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BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ARNOLD REGINALD HENDERSON, V

VSB Docket No. 13-032-095270

ORDER OF SUSPENSION WITH TERMS

THIS MATTER came on to be heard on October 24, 2014, before a panel of the Virginia State Bar Disciplinary Board, consisting of Whitney G. Saunders, First Vice Chair, Michael A. Beverly, Richard J. Colten, Tony H. Pham, and Anderson Wade Douthat, IV, Lay Member. The Virginia State Bar was represented by Renu Mago Brennan, Assistant Bar Counsel.

The Respondent, Arnold Reginald Henderson, V, was present in person and represented by counsel. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been Arnold Henderson & Associates, Suite 102, 116 East Franklin Street, Richmond, Virginia 23219. Respondent was represented by Claire G. Cardwell, whose address is 101 Shockoe Slip, Suite K, Richmond, Virginia 23219. Both the Respondent and his counsel received proper notice of this proceeding as required by Part Six, §IV, ¶¶13-12 and 13-18A of the Rules of the Virginia Supreme Court.

For the entire proceedings before the Board, the Complainant, Marquise Jennings, was present and, in a limited way, participated in the proceedings.

The court reporter, Bryan A. Wayne, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone 804/730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair polled the members of the Board Panel as to whether any of them was aware of any personal or financial interest or bias which would prejudice any of them from fairly hearing this matter and serving on the panel, to which inquiry each panel member responded in the negative.

This matter came before the Board on the District Committee Determination for Certification by the duly convened Third District Subcommittee which on March 26, 2014, issued the following factual findings and certification to the Virginia State Bar Disciplinary Board:

1. At all times referenced herein Respondent Arnold Reginald Henderson, V (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On July 9, 2009, client Marquise Jennings (Jennings) retained Respondent to represent him in a civil suit for injuries he sustained in a car accident.

3. On June 29, 2011, Respondent filed suit against defendants in Chesterfield Circuit Court (Case No. CL11-1749).

4. Trial was set for March 19, 2012.

5. Other than filing suit and answering defendants' discovery, Respondent took no affirmative steps on his client's behalf in the litigation. Respondent failed to propound discovery or to designate any experts.

6. On March 5, 2012, defense counsel designated its exhibits and witnesses for trial.

7. That day, Respondent, who had failed to designate exhibits or witnesses, moved to nonsuit the case.

8. On March 12, 2012, the Court entered the Order granting the nonsuit of Case No. CL11-1749.

9. Mr. Jennings was not aware of the nonsuit until Respondent met with him May 9, 2012, over two months after Respondent requested the nonsuit.

10. Respondent disputes this assertion and states that he consulted with Mr. Jennings prior to requesting the nonsuit, and Mr. Jennings authorized the nonsuit so that Respondent could pursue settlement discussions.

11. On July 12, 2012, Respondent re-filed suit in Chesterfield County Circuit Court (Case No. CL12-2107).

12. Trial was set for March 27, 2013.

13. On July 24, 2012 defense counsel served Respondent with discovery.

14. By letter dated October 3, 2012, defense counsel requested Respondent provide discovery responses, which were overdue.

15. By letter dated October 3, 2012, defense counsel also served a draft pre-hearing order setting forth pre-hearing deadlines, including designations of experts, exhibits, and witnesses, on Respondent.

16. Respondent advised defense counsel that he did not agree with the draft pre-hearing order. Accordingly, on October 23, 2012, defense counsel filed a motion

for entry of the pre-hearing order with the Court and requested a hearing. Hearing was set for November 29, 2012.

17. Respondent did not file a written opposition to the motion for entry of the pre-hearing order, nor did he file any written objection to the proposed pre-hearing order.

18. On November 28, 2012, a law clerk from the Court advised defense counsel that the Court had entered the pre-hearing order, and there was no need for a hearing. The law clerk advised defense counsel that she would contact Respondent.

