

VIRGINIA:

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

**IN THE MATTER OF
CLIVE ALLEN O'LEARY**

**VS B Docket Nos. 12-060-091129
and 14-000-096531**

These matters came to be heard on September 27, 2013, pursuant to a Notice of Hearing on the Subcommittee Determination (Certification), as to VSB Docket No. 12-060-091129, and Notice of Show Cause Hearing on Failure to Comply with Part 6, Section IV, Paragraph 13-29 of the Rules, as to VSB Docket No. 14-000-096531 properly issued pursuant to Part 6, Section IV, Paragraph 13-18.0, of the Rules of the Supreme Court of Virginia, alleging a failure to comply with Part 6, Section IV, Paragraph 13-29 of the Rules.

These matters were heard before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Pleasant S. Brodnax, III Chair, presiding; Jody D. Katz (Lay Member), John A.C. Keith, Bretta M. Z. Lewis and Melissa W. Robinson. The Virginia State Bar was represented by Kathryn R. Montgomery, Deputy Bar Counsel. Respondent Clive Allen O'Leary (hereinafter "Respondent" or "Mr. O'Leary") appeared by letter. He was not present and was not represented by counsel at the hearing.

Senior Assistant Clerk Clara J. Crouch, pursuant to Board procedures, called Mr. O'Leary's name three times at 9:01 a.m. in the corridor outside of the Courtroom, but Mr. O'Leary did not appear or respond. Court Reporter Tracy J. Stroh, Certified Court Reporter with Chandler & Halasz, P.O Box 9349, Richmond, Virginia, 23327, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board for information regarding whether any of the members has a personal or financial interest which would preclude

fairly hearing the matter. Each member, including the Chair, individually responded that he/she has no such conflict. The matter proceeded without a personal appearance by Mr. O'Leary, and the following findings of fact resulted:

I. Findings of Fact

VSB Exhibits 1 through 15 were admitted without objection. An undated letter from the Respondent received by the Virginia State Bar on September 24, 2013 was admitted as VSB Exhibit 16. The Board makes the following findings of fact on the basis of clear and convincing evidence:

A. As to VSB Docket Number 12-060-091129

1. On or about November 3, 2000, Respondent was licensed to practice law in the Commonwealth of Virginia. At all times relevant hereto, the Respondent has been licensed to practice law within the Commonwealth, with the exception of the periods during which his license was suspended, as detailed herein.
2. The Complainant is Anthony Walker (hereinafter "Complainant"). During August 2011, Complainant hired Respondent to represent him in a divorce.
3. Between July 23, 2011 and September 13, 2011, Complainant paid Respondent a total of \$2,000. Complainant presented receipts and bank statements showing that the Respondent received the payment(s).
4. After approximately October 13, 2011, Respondent failed to provide Complainant with reasonable communication during the remainder of the representation.
5. After approximately October 13, 2011, Respondent failed to act with reasonable diligence and promptness in his representation of Complainant.

6. Prior to October 13, 2011, Respondent filed an answer and cross-bill on Complainant's behalf and represented Complainant in a hearing that resulted in a pendente lite order in the divorce action. Complainant was satisfied with the outcome of the aforementioned pendente lite hearing.
7. Respondent did not obtain a divorce for Complainant. Complainant testified that he was not yet divorced as of September 27, 2013, the date of the Board hearing.
8. Effective March 1, 2012, Respondent's license to practice law was suspended for one year.
9. According to all available information, Respondent cleared out his office and relocated to a location unknown to Complainant. Respondent did not update his address of record with the Virginia State Bar or provide the Virginia State Bar with any information regarding his new address.
10. On information and belief, Respondent relocated to an address within the Commonwealth, and later relocated to Colorado, although Respondent has never verified his address or sent notification of his address to the Bar or Complainant.
11. Respondent did not inform Complainant that his law license had been suspended or that he was planning to cease operations at the office location known to Complainant.
12. Following his March 1, 2012 suspension, Respondent did not take steps to protect Complainant's interests, such as providing Complainant with an accounting, referring Complainant to other counsel, or seeking leave of court to withdraw.
13. Respondent abandoned Complainant.
14. Complainant testified that he learned about Respondent's suspension when he conducted an internet search after several unsuccessful attempts to reach Respondent.

15. Complainant testified that he learned that Respondent had relocated when he went to visit his office and found the office empty.
16. On or about March 6, 2012, Complainant filed a bar complaint against Respondent.
17. The Bar sent Complainant's complaint to Respondent at his address of record and demanded an answer within twenty-one days. Respondent did not answer the bar complaint.
18. On or about April 19, 2012, the bar issued a subpoena duces tecum to Respondent at his address of record. Respondent did not respond.
19. On or about June 1, 2012, the bar issued a notice of noncompliance to Respondent's address of record. Respondent did not respond.
20. On or about June 12, 2012, the Disciplinary Board of the Virginia State Bar imposed an interim suspension on Respondent's license for failure to respond to a bar subpoena. The Board's order was mailed to Respondent's address of record and to another address in Colorado associated with Respondent discovered by the bar's investigator.
21. As of the date of the subcommittee meeting, Respondent remained under the interim suspension.
22. The bar's investigator testified that he attempted to contact Respondent by telephone and by letters sent to his address of record and to an address in Colorado obtained when the investigator visited the Respondent's last known residential address and spoke to someone familiar with the Respondent. In the letters sent to the Respondent, the bar's investigator requested that Respondent contact him to schedule an interview.
23. Respondent did not respond to the bar's investigator requests for an interview. Respondent did not submit to an interview by the bar's investigator.

