

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JOHN LYDON McGANN

VSB Docket No. 09-051-076260

MEMORANDUM ORDER

This matter was heard on December 9, 2011, before a panel of the Virginia State Bar Disciplinary Board consisting of William H. Atwill, Jr., Timothy A. Coyle, Raighne C. Delaney, Stephen A. Wannall, Lay Member, and Pleasant S. Brodnax, III, 2nd Vice-Chair, presiding, (collectively, the "Board"). The Virginia State Bar was represented by Kathleen M. Uston, Assistant Bar Counsel (the "Bar"). The Respondent, John Lydon McGann, (hereinafter the "Respondent"), appeared in person *pro se*.

The matter came before the Board on the Respondent's timely filed appeal, in accordance with Part 6, Section IV, Paragraph 13-17(A) of the Rules of the Supreme Court of Virginia (the "Rules"), of a determination by the Fifth District Section I Committee mailed by certified mail to the Respondent on April 5, 2011, finding that the Bar had proven by clear and convincing evidence that Respondent had violated Rule 1.4(b) of the Rules of Professional Conduct, and imposed a Public Reprimand Without Terms. The Clerk of the Disciplinary System stayed imposition of the sanction, in accordance with Paragraph 13-17(B) of the Rules.

Teresa L. McLean, CCR, 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. Standard of Review

The standard of review in an appeal from a District Committee determination is whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did." See Part 6, Section IV, Paragraph 13-19 (E) of the Rules.

B. The Proceedings

The transcript and record having been filed, and the matter having been briefed in accordance with the Rules of the Supreme Court, the Board proceeded to hear argument from the Respondent and Bar Counsel.

The issue before the Board is whether there is substantial evidence in the record to support the District Committee's finding that the Respondent's conduct violated Rule 1.4(b), which reads as follows:

Rule 1.4 Communication

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

C. The Record and Findings of Fact:

The record indicates that the District Committee convened on March 15, 2011 and took testimony of the Respondent John Lydon McGann, the Complainant, Kamil Poullath, and David G. Fennessey, an investigator for the Bar. The panel also received into evidence Virginia State Bar Exhibits 1 through 7 and Respondent's Exhibits 1 through 10. The testimony of the witnesses, along with the Exhibits admitted, provide a substantial evidentiary basis for the factual finding made by the District Committee. Those factual findings appear in the District Committee Determination and are quoted here in full:

1. At all times relevant hereto, John Lydon McGann, (hereinafter the "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On July 12, 2006, the Respondent filed suit on behalf of his client, Mr. Kamil Poullath, the Complainant herein, in the Fairfax County Circuit Court alleging personal injuries arising out of a motor vehicle accident that took place on August 3, 2004. On July 23, 2007, the Respondent moved for a first voluntary non-suit of the case, which Motion was granted.

3. Thereafter, on January 22, 2008, one (1) day before the expiration of the six (6) month tolling period, the Respondent re-filed the Complainant's case in the Fairfax County General District Court. On April 17, 2008, the first return of Complainant's General District Court matter (the "GDC case"), the court dismissed the case without prejudice. The Respondent was not present on that date, but had arranged for another attorney to appear on his behalf. The Complainant was present in court that day, but testified that the Respondent never advised him of the court date. The Complainant testified that he learned of the court date by personally contacting the court clerk. The Respondent testified that it was not likely he would have advised the Respondent to appear on the first return date.

4. On April 23, 2008, the Respondent noted his client's appeal of the dismissal of the General District Court case and in response the defendant driver filed a Motion to Strike the Appeal.

5. On June 20, 2008, the Circuit Court heard argument on defendant driver's Motion to Strike the Appeal, took the matter under advisement and asked for briefs on the limited issue of whether the General District Court's dismissal order was a final, appealable order. On July 15, 2008, the Circuit Court issued its Letter Opinion granting the defendant driver's motion and dismissing the Complainant's case. Thereafter, the Respondent appealed this dismissal to the Virginia Supreme Court which, by Order dated February 27, 2009, affirmed the trial court finding no reversible error.

6. The evidence established that English was the Complainant's second language and that he likely had great difficulty reading English. The Complainant did have family members available who were able to translate written documents for him.

7. The evidence was uncontroverted that the Respondent failed to provide to the Complainant important documents and pleadings in the case, e.g. the original Motion for Judgment filed in Circuit Court, the Order of Nonsuit of the Circuit Court case, the Warrant in Debt filed in the General District Court, the Order of Dismissal of the General District Court case, the Respondent's brief in the Circuit Court supporting the Appeal, and the Letter Opinion of Judge Bellows granting the Motion to Strike the Appeal of the dismissal of the GDC case.

8. The Respondent's failure to provide important documents and pleadings in the case to the Complainant deprived the Complainant of the opportunity to make informed decisions regarding the representation.

D. Decision

Upon completion of argument, the Chair recessed the hearing to give the Board panel the opportunity to further review the record and to deliberate. Upon reconvening, the Chair announced that it was the unanimous decision of the Board panel that there is substantial evidence in the record upon which the District Committee could reasonably have found as it did.

The District Committee's determination that the Respondent's conduct violated Rule 1.4(b) is therefore affirmed.

E. Sanction

Under Part 6, Section IV, Paragraph 13-19 (G)(2) of the Rules, 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 Without Terms. After considering the record, including Respondent's disciplinary record, and after hearing argument, the Board determined that a Public Reprimand Without Terms is an appropriate sanction in this matter.

F. Conclusion

At the conclusion of the proceedings on December 9, 2011, the Board entered a Summary Order affirming the District Committee's Determination of a violation of Rule 1.4(b) and the imposition of the sanction of a Public Reprimand Without Terms. By this Memorandum Order, the Board confirms the Summary Order.

It is further ORDERED that, pursuant to Part 6, Section IV, Paragraph 13-9 (E)(1) 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 at his last address of record with the Virginia State Bar, Suite 206, 4101 Chain Bridge Road, Fairfax, VA 22030, and a copy by regular mail to Kathleen M. Uston, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 20th day of December 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:



Pleasant S. Brodnax, 2nd Vice-Chair