

VIRGINIA:

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

**IN THE MATTER OF
ARTHUR CHARLES ERMILICH, JR.**

VSB DOCKET NO.: 12-021-090883

ORDER OF SUSPENSION

THIS MATTER came to be heard on May 17, 2013, before a panel of the Disciplinary Board (the "Board") consisting of J. Casey Forrester, Acting Chair, William C. Boyce, Jr., Timothy A. Coyle, Tony H. Pham, and Jody D. Katz, lay member. The Virginia State Bar was represented by M. Brent Saunders, Assistant Bar Counsel. The Respondent, Arthur Charles Ermlich, Jr., appeared in person and was not represented by counsel. The Chair polled the members of the Board as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which each member, including the Acting Chair, responded in the negative. Tracy J. Stroh, a registered professional court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the Subcommittee Determination for Certification by the Second District Subcommittee of the Virginia State Bar.

By agreement, the Bar's Exhibit A, Tabs 1-6 inclusive, was admitted into evidence.

By agreement, the following Stipulations of Fact and Stipulations of Misconduct (the "Stipulations") were admitted into the record as Bar Exhibit B:

I. STIPULATIONS OF FACT

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

2. On August 20, 2009, Kasie Lynn Snyder ("Snyder") was convicted of disorderly conduct and attempted larceny in the Virginia Beach General District Court. Snyder appealed her convictions to the Virginia Beach Circuit Court (CR09-3824-00; -01). On March 16, 2010, she was acquitted of the attempted larceny charge and convicted of the disorderly conduct charge for which she was fined \$250.00.

3. On April 12, 2010, Snyder filed a timely *pro se* notice of appeal of the disorderly conduct conviction.

4. By order entered on April 21, 2010, Respondent was appointed to represent Snyder on appeal.

5. On or about June 15, 2010, the Virginia Court of Appeals issued a notice to Respondent that it had received the record from the trial court and that the 40-day time period for filing the petition for appeal in Snyder's case had commenced on June 15, 2010. Respondent failed to file a petition for appeal by the July 26, 2010 deadline as required by Rule 5A:12 of the Rules of Court. As a result, the appeal was dismissed by order entered by the Virginia Court of Appeals on August 17, 2010, a copy of which was sent to Respondent.

6. Although following the dismissal of the appeal Respondent and Snyder communicated on several occasions, Respondent, with knowledge of the dismissal of Snyder's appeal, did not advise Snyder of the dismissal or of her right to pursue a delayed appeal under §19.2-321.1 of the Code of Virginia, 1950, as amended. Instead, Respondent concealed from Snyder the fact of the dismissal by making statements to her that caused her to believe the appeal

remained pending, including during discussions in September 2010 when Respondent discussed the merits of the appeal as if it remained pending, and in an email Respondent sent to Snyder on January 27, 2011, in which he stated "I will try to incorporate your ideas into your appeal. . . The next step is to complete a brief which I will have you review."

7. On January 28, 2011, the Disciplinary Board suspended Respondent's law license for a period of six months upon finding Respondent had committed misconduct in an unrelated case. (VSB Docket No. 10-022-083032). By Summary Order issued on January 28, 2011 and Memorandum Order issued on February 7, 2011, the Disciplinary Board ordered Respondent to comply with his obligations under Part 6, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia, to, *inter alia*, make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients.

8. Following the suspension of his law license, Respondent did not make appropriate arrangements for the further handling of Snyder's appeal. He did not apprise the members of his law firm of the status of Snyder's appeal. Instead, he misled the managing partner at his law firm, Paul E. Thomas ("Thomas"), and others at his firm, into believing that Snyder's appeal was still pending. After independently learning in mid to late February 2011 that the appeal had actually been dismissed in August 2010, Thomas, by letter dated March 8, 2011, notified Judge Frederick B. Lowe of the Virginia Beach Circuit Court of the situation and requested that a new attorney be appointed to further represent Snyder.

9. By order entered on March 23, 2011, the complainant in this case, Andrew G. Wiggin ("Wiggin"), was appointed "to assess and pursue remedy for a delayed appeal if determined appropriate, on behalf of [Snyder]." Wiggin subsequently ascertained that no further review was available since: i) February 17, 2011 was the deadline for the filing of a motion for

leave to pursue a delayed appeal under §19.2-321.1 of the Code of Virginia, 1950, as amended, and no such motion had been filed; and ii) Snyder was not eligible to pursue *habeas corpus* relief as she had not received any jail sentence.

10. On February 24, 2012, a copy of the complaint in this case was mailed to Respondent at his address of record with the Bar along with a letter demanding that Respondent file an answer to the complaint within 21 days of the date of the letter. Respondent never filed an answer.

II. STIPULATIONS OF MISCONDUCT

The parties stipulated 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.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

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

By agreement, a Joint Recommendation of Sanction was admitted into evidence as Bar Exhibit C. Without objection, certification of Respondent's disciplinary record was admitted into evidence as Bar Exhibit D. The Bar rested. The Respondent testified in support of the Joint Recommendation of Sanction. Bar counsel then argued in favor of the Board accepting the Joint Recommendation of Sanction.

The Board recessed to deliberate. After due deliberation, the Board reconvened and the Acting Chair stated that upon consideration of the evidence, including the Stipulations of Fact and Stipulations of Misconduct, the Board finds that violations of Rules 1.3 (a), 1.4 (a) and (b), 3.4 (d), 8.1 (c) and 8.4 (c) of the Rules of Professional Conduct have been proven by clear and convincing evidence.

With respect to the sanction to be imposed, the Board rejected the Joint Recommendation of an 18-month suspension, with agreed terms. Instead, it was determined that the appropriate sanction for the stipulated Misconduct is a three (3) year suspension. The Board was especially troubled by the Respondent's lengthy disciplinary record and his admitted dishonesty and false statements to both his client and law firm.

Accordingly, it is ORDERED that the following sanction be imposed on the Respondent: the license of Arthur Charles Ermlich, Jr. to practice law in the Commonwealth of Virginia, be, and it is hereby, SUSPENDED for a period of three (3) years, effective May 17, 2013.

It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 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 clients. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, 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 the suspension 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.

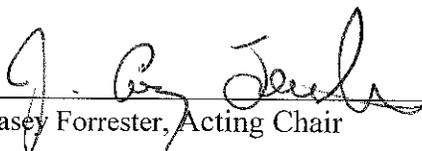
It is further ORDERED that pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

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, being Thomas Law Group, P.C., 4176 South Plaza Trail, Suite 127, Virginia Beach, VA 23452, by certified mail, and by regular mail to M. Brent Saunders, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 24th day of May, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD



J. Casey Forrester, Acting Chair