

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
DAVID PETER BUEHLER

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VSB DOCKET NO.: 12-021-090634

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER came on to be heard on December 13, 2013 before a panel of the Virginia State Bar Disciplinary Board consisting of William H. Atwill, Jr., Acting Chair, presiding, Timothy A. Coyle, J. Casey Forrester, John A. C. Keith, and Stephen A. Wannall, lay member. The Virginia State Bar was represented by M. Brent Saunders, Assistant Bar Counsel. The Respondent, David Peter Buehler, appeared *pro se*. 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, Angela N. Sidener 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.

This matter came before the Board on the Subcommittee Determination (Certification) by a Subcommittee of the Second District of the Virginia State Bar.

The Respondent, David Peter Buehler, made a motion for continuance of the hearing which the Board denied.

The exhibits of the Virginia State Bar were collectively admitted as Bar's Exhibit 1 without objection.

After the Bar presented its evidence, the Respondent stipulated to the facts contained in the aforementioned Certification and to the charges of misconduct against him. Based on the Respondent's stipulation, the Board makes the following findings of fact on the basis of clear and convincing evidence:

**I. FINDINGS OF FACT**

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent represented Jill Sozio, d/b/a Jill's Deli, Bakery & Grill ("Sozio"), in several legal matters arising from Sozio's lease of a premises located within a shopping center in Norfolk, Virginia for the operation of a business ("Premises").

3. In June 2011, an unlawful detainer action was filed against Sozio in the Norfolk General District Court by SEI Realty, L.L.C. ("SEI") seeking unpaid rent of \$1,257.54 and possession of the Premises (Case No. GV11024035-00).

4. In July 2011, before the unlawful detainer case had been heard, Respondent filed two actions in the Norfolk Circuit Court ("NCC") on behalf of Sozio against "The Former Directors, Officers and Owners of Hampton Roads Enterprises, Inc."<sup>1</sup> and Suburban Asset Management Corp. (the agent and management company for the Premises) for alleged unlawful termination of the lease and wrongful eviction from the Premises. One action was initiated with the filing of a Petition for Temporary Injunction in which Sozio requested injunctive relief in the form of an order allowing her access to the Premises to retrieve her personal property (Case No. CL11-5256). The

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<sup>1</sup> Hampton Roads Enterprises, Inc. was the owner of the Premises at the time Sozio executed the lease of the Premises. Respondent was apparently unaware that the lease for the Premises had been assigned to SEI.

other action was brought in the form of a Complaint requesting damages totaling \$1,550,000.00 arising from the alleged breach of the lease, wrongful eviction from the Premises, conversion of Sozio's personalty, tortious interference with business relationships, and lost profits (Case No. CL11-5258).

5. Attorney Shane L. Smith ("Smith") represented SEI, Suburban Asset Management Corp. and other parties adverse to Sozio in each of the legal proceedings arising from Sozio's lease of the Premises.

Injunction Case (CL11-5256)

6. On July 19, 2011, an Agreed Order was entered in the injunction case ("Agreed Order"). The Agreed Order, *inter alia*, allowed Sozio access to the Premises for the sole purpose of retrieving her personal property, and ordered her to surrender possession of the Premises no later than July 31, 2011 and sign and deliver an order dismissing her injunction action. The Agreed Order also required counsel for SEI to request a continuance of the pending unlawful detainer action to a date beyond the deadline for the removal of Sozio's personalty, and to nonsuit that case upon the dismissal of the injunction action.

7. In August 2011, Smith filed a motion requesting: i) entry of an order requiring Sozio to show cause why she should not be held in contempt of court for violating the terms of the Agreed Order; ii) allowing SEI to proceed with the unlawful detainer action; iii) dismissing the injunction action; and iv) awarding SEI its attorneys' fees and costs ("Motion").

8. Smith noticed a hearing on the Motion for September 1, 2011.

9. Respondent failed to appear at the September 1, 2011 hearing, and in his

absence, an Order to Show Cause and for Leave to Defendants was entered which: i) ordered Sozio to show cause why she should not be held in contempt for failing to comply with the Agreed Order; ii) dismissed the injunction action with prejudice; iii) granted SEI leave to proceed to trial on the unlawful detainer action; and iv) awarded the defendants their attorneys' fees and costs incurred in connection with the Motion.

