

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF SANDY YEH CHANG

VS B Docket No.: 13-000-094679

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board (“Board”) for hearing on Friday, May 17, 2013 at 9:00 AM at Courtroom A of the Worker’s Compensation Commission, 1000 DMV Drive, Second Floor, Richmond, VA 23220, upon an Amended Rule to Show Cause (“Show Cause”). The Show Cause was issued pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV (“the Rules”), for Respondent Sandy Yeh Chang (“Respondent”) to show cause why the Board should not impose reciprocal discipline against her on account of her one-year suspension from practice before the United States District Court for the District of Maryland.

A duly convened panel of the Board consisting of Martha JP McQuade, Chair Presiding; Peter A. Dingman; R. Lucas Hobbs; Samuel R. Walker; and Stephen A. Wannall, lay member, heard the matter. The Chair polled the members of the Board about whether any of them had any personal or financial interest or bias which would preclude them from fairly hearing this matter and serving on the panel. Each member responded that there were no such conflicts.

Paulo Franco, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar (“the Bar”). Bernard DiMuro appeared on behalf of Respondent, who was also present. The court reporter for the proceeding, Lisa A. Wright, Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227, telephone 804-730-1222, was duly sworn by the Chair.

The Bar introduced the Show Cause as an Exhibit. Respondent, by her counsel, previously had timely filed a written response to the Show Cause, as well as a written motion to

dismiss, on the grounds that the United States District Court for the District of Maryland was not “another jurisdiction” for purposes of the rules governing reciprocal discipline.

Those rules, contained in ¶ 13-24 of the Rules, give respondents who have had their privilege to practice before “another jurisdiction” suspended or revoked the burden of showing—by clear and convincing evidence – one of three reasons¹ why the Board should not impose the “same discipline imposed in the other jurisdiction.” The Rules also provide for the suspension of a respondent’s license to practice law in Virginia upon the issuance of a Show Cause, and require such a respondent to give notice of that suspension to all clients, as well as judges and other counsel in pending litigation. ¶¶ 13-24(A) and 13-29 of the Rules. Such a suspension was imposed in this matter when the Show Cause was issued.

After hearing argument of counsel, the Board entered a Summary Order dismissing the Show Cause against Respondent on May 17, 2013. Thereafter, the parties filed various motions.

By Order entered October 9, 2013, the Board, by majority vote, decided to reconsider its decision to dismiss the Show Cause.

The Board again convened on Thursday, December 19, 2013 at 9:00 AM at Courtroom A of the State Corporation Commission, Tyler Building, 1300 East Main Street, Second Floor, Richmond, VA 23219. Counsel for the parties appeared to offer oral argument, although Respondent was not present, having been excused on her motion. The court reporter for this proceeding, Tracy J. Stroh, also with Chandler and Halasz, was duly sworn by the Chair, and the

¹ See ¶ 13-24(B)(1), (2) and (3) of the Rules (listing three permissible reasons).

members of the panel again affirmed that none of them had any personal or financial interest or bias which would preclude them from fairly hearing this matter and serving on the panel.²

The Board then heard further argument on Respondent's Motion to Dismiss. The parties' thorough briefings and preparations greatly assisted the Board, and both parties made good arguments for their respective positions.

Respondent argued that, for purposes of ¶ 13-24, only an entity which licenses persons to practice law is a "jurisdiction." The Bar rejected such a "bright line" rule, contending that a case-by-case analysis, focused on whether the other disciplining entity had provided sufficient due process to the disciplined attorney, was more appropriate in determining whether a Show Cause should issue.³

The Board has no power to act unless given jurisdiction by the Supreme Court of Virginia under the Rules. This matter came before the Board as set forth in the Show Cause, pursuant to ¶ 13-24. On the pleadings filed by Respondent, the Board was presented with the question whether the Board was authorized to act. The Respondent had suffered a suspension of some incidents of her ability to practice law. Specifically, after investigation and hearing, her right to file pleadings and/or to appear on behalf of clients before the federal courts for the District of Maryland had been suspended by order of the United States District Court for the

² All notices of the dates and places of the Board's hearings were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by law.

³ A lack of sufficient due process is one of the three enumerated grounds for a respondent to timely object to the imposition of reciprocal discipline. ¶ 13-24(B)(1) of the Rules. Under the Rules, the Clerk of the Disciplinary System is tasked with notifying a Board member anytime the Clerk receives notice that "another jurisdiction has suspended or revoked" the license of a Virginia-licensed attorney, so that the Board member can enter a Show Cause. ¶ 13-24(A) of the Rules. Under the Bar's case-by-case structure, that Board member would determine whether the other disciplining entity was "another jurisdiction" for purposes of reciprocal discipline proceedings.

