

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DENNY PAT DOBBINS

VS B Docket No.: 13-000-093449

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board (“Board”) for hearing on November 16, 2012, upon a Rule to Show Cause and Order of Summary Suspension and Hearing entered on October 18, 2012 (“Show Cause Order”). A duly convened panel of the Board consisting of Paul M. Black, Samuel R. Walker, William H. Atwill, Jr., Robert W. Carter (Lay Member) and Pleasant S. Brodnax, III, First Vice Chair, presiding, heard this matter. Richard E. Slaney, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar (“VSB” or the “Bar”). Denny Pat Dobbins (“Respondent”) appeared in person. The court reporter for the proceeding, Tracey J. Stroh, Chandler and Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone 804-730-1222, was duly sworn by the Chair.

The Chair opened the Hearing by polling the Board members to ascertain whether any member had any personal or financial interest or bias which would impair, or could reasonably be perceived to impair, that member’s ability to hear the matter fairly and impartially. Each member responded that there were no such conflicts.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”), in the manner prescribed by law. The basis for the Show Cause Order was that the United States Bankruptcy Court for the Eastern District of Virginia (“Bankruptcy Court”) entered an Order on September 20, 2012, whereby the Bankruptcy Court ruled, among other things, that “the privilege of Denny P. Dobbins to practice before the United States

Bankruptcy Court for the Eastern District of Virginia is hereby Revoked.” The Bankruptcy Court’s Order also revoked the Respondent’s privilege to file pleadings and documents pursuant to the Bankruptcy Court’s Electronic Case Filing (ECF) System.¹

Part Six, §IV, ¶13-24(B) of the Rules of the Supreme Court, *Board Proceedings upon Disbarment, Revocation or Suspension in Another Jurisdiction* provides, in relevant part, that following the issuance and mailing of the Show Cause Order, the Respondent shall file, within 14 days of the mailing of the Board’s Order, a written response, and any communications or other materials, “*which shall be confined to allegations that:*

1. 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;
2. The imposition by the Board of the same discipline upon the same proof would result in a grave injustice; or
3. The same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

(emphasis added).”

The Respondent did not timely file a written response. In fact, the Respondent filed no response at all. He did, however, appear in person at the date and time noticed for hearing on the Show Cause Order.

Part Six, §IV, ¶13-24(G) of the Rules of the Supreme Court provides, in part, as follows:

Action by the Board. *If Respondent has not filed a timely written response, or does not appear at the hearing or if the Board, after a hearing, determines that the Respondent has*

¹ Respondent’s license to practice law in the Commonwealth was suspended effective July 1, 2012 in Disciplinary Board Case Nos. 10-010-082581 and 10-010-080201. Nevertheless, the Respondent continued to file cases and pleadings in the Bankruptcy Court and to continue as counsel of record after his license was suspended, prompting the issuance of a show cause order by the Bankruptcy Court. After notice and hearing, and after several of the Respondent’s bankruptcy clients testified that the Respondent never notified them of the suspension of his license, the Bankruptcy Court entered its September 20, 2012 Order revoking the Respondent’s privilege to practice in that Court.

failed to establish the contentions of the written response by clear and convincing evidence, *the Board shall impose the same discipline as was imposed in the other jurisdiction*. If the Board determines that the Respondent has established such contentions by clear and convincing evidence, the Board may dismiss the proceeding or impose a lesser discipline than was imposed in the other jurisdiction. (*emphasis added*).

Although the Respondent did appear at the hearing, he did not present any evidence or argument in support of the contentions set forth in ¶13-24(B), much less any basis by which the Board could find that the Respondent proved the mandated contentions by clear and convincing evidence. Accordingly, the Board may not dismiss or impose a lesser discipline, and the Board must impose the same discipline that was imposed by the Bankruptcy Court, that discipline being the revocation of Respondent's license to practice law in the Commonwealth of Virginia.

The Board decides this matter with some reservation.

