

**VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX**

**VIRGINIA STATE BAR EX REL  
FIFTH DISTRICT COMMITTEE**

**v.**

**Case No. 2012-02002**

**MARK JOHN SULLIVAN**

**MEMORANDUM ORDER**

This cause came to be heard on the 23<sup>rd</sup> day of May, 2012 before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of the Honorable Westbrook J. Parker, Judge Designate, the Honorable Walter W. Stout, III, Judge Designate, and the Honorable Lisa B. Kemler, Chief Judge Designate. The Virginia State Bar appeared through its Assistant Bar Counsel Richard E. Slaney, and the Respondent appeared in person and through his counsel, Rodney G. Leffler, Esq.

WHEREUPON, a hearing was held on the Rule to Show Cause issued against the Respondent, Mark John Sullivan, which Rule directed him to appear and show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked or why he should not otherwise be sanctioned by reason of the allegations of unethical conduct set forth in the Certification issued by a subcommittee of the Fifth District Committee of the Virginia State Bar.

Pursuant to a Pre-Hearing order, the parties previously filed exhibits and witness lists. At the outset of the hearing the panel sustained the Respondent's objection to Bar Exhibit 6, and overruled the Respondent's objections to Bar Exhibits 7 and 9. Bar Exhibits 1 through 5 and 7 through 10 and the Respondent's Exhibits 1 through 11 were admitted into evidence.

Following opening statements by the parties, the Bar presented its evidence. The panel then heard evidence on behalf of the Respondent, and the argument of the parties as to whether Respondent violated the Rule of Professional Conduct set forth in the Certification.

After due deliberation, the panel unanimously found by clear and convincing evidence the following facts:

1. At all times relevant to this matter, the Respondent, Mark John Sullivan, Esq. (Sullivan), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Sullivan, an Assistant Commonwealth's Attorney, was assigned to prosecute Devin A. Manigo (Manigo), Antonio Wilson (Wilson) and Richey Price (Price) for crimes related to their robbery of a Prime Mart convenience store.
3. Wilson and Price, who were both present at the robbery, agreed to testify against Manigo, who was not present. In return, Sullivan agreed that, as to Price, he would appear at Price's sentencing and advise the sentencing Judge of Price's cooperation. As to Wilson, Sullivan agreed he would appear at Wilson's sentencing and advise the sentencing Judge of Wilson's cooperation, and also agreed to reduce Wilson's charge of abduction for profit to simple abduction.
4. At Manigo's trial, both Wilson and Price testified they were not receiving any consideration or benefit for their testimony. Sullivan was aware both Price and Wilson were promised that if they testified against Manigo the Commonwealth would inform their sentencing judges of their cooperation; and additionally, that Wilson's charge of abduction for profit was reduced to simple abduction in exchange for his testimony. Sullivan, however, who was present while they testified, took no action to correct the testimony of either Price or Wilson. Manigo was convicted of robbery and abduction for profit.
5. After trial, counsel for Manigo filed a "Renewed Motion to Set Aside the Verdict and Motion for An Evidentiary hearing Based on Newly Discovered Exculpatory Evidence that was Unlawfully Withheld by the Prosecutor." The Court held an evidentiary hearing and granted the motion to set aside the verdict, finding Sullivan failed to correct the untruthful testimony of Price and Wilson and that such failure constituted a violation of due process as guaranteed by the U.S. Constitution.

The panel unanimously found that such conduct by Respondent violated the following provision of the Virginia Rules of Professional Conduct:

RULE 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
  - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

THEREAFTER, the Respondent presented evidence and the parties offered argument regarding the sanction to be imposed. After due deliberation, the panel unanimously decided to impose upon the Respondent a Public Admonition, effective immediately, and the Court entered a Summary Order to that effect. It is therefore

ORDERED that the Respondent, Mark John Sullivan, is PUBLICALLY ADMONISHED by this Court.

Pursuant to Paragraph 13-9(E) of the Rules, the Clerk of the Disciplinary System shall assess costs. It is further

ORDERED that the Clerk of this Circuit Court shall send a copy *teste* of this order to the Respondent by certified mail, return receipt requested, at the Office of the Commonwealth's Attorney, Room 123, 4110 Chain Bridge Road, Fairfax, VA 22030, his last address of record with the Virginia State Bar, and send copies *teste* of this order by regular mail to Assistant Bar Counsel Richard E. Slaney, at 707 East Main Street, Suite 1500, Richmond, VA 23219, to Rodney G. Leffler, Esq., 10555 Main Street, Suite 600, Fairfax, VA 22030-3309, and to Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, VA 23219.

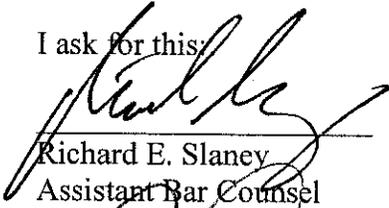
These proceedings were recorded by Gail Hirte Zehner, Verbatim Reporter, Rudiger, Green & Kerns Reporting Service, 4116 Leonard Drive, Fairfax, VA 22030, telephone number (703) 591-3136.

ENTERED this 6<sup>th</sup> day of JUNE, 2012.



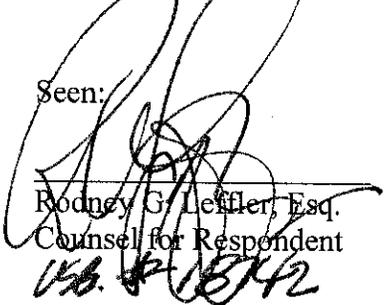
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Lisa B. Kemler  
Chief Judge Designate

I ask for this:



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Richard E. Slaney  
Assistant Bar Counsel

Seen:



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Rodney G. Leffler, Esq.  
Counsel for Respondent  
USB. # 15142