District of Maryland. The Board must determine whether that suspension was imposed by “another jurisdiction,” as contemplated by ¶ 13-24(A).

After due deliberation, the Board concluded that the United States District Court for the District of Maryland is not “another jurisdiction” within the meaning of ¶ 13-24. Although other states have - in different ways - indirectly defined that phrase, or otherwise specified the precise scope of what jurisdictions will trigger the reciprocal disciplinary process, in their disciplinary rules,⁴ the term “jurisdiction” is not defined in our Rules,⁵ and this is the first time the Board has squarely confronted the meaning of “another jurisdiction.”⁶

⁴ See e.g., Rules of Massachusetts Supreme Judicial Court, Rule 4:01, Section 16(1) (terming “another jurisdiction” to “include[e] any federal court or any state or federal administrative body or tribunal”); Michigan Court Rules of 1985, Rule 9.120(C)(1) (reciprocal discipline may follow “adjudication by any court of record or any body authorized by law or by rule of court to conduct disciplinary proceedings against attorneys by any state or territory of the United States or of the District of Columbia, a United States Court, or a federal administrative agency”); Oklahoma Rules Governing Disciplinary Proceedings, Ch. 1, App. 1-A, Rule 7, § 7.7(b) (reciprocal discipline triggered upon finding “by the highest court of another State or by a federal Court”); Pennsylvania Rules of Disciplinary Enforcement, Rule 216(a) (reciprocal discipline may follow “adjudication by any court or any body authorized by law or by rule of court to conduct [sic] disciplinary proceedings against attorneys by any state or territory of the United States court [sic], or the District of Columbia, a United States Court, or a federal administrative agency or a military tribunal”).

⁵ The term “jurisdiction” is implicitly defined in Rule 8.3(e) of our Rules of Professional Conduct. See Rule 8.3(e)(1) (using term “jurisdiction” with reference to “state or federal disciplinary authority, agency, or court in any state, U.S. territory, or the District of Columbia”).

⁶ Although the parties cite a number of the Board’s prior decisions involving reciprocal discipline, the bulk of those decisions involved no analysis of the meaning of the phrase “another jurisdiction.” See In re Kilgore, VSB Docket No. 02-000-2781; In re Lickstein, VSB Docket No. 05-000-0543; In re Harris, 02-000-1316; In re Johnson, 04-000-3404; In re Buffington, VSB Docket No. 06-000-3411; In re Volzer, VSB Docket No. 08-000-074268; and In re Schwartz, VSB Docket Nos. 08-000-0732731 and 08-000-072985. The Board did request briefing related to the meaning of the phrase, and subsequently rendered opinions discussing the matter, in In re Mullen, VSB Docket No. 02-000-1877; and In re Dobbins, VSB Docket No. 13-000-093449. However, in both of those cases, no timely written response or other pleading had been filed by a respondent to trigger a challenge to the contemplated reciprocal discipline. The lack of a timely response rendered any analysis of the meaning of “another jurisdiction” unnecessary, as the Board recognized in Dobbins, saying “at the end of the day . . . , the Respondent failed to comply

In interpreting the meaning of “another jurisdiction,” the Board is aware that – under the suspension imposed by the Maryland federal court – Respondent remained free to meet with clients, write wills, handle real estate closings, form corporations and other business entities, and engage in a wide range of other activities deemed the practice of law. Under that suspension, Respondent could engage in those activities in Maryland, Virginia, or anywhere else she held a valid license to practice law.

However, if in this matter the Board found the Maryland federal court to be “another jurisdiction,” and Respondent failed to show one of the three specific reasons by clear and convincing evidence, the Board would be unable to “impose the same discipline as was imposed” by the Maryland federal court, as is required by ¶13-24(G), because the Board’s imposition of a suspension would be a greater discipline than that imposed by the Maryland federal court. Suspension by the Board would prohibit Respondent from practicing law at all in the Commonwealth of Virginia.⁷

Thus, if we were to conclude the Maryland federal court is, under ¶ 13-24(a), “another jurisdiction” for purposes of the reciprocal discipline rule, the Board would be unable to follow the process required by the remainder of ¶ 13-24. That fact leads us to conclude that the federal

with ¶ 13-24(B) and timely raise any of the permitted issues.” Although the issue was again in In re Hardenbaugh, VSB Docket No. 06-000-0155, the Board decided that matter without analysis in a written opinion, relying solely on the decision in In re Mullen. See In re Hardenbaugh, Rule to Show Cause Order entered July 27, 2005. The Bar conceded that it knows of no other case where a timely response by a respondent was followed by the Board’s analysis of the meaning of the phrase “another jurisdiction” under ¶ 13-24.

