

**VIRGINIA:
BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
Arthur Charles Ermlich, Jr.
VSB Docket No. 10-022-083032**

ORDER OF SUSPENSION

On the 28th day of January, 2011, a hearing in this matter was held before a panel of the Virginia State Bar Disciplinary Board consisting of Martha JP McQuade, 2nd Vice Chair, presiding (“Chair”); William C. Boyce, Jr.; Richard J. Colten; Raighne C. Delaney; and Rev. W. Ray Inscoe (collectively, the “Board”).

Paul D. Georgiadis, Assistant Bar Counsel, represented the Virginia State Bar (“Bar”).

Arthur Charles Ermlich, Jr. (“Respondent”) was present and acted *pro se*.

Teresa L. McLean, 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 Subcommittee Determination of the Second District Committee, Section II (“Certification”), which was served upon the Respondent on August 19, 2010. On September 20, 2010, the Clerk duly noticed, by certified mail, return receipt requested, the Certification for a hearing before the Board to take place on January 28, 2010 at 9am at the State Corporation Commission, Courtroom A.

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.

In accordance with the Pre-hearing Order and pre-hearing conference held in this matter, the Chair admitted the Bar's Exhibit A, documents 1-8. The Chair also admitted the Stipulation of the parties as to the facts and as to misconduct, as the Bar's Exhibit B. Finally, the Chair admitted, without objection, the Respondent's disciplinary record as the Bar's Exhibit C.

Given that the parties had stipulated to the facts and to the misconduct, the only matter remaining for the Board was to determine the appropriate sanction. In defense, the Respondent testified under oath and introduced a letter from his employer, which the Chair admitted, without objection, as Respondent's Exhibit A.

II. STIPULATED FACTS REGARDING THE MISCONDUCT

The Board accepts the Stipulation of the parties regarding the facts and, accordingly, finds, by clear and convincing evidence, that:

1. At all relevant times, the Respondent was licensed to practice law in the Commonwealth of Virginia.
2. Following his court-appointed representation of client Antonio L. Waller at trial, Respondent noted an appeal of Waller's criminal convictions on September 11, 2009.
3. Rule 5A:12 requires a petition for appeal to be filed with the Court of Appeals within 40 days after the filing of the record with the Court.
4. On or about November 23, 2009, the Court of Appeals issued a notice to Respondent that it had received the record from the trial court.

5. Notwithstanding the requirements to file a petition for appeal in order for the appeal to proceed, Respondent failed to file a petition for appeal.
6. On January 19, 2010, the Court of Appeals dismissed the appeal for Respondent's failure to file a petition for appeal. Respondent thereafter took no steps to obtain a delayed appeal for Waller.
7. Respondent failed to advise client Antonio Waller of the dismissal of his case. Waller learned of the dismissal of his case only through a friend undertaking independent inquiry and advising him of the case dismissal.
8. Waller was forced to retain other counsel, Duncan R. St. Clair, to move for a delayed appeal.
9. On April 27, 2010, successor counsel Duncan R. St. Clair forwarded to Respondent an affidavit for a delayed appeal pursuant to §19.2-321.1 of the Code of Virginia¹ and requested Respondent to execute it and return it to him. Respondent failed to do so.

¹ § 19.2-321.1. Motion in the Court of Appeals for delayed appeal in criminal cases. —

A. Filing and content of motion. — When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the circuit court or an officer or employee thereof, an appeal in a criminal case has either (i) never been initiated; or (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal as required by law or by the Rules of the Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Court of Appeals within six months after the appeal has been dismissed or the circuit court judgment sought to be appealed has become final, whichever is later. Such motion shall identify the circuit court and the style, date, and circuit court record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment, shall give the Court of Appeals record number in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal. [emphasis added].

10. On May 17, 2010, St. Clair re-sent the affidavit needed for the delayed appeal and again requested Respondent to execute it and to make available a copy of the case file.

Notwithstanding said requests, Respondent failed to execute and return the needed affidavit until July 15, 2010.

11. Having received the attorney affidavit from Respondent, St. Clair timely filed the petition for a delayed appeal. The delayed appeal was granted and the appeal was considered on its merits by a panel.

III. STIPULATION OF MISCONDUCT

The Board accepts the Stipulation of the parties as to misconduct and, accordingly, finds, by clear and convincing evidence, that such conduct by the Respondent constitutes misconduct in violation of the following provisions of the 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 1.16 Declining Or Terminating Representation

- (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).

IV. FACTS REGARDING SANCTIONS.

In consideration of the Respondent's disciplinary record, the Respondent's testimony and other evidence and argument presented, the Board finds the following additional facts by clear and convincing evidence:

1. The Respondent has a lengthy disciplinary record, as follows:
 - a) Dismissal with terms, effective 6/20/97.
 - b) Public Reprimand with terms, effective 1/25/01.
 - c) Public Reprimand with terms, effective 1/25/01.
 - d) Thirty Day Suspension, effective 9/28/01.
 - e) Private Admonition with terms, effective 5/7/04.
 - f) Five Day Suspension with terms, effective 1/28/11.

2. The Respondent presents himself as honest, accepting of personal responsibility for his misconduct and, from statements from his employer and from a local judge, has shown himself capable of good quality work on behalf of his clientele, which consists mostly of indigent criminal defense and also domestic relations work. The Respondent, however, also presents as having no clear understanding of how he might effectively address the issues that gave rise to his prior disciplinary record and the matters now before this Board so that they will not happen again.

V. **BOARD'S DETERMINATION**

Given the lengthy disciplinary record, and Respondent's own presentation, the Board could not accept the Bar's recommendation of a thirty day suspension. Thus, after due deliberation, the Board announced its sanction as SUSPENSION for six (6) months, effective January 28, 2011.

VI. **ORDERS**

ACCORDINGLY, it is ORDERED that the Respondent, Arthur Charles Ermlich, Jr. be, and he hereby is, suspended from the practice of law for a period of six (6) months, effective January 28, 2011.

It is further ORDERED that, the 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 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 client. 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 suspension. 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 Arthur Charles Ermlich, Jr., at his address of record with the Virginia State Bar, Thomas Law Group, P.C., Suite 127, 4176 South Plaza Trail, Virginia Beach, VA 23452, by certified mail, return receipt requested. The Clerk of the Disciplinary System shall also hand deliver a copy of this order to Paul D. Georgiadis, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 7th day of February, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD



MARTHA JP McQUADE, 2nd Vice Chair, Presiding