

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ARTHUR CHARLES ERMLICH, JR.

VSB Docket No. 10-022-083391

MEMORANDUM ORDER
(5 Day Suspension with Terms)

This matter came on to be heard on the 21st day of January, 2011, by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of John C. Forrester, Randall G. Johnson, Michael S. Mulkey, Max Beard, lay member, and Paul M. Black, Acting Chair presiding.

Paul D. Georgiadis, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent appeared *pro se*.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel.

The Acting Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect any member's ability to be impartial in these matters. All members verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, a majority of the Panel accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.
2. In August, 2009, Respondent was contacted by his former law partner, Theresa Berry, who requested Respondent to locate, obtain, and make available to Berry the closed file of former client Bernest Ellis. While with Respondent's firm, Berry had represented Mr. Ellis on a petition for a writ of habeas corpus. Former client Ellis was requesting his file, which was in fact in the care, custody, and control of Respondent.
3. In response to the request for the Ellis file, Respondent advised Berry in September, 2009, that the file was stored off-site, that he would have it retrieved, that the facility would charge a \$25.00 retrieval fee, and that he would contact Berry when it was available for her to pick it up and reimburse him for the retrieval fee.
4. In spite of leaving several follow-up voice mails to Respondent, Berry did not receive any further information on her file request.
5. On November 20, 2009, Berry wrote to Respondent confirming her prior requests for the file, renewing said requests, and restating the continued need and urgency for the file.
6. Notwithstanding Berry's further requests of the November 20, 2009 letter, Respondent has taken no direct action to provide the file as requested by former client Bernest Ellis.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Arthur Charles Ermlich, Jr. constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.16 Declining Or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that

- 1) Effective January 28, 2011, the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of 5 days, with terms.

- 2) Within 60 days of January 28, 2011, (March 29, 2011), Respondent shall obtain and provide to Bernest Ellis a copy of his complete file and provide written proof thereof to Assistant Bar Counsel Georgiadis.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met within said 60 day period, ending March 29, 2011, the Board shall impose a 90 day suspension of Respondent's license to practice law in the Commonwealth of Virginia subject to a show cause hearing pursuant to Part Six, Section IV, Paragraph 13- 18.O. of the Rules of the Supreme Court of Virginia.

It is further ORDERED that 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 his license to practice law in the Commonwealth of Virginia, to all clients for whom he 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 his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 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 the suspension, he 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 13-29 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 costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

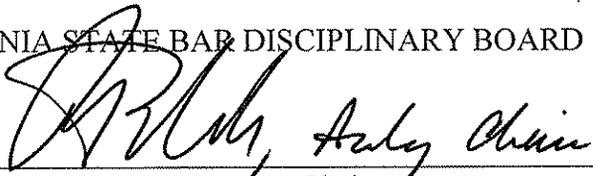
It is further ORDERED that the Clerk of the Disciplinary System shall send a certified

copy of this order to Arthur Charles Ermlich, Jr. at his last address of record with the Virginia State Bar, Thomas Law Group, P.C., Suite 127, 4176 South Plaza Trail, Virginia Beach, Virginia 23452, and a copy hand-delivered to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Teresa L. McLean, Chanlder & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: 1/24/11

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Paul M. Black, Acting Chair