19. On November 28, 2012, the law clerk left Respondent a voice mail, which Respondent acknowledges he received, in which the law clerk advised Respondent that the hearing had been removed from the Court's docket.

20. Respondent did not follow up with the Court or opposing counsel as to why the hearing was taken off-calendar or as to the status of the pre-hearing order.

21. Respondent did not file a written objection to the Court's removal of the hearing on the motion for entry of the pre-hearing order or otherwise seek review or reconsideration of the decision to enter the pre-hearing order.

22. Respondent made no effort to obtain the entered pre-hearing order so that he was aware of the case deadlines.

23. By letter dated December 20, 2012, defense counsel again requested Respondent provide discovery responses to the discovery propounded in July.

24. Defense counsel scheduled a motion to compel hearing for February 21, 2013.

25. By letter dated February 14, 2013, one week before the motion to compel, Respondent finally served discovery responses on defense counsel. These responses identified Dr. Charles Sutton as Mr. Jennings's expert.

26. Pursuant to the pre-hearing order, the deadline to designate experts expired December 27, 2012.

27. On February 22, 2013, defense counsel filed a motion in limine to exclude Dr. Sutton as an expert witness because Respondent did not timely identify Dr. Sutton. The motion in limine referenced the pre-hearing order and sought to exclude Dr. Sutton on the grounds that plaintiff failed to comply with the pre-hearing order.

28. Respondent acknowledges that he received the motion in limine.

29. On March 11, 2013, defense counsel served the defense exhibit and witness lists on Respondent.

30. On March 12, 2013, defense counsel served Respondent, via mail and fax, with a notice of hearing to be held on March 20, 2013 on the motion in limine. While Respondent asserts he did not receive the fax, a copy of the letter attaching the notice of hearing and stating that the hearing was scheduled for March 20, 2013, at 9:30 a.m. before Judge McCallum, is in Respondent's file with a fax transmission of 10:16 March 12, 2013.

31. Respondent did not file an opposition to the motion in limine.

32. Respondent did not appear at the March 20, 2013 hearing on the motion in limine and thus did not object in writing or otherwise to the motion in limine seeking to exclude his only expert. Respondent asserts he was not aware of the hearing.

33. By order entered March 25, 2013, the Court granted defense counsel's motion in limine and excluded Dr. Sutton as a witness because of Respondent's failure to timely identify Dr. Sutton in accordance with the pre-hearing order and because his designation of Dr. Sutton did not satisfy the disclosure requirements of Rule 4:1(b)(4)(A)(i) of the Supreme Court of Virginia.

34. On March 22, 2013, defense counsel filed objections to any exhibit and witness lists which might be filed by Respondent on the grounds that Respondent had not yet served any lists on defense counsel.

35. Also on March 22, 2013, defense counsel filed a motion to exclude Plaintiff's testimony on injuries, treatment, and medical bills, and defense counsel filed a notice of hearing setting its motion to exclude and pre-trial matters for hearing on March 27, 2013.

36. Defense counsel served Respondent with these motions by mail on March 22, 2013, and on that date defense counsel attempted to serve Respondent with these motions by fax. After five failed fax attempts, defense counsel's office unsuccessfully attempted to contact Respondent.

37. Respondent never filed any written oppositions to any of the motions by defense counsel.

38. On March 26, 2013, the afternoon before trial, and after defendants' motion to exclude Plaintiff's exhibits and witnesses, Respondent attempted to designate exhibits and witnesses and to serve these lists via facsimile to defense counsel. Defense counsel did not receive the lists. The transmission did not go through.

39. On March 27, 2013, Respondent appeared at trial and argued that a non-suit was appropriate because he objected to the entry of the pre-hearing order.

40. On March 27, 2013, as reflected in the Order entered May 1, 2013, the Court dismissed the case with prejudice and entered judgment in favor of defendants. The Court sustained defendants' objections to the exhibit and witness lists because Respondent did not file the lists in accordance with the pre-hearing order. The Court denied Respondent's motion for a second nonsuit and excluded plaintiff from offering his medical bills on the sole issue of establishing the amount of his damages proximately related to his accident, but the Court took under advisement whether any medical bills were admissible for another purpose.

