

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
PHILLIP STONE GRIFFIN, II

VSB Docket Nos. 09-070-078724, 09-070-077786, 09-070-076886, 09-070-079663, 10-070-083334, and 10-070-083923

MEMORANDUM ORDER

This matter came on to be heard on August 14, 2012 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 Rev. W. Ray Inscoe, lay member, Sandra L. Havrilak, attorney member, William M. Moffet, attorney member, and Tyler E. Williams, III, 2nd Vice Chair, presiding (the Panel). A fifth panel member was not available; however, upon agreement by all the parties, the matter proceeded with four panel members.

Alfred L. Carr, Assistant Bar Counsel, appeared as Counsel for the Virginia State Bar, and Respondent Phillip Stone Griffin, II, appeared with Counsel, Michael L. Rigsby via the telephone conference. Jennifer L. Hairfield, Shorthand Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, was the court reporter for the hearing and transcribed the proceedings (804) 730-1222.

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 2nd Vice 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 his or her ability to be impartial in these matters. Each member, including the 2nd Vice Chair, verified they had no such interests.

The Panel heard argument from counsel, reviewed Respondent's prior disciplinary record with the Bar, as well as mitigating factors recognized by the Supreme Court of Virginia, and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel accepted a modified Agreed Disposition.

I. FINDINGS OF FACT

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

VS B Docket No. 09-070-078724

1. At all times relevant hereto, Phillip Stone Griffin, II, (hereinafter "the Respondent"), was licensed to practice law in the Commonwealth of Virginia.
2. At the time in question the Respondent represented Mr. George Fisher in a collection matter against an individual named Laura Johnson. By letter dated May 13, 2008, the Respondent notified Laura E. Johnson, (hereinafter "the Complainant"), that she owed Mr. Fisher \$3,579.98 plus 6% interest beginning accrual on February 25, 2008.
3. Upon receipt of the Respondent's letter, the Complainant contacted the Respondent by telephone and informed him she was not the Laura Johnson the Respondent and Mr. Fisher were looking for, and presented sufficient information to the Respondent such that he agreed she was not the correct party. He thereafter informed her that he would not contact her again regarding the matter.
4. Notwithstanding his assurances, on February 20, 2009, the Respondent served on the Complainant a summons requiring her presence in the Shenandoah County General District Court in Woodstock, Virginia on March 23, 2009 to answer debtor's interrogatories.

5. On March 16, 2009, the Complainant faxed a letter to the Respondent asking for an explanation of the events given the fact that she was not the Laura Johnson sought by the Respondent's client. The letter also references a telephone call made to the Respondent's office the week prior to which she had received no response. The Respondent failed to respond to the letter.

6. Having heard nothing from the Respondent, on March 23, 2009 the Complainant traveled from her home in Fredericksburg to court in Woodstock. Her court appearance necessitated the taking of vacation from her employment as a law enforcement officer and the hiring of a child care provider.

7. The Respondent was not present in court for the proceeding; instead he had agreed to pay Paul Neal, Jr., Esquire to appear for him. The Complainant satisfied the Court and Mr. Neal that hers was a case of mistaken identity. She represented to the judge that she had spoken with the Respondent previously regarding the matter and that the Respondent had promised to "take care of it." The Court confirmed that the Laura Johnson summoned by the Respondent was not the Laura Johnson against whom the judgment was obtained.

8. The complaint in this matter was received by the Virginia State Bar on March 9, 2009. A letter containing the complaint was sent from the Virginia State Bar to the Respondent on March 18, 2009. The letter included the following language:

Pursuant to Rule of Professional Conduct 8.1 (c), you have a duty to comply with the bar's lawful demands for information not protected By Rule 1.6. As part of my preliminary investigation of the complaint, I demand that you submit a written answer to the complaint within 21 days of the date of this letter. Failure to respond in a timely manner to this and other lawful demands from the bar for information about the complaint may result in the imposition of disciplinary sanctions.

9. The Respondent's response to the bar complaint was due no later than April 8, 2009. The Respondent failed to respond to the bar complaint.

10. An interview of the Respondent regarding this matter was conducted by Virginia State Bar Investigator Donald Lange on December 10, 2010. The Respondent admitted to Mr. Lange that he had failed to provide a response to the bar complaint. His reason for failing to respond was that the Complainant was not his client.

VSB Docket No. 09-070-076886

1. At all relevant times hereto, Respondent Phillip Stone Griffin, II, (hereinafter "Respondent") was a duly licensed attorney in the state of Virginia.

