

VIRGINIA:

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

**IN THE MATTER OF
Richard Lawrence James McGarry**

VSB Docket No. 11-080-088057

ORDER OF REVOCATION

THIS MATTER came to be heard on April 26, 2013, at 9:00 a.m., in the General Assembly Building, House Room C, 910 Capital Street, Richmond, Virginia 23219, before a duly convened Panel of the Virginia State Bar Disciplinary Board. The Board Panel consisted of Tyler E. Williams III, presiding, William H. Atwill, Jr., Robert Lucas Hobbs, Richard J. Colten, and Stephen A. Wannall, Lay Member. The Virginia State Bar was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. The Respondent, Richard Lawrence James McGarry, did not initially appear either in person or as represented at the commencement of the hearing at 9:00 a.m., as scheduled. The Respondent's name was called in the hallway three times by the Clerk, who reported that there was no response. At approximately 9:14 a.m., the Respondent appeared, representing himself, and the hearing that was in progress continued. The Respondent remained, albeit unrepresented, for the balance of the hearing and all proceedings. Angela N. Sidener, a registered professional court reporter, employed by Chandler & Lashasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after duly being sworn, recorded the hearing and transcribed the proceedings.

The Chair commenced the hearing by calling the case in the hearing room and requesting the Clerk to call the Respondent's name in the hallway, outside of the hearing room, promptly at 9:00 a.m. The Chair then asked the members of the Board as to whether any of them had any personal or financial interest that could affect, or reasonably be perceived to affect, his ability to be impartial in the matter. Each Board Member, including the Chair, responded that there were no such interests or conflicts.

Before presenting evidence, Bar Counsel advised the Board that he was withdrawing the allegation that Respondent violated Rule 1.16(e) to which withdrawal the Respondent did not have an objection.

The matter came before the Board on Certification of the District Subcommittee of the Virginia State Bar, dated January 23, 2013. All legal notices of the date, time and place of the hearing and proceedings were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. VSB Exhibits A, Parts 1-12 inclusive, VSB Exhibit B and VSB Exhibit C were all admitted into evidence without objection. The pertinent facts contained in the certification are as follows:

I. FINDINGS OF FACT

1. At all times relevant, Respondent was a lawyer licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on October 12, 1989.
3. Billy Rosser retained Respondent to represent his interests in a medical malpractice case in March of 2011.
4. On March 5, 2011, Mr. Rosser paid Respondent an advanced fee against which Respondent would bill of [sic] \$2,000.00. Mr. Rosser sent another advanced fee payment of \$1,000.00 in April of 2011.
5. Respondent admitted to the Bar's investigator that he did not deposit the advanced fees into his trust account.
6. Mr. Rosser began making demands upon Respondent for information related to his case.
7. Respondent told Mr. Rosser that papers had been filed with the court when in fact they had not.
8. Due to the lack of communication and advancement of the case, Mr. Rosser sent Respondent a letter certified mail, return receipt requested on May 18, 2011 terminating his services, demanding an accounting, a return of all files, and a return of all unused advanced fees.
9. Mr. Rosser also faxed a copy of the letter to Respondent giving him ten days to respond.

10. Respondent refused to pick up the letter from the post office and never answered the fax copy that Mr. Rosser sent.

11. Mr. Rosser filed a complaint with the Virginia State Bar on May 27, 2011.

12. Respondent failed to answer the Bar's letter demanding an answer to the complaint.

12. [sic] During the course of the investigation, The Respondent was issued a subpoena duces tecum dated December 16, 2011 seeking his trust account records and subsidiary ledgers for the Rosser matter.

13. The United States Postal Service records show that Respondent never claimed the subpoena.

14. On January 12, 2012, The Bar wrote to Respondent stating that if he did not comply with the subpoena his license would be administratively suspended.

15. Respondent failed to answer the Bar's January 12 letter.

16. On February 7, 2012, the Disciplinary Board entered an order administratively suspending Respondent's license to practice law for failing to comply with the subpoena.

17. The Clerk of the Disciplinary Board mailed Respondent a letter dated May 3, 2012, reminding him of the duties and obligations of a suspended lawyer pursuant to Part 6, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia.

18. Respondent is in violation of Part 6, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia in that he has failed to give the required notices.

19. In June of 2012, Mr. Rosser served on Respondent a warrant in debt from the Roanoke County General District Court seeking a judgment in the amount of \$3,000.00.

20. Respondent failed to appear and the Roanoke County General District Court entered judgment against him in Mr. Rosser's favor in the amount of \$3,000.00.

21. To date, Respondent has refused to honor the judgment.

The Complainant, Billy N. Rosser, was sworn and testified, under oath as to the transactions and circumstances occurring during his representation by the Respondent from March 2011 through May 18, 2011, when representation was terminated. That testimony, along

with the VSB Exhibits A, B, and C, established by clear and convincing evidence all of the facts and allegations contained in the FINDINGS OF FACT above, with the exception that the evidence established that the Respondent represented the estate of Mr. Rosser's deceased mother. The Respondent had an opportunity to cross-examine Mr. Rosser and did so. The Respondent stated, on the record, that he acknowledges the accuracy of the alleged facts and stated that his position is in the nature of a "nolo contendere."

II. MISCONDUCT

Certification charged violations of the following provisions of the Virginia 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 shall promptly comply with reasonable requests for information.

RULE 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;

- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.
- (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 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of the fee that has not been earned and handling records as indicated in paragraph (e).
- (e) Counsel, on behalf of the VSB, withdrew this charge.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law.

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; or
- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

III. DISPOSITION

After hearing all the evidence, reviewing the exhibits, hearing argument by the Virginia State Bar and the Respondent, the Board recessed to deliberate. After due deliberation, the Board found that the Virginia State Bar did not prove, by clear and convincing evidence, the following violations: 1.3(a), 1.5(a), subparts 1-8, 1.5(b). The Board did find, by clear and convincing evidence, violations of 1.4(a), 1.16(d), 4.1(a), 8.1(c), 8.1(d), 8.4(c), all recited above.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including Respondent's prior disciplinary record. The disciplinary record, contained in VSB Exhibit C, reflected two prior proceedings and sanctions. The Respondent has demonstrated little, if any, understanding or contrition regarding his violations. He has failed to make any accounting whatsoever for the funds obtained from the Complainant, nor has he refunded any of the so-called advanced costs. The Respondent also states, when inquiry was made, that he does not believe that he is capable of properly practicing law at this time. The Respondent has not complied with a subpoena duces tecum previously issued by Bar Counsel and does not maintain an escrow account.

The Board recessed once again in order to deliberate what sanction to impose upon its findings of misconduct by the Respondent. After due deliberation, the Board reconvened to announce the Panel's determination that the Respondent's license to practice law in the Commonwealth of Virginia should be revoked immediately.

Accordingly, IT IS ORDERED that the license of the Respondent, Richard Lawrence James McGarry, to practice law in the Commonwealth of Virginia is **REVOKED** as of April 26, 2013.

IT IS FURTHER ORDERED that the Respondent must comply with the requirements of Part 6, § 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 revocation 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. The Respondent shall give notice within 14 days of the effective date of the revocation and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of revocation 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 revocation, he shall submit an Affidavit of that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of 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 6, § 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 the Respondent at his address of record, Suite 206, 6405 Merriman Road, S.W., Roanoke, Virginia 24018 with the Virginia State Bar, by certified mail and by regular mail to Assistant Bar Counsel, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 10th DAY OF MAY, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By 
Tyler E. Williams, III, Second Vice Chair