10. On September 29, 2011, Respondent filed Plaintiff's Response to Order to Show Cause requesting that the September 1, 2011 order be vacated. In support of his request, Respondent represented that he had not received the order until September 27, 2011, apparently due to the postal carrier's inability to access his mailbox. Respondent did not disclose the fact that Smith had sent the order to Respondent by both mail and email on September 1, 2011.

11. On October 20, 2011, an order was entered awarding Smith's clients \$2,135.00 in attorneys' fees and costs incurred in conjunction with the Motion.

12. Respondent filed a pleading asking that the show cause order be vacated or modified and the request for attorneys' fees be denied<sup>2</sup>.

13. In a letter to the presiding judge and NCC Clerk dated October 26, 2011, Respondent stated that he had not received a copy of the July 19, 2011 Agreed Order until September, and that in the interim, he had provided Smith with a signed sketch order dismissing the injunction case. He then attributed the issuance of the show cause order to the sketch order having never been submitted for entry. Smith never received such an order from Respondent. By email dated October 28, 2011, Smith requested

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<sup>2</sup> Respondent never noticed that pleading for hearing despite being requested to do so by Smith, who himself noticed it for hearing on January 31, 2012. Respondent did not appear at the hearing, and in his absence, an order was entered denying the relief Respondent had requested.

Respondent to provide proof that he had sent such an order to Smith and Respondent never did so.

Damages Case (CL11-5258)

14. In response to the \$1,550,000.00 lawsuit Respondent filed on behalf of Sozio, Smith filed a Motion to Dismiss Misjoined Parties, Motion to Quash Service of Process, and Demurrer.

15. Respondent filed a request for extension of time to respond to that filing in which he stated he was "seeking to determine if counsel for Defendants will oppose this extension, but has not as of yet received a response." As of the time of the filing of his request, Respondent had not requested a time extension from Smith.

16. By order issued on September 22, 2011, counsel for the parties were ordered to appear at a scheduling conference on November 10, 2011, unless an endorsed scheduling order was filed prior to that date. Following entry of the September 22, 2011 order, Smith attempted to obtain Respondent's available dates for the trial so that a scheduling order could be submitted in lieu of attending the scheduling conference on November 10, 2011. Respondent failed to provide his available dates, and Smith filed a Motion to Set Trial Date and Enter Scheduling Order.

17. On or about October 21, 2011, Respondent filed a Memorandum of Lis Pendens in the damages case, which operated as a prejudgment lien against the Premises. Smith filed a Motion for Leave to Intervene, to Quash Lis Pendens, and for Sanctions<sup>3</sup> on the basis that the Memorandum of Lis Pendens was improperly filed

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<sup>3</sup> Prior to filing this motion, Smith had asked Respondent to withdraw the Memorandum of Lis Pendens for the reasons that Smith would later set out in his motion to quash. Respondent did not withdraw it.

since: i) Sozio was not asserting an ownership interest in the Premises, but merely seeking monetary damages; and ii) Sozio had not named the owners of the Premises as parties defendant in the lawsuit. Respondent never filed a written opposition to the motion.

18. On November 10, 2011, a hearing was conducted on Smith's Motion to Quash Lis Pendens and for Sanctions, Motion to Set Trial Date and Enter Scheduling Order, and other motions he had filed in the case. Respondent and Smith appeared. Following arguments, the Court, *inter alia*, granted the Motion to Quash Lis Pendens and awarded Smith's clients their attorney's fees and costs incurred in connection with the Motion to Quash Lis Pendens<sup>4</sup>.

19. Smith prepared and sent to Respondent: i) an order setting out the rulings made on the various motions; and ii) a scheduling order setting out the June 12-14, 2012 trial dates selected during the hearing. On November 18, 2011, Respondent returned to Smith via facsimile transmission both orders bearing Respondent's signature. Despite requests from Smith to return orders bearing Respondent's original signature, Respondent failed to do so, resulting in delays in the entry of those orders<sup>5</sup>.

20. On December 12, 2011, Smith sent to Respondent via mail and email a copy of the order entered on that date granting the Motion to Quash Lis Pendens and for Sanctions. Under the terms of that order, Smith's clients were given 20 days from entry of the order to submit a bill and affidavit in support of their attorneys' fees award

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<sup>4</sup> It is indisputable that: i) Sozio did not assert an ownership interest in the Premises and had no basis to do so; and ii) the owners of the Premises were not named in the Memorandum of Lis Pendens and Respondent did not have a title examination performed to ascertain the owner the Premises prior to filing the Memorandum of Lis Pendens.