2. On or about January 11, 2008, Complainant Eric Schachinger, (hereinafter "Complainant"), hired Respondent for legal representation in a divorce, (Eric Schachinger v. Kelli Schachinger,) under the jurisdiction of the Colorado state court system.

3. In March of 2008, Complainant paid Respondent an advance legal fee of \$5,000 for the legal services concerning the divorce; however, in June of 2008, the divorce concluded in Colorado without the use of Respondent's legal services.

4. Complainant requested a full refund. In June of 2009, Respondent made a partial refunded of \$1,954.72 to Complainant.

5. Respondent states he earned \$3,042.28 in legal fees for worked performed in Virginia on the Colorado divorce.

6. Respondent's detailed billing invoices show that he charged Complainant .25 of an hour or twenty-five dollars for retrieving voicemails, even though he did not return Complainant's phone call.

7. In the Fall of 2007, Complainant's father-in-law, a CEO of a local bank had accessed Complainant's credit reports without his authorization and provided said credit reports to his daughter, Kelli Schachinger, during the pendency of the Schachinger's Colorado divorce. Complainant asked Respondent to assist in settling this matter with the bank and his father-in-law.

8. Respondent did not execute a new retainer agreement with Complainant that communicated the basis or rate of the fee concerning the new legal matter.

9. On February 7, 2008, Respondent sent the bank a debt collection letter that demanded a \$20,000 payment to Complainant and \$7,500 in attorney's fees to Respondent to resolve the unauthorized access of the credit reports.

10. In a letter dated February 28, 2008, Brad Weiss, Esq., attorney for the father-in-law, responded to Respondent's debt collection letter. Mr. Weiss' letter disputed his client's alleged debt to Complainant and requested documentation of legal services performed to support \$7,500 in attorney's fees.

11. Respondent did not respond to Mr. Weiss' request for documentation to support his demand letter.

12. In a letter dated March 12, 2008, Covington and Burling contacted Respondent and asked for documentation or information regarding the credit report incident. Respondent did not respond.

13. On March 14, 2008, Respondent's paralegal sent Complainant an email that outlined the settlement proposal from the bank and his father-in-law - \$4,000 to Complainant and \$2,000 in attorney's fees to Respondent.

14. On March 17, 2008, by email, Complainant responded to Respondent to inform him that he declined the settlement offer, instructed Respondent to ask for a larger amount, and asked Respondent for his legal opinion since he had not been able to speak to him about the settlement offer.

15. On June 26, 2008, Mr. Weiss sent Respondent a letter stating that due to the lack of response from him, that it was Mr. Weiss' understanding that Complainant had accepted the settlement offer and enclosed two checks -- \$4,000 check made payable to Complainant and \$2,000 made payable to Respondent for attorney's fees.

16. Respondent informed Complainant of the \$4,000 check but did not mention the \$2,000 check made payable to him.

17. Respondent did not deposit the checks into his IOLTA, but placed the checks in the file.

18. Complainant fired Respondent in May of 2009 and hired subsequent counsel.

VSB Docket No. 09-070-079663

1. At all relevant times hereto, Respondent Phillip Stone Griffin, II, (hereinafter "Respondent") was a duly licensed attorney in the state of Virginia.

2. On October 3, 2008, W & L Construction hired Respondent to prosecute a debt collection matter against one of its customers.

3. On October 22, 2008, Respondent filed a pleading titled "Civil Action/Motion for Judgment" in Warren County Circuit Court.

4. On December 15, 2008, the Court sustained the opposing party's Demurrer and granted Respondent leave to amend his Motion for Judgment.

5. The court, *ore tenus*, directed Respondent to draft and submit an order to the court for entry that granted Respondent leave to amend his motion for judgment. Respondent did not submit the order as instructed by the court.

6. On January 12, 2009, however, Respondent filed an Amended Motion for Judgment even though he had not submitted an order for entry that granted him leave to file the amended pleading.

7. On January 19, 2009, opposing counsel, Mr. Litten, notified Respondent that unless and until he filed the order as directed by the court on December 15, 2008, he could not file the amended pleading in the case.

8. Respondent mailed Mr. Litten's letter to Complainant without any comment as to the status of the case or a legal explanation.

9. On February 2, 2009, W & L Construction contacted Respondent to inquire about the content of Mr. Litten's January 19, 2009 letter and requested an update on the status of the case. Respondent did not respond to his client's request for an update on the status of the case or provide a legal explanation.

10. On February 3, 2009, the court notified Respondent and Mr. Litten that it agreed with Mr. Litten and directed Respondent to comply with the December 15, 2008, *ore tenus* instructions within ten days or Mr. Litten could file a motion and order to dismiss the case. Respondent did not comply with the court's instruction to the order within ten days.

