

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF BRIAN MERRILL MILLER

VSB Docket No. 06-053-2860

ORDER OF SUSPENSION

This matter came before the Board on April 22, 2008, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, relative to the matter contained in the Subcommittee Determination (Certification) issued to the Respondent on January 8, 2008. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Dr. Theodore Smith, lay member, Sandra L. Havrilak, Martha J.P. McQuade, Russell W. Updike, and Robert E. Eicher, First Vice Chair, presiding. Each member affirmed that he had no business or personal interest that would impair, or reasonably could be perceived to impair, his ability to be impartial.

Seth M. Guggenheim, Senior Assistant Bar Counsel, representing the Bar, and the Respondent, Brian Merrill Miller, represented by his attorney, Michael L. Rigsby, presented an endorsed Agreed Disposition, dated April 18, 2008. The court reporter for the proceeding was Theresa S. Griffith, Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Brian Merrill Miller (hereinafter the

Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In February of 2004, the Complainant, Barbara A. McGriff, was referred to the Respondent by Omni Legal, a legal referral service that had a relationship with Ms. McGriff's employer. Ms. McGriff hired the Respondent to represent her in domestic relations matters. She paid the Respondent \$1,000.00 in advanced fees. She also provided him with a copy of a property settlement agreement that she and her husband had drawn up themselves and signed.

3. For approximately a year, Ms. McGriff attempted without success to secure information regarding the status of her case from the Respondent. The Respondent filed no pleadings to initiate her case.

4. Finally, in March of 2005, Ms. McGriff contacted Omni Legal who in turn contacted the Respondent. The Respondent informed Omni Legal that he would have a Bill of Complaint and a motion for spousal support ready to be served on Ms. McGriff's husband within a week.

5. On March 11, 2005, upon the advice of Omni Legal, Ms. McGriff sent a certified letter to the Respondent reiterating her understanding of their attorney/client relationship up to that point and demanding that he inform her when he had served the Bill of Complaint and motion. The Respondent did not respond to Ms. McGriff's inquiry until March 29, 2005, after an additional electronic mail from Ms. McGriff on that date.

6. On August 2, 2005, Ms. McGriff sent another electronic mail to the Respondent, again asking where her case stood. She had not heard from him for almost a month. She informed the Respondent that she had only six months left on her rental lease

and wanted to know about the progress of her property settlement agreement in order to make plans for finding another residence. The Respondent again did not respond. On October 26, 2005, Ms. McGriff sent another electronic mail to the Respondent, informing him that she had attempted to contact him at least five times since her last electronic mail on August 2, but had not heard from him. After an electronic email from Ms. McGriff's daughter, Carmen, who was helping to support Ms. McGriff financially, on November 3, 2005, the Respondent finally called Ms. McGriff again. He claimed he had not been able to get in touch with Deborah Arthur, opposing counsel, regarding the McGriffs' settlement agreement. After this conversation, more phone messages and electronic mail ensued without response from the Respondent.

7. Ms. McGriff filed her complaint with the Virginia State Bar on February 28, 2006. Sometime in the middle of April of 2006, Ms. McGriff hired new counsel, Marc Botzin, who informed Ms. Arthur that Ms. McGriff did not agree with the property settlement that she had proposed. Ms. Arthur and Mr. Botzin then renegotiated the McGriffs' agreement to Ms. McGriff's satisfaction.

The Board finds by clear and convincing evidence that such conduct on the part of the Respondent, Brian Merrill Miller, constitutes a violation of the following provisions of the 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 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.

Upon consideration whereof, and of the disciplinary record of the Respondent consisting of a Public Reprimand issued by the Fifth District—Section III Subcommittee on July 25, 2005, it is ORDERED that the license of Brian Merrill Miller to practice law in the Commonwealth of Virginia, be and hereby is SUSPENDED for a period of thirty (30) days, effective April 22, 2008.

It is further ORDERED that, Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) 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 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 client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension 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 April 22, 2008, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be

determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. 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 respondent at his address of record with the Virginia State Bar, being 10482 Armstrong Street, Fairfax, Virginia 22030, by certified mail, return receipt requested, by regular mail to 908 South George Mason Drive, Arlington, Virginia 22204-1557, by regular mail to Michael L. Rigsby, Respondent's Counsel, Carrell Rice & Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, Virginia 23226, and by regular mail to Seth M. Guggenheim, Senior Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED this twenty-second day of April, 2008.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Robert E. Eicher, First Vice Chair