

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JOHN JAMES McNALLY

VSB DOCKET NO. 06-021-2517

**ORDER OF SUSPENSION**

**THIS MATTER** came before the Virginia State Bar Disciplinary Board (“Board”) for hearing on October 26, 2007, upon the Second District Committee’s Certification of a Subcommittee Determination for Certification to the Board which was mailed to the Respondent on May 24, 2007, and upon a Certified Notice of Hearing issued to the Respondent on June 27, 2007 by the Clerk of the Disciplinary System pursuant to Part 6, Section IV, Paragraph 13.I.1.3 of the Rules of the Supreme Court of Virginia.

A hearing was held before the duly convened panel of the Board consisting of Acting Chair William E. Glover, Lay Member V. Max Beard and lawyer members Robert E. Eicher, Martha JP McQuade and Russell W. Updike. The Virginia State Bar (“VSB”) was represented by Assistant Bar Counsel Edward L. Davis (“Mr. Davis”). Respondent John James McNally (“Mr. McNally”) represented himself. The hearing was recorded and reported by Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, telephone number (804) 730-1222, after she was duly sworn by the Chair.

The Chair opened the hearing by polling the Board members to ascertain whether any of them had any personal or financial interest or bias which would interfere with or influence his or her determination, and each member responded that there were no such conflicts.

Mr. Davis and Mr. McNally informed the Board that, prior to the hearing, they had

reached the following:

**STIPULATED FACTS:**

1. During all times relevant to the disciplinary charges, Mr. McNally had been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On May 27, 2003, Complainant Leslie C. Ballance ("Mr. Balance") had hired Mr. McNally to pursue a medical malpractice claim relating to the death of Mr. Balance's mother in a nursing home. Mr. McNally filed suit, and litigation took place over the following three years.

3. In late 2006, Mr. Ballance approached Rebecca Correa, L.P.N. ("Ms. Correa") as a potential expert witness.

4. At Mr. Balance's request, Ms. Correa spoke with Mr. McNally about reviewing the relevant medical records, preparing a report, and testifying as an expert.

5. Mr. Ballance advanced \$1,000 to Mr. McNally for costs.

6. On December 12, 2005, Mr. McNally delivered to Mr. Ballance the medical records and a \$500 trust account check for Ms. Correa, annotated "Expert Ballance Ret." Mr. Ballance delivered the check and medical records to Ms. Correa, who then commenced her review of the records and preparation of a narrative report.

7. Upon completion of her report, Ms. Correa telephoned Mr. McNally to inform him. Mr. McNally asked her to send her resume, which she did by letter, dated December 18, 2005.

8. In her letter of December 18, 2005, Ms. Correa specifically stated that she

required an additional \$500 for her report.

9. On or about December 21, 2005, Ms. Correa met with Mr. McNally at his home office and delivered the report.

10. In return for the report, Mr. McNally gave her a check in the amount of \$500, this time with the annotation: "Expert Fee Ballance."

11. Unbeknownst to Ms. Correa, Mr. McNally post-dated the check to January 2, 2006.

12. When Ms. Correa attempted to negotiate the check, her bank would not accept the check because it was post-dated.

13. Ms. Correa contacted Mr. McNally about this, who said that he had decided not to use her services, and asked her to return his check.

14. Having felt that she had earned the check in return for her report, Ms. Correa deposited the check again, but this time it was returned because Mr. McNally ordered a stop-payment.

15. Mr. McNally explained to the Bar that the fee for reviewing the records and preparing the report was \$500, and that the second \$500 check was only to retain Ms. Correa's future services as an expert. He told the Bar's investigator that he post-dated the check based on his "belief that we would not be using her services again."

16. Mr. McNally also said, however, that he gave Ms. Correa the check in order to get the report, that Ms. Correa asked for a \$500 "retainer" in return for the report.