11. On February 20, 2009, the court dismissed the case because Respondent did not file the order as directed by the court's February 3, 2009 memorandum delivered to Mr. Litten and Respondent.

12. On May 26, 2009, the Bar notified Respondent of this instant complaint and demanded a written response within twenty-one days. Respondent did not respond.

13. On November 5, 2009, the Bar forwarded case to the district committee for more investigation because Respondent did not respond to the May 26, 2009 demand letter from the Bar.

14. On February 8, 2010, the Bar administratively suspended Respondent because he did not comply with a subpoena *duces tecum* served on November 9, 2009.

VSB Docket No. 10-070-083334

1. At all relevant times hereto, Respondent Phillip Stone Griffin, II, (hereinafter "Respondent"), was a duly licensed attorney in the state of Virginia.

2. The Bar suspended Respondent's license on February 8, 2010. The Bar reinstated his license on February 17, 2010.

3. Respondent drafted the pleading for the second lawsuit but he could not file it in court due to the suspension of his bar license.

4. Respondent had his client sign the pleading; however, he directed his legal secretary to sign the certificate of service and file it in court. His legal secretary filed the pleading with a cover letter written on Respondent's law firm letterhead as directed by Respondent.

5. On April 19, 2010, the Arlington County Circuit Court dismissed Complainant's lawsuit with prejudice and sanctioned Respondent \$6,800 for attorney's fees.

6. The court held that Respondent's pleading was a nullity, that filing an invalid pleading is a violation of Va. Code sec. 8.01-271.1, and based on Mr. Griffin's admissions in

open court that the mailing certificate was signed by his secretary, the pleading was not a *pro se* pleading but one filed by Respondent.

7. The court also held that Respondent showed a lack of candor toward the court when he said he was out of the area, but was only in Washington, D.C.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Phillip Stone Griffin, II constitutes misconduct in violation of the following Rules of Professional Conduct:

VSB Docket No. 09-070-078724

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

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[;]

VS B Docket No. 09-070-076886

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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.5 Fees

- (b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

VS B Docket No. 09-070-079663

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.

VSB Docket No. 10-070-083334

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(i) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(a) A lawyer, law firm or professional corporation shall not employ in any capacity a lawyer whose license has been suspended or revoked for professional misconduct, during such period of suspension or revocation, if the disciplined lawyer was associated with such lawyer, law firm, or professional corporation at any time on or after the date of the acts which resulted in suspension or revocation.

(b) A lawyer, law firm or professional corporation employing a lawyer as a consultant, law clerk, or legal assistant when that lawyer's license is suspended or revoked for professional misconduct shall not represent any client represented by the disciplined lawyer or by any lawyer with whom the disciplined lawyer practiced on or after the date of the acts which resulted in suspension or revocation.

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

The Panel dismissed VSB Docket Nos. 09-070-077786 (Seifert) and 10-070-083923 (James), under the accepted Agreed Disposition. The Board considered Mr. Griffin's disciplinary record, as well as the following mitigating factors recognized in the Standards For Imposing Lawyer Sanctions adopted by the American Bar Association and recognized by the Supreme Court of Virginia.

1. Mr. Griffin cooperated with and demonstrated a cooperative attitude toward the investigation of these matters.
2. Mr. Griffin experienced significant personal issues during the time period of the above complaints.
3. The Virginia State Bar experienced a delay in investigating and presenting the complaints

to the Board.

4. Mr. Griffin's disciplinary record involved conduct akin to that in the instant complaints that occurred during the same time period as the instant matters.
5. The Arlington County Circuit Court imposed a \$6,800 sanction for Mr. Griffin's conduct ^{of} in one the above complaints. } RW

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the modified Agreed Disposition, the Disciplinary Board **ORDERS** that Respondent, Phillip Stone Griffin, II, be and is hereby suspended from the practice of law for **Six (6) months, effective August 24, 2012.**

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 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 client. 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

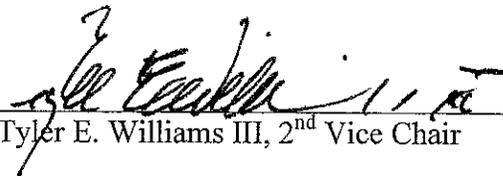
Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

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 Phillip Stone Griffin, II at his last address of record with the Virginia State Bar, 102 South Kent Street, Winchester, VA 22601, and a copy by regular mail to Michael L. Rigsby, Respondent's counsel, P.O. Box 29328, Henrico, VA 23242, and a copy hand-delivered to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED: August 24, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Tyler E. Williams III, 2nd Vice Chair