⁷ In fact, the suspension imposed by the Show Cause already had this effect. On entry of the May 17, 2013 Summary Order, the Clerk lifted that suspension, and it was not reimposed by the Board’s October 9, 2013 Order, or otherwise.

court is not “another jurisdiction” under the current framework of the reciprocal discipline rule, as adopted by the Supreme Court of Virginia.⁸

Nothing in this Order and Opinion should be construed to limit the Bar’s ability to initiate disciplinary proceedings against Respondent under ¶13-15 of the Rules.

Accordingly, it is ORDERED that Respondent’s Motion to Dismiss the Show Cause is GRANTED, and that the Show Cause is DISMISSED.

It is further ORDERED that this matter shall be removed from the Board’s docket.

Finally, it is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent Sandy Yeh Chang at her address of record with the

⁸ In contending the panel improperly considered the penalty to be imposed in this case prior to that issue being put to it, the dissent misapprehends the significance to four of the five members of this panel of the distinction between suspension from practice before federal courts in Maryland versus suspension entirely from the practice of law in Virginia. This distinction necessarily informs our understanding of whether the federal court was contemplated by our Supreme Court as “another jurisdiction” in authorizing the Board to impose summary discipline in a show cause context as here advocated by the Bar.

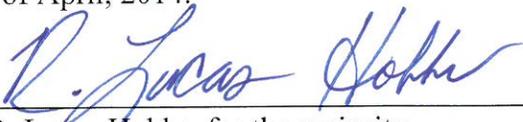
Under the framework of ¶ 13-24, the Board is authorized to act only upon prior sanction by “another jurisdiction.” Absent proof of lack of due process, a determination that the same conduct would not be grounds for disciplinary action in Virginia, or a finding that imposition of the same discipline on the same proof would be a grave injustice, the Board must impose the “same discipline” as the other jurisdiction.

The plain meaning of the rule, as written, is that “another jurisdiction” is one with sanction powers equivalent to those delegated to this Board. The Board simply does not have any disciplinary option which can fairly be construed as the same as that imposed by the Maryland federal court.

As the dissent implicitly concedes, had the Board proceeded in this case, it would have been compelled to deviate from the language of ¶ 13-24, which mandates the imposition of “the same discipline” as imposed by the Maryland court. The dissent argues that the Board could have considered all the circumstances, including additional “evidence . . . of Respondent’s wrongdoing,” and imposed some other appropriate discipline, guided by the Board’s mission to protect the public. The majority was disinclined to stray so far from the clear wording of ¶ 13-24.

Virginia State Bar, that being the Chang Law Firm, 1 Research Court, Suite 140, Rockville, MD 20850, by certified mail, and by regular mail to her counsel, Bernard DiMuro, DiMuro Ginsburg, P.C., 1101 King Street, Suite 610, Alexandria, VA 22314-2956, and to Paulo Franco, Assistant Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, VA 23219.

SO ORDERED, this 16th day of April, 2014.

By 
R. Lucas Hobbs, for the majority

Martha JP McQuade, Dissenting:

I respectfully disagree with the majority decision for the following reasons:

(1) ¶ 13 was written specifically to provide procedures for conducting actions against lawyers accused of violating the Rules of Professional Conduct (“RPC”). While it would have been better to also define “another jurisdiction” in ¶ 13-1 and/or ¶ 13-24, I agree with the Bar that the definition used in RPC 8.3(e)(1) is the definition intended in ¶ 13-24.⁹ Indeed, if that were not the case, the Bar would be free, whenever it learned that any of the entities enumerated in RPC 8.3(e)(1) had begun an investigation of a Virginia lawyer’s actions, to open its own investigation of the same allegations against the lawyer. There would be no need to wait, as ¶ 13-24 specifically requires, until the action in the other jurisdiction has become final. As the Bar argued, RPC 8.3(e)(1) and ¶ 13-24 are clearly meant to work hand in hand.

(2) I am deeply troubled by the lack of consideration in this case, and the majority opinion, for the primary role that protection of the public must play in lawyer disciplinary proceedings in Virginia, and the long history that pursuit has played, and still plays, in the Bar.¹⁰

⁹ RPC 8-3(e)(1) requires a lawyer to notify the Virginia State Bar when he or she has been disciplined by “a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of the rules of professional conduct in that jurisdiction. . . .” ¶ 13-24 provides that “Upon receipt of a notice . . . that another jurisdiction has suspended or revoked the License of the Respondent and that such action has become final . . .”, the Board is to take specified reciprocal action against the lawyer.

