

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ROBERT RAY STONE, JR.

VSB DOCKET NOS. 05-041-4139 and 07-041-1180

**ORDER OF REVOCATION**

**THESE MATTERS** came on to be heard on Friday, February 22, 2008, at 12:45 p.m., before a panel of the Disciplinary Board consisting of William H. Monroe, Jr., 2<sup>nd</sup> Vice Chair presiding (the "Chair"), Paul M. Black, Timothy A. Coyle, Robert L. Freed and Stephen A. Wannall (Lay Member). The Virginia State Bar ("VSB") was represented by Kathleen M. Uston, Assistant Bar Counsel. The Respondent, Robert Ray Stone, Jr., appeared in person and represented himself. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing these matters and serving on the panel, to which inquiry each member, including the Chair, responded in the negative. Tracy J. Johnson, registered professional reporter, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

These matters came before the Board on the Subcommittee Determination (Certification) by the Fourth District Subcommittee Section I. At the beginning of the proceedings, the Respondent made a Motion to admit into evidence certain affidavits. Bar Counsel had no objection provided the affidavits were offered at the discipline stage of the proceedings. Respondent agreed and the affidavits were received by the Chair to be utilized and admitted into evidence only upon a finding of misconduct followed by a subsequent determination of sanction. The Respondent then moved to dismiss the proceedings arguing that he did not receive a copy of the Certification. In addition, Respondent argued that he was unable to successfully subpoena a complaining witness, Ms. Teresa G. Taylor, who was not present to testify. The Board recessed

to deliberate. In deliberations the Board found that the Respondent was properly served with a copy of the Certification and that his inability to successfully subpoena a witness to testify at the hearing was chiefly due to the Respondent's failure to request subpoenas within the deadline clearly set forth in the Pre-Hearing Order. Following deliberation, and prior to the Board announcing its ruling, the Respondent stipulated that he had been served with the Certification. The Board then announced that the Respondent's Motion to Dismiss was denied.

### I. FINDINGS OF FACT

VSB Exhibits 1 through 21 inclusive were admitted without objection. The VSB presented evidence through its witnesses; the Respondent cross-examined the witnesses and thereafter testified on his own behalf. After consideration of the exhibits and the testimony, the Board makes the following findings of fact on the basis of clear and convincing evidence:

#### **VSB Docket No. 05-041-4139**

1. At all times relevant to the matters set forth herein, Robert Ray Stone, Jr., (hereafter "Respondent"), was an active member of the Virginia State Bar not in good standing, his license first having been suspended on November 28, 1989 for non-compliance with professional liability insurance filing requirements. Respondent's license was also suspended on October 18, 1999 for non-payment of annual dues, and was forfeited on January 31, 2002 for non-payment of annual dues. The Respondent's license has never been reinstated, and he has received notice of the suspension of his license to practice law in Virginia. The Respondent received proper notice of this proceeding as required by Part Six, §IV, ¶13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

2. The Respondent prepared a Memorandum of *Lis Pendens* on behalf of Ms. Teresa G. Taylor in the case styled *Teresa G. Taylor v. Roberto Manglapus and E. Victoria Manglapus* filed by Ms. Taylor June 30, 2004 in the Circuit Court of Arlington County, Virginia, Chancery

No. 04-400.

3. On December 17, 2004, Ms. Taylor appeared *pro se* in the Arlington County Circuit Court on the defendants' Motion to Quash the Memorandum of *Lis Pendens*. The matter was heard by the Honorable Joanne F. Alper. The Respondent prepared an Answer to Motion to Quash and for Sanctions for Ms. Taylor but did not appear at the hearing on December 17, 2004. In response to the Court's questions, Ms. Taylor stated that she was representing herself and others for whom she had power of attorney based upon advice from her attorney. She also stated that her attorney had shown her how to file the *lis pendens* and had prepared the papers, but that she did not have the funds to pay him to appear in court with her. The Court asked Ms. Taylor who her attorney was and she stated that he was Robert Ray Stone, Jr., the Respondent.

4. Since there was no case underlying Ms. Taylor's memorandum of *lis pendens*, the Court granted the defendants' motion to quash by order entered December 17, 2004, and sanctioned Ms. Taylor \$1,450.00 in attorney's fees. The Court subsequently filed the instant complaint with the Virginia State Bar regarding the Respondent.

5. Under letterhead which read, in part, "Robert R. Stone, Esq., 2600 S. Eads St., Arlington, VA 22202," the Respondent created a Bill for Professional Services dated "Week of December 11-18, 2004," and billed Ms. Taylor a total of \$1,662.00. The Respondent testified that Ms. Taylor paid him approximately \$300.00 for his work.

6. The Respondent was aware that his license to practice law was not in good standing when he performed legal work for Ms. Taylor.

**VSB Docket No. 07-041-1180**

1. At all times relevant to the matters set forth herein, Robert Ray Stone, Jr., Esquire (hereafter "Respondent") was an active member of the Virginia State Bar not in good

standing, his license first having been suspended on November 28, 1989 for non-compliance with professional liability insurance filing requirements. Respondent's license was also suspended on October 18, 1999 for non-payment of annual dues, and was forfeited on January 31, 2002 for non-payment of annual dues. Respondent has received notice of the suspension of his license to practice law in Virginia. The Respondent received proper notice of this proceeding as required by Part Six, §IV, ¶13(E) and (I)(a) of the Rules of Virginia Supreme Court.

