondent performed services regarding the Complainant’s legal matter. During the Spring and Summer of 2008, the Complainant inquired as to status of his case, and the Respondent replied by saying that he would be attending to it.

4. On September 3, 2008, the Respondent sent an e-mail to the Complainant stating that the Respondent had “[s]tarted making some edits to your personal statement and got interrupted several times. I hope to have it to you later today.” On September 4, 2008, the Complainant sent an e-mail to the Respondent indicating that he had not received the statement from the Respondent and inquired if it would be sent by e-mail or “postal mail.”

5. On September 11, 2008, the Complainant sent an e-mail to the Respondent, stating “I have yet to receive a letter and you stated I would have it on the 3rd this is the second email on this issue can you please respond by email or phone. I would like to wrap this up ASAP this has been way to long.” (All errors in original.)

6. On September 12, 2008, the Respondent stated “I apologize for the delay. I am working on your case today and will continue through the weekend if necessary. In appreciation for patience I will make an adjustment to your final bill to account for the delay in completing your case.”

7. On September 23, 2008, the Complainant sent an e-mail to the Respondent, stating as follows:

Richard I do not know what is going on in your office, you have not answered a call in two week and I have yet to hear back from you. This case has been in your hands for over a year and a half. I need you to forward me the work you have done and a refund (unable to finish you work in an appropriate timetable) and cut ties or finish this case by the end of the week. [Errors in original.]

8. On October 1, 2008, the Complainant wrote to the Respondent inquiring about the status of his legal matter; the Respondent replied by stating that the Respondent would have the Complainant's declaration to submit to the Naval Discharge Review Board within the week.

9. On October 14, 2008, the Respondent sent the Complainant a personal declaration and application for review of discharge for the Complainant's signature.

10. The Respondent wrote to the Complainant on October 31, 2008, advising that he had received the signed forms from the Complainant, and that the Respondent hoped to have a package ready for the Naval Discharge Review Board within a few days.

11. The Complainant had not received a copy of any filings made on his behalf as of November 18, 2008, and on that date wrote to the Respondent inquiring if the Respondent had sent the documents. The Respondent replied on November 19, 2008, stating that "I am out of the office today and most of the day tomorrow. I am certain the copy was previously sent. I will follow up on it when I return and let you know what I found out."

12. The Complainant heard nothing further from the Respondent until January 7, 2009, when the Respondent sent the Complainant an e-mail stating that he had had a family emergency and had been away from his office. The Respondent stated that "I have just prepared another package and prepared it for mailing." He provided a "USPS tracking number" to the

Complainant and further stated that he used the Complainant's e-mail address so that he would receive a confirmation.

13. On January 13, 2009, the Complainant sent the Respondent an e-mail, stating "Richard I noticed usps has not picked up according to the tracking number can you verify thanks Daniel". (Errors in original.)

14. The Complainant advised the Respondent by e-mail on January 19, 2009, that he had "not received the usps package please update on tracking and status of when we should have a case number would like to have this case wrapped up, it has been too long". (Errors in original.)

15. On February 7, 2009, the Complainant sent the Respondent an e-mail, stating "Richard I have yet to get a response from you regarding the delay of information that you have promised. I would like you to give me a time you will be in your office or at home to call and resolve this issue. Your response is paramount!" (Errors in original.)

16. The Complainant called the Naval Discharge Review Board and determined that as of February 23, 2009, nothing had been submitted on his behalf.

17. The Complainant filed a complaint with the Virginia State Bar on February 24, 2009, a copy of which was sent to the Respondent on March 4, 2009, with Bar Counsel's demand that a written answer thereto be filed within 21 days following the date of Bar Counsel's letter. The Respondent failed to file a written response to the bar complaint within the said 21 days, or at any time thereafter.

18. During telephone interviews conducted by a Virginia State Bar investigator, the Respondent admitted that he did not finish the legal work required for Complainant's matter. He stated that he intended to prepare and file the petition required in Complainant's case but did not do so. The investigator determined that the Respondent had closed his practice, but nothing in

the Respondent's file discloses that he ever advised the Complainant that he intended to close his practice.

19. On March 1, 2010, the Respondent forwarded the Complainant's file to him, along with funds then held in an attorney escrow account to the Complainant's credit in the sum of \$489.00. The Respondent's cover letter to the Complainant stated "I have been contacted by the Virginia State Bar and informed that you have filed a complaint against me. I understand that you are seeking your file. I apologize that you have had difficulty contacting me. Your file and a check in the amount of \$489.00 representing the unused balance of your advance payment, is [*sic*] enclosed."