41. Respondent advised Mr. Jennings that he could appeal or file a motion to reconsider.

42. On April 1, 2013, Mr. Jennings filed a bar complaint against Respondent.

43. In his response to the bar complaint, Respondent stated that he considered the attorney-client relationship between him and Mr. Jennings was terminated in light of the bar complaint.

44. Other than his response to the bar complaint, Respondent did not communicate to his client that he considered the attorney-client relationship to be terminated in light of the bar complaint.

45. The parties dispute whether Respondent returned Mr. Jennings' file to him at Mr. Jennings's request at the termination of the relationship.

I. FINDINGS OF FACT AND NATURE OF MISCONDUCT

Joint Exhibit A (Stipulations) and Joint Exhibit B (Respondent's Disciplinary Record) were admitted into evidence at the hearing by the Chair, without objection.

Respondent's Exhibit A, correspondence to the Disciplinary Board from Claire G. Cardwell, counsel for the Respondent, and taken as a submission in support of an oral motion to delay any disposition, was admitted into evidence at the hearing, without objection.

VSB Exhibits 1-43 and Respondent's Exhibits 1-7 were admitted by the Chair, without objection, during the Prehearing Conference Call on October 15, 2014.

The Respondent and his counsel, along with the Virginia State Bar, as evidenced by their endorsements, entered into a comprehensive written stipulation as to the facts and nature of misconduct, which are hereafter recited *in toto*.

A. Stipulated Facts

1. At all times referenced herein Respondent Arnold Reginald Henderson, V (Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On July 9, 2009, client Marquise Jennings (Jennings) retained Respondent to represent him in a civil suit for injuries he sustained in a car accident.

3. On June 29, 2011, Respondent filed suit against defendants in Chesterfield Circuit Court (Case No. CL11-1749).

4. Trial was set for March 19, 2012.

5. Other than filing suit, answering defendants' discovery, and participating in some depositions noticed by defense counsel, Respondent took no affirmative steps on his client's behalf in the litigation. Respondent failed to propound discovery or to designate any experts. Respondent asserts that he did not propound discovery as he was aware of the facts necessary to try the case.

6. On March 5, 2012, defense counsel designated its exhibits and witnesses for trial.

7. That day, Respondent, who had failed to designate exhibits or witnesses, moved to nonsuit the case.

8. On March 12, 2012, the Court entered the Order granting the nonsuit of Case No. CL11-1749.

9. Mr. Jennings was not aware that Respondent intended to request a nonsuit, and Mr. Jennings did not authorize Respondent to seek a nonsuit. Mr. Jennings was unaware of the status of the case in March 2012 as Respondent had not communicated with Mr. Jennings about the case. Mr. Jennings was copied on the cover letter for the motion for nonsuit. Respondent asserts that he consulted with Mr. Jennings prior to requesting the nonsuit, and Mr. Jennings authorized the nonsuit so that Respondent could pursue settlement discussions.

10. On July 12, 2012, Respondent re-filed suit in Chesterfield County Circuit Court (Case No. CL12-2107).

11. Trial was set for March 27, 2013.

12. On July 24, 2012 defense counsel served Respondent with discovery. Respondent asserts that counsel agreed to adopt Mr. Jennings's discovery responses from the first suit, however, there was a disagreement about the sufficiency of the interrogatory attestation, and defense counsel tendered the interrogatories again.

13. By letter dated October 3, 2012, defense counsel requested Respondent provide discovery responses, which were overdue.

14. By letter dated October 3, 2012, defense counsel also served a proposed pretrial scheduling order setting forth pretrial deadlines, including designations of experts, exhibits, and witnesses, on Respondent.

15. By letter dated October 5, 2012, Respondent advised defense counsel that he did not agree with the proposed pretrial scheduling order. Accordingly, on October 23, 2012, defense counsel filed a motion for entry of the pretrial scheduling order with the Court and requested a hearing. Hearing was set for November 29, 2012.