2. On August 30, 2006, the Complainant, Ms. Monica Ann Mallini, and her estranged husband, Mr. Robb Rourke, retained the Respondent to prepare a Property Settlement Agreement incident to their divorce. The Respondent accepted a \$500.00 check from Ms. Mallini representing her share of his fees.

3. At no time did the Respondent advise Ms. Mallini that his license to practice law in the Commonwealth of Virginia had been suspended and was not in good standing.

4. The Respondent acknowledged receipt of \$500.00 from Ms. Mallini and admitted that he deposited the funds received from Ms. Mallini directly into his personal bank account as he no longer maintained a trust or law office account.

5. Respondent accepted personal services from Mr. Rourke in lieu of payment for his legal services, including typing and assisting with correspondence.

6. From August 30, 2006 until early October, 2006, Ms. Mallini tried to contact the Respondent to inquire as to the status of the Property Settlement Agreement she had engaged him to prepare. Ms. Mallini testified that the Respondent failed to return her telephone calls or to otherwise advise her of the status of her matter and the Respondent testified that he tried but it was difficult to get in touch with Ms. Mallini.

7. By letter dated October 2, 2006, Ms. Mallini advised the Respondent that she required the Property Settlement Agreement no later than October 13, 2006.

8. On or about November 21, 2006, the Respondent informed Ms. Mallini that the Property Settlement Agreement was ready for her review. A copy of that Agreement was delivered to Ms. Mallini by Mr. Rourke the following day. The Agreement prepared by the Respondent and given to Ms. Mallini contains factual inaccuracies, run on sentences and many typographical, capitalization and grammatical errors.

9. In addition, the Agreement presented to Ms. Mallini did not contain provisions she had discussed with the Respondent and contained provisions favorable to Mr. Rourke about which Ms. Mallini was not previously aware and to which she had not agreed.

10. Ms. Mallini ultimately prepared her own Property Settlement Agreement and utilized that document incident to her divorce from Mr. Rourke.

11. The Respondent was interviewed by David Jackson, a Virginia State Bar investigator, in December, 2006, concerning the matters set forth herein. Respondent told the investigator that he was paid \$500 by Ms. Mallini to prepare a Property Settlement Agreement, that he deposited her check into his personal bank account and that he did not maintain a trust account.

12. Respondent maintained a website that, as of the date of the Certification by the Fourth District Subcommittee, identified him as eligible to practice before courts in Arlington and Fairfax, Virginia. Investigator Jackson testified that as of February 20, 2008, the Respondent still maintained a website substantially the same as the website referred to above.

## II. MISCONDUCT

The Certification for **VSB Docket No. 05-041-4139** charged violations of the following provision of the Virginia Rules of Professional Conduct:

### **RULE 5.5 Unauthorized Practice of Law**

- (a) A lawyer shall not:
  - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction ...

The Certification for **VSB Docket No. 07-041-1180** 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 1.4 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 1.7 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 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.

### **RULE 1.15 Safekeeping Property**

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in

which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
  - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
    - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts.
    - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;
    - (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts ...

**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 other law ...

**RULE 5.5 Unauthorized Practice Of Law**

- (a) A lawyer shall not:
  - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction ...

**III. DISPOSITION**

Upon hearing the foregoing findings of fact, the exhibits presented by Bar Counsel on behalf of the VSB (Exhibits 1 through 21), the evidence from witnesses presented on behalf of the Bar and upon evidence presented by Respondent in the form of his own testimony, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence any violation of Rule 1.4(a) in VSB Docket No. 07-041-1180.
2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of the following Rule of Professional Conduct in VSB Docket No. 05-041-4139: Rule 5.5(a)(1).
3. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of the following Rules of Professional Conduct in VSB Docket No. 07-041-1180: Rules 1.1, 1.7(a)(1) and (2); 1.15(a) and (e); 1.16(a)(1) and 5.5(a)(1).

The Board then heard evidence regarding the appropriate sanction that should be imposed. The Board received and considered the affidavits supportive of Respondent from John B. Jacobs and Rev. Stephen Hassmer, in addition to an affidavit and testimony from Frederick Shaddock. The Board was also presented with a copy of the Respondent's prior disciplinary record. The Board additionally heard arguments of Bar counsel and Respondent.

The Board then recessed to consider the evidence and the arguments by counsel. After due deliberation, the Board reconvened and the Chair announced the sanction as REVOCATION of the Respondent's license to practice law in the Commonwealth of Virginia.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is REVOKED, effective February 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 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 the 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 (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 P.O. Box 100411, Arlington, VA 22210, by certified mail, return receipt requested, and by regular mail to Kathleen M. Uston, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED this 25<sup>th</sup> day of MARCH, 2008

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
William H. Monroe, Jr., 2<sup>nd</sup> Vice Chair