At the hearing, the Board raised the issue as to whether a single judge of the Bankruptcy Court can constitute "another jurisdiction" within the scope of ¶13-24 (B). The Bar's position was that the order of the Bankruptcy Court was sufficient to fall within the purview of ¶13-24(B), and the Bar cited and introduced this Board's previous rulings in *In re Bridget M. Harris*, No. 01-000-1316 and *In re James D. Kilgore*, No. 02-000-2781 in support of its position. In *Harris*, the respondent was permanently barred from practice in the Bankruptcy Court, and in *Kilgore*, the respondent was barred from practice in the United States Bankruptcy Court for the Western District of Virginia. In each case, this Board imposed reciprocal discipline, and the respondents in both *Harris* and *Kilgore* had their licenses to practice law in the Commonwealth of Virginia revoked.² However, the opinions in those cases do not reflect whether the Board considered the issue as to whether a single court or ruling by a judge falls within the purview of the Rule's requirement that the discipline arise from "another jurisdiction." Neither in this case,

nor in *Harris* or *Kilgore*, was the respondent disciplined under the guidelines of a licensing authority sanctioned by another sovereign jurisdiction. Rather, they were sanctioned by a single judge, in a single court.

Before issuing its memorandum opinion in this matter, the Board elected, with one dissent, to vacate its initial ruling of revocation and request briefing and argument on the applicability to this case of (i) the Virginia Supreme Court's ruling in *In re Moseley*, 273 Va. 688, 643 S.E.2d 190 (2007) and (ii) this Board's prior ruling in *In the Matter of Mullen*, VSB Docket No. 02-000-1877, which were cited neither by the Bar nor by the Respondent. *Moseley* was decided after this Board's previous rulings in both *Harris* and *Kilgore*. In *Moseley*, the Circuit Court of Arlington County revoked an attorney's right to appear before that particular court. The attorney contended on appeal that the Arlington Circuit Court had no such authority to do so outside the statutory framework for attorney discipline. Affirming the trial court, the Supreme Court held that a court has "an inherent and constitutional authority to discipline attorneys apart from the formal statutory disciplinary procedures affecting the attorney's license to practice law." *Id.* 273 Va. at 697. However, the Supreme Court also opined that "[a] license to practice law covers the full panoply of actions an attorney can undertake from writing a will to representing a person in a controversy before a court. And while the issuance of a license to practice law carries with it certain rights for the holder of that license, the ability to practice before a particular court is a distinct and separate consideration." *Id.* 273 Va. at 695. Further, speaking in the context of Virginia circuit courts, the Supreme Court ruled that "a court's authority in the discipline of attorneys practicing before it is limited to the jurisdictional

² In *Kilgore*, the United States Bankruptcy Court for the Western District of Virginia also provided, in its order of revocation, a mechanism for the Respondent to seek reinstatement of his privilege to practice in that court.

boundaries of that court and cannot extend to other courts beyond that boundary.” Id. 273 Va. at 698.

In *Mullen*, the respondent was suspended from practicing before the United States Patent and Trademark Office (“PTO”) for a period of four years. In the course of the subsequent disciplinary proceeding before this Board, the Board -- troubled by the same issue in this case -- asked the parties to brief whether the PTO was “another jurisdiction,” especially given that the term “another jurisdiction” is not defined in the Rules. The Board cited a Connecticut Court of Appeals decision, *Statewide Grievance Committee v. Klein*, 1998 WL 563533 (Conn. Super. Ct.), *aff’d* 56 Conn. App. 903, 742 A.2d 443 (Conn. App. Ct. 1999), *petition for appeal denied*, 252 Conn. 940, 747 A.2d 6 (Conn. 2000), where reciprocal discipline was imposed upon a lawyer who had been suspended before practice before the PTO. However, the issue of whether it was “another jurisdiction” was not addressed in the Connecticut case. The Board found it significant that the PTO had adopted the Code of Professional Responsibility as the Canons and Disciplinary Rules governing its members (the same rules Virginia had in effect at the time of Mullen’s misconduct). In addition, the Board also observed that the PTO had the express regulatory authority to reprimand, suspend or revoke its members and that the Code of Federal Regulations established procedures for disciplinary investigations, the filing and service of charges of misconduct, and “a myriad of procedural rules relating to motions, hearings, appeals and even petitions for reinstatement.” *Mullen*, at p. 5.