16. Respondent did not file a written opposition to the motion nor did he file a written objection to the proposed pretrial scheduling order.

17. On November 28, 2012, a law clerk from the Court advised defense counsel that the Court had entered the pretrial scheduling order, and there was no need for a hearing. The law clerk advised defense counsel that she would contact Respondent.

18. On November 28, 2012, the law clerk left Respondent a voice mail, which Respondent acknowledges he received, in which the law clerk advised Respondent that the hearing on the motion for entry of the pretrial scheduling order had been removed from the Court's docket.

19. Respondent asserts that the law clerk did not advise him that the Court entered the pretrial scheduling order, and he did not receive the entered order.

20. Respondent did not follow up with the Court or opposing counsel or as to the status of the pretrial scheduling order. Respondent asserts he was waiting for the hearing to be rescheduled.

21. By letter dated December 20, 2012, defense counsel again requested Respondent provide responses to the discovery propounded in July.

22. Defense counsel scheduled a motion to compel hearing for February 21, 2013.

23. By letter dated February 14, 2013, one week before the motion to compel, Respondent served discovery responses on defense counsel. These responses identified Dr. Charles Sutton as Mr. Jennings's expert.

24. Pursuant to the pretrial scheduling order, the deadline to designate experts expired December 27, 2012. Respondent asserts he was unaware that the Court entered the pretrial scheduling order.

25. On February 22, 2013, defense counsel filed a motion in limine to exclude Dr. Sutton as an expert witness because Respondent did not timely identify Dr. Sutton. The motion in limine referenced the pretrial scheduling order and sought to exclude Dr. Sutton on the grounds that plaintiff failed to comply with the order.

26. Respondent acknowledges that he received the motion in limine.

27. Respondent did not file an opposition to the motion in limine.

28. On March 11, 2013, defense counsel served the defense exhibit and witness lists on Respondent.

29. On March 12, 2013, defense counsel served Respondent, via mail and fax, with a notice of hearing to be held on March 20, 2013, on the motion in limine. While Respondent asserts he did not receive the fax, a copy of the letter attaching the notice of hearing and stating that the hearing was scheduled for March 20, 2013, at 9:30 a.m. before Judge McCallum, is in Respondent's file with a fax transmission of 10:16 March 12, 2013. Respondent asserts that his fax machine was not working properly at this time and that the fax transmission does not reflect that he received the fax on March 12, 2013. Respondent asserts that he did not receive the notice of hearing until March 18, 2013, two days before the hearing. Respondent also asserts that he did not receive the motion in limine filed February 22, 2013, until March 15, 2013, and he did not see the motion in limine until March 18, 2013, the same time he first saw the notice of hearing on the motion in limine.

30. Respondent did not appear at the March 20, 2013, hearing on the motion in limine and thus did not object in writing or otherwise to the motion in limine seeking to exclude his only expert. Respondent asserts that he could not attend the hearing on March 20 because he was scheduled to appear in two other courts and states that he only learned on March 18, 2013, that the hearing on the motion in limine would be held March 20. Respondent did not contact the Court or opposing counsel on March 18, March 19, or March 20, to request a continuance and/or to advise that he could not attend the hearing due to a conflict in his schedule. Respondent did not advise his client of the motion in limine or of the hearing on the motion in limine or that he could not and did not attend the motion in limine.

31. By order entered March 25, 2013, the Court granted defense counsel's motion in limine and excluded Dr. Sutton as a witness because of Respondent's failure to timely identify Dr. Sutton in accordance with the pre-hearing order and because his designation of Dr. Sutton did not satisfy the disclosure requirements of Rule 4:1(b)(4)(A)(i) of the Supreme Court of Virginia.

32. On March 22, 2013, defense counsel filed objections to any exhibit and witness lists which might be filed by Respondent on the grounds that Respondent had not yet served any lists on defense counsel.