As to VSB Docket No. 09-052-079643:

20. On May 20, 2009, the Virginia State Bar received a complaint from Christopher Keith Sherer ("Complainant"). The Complainant alleged that over the five months preceding the filing of his complaint, he had tried without success to have the Respondent reply to him concerning the legal matter entrusted to him. The Complainant alleged that when he was in contact with the Respondent, the Respondent informed him that the Respondent was in receipt of the Complainant's military records, and that all that Respondent needed to do was submit the Complainant's case to the applicable military review board.

21. The Complainant further alleged that he had mailed the Respondent a certified letter on April 22, 2009, which was received by "LeAnn Bednar," requesting that Respondent discontinue representation and return the Complainant's "case work" and military records within one week. The Complainant alleged that there was no response to his letter.

22. Bar Counsel sent a copy of the Complainant's bar complaint to the Respondent on May 29, 2009, with Bar Counsel's letter demanding that a written answer thereto be filed within

21 days following the date of Bar Counsel's letter. The Respondent failed to file a written response to the bar complaint within the said 21 days, or at any time thereafter.

23. Bar Counsel issued a subpoena *duces tecum* to the Respondent on May 29, 2009, requiring production on or before June 19, 2009, of the Complainant's complete file, attorney trust account records, and other materials pertaining to the Respondent's representation of the Complainant. Due to the Respondent's failure to produce the subpoenaed materials, on June 24, 2009, Bar Counsel issued a Notice of Noncompliance and Request for Suspension of Respondent's License to Practice Law. Pursuant to Bar Counsel's said request, the Virginia State Bar Disciplinary Board issued an Interim Suspension Order, suspending the Respondent's license to practice law effective July 7, 2009.

24. An investigation conducted by the Virginia State Bar revealed that on or about August 13, 2007, the Respondent, through his law firm, entered into an agreement with the Complainant to evaluate the Complainant's legal matter regarding the correction of the Complainant's military records and the terms of his discharge from the U. S. Army. The Complainant paid an advance fee of \$400.00 for such services.

25. The investigation further revealed that the Respondent made records requests on the Complainant's behalf and that the Respondent spoke to an individual who was associated with the events related to the Complainant's legal matter. The Respondent informed the Virginia State Bar investigator that while awaiting information from the individual in question he was closing his practice and that "that is where Chris's case withered on the vine." He informed the investigator that he had been in personal and financial turmoil at the time he closed his practice, that he was distracted from his work, and that the further he got behind the less responsive he became to the people with whom he was behind.

26. On March 1, 2010, the Respondent forwarded the Complainant's file to him, stating in a cover letter that "I have been contacted by the Virginia State Bar and informed that you have filed a complaint against me. I understand that you are seeking your file so that you can pursue alternative representation. I apologize that you have had difficulty contacting me. Your file is enclosed."

As to VSB Docket No. 09-052-079974:

27. John D. Brand, III, ("Complainant") engaged the Respondent in November of 2007 to evaluate the Complainant's legal matter regarding the Complainant's military discharge. The Complainant paid the Respondent's firm an advanced fee of \$400.00 with a cashier's check dated November 13, 2007.

28. On June 17, 2009, the Virginia State Bar received a complaint from the Complainant alleging that the Complainant had been unable to reach the Respondent since November of 2008, stating that the Respondent had not sent any correspondence or returned any of the Complainant's phone calls.

29. Bar Counsel sent a copy of the Complainant's bar complaint to the Respondent on June 23, 2009, with Bar Counsel's letter demanding that a written answer thereto be filed within 21 days following the date of Bar Counsel's letter. The Respondent failed to file a written response to the bar complaint within the said 21 days, or at any time thereafter.

30. An investigation of the complaint disclosed that promptly following his engagement by the Complainant, the Respondent requested and thereafter received certain of the Complainant's military records from government agencies.

31. The Respondent informed a Virginia State Bar investigator that he recalled having consulted his law partner regarding the Complainant's case before the law partnership ended in

February of 2008. He further informed the investigator that he could neither recall nor determine what he had done following his discussion of the matter with his law partner.

32. The Respondent further informed the investigator that he did recall having received phone messages from the Complainant, which he did not return, and that he intended to catch up on his work before contacting the Complainant, which did not happen. The Respondent stated to the investigator that “I dropped the ball on this one.”

33. The Respondent closed his office and moved to Utah as of June, 2009. The Complainant did not receive a notification from the Respondent that the Respondent was closing his office.

34. On March 1, 2010, the Respondent forwarded the Complainant’s file and an attorney escrow account check to him, stating in a cover letter that “I have been contacted by the Virginia State Bar and informed that you have filed a complaint against me. I understand that you are seeking your file so that you can pursue alternative representation. I apologize that you have had difficulty contacting me. Your file and a check in the amount of \$10.00, representing the unused balance of your advance payment, is *[sic]* enclosed.”

