

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
ERIC JOSEPH LIVINGSTON**

**VSB Docket No. 10-031-084027**

**MEMORANDUM ORDER**

This matter was heard on December 13<sup>th</sup>, 2013, before a panel of the Virginia State Bar Disciplinary Board consisting of James Leroy Banks, Jr., Tony H. Pham, Samuel R. Walker, Rev. Dr. Theodore Smith, Lay Member, and Richard J. Colten, Acting Chair, presiding (collectively, the "Board"). The Virginia State Bar was represented by Kara L. McGehee, Assistant Bar Counsel (the "Bar"). The Respondent, Eric Joseph Livingston (the "Respondent"), appeared in person and was represented by his counsel, William J. Dinkin.

The matter came before the Board on remand from the Supreme Court of Virginia for determination of the appropriate sanction for violation of Rule 1:1 of the Rules of Professional Conduct. On September 28, 2012, the Board heard this matter on Respondent's appeal from the District Committee's finding of a violation of Rule 1:1, 3.1, 3.8(a). After hearing the evidence, the Board affirmed the District Committee's determination of violations of Rules 1.1, 3.1, and 3.8(a) and the imposition of the sanction of a Public Reprimand With Terms. The Respondent noted his appeal to the Supreme Court of Virginia. On June 26, 2013, The Supreme Court of Virginia dismissed the alleged violations of Rules 3.1, 3.8 (a) and affirmed the finding of violation of Rule 1.1 and remanded the matter for consideration of a proper sanction.

Valarie L. S. May, RPR, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227 (804-730-1222), after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the Board to ascertain whether any member had any personal or financial interest or bias that might affect, or could reasonably be perceived to affect, his ability to be impartial in this matter. Each Board panel member responded to this inquiry in the negative.

**A. The Proceedings**

The transcript and record having been filed, and the matter having been remanded from the Supreme Court of Virginia with specific instructions, the Board proceeded to hear stipulations and argument from the Respondent's counsel and Bar Counsel.

The sole issue before the Board is the proper sanction for a violation of Rule 1.1, which reads as follows:

**Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation.

**B. The Record and Findings of Fact**

The record indicates that the District Committee convened on November 17, 2011, and took testimony of the Respondent, Eric Joseph Livingston. The District Committee panel also received into evidence Virginia State Bar Exhibits and Respondent Exhibits. Upon consideration, the District Committee found violations of Rules 1:1, 3.1, and 3.8(a). Respondent appealed the District Committee's finding to the Board. On September 28, 2012, the Board affirmed the District Committee's determination. The Board's findings were appealed by the Respondent to the Virginia Supreme Court, which dismissed such determination, in part, and remanded the matter to the Board. Upon hearing on remand on December 13, 2013, the Board considered, without objection, the transcript and record of prior proceedings and stipulations and argument by counsel for Respondent and Bar Counsel. The Board further took into consideration the fact that the Respondent had no prior disciplinary record.

**C. Decision and Sanction**

Upon completion of argument, the hearing was recessed to give the Board panel the opportunity to further review the record and to deliberate. At no time did the Board consider the dismissed violations as set forth in the Order from the Supreme Court of Virginia. Deliberations were focused solely upon the affirmed violation of Rule 1:1 governing competence. Upon reconvening, the Chair announced that it was the unanimous decision of the Board panel that under Part 6, Section IV, Paragraph 13-19 (G)(2) of the Rules and upon remand from the Supreme Court

of Virginia, once the Board affirms the determination of the District Committee, it "may impose the same or any lesser sanction as that imposed by the District Committee." The Board noted that the sanction imposed by the District Committee was a Public Reprimand With Terms. After considering the record concerning the actions which yielded a Rule 1:1 violation, including Respondent's lack of any prior disciplinary record, and after hearing argument, the Board determined that given the unique facts and circumstances of this matter, at a minimum a Public Reprimand With Terms, as imposed by the District Committee, is an appropriate sanction in this matter, same to be effective December 13, 2013. The terms and conditions are as follows:

Respondent shall complete two hours of Continuing Legal Education on the subject of ethics, which two hours shall not be applied toward his annual Mandatory Continuing Legal Education requirements. Respondent shall deliver to Bar Counsel in writing, no later than June 1, 2014, a certification that he has complied with this term.

The Board shall note that during the December 13, 2013 hearing, the Respondent presented certification of completion of two (2) additional hours of continuing legal education credits. Hearing no objection from counsel for the Bar, the Board accepts the certificate, identified and entered into evidence as Ex. 1, as satisfaction of the terms and conditions.

**C. Conclusion**

At the conclusion of the proceedings on December 13, 2013, the Board entered a Summary Order imposing the sanction of a Public Reprimand With Terms as set forth above. The Board further accepts Exhibit 1 as Respondent's certification of completion of the terms and conditions of this Order.

It is further ORDERED that, pursuant to Part 6, Section IV, Paragraph 13-9 of the Rules, the Clerk of the Disciplinary System shall assess costs against the Respondent.

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

Order by certified mail to Respondent, Eric Joseph Livingston, at his last address of record with the Virginia State Bar, 7807 Hampton Summit Terrace, Chesterfield, VA 23832; by regular mail to Respondent's Counsel, William J. Dinkin, at Stone, Cardwell & Dinkin, PLC, 101 Shockoe Slip, Suite K, Richmond, VA 23219; and a copy by hand-delivery to Kara L. McGehee, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 23<sup>rd</sup> of December, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD



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Richard J. Colten, Acting Chair