33. Also on March 22, 2013, defense counsel filed a motion to exclude Plaintiff's testimony on injuries, treatment, and medical bills, and defense counsel filed a notice of hearing setting its motion to exclude and pre-trial matters for hearing on March 27, 2013.

34. Defense counsel served Respondent with these motions by mail on March 22, 2013, and on that date defense counsel attempted to serve Respondent with these motions by fax. After five failed fax attempts, defense counsel's office unsuccessfully attempted to contact Respondent.

35. Respondent never filed any written oppositions to any of the motions by defense counsel.

36. On March 26, 2013, the afternoon before trial, and after defendants' motion to exclude Plaintiff's exhibits and witnesses, Respondent attempted to designate exhibits and witnesses and to serve these lists via facsimile to defense counsel. Defense counsel did not receive the lists. The transmission did not go through.

37. On March 27, 2013, Respondent appeared at trial and argued that a non-suit was appropriate because he objected to the entry of the pre-hearing order and was entitled to a hearing prior to the entry of the order. Respondent asserts that he preserved on the record his objections to the Court's entry of the pre-trial scheduling order and all subsequent orders.

38. On March 27, 2013, as reflected in the Order entered May 1, 2013, the Court dismissed the case with prejudice and entered judgment in favor of defendants. The Court sustained defendants' objections to the exhibit and witness lists because Respondent did not file the lists in accordance with the pre-hearing order. The Court denied Respondent's motion for a second nonsuit and excluded plaintiff from offering his medical bills on the sole issue of establishing the amount of his damages proximately related to his accident, but the Court took under advisement whether any medical bills were admissible for another purpose.

39. Respondent advised Mr. Jennings that he could appeal or file a motion to reconsider.

40. On April 1, 2013, Mr. Jennings filed a bar complaint against Respondent.

B. Stipulated Nature of Misconduct

The conduct of 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.

II. DISPOSITION

The Board, after due deliberation, accepted the stipulations as to fact and nature of misconduct but rejected the original joint recommendation as to disposition. Additionally, the Board unanimously denied Respondent's request, as evidenced in Respondent's Exhibit A, to delay any disposition or sanction imposed by the Board.

Thereafter, counsel for the Bar, counsel for the Respondent and the Respondent proffered for the Board's consideration an alternative joint agreed disposition, with terms, to which the Board, following deliberation, unanimously consented. The disposition that follows embodies the terms of such agreed disposition.

Upon review of the stipulated findings of fact and nature of misconduct contained in Joint Exhibit A, argument of counsel, consideration of an agreed alternate recommended disposition, and reviewing the Respondent's prior disciplinary record as evidenced in Joint Exhibit B, it is hereby ORDERED that the license of Respondent, Arnold Reginald Henderson, V, to practice law in the Commonwealth of Virginia shall be SUSPENDED FOR A PERIOD OF ONE YEAR, commencing on October 24, 2014. As an additional term of his suspension, the Respondent shall pay to the Complainant, Marquise Jennings, the sum of $13,639.05 on or before December 31, 2014. Should the Respondent fail to comply with the terms of this Board's Order as aforesaid, requiring that he make payment to Complainant Jennings on or before December 31, 2014, the alternate disposition shall be suspension of Respondent's license to practice law in the Commonwealth of Virginia for a term of three years.

It is further ORDERED that, as directed in the Board's 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 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 ¶13-29 shall be determined by the Virginia State Bar Disciplinary Board.

It is further ORDERED that pursuant to Part Six, §IV, ¶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, Arnold Reginald Henderson, V, by certified mail, at his address of record with the Virginia State Bar, that being Arnold Henderson & Associates, Suite 102, 116 East Franklin Street, Richmond, Virginia 23219, and by regular mail to Renu Mago Brennan, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

ENTERED this 12th day of November, 2014.

VIRGINIA STATE DISCIPLINARY BOARD

By: _____
Whitney G. Saunders, First Vice Chair