24. Respondent's only contact with the Bar involving the instant matters is VSB Exhibit 16, which is part of the record of the instant proceedings and references only the docket number 14-000-096531.

B. As to VSB Docket Number 14-000-096531

25. On January 30, 2012, Respondent, who was represented by Counsel, appeared before a Three-Judge Court in the Circuit Court for Stafford County for a hearing in matter number CL11001157-00 (VSB docket numbers 10-060-080220 and 11-060-084890). The January 30, 2012 matter arose from a Certification issued by a subcommittee of the Sixth District Committee on VSB docket numbers 10-060-080220 and 11-060-084890.

Respondent and Counsel presented argument and evidence before the Court. The Petition for a Show Cause Hearing was supported by VSB Exhibits 1-3, which were considered by the Board.

26. At the conclusion of the January 30, 2012 hearing, the Court found various violations of the Rules of Professional Conduct and announced a one year suspension with terms effective March 1, 2012.

27. On March 12, 2012, the Three-Judge Court entered a Memorandum Order imposing the one year suspension with terms in the matter of CL11001157-00 (VSB docket numbers 10-060-080220 and 11-060-084890). The Memorandum Order is attached as Exhibit 1. The Memorandum Order required Respondent to comply with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia.

28. Respondent failed to certify to the Clerk of the Disciplinary System compliance with Paragraph 13-29, as required by the Court's Summary Order and Memorandum Order, and by Paragraph 13-29. 29. In violation of the Summary Order and the Memorandum

- Order and the requirements of Paragraph 13-29, Respondent failed to notify an existing client, Anthony Walker, of his suspension.
30. Respondent has not complied with Part Six, Section IV, Paragraph 13-29 of the Rules of Court as ordered by the Three-Judge Court in its January 30, 2012 Summary Order and March 12, 2012 Memorandum Order.
 31. Pursuant to the January 30, 2012 Order, the alternative sanction to be imposed if Respondent failed to comply with terms was a two-year suspension. The Court entered a Summary Order on March 12, 2012 ordering Respondent to comply with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia.
 32. On November 16, 2012, The Virginia State Bar Disciplinary Board held a hearing resulting from a Notice of Show Cause against Respondent for failure to comply with terms imposed by the Three-Judge Court. Respondent was not present at the hearing and was not represented by counsel. At the conclusion of the hearing, the Board found that Respondent had failed to comply with the terms of the March 12, 2012 Memorandum Order and imposed the alternate sanction of a two-year suspension.
 33. The Virginia State Bar Disciplinary Board entered a November 16, 2012 Summary Order and a December 31, 2012 Order of Suspension in VSB docket number 13-060-093249. The Memorandum Order is attached as Exhibit 2. The Summary Order is attached to the Affidavit of Barbara S. Lanier, Clerk of the Disciplinary System, which is attached to the Petition for Rule to Show Cause as Exhibit 3. The Summary Order and the Order of Suspension imposing the two-year suspension also require Respondent to comply with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia.

34. Respondent failed to certify to the Clerk of the Disciplinary System compliance with Paragraph 13-29, as required by the Board's November 16, 2012 Summary Order and the Board's December 31, 2012 Order of Suspension, and by Paragraph 13-29.
35. As of September 27, 2013, Respondent had not complied with Part Six, Section IV, Paragraph 13-29 of the Rules of Court as ordered by the Disciplinary Board in the November 16, 2012 Summary Order and the December 31, 2012 Order of Suspension.
36. Respondent's only contact with the Bar involving the instant matters is a letter received in the Bar office on September 24, 2013. The letter is part of the record of the instant proceedings and references only the docket number 14-000-096531.

II. NATURE OF MISCONDUCT

A. As to VSB Docket Number 12-060-091129

The Board found by clear and convincing evidence that the Respondent's conduct constitutes misconduct in 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.

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 fee that has not been earned and handling records as indicated in paragraph (e).

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;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

As to the remaining violations contained in the Certification, the Board found that the Bar had not proved violations by clear and convincing evidence.

B. As to VSB Matter Number 14-000-096531

The Board found by clear and convincing evidence that the Respondent has failed to comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia as well as the various Orders that have been entered by the Court and the Disciplinary Board in the instant matters.

III. DISPOSITION

A. As to VSB Docket Number 12-060-091129

After receiving evidence of aggravation and mitigation from the Bar and the Respondent, and after receiving the Respondent's prior Disciplinary Record consisting of five (5) prior matters, the Board recessed to deliberate regarding the appropriate sanction. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced that the matters warranted imposition of the following sanction:

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective September 27, 2013.

B. As to VSB Docket Number 14-000-096531

After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced that the matters warranted imposition of the following sanction:

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective September 27, 2013.

It is further ORDERED that, as directed in the Board's September 27, 2013, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § 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 client. Respondent shall give such 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 day of the 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 his revocation, 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 13-29 shall be determined by the Virginia State Bar

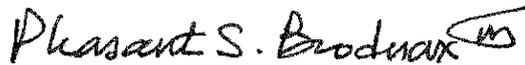
Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. 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 The Law Office of Clive A. O'Leary, 1440 Central Park Boulevard, Suite 208, Fredericksburg, VA 22401, and a copy hand-delivered to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 10th day of October, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Pleasant S. Brodnax, III
Pleasant S. Brodnax, III, Chair