<sup>5</sup> The order memorializing the Court's rulings bearing Respondent's facsimile signature was entered on December 12, 2011. A scheduling order was entered on February 24, 2012, without Respondent's endorsement.

and Sozio was given 20 days to file an affidavit in opposition. Smith filed a billing statement and invoice and provided the same to Respondent well in advance of the 20-day deadline. Respondent never filed an affidavit in opposition. By order entered on January 25, 2012, Sozio was ordered to pay Smith's clients \$4,239.50 in attorneys' fees incurred in connection with the Motion to Quash Lis Pendens.

21. In late February 2012, Respondent filed a Motion for Nonsuit. A week later, he filed a motion to withdraw as Sozio's counsel. By orders issued on March 13, 2012, the damages case was nonsuited and Respondent was granted leave to withdraw.

Unlawful Detainer Case (CL11-7070)

22. Following a contested trial of the unlawful detainer action in the Norfolk General District Court on September 13, 2011, judgment was entered in favor of SEI for both unpaid rent and possession of the Premises. Sozio appealed to the NCC. (Case No. CL11-7070).

23. By email dated November 21, 2011, Smith attempted to obtain Respondent's availability for the setting of a trial date. Respondent failed to respond, and on or about November 23, 2011, Smith filed a motion for the setting of a trial date and entry of a scheduling order.

24. Smith noticed a hearing on that motion for December 12, 2011. Respondent did not appear<sup>6</sup>. Multiple orders were entered in Respondent's absence, including a scheduling order setting the case for trial on February 2, 2012.

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<sup>6</sup> Respondent asserted in his answer to this complaint that this hearing took place without any prior notice to him. In fact, on December 2, 2011, Smith's administrative assistant sent Respondent a Notice of Hearing via mail and email to Respondent's last known mailing address and email address.

25. On December 12, 2011, Smith's administrative assistant sent Respondent copies of the orders entered that day, two of which set the trial of the unlawful detainer case for February 2, 2012. The orders were sent via mail and email to Respondent's last known mailing address and email address.

26. By letters dated January 26, 2012, addressed to Smith and the Clerk of the NCC, Respondent stated that he had just discovered the unlawful detainer case was set for trial on February 2, 2012, was not aware a scheduling conference had taken place, and had not received the scheduling order. On January 31, 2012, Respondent filed a Motion for Continuance in which he asserted his recent discovery of the February 2, 2012 trial date.

27. On February 2, 2012, the Court denied the continuance request and granted Smith's motion to exclude Sozio from presenting any testimony or other evidence other than for rebuttal or impeachment based on her non-compliance with the filing deadlines in the scheduling order. Following a trial, judgment was entered for SEI for both unpaid rent and possession of the Premises.

28. Following entry of final judgment, Respondent moved for leave to withdraw as Sozio's counsel. The motion was granted on March 13, 2012.

## **II. NATURE OF MISCONDUCT**

The Certification charged violations of the following provisions 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 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

### RULE 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
  - (1) make a false statement of fact or law to a tribunal;

### RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.

### RULE 4.4 Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

### RULE 8.4 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;

## **III. DISPOSITION**

After review of the foregoing findings of fact, the evidence adduced and the exhibits presented by Bar Counsel on behalf of the Virginia State Bar, and the

stipulation 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 the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.3(a), Rule 3.1, Rule 3.3(a)(1), Rule 3.4(g), Rule 4.4 and Rule 8.4(c).

Thereafter the Bar and the Respondent made a joint recommendation to the Board for a sanction of a six month suspension of the Respondent's license. 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 six (6) months.

Accordingly, it is ORDERED that the license of the Respondent, David Peter Buehler, be suspended as of December 13, 2013 for a period of six (6) months.

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 13-9E.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by certified mail to David Peter Buehler at his last address of record with the Virginia State Bar at 4310 Constance Street, New Orleans, Louisiana 70115; and shall hand-deliver a copy to M. Brent Saunders, Assistant Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 21<sup>st</sup> day of February, 2014.

**VIRGINIA STATE BAR DISCIPLINARY BOARD**

By:   
**William H. Atwill, Jr., Acting Chair**