

**VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
SEAN PATRICK McMULLEN**

**VSB DOCKET No. 15-041-101701**

MEMORANDUM ORDER

This matter came on to be heard on June 26, 2015, before a panel of the Disciplinary Board of the Virginia State Bar (the Board) upon the District Subcommittee Determination for Certification by the Fourth District, Section I pursuant to Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia. A duly convened panel of the Board consisting of Tyler E. Williams, Chair, Stephen A. Wannall, Lay Member, Thomas O. Bondurant, Jr., R. Lucas Hobbs and Lisa A. Wilson (the Panel) heard the matter. Renu M. Brennan, Assistant Bar Counsel appeared as counsel for the Virginia State Bar. The Respondent, Sean Patrick McMullen (Respondent) appeared in person and was represented by Timothy J. Battle. The court reporter for the proceeding, Jennifer Hairfield, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone 804-730-1222, was sworn by the Chair. The Chair 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 Chair, responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (Clerk) in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

## I. FINDINGS OF FACT

VSB Exhibits A1 – A125 were admitted without objection. The Bar objected to Respondent's Exhibit 1 and the introduction of impairment evidence on the grounds that Respondent failed to comply with the terms of the Pre-Hearing Order entered on April 30, 2015 and the notice provisions of Part Six, Section IV, Paragraph 13-23(A) of the Rules of the Supreme Court of Virginia. The Bar's objection was sustained. Respondent stipulated to the facts contained in paragraphs 1 – 19, 21 – 48, 49 (as modified by the parties) and 50 - 51 of the Certification. Respondent further stipulated that the allegations contained in the Certification established clear and convincing evidence of violations of Virginia Rules of Professional Conduct Rule 1.1, 1.3(a), 1.3(b), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 1.16 (a)(1), 1.16(a)(2), 1.16(a)(3), 8.4(a), 8.4(b) and 8.4(c). The Bar withdrew its allegations of violations of Rules 1.7(a), 1.7(b) and 4.1(a). The Panel, by agreement of the parties, accepted the stipulations as to violations of Rules 1.1, 1.3(a), 1.3(b), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 1.16 (a)(1), 1.16(a)(2), 1.16(a)(3), 8.4(a), 8.4(b) and 8.4(c). The Board makes the following findings of fact on the basis of clear and convincing evidence, including Respondent's stipulations:

1. At all times relevant hereto, Sean Patrick McMullen (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. From 2000 to August 2014 Respondent was with the firm formerly known as Lange, Thomas & McMullen, LLP, and which is now known as Lange, Thomas & Associates, LLP. At the time of the events referenced herein, Respondent was a partner in the firm.

### Tina Dove

3. On November 2, 2009, Tina Dove retained the firm of Lange, Thomas & McMullen, LLP

to represent her for injuries she sustained from a July 2, 2009 fall and carbon monoxide exposure at her apartment.

4. Respondent was assigned to handle Ms. Dove's case.

5. On July 1, 2011, the last day of the two-year statute of limitations, Respondent filed suit on Ms. Dove's behalf for breach of contract and negligence against Conner Properties, LLC and Bo Conner in Arlington County Circuit Court.

6. The complaint was not served on defendants until December 2011.

7. In the complaint, Respondent alleged that a blood gas test administered when Ms. Dove was treated for injuries revealed that the level of carbon monoxide in Ms. Dove's blood was between 10% -11%, a level which greatly exceeded normal levels of .08% for non-smokers like Ms. Dove.

8. Respondent alleged that Ms. Dove suffered the direct effects of absorption of massive amounts of carbon monoxide in her body and a bruised spine, strains, and spasms from her fall.

9. Defendants demurred to the suit. Defendant Bo Conner's demurrer was sustained in its entirety. Defendant Conner Properties, LLC's demurrer to negligence was sustained, but Respondent was granted leave to amend the negligence claim, which he did.

10. On March 30, 2012, Defendant Conner Properties, LLC's second demurrer to the negligence claim was also sustained. Thereafter Respondent did not amend the negligence claim against Conner Properties, LLC. Only the breach of contract claim against Defendant Conner Properties, LLC survived.

