

VIRGINIA:

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

**IN THE MATTER OF
REUBEN VOLL GREENE**

VS B Docket Nos. **11-033-086842
14-000-096410**

ORDER OF SUSPENSION

This matter came to be heard on August, 23, 2013, pursuant to a Notice of Hearing on the Subcommittee Determination (Certification), as to VSB Docket No. 11-033-086842, and Notice of Show Cause Hearing on Failure to Comply With Terms, as to VSB Docket No. 14-000-096410, properly issued pursuant to Part 6, Section IV, Paragraph 13-18.0, of the Rules of the Supreme Court of Virginia, alleging a failure to comply with terms. The matter was heard before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Whitney G. Saunders, Chair, presiding; Bretta M. Z. Lewis, Thomas R. Scott, Jr., Samuel R. Walker; and Lay Member Anderson W. Douthat. The Virginia State Bar was represented by Edward L. Davis, Bar Counsel. Reuben Voll Greene appeared *pro se*. Court Reporter, Roy G. Wood, RPR, Capitol Reporting, Inc., P. O. Box 959, Mechanicsville, VA 23111, (804) 788-4917, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board as to whether any of them was aware of any personal or financial interest which would preclude any of them from fairly hearing the matter, to which inquiry each member, including the Chair, responded in the negative.

On the morning of the hearing, the Board was presented with an Agreed Disposition, pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.H, which included Stipulations of Fact agreed to by Bar Counsel and the Respondent.

I. Stipulations of Fact

1. During all times relevant hereto, the Respondent, Reuben Voll Greene, has been an

attorney licensed to practice law in the Commonwealth of Virginia except where indicated below.

As to VSB Docket No. 11-033-086842:

2. On September 7, 2010, Tammy Sauls hired Mr. Greene to represent her son, Sherrod Boshier, on two felony indictments for possession with intent to distribute heroin.
3. At that time and throughout the matter Mr. Boshier was held at the Richmond City Jail without bond.
4. On September 7, 2010, Ms. Sauls paid Mr. Greene \$1500 toward a total fee of \$2500. She paid another \$500 on September 17, 2010, \$200 more on October 7, 2010, and \$200 again on January 7, 2011, for a total of \$2400.
5. Mr. Greene conducted formal discovery, met with the prosecuting attorney, and otherwise prepared the case for trial without a jury.
6. Following a series of continuances, trial was scheduled for Thursday, January 27, 2011. The order scheduling the trial was entered on January 7, 2011.

Mr. Greene would add that the matter was set for trial without a jury on January 7, 2011. Mr. Greene had prepared client for trial on that date and Mr. Greene appeared on that date prepared to try the case. When the case was called, the Court informed the parties for the first time that the matter needed to be continued on the Court's motion because the Court had a scheduling issue. Mr. Greene proposed that the case be moved to another courtroom that morning for trial or that the matter might be placed on that afternoon's docket. After consideration, the Court declined both of these suggestions and that matter was continued.

7. As of January 7, 2011, Mr. Greene was already scheduled to appear before the Virginia State Bar Disciplinary Board on disciplinary charges beginning Thursday, January 27 and concluding on Friday, January 28, 2011.

Mr. Greene would say that as of January 7, 2011, he was aware of his trial before the Disciplinary Board on January 27, 2011, but that the matter was in negotiation between his counsel and the bar, that he expected the case to be resolved, and that he did not know at the time that his license would be suspended effective January 27, 2011.

8. On January 13, 2011, the Disciplinary Board approved an agreed disposition between Mr. Greene, his counsel, and the Virginia State Bar suspending Mr. Greene's license to practice law for 60 days, effective January 27, 2011.
9. The suspension, to which Mr. Greene agreed, rendered him unable to represent Mr. Boshier on January 27, 2011, the date that Mr. Boshier's trial was scheduled to begin.
10. Mr. Greene did not inform Mr. Boshier about the upcoming suspension of his law license until the night before trial, January 26, 2011, during a visit at the jail. The visit was between 7:58 and 9:20 pm, according to the jail records.

The bar concedes that Mr. Green's notification of his client about the suspension of his license

effective the following day, the day of his client's trial, was not a per se violation of the Rules of Professional Conduct; that the Rules of Court require that clients be notified within 14 days of the effective date of a suspension, and that despite his notification, the client had time to engage successor counsel who obtained a favorable result for the client after the court continued the case from January 27 to February 4, 2011.

11. Mr. Greene did not inform Ms. Sauls about the upcoming suspension until the afternoon before trial, January 26, 2011, between 5:30 and 6:00 pm. Although he saw Ms. Sauls in court earlier the same day, Mr. Greene did not mention the pending suspension of his law license until later.

Mr. Greene would say that he did not notify Ms. Sauls about his upcoming suspension during the unrelated trial on January 26, 2011, because he was focused on that trial. He did notify her about it later the same day, however, as indicated above.

12. During his discussions with his client and Ms. Sauls, Mr. Greene suggested three options: hire another attorney, ask for appointed counsel, or wait for Greene's suspension to end.