As to VSB Docket No. 10-052-081160

35. Herbert D. Dwyer (“Complainant”) hired the Respondent’s law partner in early 2007 regarding a medical discharge issue involving the Navy. In February of 2008 the Complainant received a letter from the Respondent and his law partner stating that the law partner had accepted federal employment. The letter gave the Complainant the option of having the Respondent continue the Complainant’s representation, which the Complainant elected to do on February 11, 2008.

36. The Complainant and Respondent spoke a few times following the Respondent's assumption of responsibility for the Complainant's legal matter. In October of 2008, the Complainant received an adverse decision from the Board for Correction of Naval Records. The Respondent contends that the Complainant's receipt of the Board's decision completed the legal services for which Complainant contracted. The Complainant and Respondent agreed that the next step would be to file a petition with the Naval Discharge Review Board. The Respondent has represented to the Virginia State Bar that a new fee agreement or engagement contract was never executed and that the Complainant did not advance any additional funds.

37. Following receipt of the aforesaid adverse decision, the Respondent informed the Complainant that the Respondent was "wrapping up some other things," but would get to the Complainant's case within a couple of weeks. When the Complainant heard nothing further, he called the Respondent around Thanksgiving, and was told by the Respondent that the Respondent had not yet gotten to the Complainant's petition, but that he would do so and would call the Complainant.

38. The last time the Complainant spoke to the Respondent was during the Winter of 2008/2009. When the Complainant attempted to reach the Respondent in or around September of 2009, the Respondent's phone had been disconnected and his Internet website was unavailable.

39. The Respondent had closed his office and moved to Utah as of June, 2009. The Complainant did not receive a notification from the Respondent that the Respondent was closing his office.

40. The Respondent was interviewed by a Virginia State Bar investigator. He advised the investigator that he had talked to his former law partner concerning the approach and strategy

regarding the Complainant's case, and that he spoke to the Complainant regarding the chances for success if a petition were filed with the Naval Discharge Review Board. The Respondent stated that he intended to file a petition on the Complainant's behalf but that he never did so.

41. On March 1, 2010, the Respondent forwarded the Complainant's file to him, stating in a cover letter that "I have been contacted by the Virginia State Bar and informed that you have filed a complaint against me. I understand that you are seeking your file so that you can pursue alternative representation. I apologize that you have had difficulty contacting me. Your file is enclosed."

42. The Virginia State Bar investigator's interviews of the Respondent were conducted by telephone in January, February, and March of 2010. The Respondent furnished the investigator with bank statements for his attorney escrow account for January of 2008 through January of 2010, as well as copies of his client subsidiary ledger cards and other records.

43. The Respondent's records and interview revealed that as of January 29, 2010, the Respondent maintained a trust account balance pertaining to ten clients of \$10,056.32, which he had yet to disburse to those clients. The investigator's audit of the Respondent's escrow account revealed computational and other discrepancies. The Respondent informed the investigator that he did not withdraw fees as they were earned because he was slow to do bookkeeping.

The Board further finds that the mitigating factors identified in the *Standards for Imposing Lawyer Sanctions*, issued by the American Bar Association, which are applicable to these matters are:

- a. absence of a prior disciplinary record;
- b. absence of a dishonest or selfish motive;
- c. personal or emotional problems;

- d. character or reputation
- e. full and free disclosure to the disciplinary board or cooperative attitude toward proceedings; and
- f. remorse.

The Board finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provision of the Virginia Rules of Professional Conduct:

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 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (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

- (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[.]
- (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).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

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[.]

Upon consideration whereof, it is ORDERED as that:

The Respondent shall receive a three (3) year suspension of his Virginia license to practice law, and his license is hereby suspended for such period effective March 23, 2011.

It is further ORDERED that, as directed in the Board's March 23, 2011 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 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 Respondent's 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 Respondent's care in conformity with the wishes of Respondent's 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.

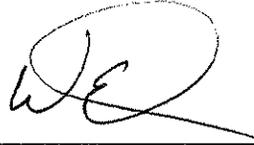
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of March 23, 2011, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar

Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

Pursuant to Part 6, Section IV, Paragraph 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that a copy *teste* of this Order shall be mailed by Certified Mail to the Respondent at his address of record with the Virginia State Bar being Apt 1, 68 S 100 W, Farmington, UT 84025, and a copy to Seth M. Guggenheim, Senior Assistant Bar Counsel Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 24th day of March, 2011.



William E. Glover, Chair
Virginia State Bar Disciplinary Board