The Bar contends that *Moseley* is inapposite, because the Bar was not a party and it stands simply for the proposition that, independent of any statutory authority, “courts of record of this Commonwealth might ... suspend or annul the license of an attorney, so far as it authorized him to practice in the particular court, but no farther.” *VSB Brief*, at p.2, *citing*

Moseley, 643 S.E.2d at 194. Because Arlington County Circuit Court is part of the Virginia court system, it is not “another jurisdiction” within the scope of the Rules. The Bar likewise contends that *Mullen* supports reciprocal discipline here. In *Mullen*, the PTO was found to be “another jurisdiction,” because it afforded opportunity for notice and hearing, had rules similar to the Virginia Rules of Professional Conduct, and recognized that another state, Connecticut, had so recognized the PTO in its attorney discipline. Here, the Bar contends that other states, including South Carolina, have recognized the Bankruptcy Courts as a separate jurisdiction for attorney discipline, and the Bankruptcy Court also provided notice and hearing and adopted Virginia rules of practice in the conduct of attorneys.

Nevertheless, in this case, we are faced with the anomaly that had the Respondent been revoked from practicing in a circuit court in the Commonwealth of Virginia, the Bar could have taken no reciprocal action -- although they could have filed separate charges of misconduct -- and the Respondent could continue to practice law and appear in other courts. However, because a federal bankruptcy court revoked the Respondent’s ability to practice in that particular court, and because reciprocal discipline is imposed due to the federal court being viewed as “another jurisdiction” within the meaning of ¶13-24, the Respondent’s license to practice law in the Commonwealth of Virginia is consequentially revoked.³

In this case, the Bar is not required to file separate charges of misconduct -- which the Bar must prove by clear and convincing evidence -- where a federal court judge has suspended or revoked the lawyer’s ability to practice in that particular district court. Rather, where reciprocal

³ At oral argument, the Bar pointed out that Paragraph 13-24(A) does speak in terms of a “final” order. Had the Respondent here chosen to appeal the Bankruptcy Court’s ruling to the United States District Court or higher, the Bar’s position, in this case, was the order would not have been final such that the Bar would have taken no immediate action until the appeals were resolved. The Respondent, however, noted no such appeal.

discipline is sought, the burden of proof shifts to the respondent, and the requirements of ¶13-24(B) set a high standard for any respondent to meet.⁴ It is also noteworthy that in *Mullen*, there was a vigorous Board dissent in which the dissenting member, after pointing out many of the same concerns the members of this Board have, stated that “I would limit the effect of “[another] jurisdiction”...to state bars who license attorneys for the practice of law.” *Mullen*, at p. 9. That no action has been taken in the ten years since *Mullen* was decided to address this issue in the Rules suggests that the dissenting view may remain just that -- a dissenting view.

At the end of the day, however, the Respondent failed to comply with ¶13-24(B) and timely raise any of the permitted issues in response to the Show Cause Order in this case. Following the provisions of ¶13-24(G), and upon consideration of the matters before this panel of the Board therefore, it is hereby ORDERED that the Respondent, Denny Pat Dobbins, be and hereby is disbarred and his license to practice law in the Commonwealth of Virginia is hereby REVOKED effective November 16, 2012.

It is FURTHER ORDERED that, as directed in the Board’s November 16, 2012 Summary Order in this matter, which is hereby reinstated, a copy of which was served on Respondent by certified mail, the Respondent must comply with the requirements of Part 6, 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 his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently

⁴ Part Six, §IV, ¶13-24(F) of the Rules of the Supreme Court provides as follows:

Burden of Proof. The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard, and the burden of producing the Record upon which the Respondent relies to support the Respondent’s contentions, and shall be limited at the hearing to proof of the specific contentions raised in any written response. Except to the extent the allegations of the written response are established, the findings in the other jurisdiction shall be conclusive of all matters for purposes of the Proceeding before the Board.

handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall give notice within fourteen (14) days of the effective date of this Order and make such arrangements as are required within forty-five (45) days of the effective date of the Order. The Respondent shall also furnish proof to the Bar within sixty (60) days 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 the revocation, he shall submit an affidavit to that effect to the Clerk. All issues concerning the adequacy of the notice and arrangements required by ¶13-29 shall be determined by the Board.

Pursuant to Part Six, § IV, ¶13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against the Respondent.

It is FURTHER ORDERED that the Clerk shall send an attested copy of this Order and Opinion to Respondent, Denny Pat Dobbins, by certified mail, at his address of record, One Guardian Court, Suite 100, Portsmouth, Virginia 23704 and shall hand deliver an attested copy of this Order and Opinion to Richard E. Slaney, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803.

ENTERED this 7th day of February 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD

Pleasant S. Brodnax

Pleasant S. Brodnax, III, First Vice-Chair