13. Her son having been jailed without bond for months, and the case having been continued three times already, Ms. Sauls did not want to wait any longer. Nor did Ms. Sauls want a court-appointed lawyer when she had already paid for private counsel. She and Mr. Boshier decided to hire another attorney who substituted into the case and finished it in Mr. Greene's stead.

As indicated above, the client had enough time to hire successor counsel who concluded the case to his satisfaction.

14. Mr. Greene having not finished the case, Ms. Sauls demanded a refund, but Mr. Greene never refunded any of the \$2400 paid in advance.

Mrs. Sauls never stated any amount of refund she believed she was due nor the impact of the work done by Mr. Greene in preparing her son's the case for trial.

15. Ms. Sauls alleged that she scheduled several meetings with Mr. Greene to obtain her refund but that he cancelled all of them. Subsequently, she complained to the Virginia State Bar.

Mr. Greene denies that he canceled appointments for Mrs. Sauls.

16. In response to the bar complaint, Mr. Greene explained that \$500 of the \$2400 paid was to defend Boshier on an unrelated assault charge in the Henrico Circuit Court, and that he used the \$500 for this purpose with Mr. Boshier's consent.

17. Ms. Sauls alleged that this was the first that she had heard of this, that her payments were for the felonies pending in Richmond, not the assault in Henrico, and that it wasn't until October 2010 (after she had already paid \$2000) that she talked to Greene about representing her son in the Henrico case.

Mr. Greene would add that, despite Ms. Sauls' denials, her son has admitted under oath that on or about 9/17/10, he did in fact ask Mr. Greene to represent him in the Henrico case during a meeting at the Richmond City Jail and that he agreed that his mother would pay the \$500 fee for that case also.

18. Similarly the client, Mr. Boshier, denies telling Greene to apply \$500 to the Henrico case.

Mr. Greene would again note that Boshier has admitted under oath that on or about 9/17/10, he did in fact ask Mr. Greene to represent him in the Henrico case during a meeting at the Richmond City Jail and that he agreed that his mother would pay the \$500 fee for that case also because he was incarcerated.

19. With respect to the rest of the money that Ms. Sauls paid to Mr. Greene in advance for the Richmond charges, Greene claimed that the remaining \$1900 had been earned by him through the work he had done on the Richmond case up to the date of his law license suspension or by January 7, 2011.

The bar agrees that the client and Ms. Sauls did in fact hire Mr. Greene to represent the client on an assault and battery charge in the Henrico County General District Court for a fee of \$500. Mr. Greene concluded that case to the client's satisfaction (12-month suspended sentence) on November 16, 2010. Therefore, between the two sets of cases, the client owed Mr. Greene a total of \$3,000. Terms of payment, however, were not reduced to writing, and Mr. Greene understood that the payments received of \$2400 were toward the fees owed in both sets of cases. Secondly, in the Richmond cases, Mr. Greene did in fact conduct discovery, review surveillance tapes, meet with his client and the Commonwealth on multiple occasions and work the case to conclusion except for the trial that would have taken no more than one or two hours, in his estimation. Therefore, in light of these circumstances, the bar concedes Mr. Greene likely earned the fees paid in advance on a quantum meruit basis. Mr. Greene also concedes, however, that he did not maintain required trust account subsidiary ledgers or records that would have corroborated his explanation for the use of the client's fees.

20. Mr. Greene provided copies of his trust account deposit slips that reflect the deposits of fees paid to him by Ms. Sauls as indicated in the receipts that she provided to the bar.

21. Mr. Greene had no other escrow account records to provide to the bar, however, in response to a subpoena duces tecum. Specifically, he said that he did not know if he had a subsidiary ledger for this client file. When asked for his records reflecting his disbursements for fees earned on the Richmond case, Mr. Greene replied that if he had those records, he would provide them, but he wasn't sure if he was keeping those records at the time. He also said that he was pretty sure that he could provide the bank statements.

22. Mr. Greene, however, never provided the bar with any subsidiary ledgers, trust account disbursement records, or bank statements.

Mr. Greene concedes that he did not have the required trust account records to furnish to the bar, a matter for which he was already sanctioned by the Disciplinary Board in the January, 2011, disposition. Mr. Greene also concedes that he did not obtain copies of his bank statements to furnish to the bar in response to the subpoena duces tecum, as required by Rule 8.1(c) of the Rules of Professional Conduct.

23. The bar, therefore, obtained copies of the pertinent trust account bank statements on its own from the bank directly which verified the deposit of Ms. Sauls' fees on the dates indicated.

24. The bank statements also showed, however, that the same date that he deposited Ms. Sauls'

first payment of \$1,500 (September 10, 2010), Mr. Greene withdrew \$5,650, leaving a balance of only \$211.71 in the trust account although he had just been hired by Ms. Sauls three days before on September 7, 2010.

Mr. Greene acknowledges that as of September 10, 2010, he had not yet completed the discovery and other case preparation for which he was paid in advance.

However, Mr. Greene would add that records indicate that on September 7, 2010, he prepared and mailed for filing both his general discovery motion and his motion for exculpatory evidence. Records also indicate that on September 10, 2010, Mr. Greene prepared and faxed for filing his motion and proposed order for substitution of counsel. Mr. Greene's cover letter bears a clerk's stamp of filing of Sept. 10, 2010.

