

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
CHARLES FREDERICK DAUM**

VS Docket No. 13-000-093224

ORDER OF REVOCATION

On the 15th day of February, 2013, a hearing in this matter was held before a panel of the Virginia State Bar Disciplinary Board consisting of Timothy A. Coyle, Anderson W. Douthat, IV, Lay Member, Melissa Robinson, Esther J. Windmueller and Richard J. Colten, Chair Designate, presiding (“Chair”), (collectively, the “Board”).

Anastasia Jones, Assistant Bar Counsel, represented the Virginia State Bar (“Bar”).

Charles Frederick Daum, (“Respondent”) was not present and was not represented by counsel. To verify that the Respondent was indeed absent, the Chair asked the Assistant Clerk, Bonnie Waldeck, to call the Respondent’s name in the hallway three times in a loud and clear voice. Clerk Waldeck reported that she did so and received no answer.

Tracy J. Stroh, a registered professional reporter, Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

I. PRELIMINARY MATTERS

This matter came before the Board for a hearing upon the Rule to Show Cause and Order of Suspension and Hearing, dated January 24, 2013 (“Rule”). The Rule asserts that by Verdict order filed on June 22, 2012 in the United States District Court for the District of Columbia, Respondent was convicted of: one count of Conspiracy to Influence or Injure Officer Generally in violation of 18 U.S.C. §371 and 1503; two counts of Influencing or Injuring Officer or Juror Generally, in violation of 18 U.S.C. § 1503, and two counts of Subornation of Perjury, 18 U.S.C. §1622 (Criminal Case Number

11-102). Pursuant to Part 6, § IV, Para. 13-20(A) of the Rules of the Supreme Court of Virginia, the Board had summarily suspended the Respondent's license upon his conviction. The hearing's purpose was to determine whether the Respondent was convicted of a crime, and if so, whether the Board should further suspend or revoke the Respondent's license to practice law. The Rule was sent to Respondent on January 24, 2013.

The Chair opened the proceeding and polled the members to determine whether any had a personal or financial interest in the proceeding that would impair, or reasonably could be perceived to impair his or her ability to be impartial. Each member responded in the negative.

II. MISCONDUCT PHASE

At the misconduct phase's commencement, the Bar made an opening statement. During that opening statement, the Bar requested the admission of Bar Exhibit 1, Rule to Show Cause and Order of Suspension and Hearing with attached District of Columbia Verdict. The Chair admitted Bar Exhibit 1 without objection. The Bar called Bar Investigator David Jackson, who was sworn. Investigator Jackson testified that he had talked to the Respondent on February 6, 2013, and that the Respondent knew about the instant hearing, had received all the relevant paperwork and was not planning to attend. Investigator Jackson offered to hand deliver any missing paperwork, and Respondent indicated that such action would be unnecessary.

Investigator Jackson further testified that he had spoken to various members of law enforcement that had been involved in the criminal case against Respondent. They related that at trial there was evidence adduced indicating that Respondent had manufactured evidence in other criminal cases including one twenty years prior.

The Bar asserted that the District of Columbia Bar had moved to have the Respondent revoked in their jurisdiction and that they were waiting on the Court of Appeals to rule, as their procedure demands. The Bar then rested. Thereafter, the Board determined that, based on the exhibits and the

Respondent's admission, the Bar had demonstrated, with clear and convincing evidence, that the Respondent was convicted of the five felony counts previously set forth above. The Board then proceeded to determine whether to further suspend or revoke the Respondent's license.

III. SANCTIONS PHASE

Upon the commencement of the sanctions phase, the Bar made its opening statement, and offered as evidence, without objection, Bar Exhibit 2, a copy of the Respondent's disciplinary record. The Chair admitted Bar Exhibit 2 into evidence. The Bar then recalled Investigator David Jackson. Investigator Jackson related that he spoke to Investigator Michael Iannacchione, a Detective Major in the Narcotics Division of the D.C. Metro Police force. Investigator Iannacchione, a leading investigator in the case against Respondent, told Investigator Jackson that the investigation revealed two specific instances where the Respondent fabricated evidence in other cases, one in a drug case in the Eastern District of Virginia in 2005 and once in a murder case twenty years ago. This evidence was presented at the criminal trial of the Respondent. Further, Jackson related that when the Respondent turned over his case files to new attorneys to wrap up his work, previously noted exculpatory evidence was missing, leading investigators to infer that this evidence may have been fabricated as well. There was no evidence presented in mitigation. The Bar rested.

The Board then recessed to deliberate the case.

IV. FINDINGS OF FACT

Upon consideration of the exhibits and testimony presented at the hearing, along with the arguments of counsel, the Board finds the following facts by clear and convincing evidence:

Nature of Convictions

At all relevant times, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia. On November 18, 2008, Respondent was indicted in the U.S. District Court for the District of Columbia, Criminal No. 11-102, as follows: Count I: Conspiracy to Influence

or Injure Officer Generally in violation of 18 U.S.C. §§371 and 1503; Counts II-IV: Influencing or Injuring Officer or Juror Generally, in violation of 18 U.S.C. § 1503, Count V: Tampering with a Witness, Victim, or an Informant, 18 U.S.C. §§ 1512(b)(2)(C) and (D), and Counts VI-VII: Subornation of Perjury, 18 U.S.C. §1622. On June 22, 2012, Judge Gladys Kessler found that the U.S. government had proved, beyond a reasonable doubt, with respect to Count I that the Respondent intentionally and knowingly entered into an agreement with the purpose of unlawfully influencing a juror, taking the following overt acts:

1. Respondent directed witnesses to find duplicates of evidence pertinent to the trial of his client Delante White.
2. In further preparation for the trial, Respondent organized a staged photograph that would give the impression that Delante White's brother (as opposed to Delante) was involved in cutting cocaine.
3. Prior to Delante White's trial, Respondent directed Delante White's girlfriend to obtain boots in a smaller size but identical to boots seized by police so that they could be used in fabricated photos.
4. Respondent directed the girlfriend to create a false lease agreement to give the impression that Delante White lived with her and not his grandmother.
5. During the trial of *United States v. Delante White*, Case No. 08-65, Daum entered the photographs, boots and false lease into evidence.
6. During that trial, Respondent presented the testimony of witnesses that he knew to be false.

As to Count II of the Indictment, obstruction of justice, Respondent was found guilty beyond a reasonable doubt for introducing the aforementioned photographs into evidence.

As to Count III of the Indictment, obstruction of justice, Respondent was found guilty beyond a reasonable doubt for introducing the aforementioned false lease agreement.

As to Count IV of the Indictment, obstruction of justice, Respondent was found guilty beyond a reasonable doubt for introducing the recently obtained Gucci boots to procure a false inference that there was a second pair of boots other than those that the Government had confiscated..

As to Count V of the Indictment, tampering with a witness, Respondent was found not guilty.

As to Count VI of the Indictment, subornation of perjury, Respondent was found guilty beyond a reasonable doubt for knowingly calling a witness, Christopher White, to testify falsely to material facts.

As to Count VII of the Indictment, subornation of perjury, Respondent was found guilty beyond a reasonable doubt for knowingly calling a witness, Candice Robertson to testify falsely to material facts.

The Respondent has a prior disciplinary record. On February 9, 1994, a Fifth District Subcommittee entered a Public Reprimand for practicing in Maryland without a law license and without being admitted *pro hac vice*. in violation of DR 1-102. On November 8, 2005 the Circuit Court for the County of Arlington issued a Public Reprimand with Terms for failing to deposit unearned fees into a trust account, for not reconciling his trust account and for failing to keep an accounting of time spent on a case in violation of Disciplinary Rules 1.15 and 1.16. On December 29, 2005, a Fourth District Subcommittee issued an Admonition without Terms for advising a client that the maximum penalty for the crime charged was ten years when it was actually five years. He further noted the erroneous sentencing range in the plea agreement and his client was sentenced in excess of the maximum penalty. That error was corrected at the trial court level.

Aggravating & Mitigating Factors

The Board, by clear and convincing evidence, finds the following to be aggravating, mitigating or neutral factors in this case. (Other factors were not applicable).

With respect to prior disciplinary record, it is an aggravating factor.

With respect to dishonest or selfish motive, it is an aggravating factor.

With respect to a pattern of misconduct, it is an aggravating factor.

With regard to illegal conduct, it is an aggravating factor.

With respect to the Respondent's substantial experience, it is an aggravating factor.

The Board finds no mitigating factors and no factors that are neither mitigating nor aggravating.

V. BOARD'S DETERMINATION

Under the applicable rules, the Board's responsibility is to hear the evidence and decide upon an appropriate sanction. In exercising the responsibility, the Board is obligated to consider the evidence presented and the interests of the Bar, the public and the Respondent. In determining an appropriate sanction, the Board must be consistent with sanctions imposed in other and similar cases. In its effort to be consistent, the Board looks to the ABA Standards for Imposing Lawyer Sanctions.

First, according to the ABA standards, revocation of a license is not automatic upon the entry of a criminal conviction. ABA Standard 5.11 states:

“Disbarment is generally appropriate when:

1. a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, . . . or conspiracy or solicitation of another to commit any of these offenses; or
2. a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.”

On the other hand, ABA Standard 5.12 states:

“Suspension is generally appropriate when the lawyer knowingly engages in criminal conduct which does not contain the elements listed in standard 5.11 and that seriously adversely reflect on the lawyer's fitness to practice.”

In this case, revocation of the Respondent's license seems to be the only appropriate sanction. Thus after due deliberation, the Board announced its sanction as REVOCATION, effective February 15, 2013, in accordance with the Rules of the Supreme Court of Virginia.

ACCORDINGLY, it is ORDERED that the license of Respondent, Charles Frederick Daum, to practice law in the Commonwealth of Virginia be REVOKED effective February 15, 2013.

It is further ORDERED that, as directed in the Board's Rule, 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 Revocation of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent 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 clients. Respondent shall give such notice within fourteen (14) days of the effective date of this order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of this order that such notices have been timely given and such arrangements made for the disposition of matters.

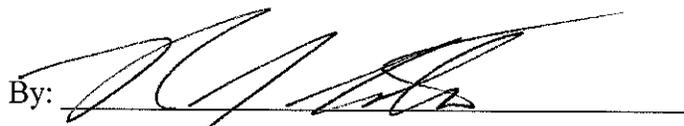
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, Section IV, Paragraph 13-9E 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 Respondent, Charles Frederick Daum, at his address of record with the Virginia State Bar, 736 5th Street, NE, Washington, DC 20002, by certified mail. The Clerk of the Disciplinary System shall also hand-deliver a copy of this order to Anastasia Jones, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 4th day of March, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Richard J. Coften, Chair Designate