¹⁰ The Virginia State Bar Mission Statement and Code of Ethics distributed at the 2010 Disciplinary Conference expressly stated that the Virginia State Bar is to be “motivated by . . . understanding that our top priority is to protect the public. . . .” “Frequently Asked Questions”

In the conduct of this case, over and over, issues of fairness to the lawyer were raised, and rightly so - but not when that is to the exclusion of the protection of the public.

The argument was repeatedly made in this case that a lawyer loses only some of his “bundle of sticks”¹¹ when a federal court or other entity, in response to misconduct on the lawyer’s part in practice before that body, suspends or bars him from practice before that Court. As the majority points out, such a lawyer cannot practice before that Court; however, he may still “meet with clients, write wills, handle real estate closings . . .” and the like. Admittedly, such a lawyer faces at least a short, and potentially permanent, loss of all of his “bundle of sticks” if reciprocal action¹² is brought against him, rather than misconduct proceedings.¹³ However, the misconduct proceedings require full due process to be afforded to the lawyer facing disciplinary action. On the other hand, reciprocal proceedings are premised upon that same due process having already been afforded the lawyer when he faced misconduct proceedings in “another jurisdiction,” was suspended or revoked in that jurisdiction, and so now faces related Virginia State Bar process. In the event that was not the case, it is the lawyer’s right and responsibility to

still appearing on the Bar’s website and updated as of December 2013, answers the question “What is the Virginia State Bar” with the answer “. . . an administrative agency of the Supreme Court of Virginia. It is responsible for the regulation of the legal profession, protection of the public from lawyer misconduct and support of the rule of law.” In the February 2014 volume of Virginia Lawyer, Virginia State Bar President Sharon D. Nelson opens her column, “The President’s Message” with the words “The Virginia State Bar has many missions but one primary mission is to protect the public.” In the Preamble to the current Rules of Professional Conduct, it is said that “a lawyer should help the Bar regulate itself in the public interest.” Part 6, Section II of the Rules of the Supreme Court of Virginia. Consistently, we have been told, in all of our training for service on a Disciplinary Committee or on the Board, that our primary concern must be the protection of the public.

¹¹ (the phrase attached throughout these proceedings to the abilities to act in various ways as a lawyer).

¹² (which involves the issuance of a Show Cause - with the burden on the lawyer, and temporary suspension pending a Board hearing scheduled on an expedited basis. See ¶ 13-24).

¹³ (which involve a lengthy process of review, notice, investigation, submission to a District committee or sub-committee, determination by that body, sometimes a negotiated and then approved or disapproved disposition, and/or a trial at the committee level with the burden being on the Bar, sometimes an appeal to the Board or a three Judge Panel, or if the initial allegations are serious enough, certification by the District committee or sub-committee directly to the Board, then notice and hearing before the Board, with the burden on the Bar. See ¶¶ 13-10, 13-15, 13-16, 13-17, 13-18, 13-19 and 13-20).

raise the lack of due process in the initial proceedings in the other jurisdiction as a defense in the reciprocal proceedings.¹⁴

Accordingly, ¶ 13-24, on its face, requires the Board to balance the rights of the lawyer with the protection of the public in these proceedings. In this regard, I do not, as the majority contends, “misapprehend” the distinction between suspension from practice before federal courts in Maryland and the suspension entirely from the practice of law in Virginia. The seriousness with which the majority took the “bundle of sticks” argument was made very clear to me and that argument is, admittedly, strong. Of equally strong significance to me is the need to balance the rights of lawyers with protection of the public. When we put protecting the lawyer first, or consider only the lawyer, we deservedly put at risk our ability to continue to be a self-disciplining body.

(3) There is no question that the Respondent in this case has already been provided full due process in the federal court. Indeed, her Counsel readily admitted same. Further, in any case, when a lawyer has been found to have committed serious enough acts to justify a federal court or other jurisdiction suspending or barring him from practice before it, the issue is justifiably raised - certainly in the mind of the public - that similar kinds of unethical behavior¹⁵ might well be committed in any kind of case the lawyer could undertake. Accordingly, the use of reciprocal action under ¶ 13-24 (which initially suspends the lawyer but also requires a quick hearing which could result in the lifting of that suspension) is appropriate. Where the federal court or other jurisdiction has already provided full due process to the Respondent in finding the misconduct before that Court, to painstakingly repeat that process under the considerably more time consuming misconduct rules, while the public remains at risk, simply does not make sense. Nor would such a course of action necessarily be better for the lawyer - as he or she would, already disciplined by the federal court, then face lengthy investigation, charging and prosecution processes in Virginia.