11. In February 2012, Defendant Conner Properties, LLC served interrogatories and document requests on Respondent.

12. Respondent did not answer the discovery, despite extensions, and defendants successfully moved to compel responses.
13. By Order entered July 6, 2012, responses were due by July 16, 2012.
14. Respondent did not provide responses as required by the Court's July 6, 2012 Order.
15. On December 10, 2012, Defendant Conner Properties, LLC moved for sanctions requesting dismissal of Ms. Dove's suit, or alternatively, requesting that Ms. Dove be prohibited from introducing evidence in support of her suit. A hearing on the motion for sanctions was set for December 21, 2012.
16. Respondent did not keep Ms. Dove advised of his failure to provide responses, the motion to compel, or the motion for sanctions.
17. On December 21, 2012, the date of the hearing on the motion for sanctions, Respondent nonsuited Ms. Dove's suit.
18. Respondent did not seek Ms. Dove's permission to nonsuit the case, or even advise her of the nonsuit.
19. That day, Respondent refiled suit against Conner Properties, LLC for breach of contract.
20. Pursuant to Rule 3:5(e) of the Rules of the Supreme Court of Virginia and VA Code 8.01-275.1, Respondent had to serve the suit within one year of the filing date or risk dismissal of the suit if he could not show that he exercised due diligence in attempting to serve defendant.
21. The Court set several term dates because defendant had not been served. Respondent did not appear at some of the term dates. The last term date was set for December 20, 2013, the day before the one-year deadline to serve defendant expired.
22. Respondent made his first attempt to serve defendant on December 20, 2013, the day

before the one-year deadline to serve defendant expired.

23. Respondent failed to have the suit timely served on defendant.

24. The Court found that Respondent did not exercise due diligence to serve defendant and noted that it would be plain error to find due diligence in light of the record and the Court's efforts to move the case along. The Court, however, allowed Respondent to argue a motion for a second nonsuit. Hearing on this motion was set for February 14, 2014.

25. Respondent failed to appear at the February 14, 2014 hearing to argue his motion for a second nonsuit.

26. By Order entered February 14, 2014, Ms. Dove's case was dismissed with prejudice.

27. Respondent did not advise Ms. Dove that her case was dismissed with prejudice.

28. Respondent did not advise Gene Lange, managing partner of Lange, Thomas & McMullen, LLP, that the case was dismissed with prejudice.

29. The time to appeal the dismissal lapsed.

30. Respondent misrepresented the status of the matter to Ms. Dove. In e-mails and other communications subsequent to the February 14, 2014 dismissal of the case with prejudice, Respondent made it appear as if the case was ongoing.

31. Months after the dismissal of Ms. Dove's case, Respondent told Ms. Dove that the case was scheduled for either mediation or arbitration at the Arlington County Circuit Court on August 7, 2014. Ms. Dove appeared at the Court on that date, at which time Respondent showed Ms. Dove notes he fabricated regarding the matter to continue the ruse that the case was still ongoing. Respondent further misrepresented to Ms. Dove that that mediation or arbitration was postponed. At the urging of her boyfriend, Ms. Dove went to the Clerk to inquire about her

case. It was only then that Ms. Dove learned that her case had been dismissed with prejudice six months earlier.

**Lashawne Bell**

32. In January 2012, the firm of Lange, Thomas & McMullen, LLP agreed to represent Lashawne Bell in her action against her insurer for water damage to her home in Washington, D.C. Ms. Bell had filed her suit *pro se* in the Superior Court of the District of Columbia.

33. On January 26, 2012, Respondent entered his appearance as counsel for Ms. Bell.

34. On February 3, 2012, after Ms. Bell failed to answer discovery, defendant moved to compel responses.

35. Respondent did not oppose the motion to compel, nor did he respond to discovery.

36. Respondent had unsigned discovery responses from Ms. Bell.

37. Defendant moved for sanctions.

38. Respondent did not oppose the motion for sanctions.

39. By Order entered March 13, 2012, the Court compelled responses by March 20, 2012.

The Order also ruled that defendant could renew its motion for sanctions if plaintiff did not respond by March 20, 2012.

40. Respondent did not provide responses by March 20, 2012.

41. On March 22, 2012, defendant renewed its motion for sanctions and sought dismissal of the suit.

42. Respondent did not respond to the renewed motion for sanctions.

43. By Order entered April 3, 2012, the Court ordered plaintiff to show cause within seven days as to why her case should not be dismissed with prejudice. The Order provided that if no

response to the Order and no responses to the discovery were received within seven days, the case would be dismissed with prejudice.

44. Respondent did not respond to the Order or the discovery.

45. On May 11, 2012, the Court dismissed Ms. Bell's suit with prejudice.

46. Respondent did not tell Ms. Bell or Mr. Lange, the managing partner for Lange, Thomas & McMullen, LLP, that the case was dismissed with prejudice.