17. The check in question, however, is annotated "Expert Fee Balance," unlike

the first check (the one that Ms. Correa was able to deposit) which is annotated “Expert Ballance Ret.”

18. In his letter to the bar, dated March 8, 2006, Mr. McNally acknowledged that on December 18, 2006, when Ms. Correa informed him that the report was ready, she said that she needed to be paid up front for the report, and that Mr. McNally would have to provide her another \$500 check to get the report. He acknowledged further that he told her to bring the report and that he would give her a check.

19. Ms. Correa has never been paid the \$500 for her report in accordance with the terms of her letter to Mr. McNally, dated December 18, 2005, and their subsequent discussions.

The VSB’s Exhibits and Mr. McNally’s Exhibits were admitted, without objection and Mr. Davis and Mr. McNally informed the Board that, prior to the hearing, they had reached the following:

**STIPULATED RULE VIOLATION:**

By his actions as set forth in the Stipulated Facts, Mr. McNally engaged in misrepresentation and thereby violated the Rules of Professional Conduct, specifically Rule 8.4(c), which states that it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer’s fitness to practice law.

The VSB withdrew its charge that Mr. McNally had violated Rule 8.4(b) by engaging in larceny.

**AGREED PROPOSED DISCIPLINE:**

Mr. Davis and Mr. McNally informed the Board that they jointly proposed Mr. McNally receive a 14 day suspension of his Bar license, such suspension to begin December 15, 2007. Argument was presented as to why the VSB considered this a reasonable proposed discipline. In addition, Mr. McNally's disciplinary record, which had been certified, was admitted.

The Chair of the Board informed Mr. Davis and Mr. McNally that the Board was not bound by the proposed discipline and could impose a different sanction. Mr. McNally reiterated his presentation of and agreement to the Stipulated Facts and Stipulated Rules Violation. The Board then retired to deliberate.

**DISPOSITION:**

After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction that Mr. McNally's Virginia license to practice law be suspended for 14 days, beginning December 15, 2007. Accordingly, and in conformance with the Board's October 26, 2007 Summary Order in this matter, it is ORDERED that:

Mr. McNally's Virginia license to practice law be, and hereby is, suspended for 14 days, beginning December 15, 2007;

Mr. McNally comply with the requirements of Part 6, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia. He shall forthwith give notice of the suspension of his license to practice law in the Commonwealth of Virginia, by certified mail, return receipt requested, to all clients for whom he is handling matters and to all opposing attorneys and presiding judges in pending litigation. He shall also make appropriate arrangements for the

disposition of matters then in his care in conformity with the wishes of each client. The Respondent shall also forthwith furnish proof to the Bar that such notices have been timely given and such arrangements made for the disposition of matters;

Further, if Mr. McNally is not handling any client matters on the effective date of his suspension, he must submit an affidavit to that effect to the Clerk of the Disciplinary System. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.M shall be determined by the Board, unless Mr. McNally makes a timely request for hearing before a three-judge court;

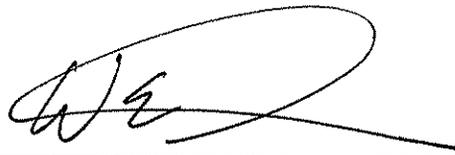
Pursuant to Part 6, Section IV, Paragraph 13.B.8(c) of the Rules, the Clerk of the Disciplinary System shall assess costs in this matter against Mr. McNally; and

The Clerk of the Disciplinary System shall mail an attested copy of this Order to Mr. McNally, by certified mail, at his address of record with the Virginia State Bar, that being: John James McNally, 1057 Manchester Avenue, Norfolk, Virginia 23508 and shall also hand deliver a copy to Mr. Davis at the following address: Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street - Suite 1500, Richmond, Virginia 23219-2800.

ENTERED THIS 19<sup>th</sup> DAY OF December, 2007.

BOARD

VIRGINIA STATE BAR DISCIPLINARY



William E. Glover, Acting Chair