Moreover, even if the lawyer were first made subject to misconduct proceedings in Virginia, and been found to have filed fraudulent documents with a court, depending on the

¹⁴ ¶ 13-24(B) provides three allowable defenses to a Show Cause issued under that Rule: that the “record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;” that “imposition by the Board of the same discipline upon the same proof would result in a grave injustice” or that the “same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.”

¹⁵ (in this case, filing fraudulent documents with a Court or, at the very least, taking no steps to supervise what documents were filed with the Court under the lawyer’s name, bar number and codes assigned by the Court to the lawyer with specific prohibition on those codes being given to or allowed to be used by other individuals).

circumstances, the Board could clearly suspend or disbar that lawyer for such action, resulting in his no longer being able to practice any kind of law in Virginia. There is no reason a lawyer whose misconduct is first discovered and prosecuted by a federal court¹⁶ should be allowed two bites at the procedural apple, whereas those lawyers whose misconduct is initially discovered and prosecuted by the Virginia State Bar are allowed only the one.

(4) The Board panel improperly considered the penalty to be imposed in this case prior to that issue being put before it. Even given her admission that the federal Court had already provided her full due process in imposing its discipline upon her, ¶ 13-24 still allowed Respondent herein two permissible lines of defense, that the “imposition of the same discipline upon the same proof would result in a grave injustice” and/or that the “same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.” Had she raised either or both of those defenses, the Bar would have had the opportunity to more fully present any evidence it had of Respondent’s wrongdoing beyond the federal court’s findings, and the Respondent would have had the chance to also present any exculpatory or explanatory evidence.¹⁷ Depending on the evidence presented, the Board might have found itself less concerned with her fate and more concerned with the protection of the public, or it might have come to the conclusion that, as allowed by ¶ 13-24(G), it should “dismiss the proceeding or impose a lesser discipline than was imposed in the other jurisdiction.” However it would have turned out, that is the procedural way this case should have been decided.

Instead, and as expressed in the majority opinion, the panel worried that “. . . if in this matter the Board found the Maryland federal court to be ‘another jurisdiction,’ and Respondent failed to show one of the three specific reasons by clear and convincing evidence, the Board felt it would be unable to ‘impose the same discipline as was imposed’ by the Maryland federal court.” In doing so, the panel impermissibly took the burden of defense of this Respondent upon itself - just as, in the Dobbins case, the Board, on reconsideration, tried to do but ultimately rightly found, based on the clear language of ¶ 13-24, that it could not.¹⁸ In this regard, I do not claim that the majority intended to take on Respondent’s defense – only that the end result of their decision was to have done so.

In conclusion, as Respondent’s Counsel correctly noted in argument, no prior decision of the Board with respect to the jurisdictional issues raised in this case is *res judicata* as none were reviewed and either upheld or overturned by the Virginia Supreme Court. This decision is not

¹⁶ (or an agency, or the Patent and Trademark Office, or another state licensing body, or any other such jurisdiction where full due process has been afforded to the lawyer).

¹⁷ Either side could have, just as one example, produced the employee who was blamed by the Respondent, in the federal court proceedings, for the fraudulent filings – the Bar perhaps to have her swear she was instructed by the Respondent to do so, or the Respondent to have her swear Respondent knew nothing of her activity in this regard.

¹⁸ In Re the Matter of Dobbins, VSB Docket No. 13-000-093449 (2013).

res judicata either, because the Bar cannot appeal it and the Virginia Supreme Court will not, therefore, approve, or disapprove, its reasoning. Accordingly, as Respondent's Counsel argued, any subsequent Board member asked to enter a ¶ 13-24 Rule to Show Cause, and any Board panels tasked with consideration of such a case, are free to be guided by it, or not, and to make their own decisions in the event of jurisdictional issues raised. Such unpredictability serves no one well. I would, therefore, urge the Board as a whole to consider this matter - not with respect to this case, obviously, but with respect to setting Board policy as to how the Bar and the Board Clerk's Office should handle such cases in the future, that is, which kind of cases the Board wants processed and brought under ¶ 13-24 as reciprocal matters versus what kind of heretofore reciprocal matters must now be brought instead under the more resource and time consuming misconduct proceedings. Failing that, or in conjunction with it, I would urge the Committee on Lawyer Discipline to develop and propose a rules change that clearly makes the connection between the notification requirements of RPC Rule 8.3(e)(1) and the reciprocal procedures triggered by such notification under ¶ 13-24.