25. When Mr. Greene deposited her next payment of \$500 on September 17, 2010, the resulting balance in the account was \$1,711.71, although he had been paid \$2,000 at the time.

26. Mr. Greene provided no records of any kind reflecting the receipt and disbursement of the fees paid by Ms. Sauls other than the deposit slips referenced above in (20). There were no records reflecting disposition of the funds or the purported application of \$500 for the Henrico case.

As to VSB Docket No. 14-000-096410:

27. The quarterly reports furnished by the Respondent's Certified Public Accountant do not show the required periodic reconciliations or trial balances as required by the terms of the underlying disposition. Further, one client account has negative balances, and four other withdrawals from the trust account are under the heading "Clearing Acet" and are not identified with any client. By letter to Mr. Greene's counsel on two occasions, the bar asked for an explanation from Mr. Greene or his CPA, but none was forthcoming. Mr. Greene would say that he discussed this with his CPA who said that the required reconciliations were there.

II. MISCONDUCT

As to VSB Docket No. 11-033-086842, the Board found by clear and convincing evidence violations of the rules set forth below and as the parties stated in the Agreed Disposition that such conduct by Respondent, set out below, constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

"In failing to account to his client the disposition of the funds held in trust; in applying \$500 of the advanced fee for payment in another case with no supporting records; in failing to maintain the required client subsidiary ledgers, receipts and disbursement journals, proof of reconciliations or bank statements and failing to turn any bank records over to the bar in response to subpoena; in being out of trust by nearly \$1,300 three days after he was hired and after he had been paid a partial advance fee of \$1,500, the Respondent was in violation of the following Rules of Professional Conduct[, notwithstanding that, in the Agreed Disposition] the Respondent indicated that the disciplinary charges for which his law license was suspended on January 27, 2011, included the same failures to maintain required attorney trust account records alleged in the Subcommittee Determination, albeit for a different client[.]"

1.15 Safekeeping Property

(c) A lawyer shall:

- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;
- (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive

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[.]

As to VSB Docket No. 14-000-096410, the Board found by clear and convincing evidence that the Respondent had not shown compliance with the prior order.

III. DISPOSITION

After receiving further evidence of aggravation and mitigation from the Bar and the Respondent, and the Respondent's prior Disciplinary Record consisting of four matters, the Board recessed to deliberate whether to impose the sanction agreed to in the Agreed Disposition, or some other greater or lesser sanction. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced that it had agreed to impose the disposition set forth in the Agreed Disposition, as follows:

The Respondent's license to practice law in the Commonwealth of Virginia is suspended for one year, with Terms, effective August 23, 2013. The terms with which the Respondent must comply are as follows, according to the Agreed Disposition:

1. Within ninety (90) days of his return to the practice of law, the Respondent will schedule an appointment with Virginia State Bar Chief Investigator Cam Moffatt to review the trust account records of the Respondent's law practice to ascertain whether the Respondent is handling client money as required by Rule 1.15 of the Rules of Professional Conduct, including but not limited to:

- Maintaining subsidiary ledgers for all clients
- Showing proof of periodic reconciliations and trial balances of his attorney trust account
- Maintaining a cash receipts and cash disbursements journal for his attorney trust account

2. The Respondent will schedule three (3) more appointments with Chief Investigator Moffatt at ninety (90) day intervals, no exceptions.

3. The scope and purpose of the inspections is to insure compliance with Rule 1.15 of the Rules of Professional Conduct as set forth above in (1).

4. The Respondent shall be in full compliance with Rule 1.15 as set forth above in (1) when he meets with Chief Investigator Moffatt, no exceptions.

5. The Respondent is placed on disciplinary probation for a period of one year from the date that the Virginia State Bar Disciplinary Board enters an Order imposing a sanction in these matters. The Respondent will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such one-year probationary period. Any final determination of misconduct by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of the alternate sanction, the Revocation of his license to practice law in the Commonwealth of Virginia. The alternate sanction will not be imposed while the Respondent is appealing any adverse decision that might result in a probation violation. For clarification, a mere complaint, or a subcommittee finding that the Respondent may appeal, for example, shall not constitute a violation of this term. Only a final determination of misconduct by any District Committee of the Virginia State Bar, the Disciplinary Board or a three-judge circuit court to have occurred during the

one-year probationary period will be deemed to be a violation of this term.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall revoke his license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.0.

In addition to the terms included in the Agreed Disposition, the Board requires, as an additional term, that the Respondent complete an accounting or office management class satisfactory to the Bar, in addition to any required Continuing Legal Education hours, to be completed prior to the end of his suspension, and certified to Bar Counsel within 30 days, in VSB Docket No. 14-000-096410.

It is further ORDERED that, as directed in the Board's August 23, 2013, Summary Order in this matter, 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 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 pursuant to Part Six, §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 at his address of record with the Virginia State Bar, being 217 West Broad Street, Richmond, Virginia 23220, by certified mail, and by regular mail to Edward L. Davis, Bar

Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 10th day of September, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Whitney G. Saunders, 2nd Vice Chair