47. For two years, from May 2012 to April 2014, Respondent misrepresented the status of the case to Ms. Bell and made it appear as if the case was still active. Respondent advised Ms. Bell of hearings and conferences, which Ms. Bell attempted to attend, only to be told by Respondent on the date of the alleged hearing or conference that the Court had postponed the matter.

48. Respondent also misrepresented to Mr. Lange that the case was scheduled for mediation. Additionally, the Bar contends that Respondent fabricated a scheduling order in the firm's file. Mr. Lange had reviewed the firm's file and relied on this scheduling order, which indicated mediation was scheduled. [Respondent contends that the order was for potential use in the case and that it was never presented to opposing counsel].

49. In April 2014, Respondent finally told Mr. Lange that the case had been dismissed in May 2012, after which Mr. Lange advised Ms. Bell.

50. The time to appeal the decision had lapsed by the time Ms. Bell was advised that the case had been dismissed.

## **II. MISCONDUCT**

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

**RULE 1.1      Competence**

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

**RULE 1.3      Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and 3.3.

**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 1.7      Conflict of Interest: General Rule**

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation. And:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) the consent from the client is memorialized in writing.

#### **RULE 1.16 Declining Or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

#### **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 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or deliberately wrongful act that reflects adversely on the

lawyer's honesty, trustworthiness or fitness to practice law;

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

### **III. DISPOSITION**

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits A1 – A125, Respondent's stipulation as to violations of Rules 1.1, 1.3(a), 1.3(b), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 1.16 (a)(1), 1.16(a)(2), 1.16(a)(3), 8.4(a), 8.4(b) and 8.4(c) and the Bar's withdrawal of Rules 1.7(a), 1.7(b) and 4.1(a), upon evidence presented by Respondent in the form of his own testimony, and at the conclusion of the evidence regarding aggravation and mitigation, including Respondent's prior disciplinary record (admitted as VSB Exhibit B), the Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed. In reaching its decision as to sanction, the Board considered the following aggravating factors:

(1) Respondent's prior Public Reprimand issued by the Fourth District, Section I Subcommittee of the Virginia State Bar on May 5, 2000 for violations of DR 1-102 Misconduct (now Rule 8.4) and DR 6-101 Competence and Promptness (now Rule 1.3);

(2) Respondent's dishonest or selfish motives;

(3) Respondent's pattern of misconduct;

(4) Respondent's offenses involve multiple clients

(5) Respondent's refusal to acknowledge the wrongful nature of his conduct (while

Respondent did stipulate to violating the Rules of Professional, the statements made during his

testimony led the Board to conclude that he did not fully appreciate the wrongful nature of his conduct);

- (6) the vulnerability of both of Respondent's victims;
- (7) Respondent's substantial experience in the practice of law.

The Board considered the following factor in mitigation:

- (1) Respondent cooperated fully with the Bar's investigation

The Chair announced the sanction as revocation of Respondent's license to practice law in the Commonwealth of Virginia, effective June 26, 2015. Respondent was present in person and was advised of the imposition of the sanction.

It is further **ORDERED** that Respondent must comply with the requirements of Part 6, 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 of his license to practice law in the Commonwealth of Virginia to all clients for which he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall give notice within fourteen (14) days of the effective date of this Order and make such arrangements as are required within forty-five (45) days of the effective date of this Order. The Respondent shall also furnish proof to the VSB within sixty (60) days that such notices have been timely given and such arrangements made for the disposition of such matters.

It is further **ORDERED** that if 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. All issues concerning the adequacy of the notice and arrangements required by Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia shall be determined by the Board.

It is **ORDERED** that in accordance with Part 6, Section IV, Paragraph 13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against Respondent.

It is further **ORDERED** that the Clerk shall mail an attested copy of this Order to Respondent, Sean Patrick McMullen, by certified mail, return receipt requested at his address of record with the Virginia State Bar, Lange, Thomas & McMullen, LLP, Suite 225, 6849 Old Dominion Drive, McLean, VA 22101, and to the Respondent, Sean Patrick McMullen, by regular mail to 3423 Wake Drive, Kensington, MD 20895 and to Timothy J. Battle, Respondent's Counsel, at Law Office of Timothy J. Battle, P.O. Box 320593, Alexandria, VA 22320-4593 and hand delivered to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, Bank of America Building, 1111 East Main Street, Richmond, VA 23219-0026.

ENTERED THE 31st DAY OF JULY, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD



\_\_\_\_\_  
Tyler E. Williams, III, Chair