

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MARTIN JOSEPH SWEANEY

VS B Docket No. 10-033-081985

MEMORANDUM ORDER

This matter came on to be heard on May 3, 2012 by the Disciplinary Board of the Virginia State Bar (the Board) by telephone conference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Werner Quasebarth (Lay Member), Samuel R. Walker, Whitney G. Saunders, Richard J. Colten, and Pleasant S. Brodnax, III, Second Vice Chair, presiding (the Panel).

Edward L. Davis, Bar Counsel, appeared for the Virginia State Bar, and the Respondent, Martin Joseph Sweaney, appeared by telephone, *pro se*.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented the same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel accepted the Agreed Disposition by unanimous decision.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. During all times relevant hereto, except as indicated below, the Respondent, Martin Joseph Sweaney, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Mr. Sweaney was admitted to practice law in the Commonwealth of Virginia on April 28, 1988. He has not been admitted to practice in any other jurisdiction.
3. In July 1989, Mr. Sweaney joined the Department of Justice (DOJ), Federal Bureau of Prisons (BOP) as an attorney-advisor. He maintained continuous employment with the BOP in the state of Texas and advanced to the position of Senior Litigation Counsel in 2006.
4. While employed as an attorney for BOP, Mr. Sweaney allowed his law license to be suspended for failure to pay dues on five separate occasions for a total of 128 months. This was in violation of both DOJ policy¹ and federal law², which required him to maintain a law license in at least one jurisdiction.
5. Specifically, Mr. Sweaney allowed his law license to be suspended from October 5, 1990 to April 17, 2000; October 13, 2005 to January 17, 2006; March 29, 2006 to June 30, 2006; October 11, 2006 to April 9, 2007; and October 12, 2007 to December 26, 2007.
6. The matter came to light in 2008 when BOP learned about Mr. Sweaney's Virginia law license suspension from October 11, 2006 to April 9, 2007. BOP then reported the matter to the DOJ Office of Professional Responsibility (OPR) for investigation.
7. During the ensuing OPR investigation, Mr. Sweaney testified under oath that he realized for the first time that he had not paid his 2006-2007 VSB dues when he was preparing his 2007 Federal Income Tax returns and could not find a record of having paid the dues in order to declare a business expense deduction.
8. He also testified that he knew that he was required to maintain an active bar license at all times of his employment with BOP, and that he "pretty regularly" received mailings from the VSB.
9. When OPR asked about whether his law license could have been suspended on other occasions, Mr. Sweaney testified that he could not recall, that he thought that there was

one time, but could not remember, and that he did not know the time that any other suspension occurred.

10. Based upon Mr. Sweaney's testimony during the March 27, 2008 interview, the OPR attorneys made further inquiry of the Virginia State Bar which revealed three other time periods between 2005 and 2007 when his law license was suspended by the VSB. (It did not reveal the suspension from 1990 to 2000 at that time.)
11. By letter, dated May 6, 2008, OPR sent Mr. Sweaney the VSB documents relating to the three other suspensions and advised him that they planned to re-interview him.
12. After receiving the VSB records from OPR, Mr. Sweaney acknowledged by letter, dated May 12, 2008, that during his March 27, 2008 interview, he had "made an untrue statement when [he] said that [he] could not recall whether there were other instances of suspension of [his] Virginia law license."
13. At his May 20, 2008 re-interview, Mr. Sweaney admitted to OPR that he had made the following six false statements during his March 27 interview:
 - (1) When asked if there were any other times between 1988 and 2006 that his law license had been suspended, he responded, "I can't say that I recall. My memory just isn't that good. I wouldn't think so." He later admitted on May 20 that this was a false statement because he knew that there had been earlier occasions during which he had been suspended by the VSB.
 - (2) When asked if he had any reason to think that at any time between 1988 and 2006 his license had been suspended, he responded, "I think that there was at one time, but I really don't remember. All I know is when I realized it I'm sure [I] got it back into good standing." He admitted on May 20 that this was a false statement and that, in fact, he knew that there had been multiple prior suspensions.
 - (3) When asked if he remembered when any suspension had occurred, he responded, "No." He admitted on May 20 that this was a false statement and that, in fact, he knew at least approximately when he had been suspended.
 - (4) When asked if he remembered the circumstances of how it came to be that his license may have been suspended, he responded, "No, I don't." He admitted on May 20 that this was a false statement because he knew that he had been suspended for failure to pay annual bar dues and for not fulfilling his Continuing Legal Education requirements.
 - (5) When asked if he remembered how long his license may have been suspended, he responded "No." He admitted on May 20 that this was a false statement because he knew of the 2005-2006 suspension and because he recalled being suspended

for much of the 1990's – a subject that had not arisen at his interviews, but which he then described.

- (6) When asked if he had been previously suspended for failing to pay bar dues, he responded, "If there ever was a one [a previous suspension], that would be the only reason that I could imagine....I never had any problems of any other nature with the Virginia Bar." He admitted on May 20 that this was a false statement because he knew that he had also been suspended for failure to fulfill his CLE requirements as well as nonpayment of dues.
14. During this interview, Mr. Sweaney also testified that his law license had been suspended during the 1990's for several years and that he was not reinstated until he paid more than \$2,000 in dues, penalties and costs. He testified that he did not reactivate his law license because of the spiraling costs, but then did so when DOJ instituted a requirement that DOJ attorneys certify active bar membership.
15. The DOJ/OPR report concluded that (1) by knowingly allowing his law license to lapse five separate periods of time, for a cumulative total of 128 months, Mr. Sweaney violated his obligation under 28 U.S.C. 530c(c) (1) and DOJ policy to maintain an active membership in at least one state bar and (2) that Mr. Sweaney violated his duty of candor by purposefully misrepresenting material facts at his OPR interview on March 27, 2008, citing 28 C.F.R. Section 45.13.³
16. DOJ suspended his employment for 50 days, but permitted him to serve the suspension in two 25-day increments at the suggestion of his employer.
17. By letter, dated November 30, 2009, OPR reported its findings to the Virginia State Bar.
18. In response to the bar complaint, Mr. Sweaney acknowledged the accuracy of the statements regarding his misconduct contained in the letter of November 30, 2009, and further acknowledged that he had no justification for his misconduct, by which he caused financial hardship to his family along with personal and professional embarrassment before his colleagues, and that he will be forever sorry.
19. During an interview with the VSB investigator on March 28, 2011, Mr. Sweaney acknowledged that he purposefully made misrepresentations while under oath during the OPR interview and that he committed intentional professional misconduct by knowingly violating 28 U.S.C. 530c (c) (1) Department of Justice Policy by not maintaining an active bar membership in any state for five periods of time due to nonpayment of bar dues and noncompliance with mandatory CLE requirements.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Martin Joseph Sweaney constitutes

misconduct in violation of the following Rules of Professional Conduct:

Rule 5.5 Unauthorized Practice Of Law; Multijurisdictional Practice of Law

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

Rule 8.5 Disciplinary Authority; Choice Of Law

(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Virginia is also subject to the disciplinary authority of Virginia if the lawyer provides, holds himself out as providing, or offers to provide legal services in Virginia. By doing so, such lawyer consents to the appointment of the Clerk of the Supreme Court of Virginia as his or her agent for purposes of notices of any disciplinary action by the Virginia State Bar. A lawyer may be subject for the same conduct to the disciplinary authority of Virginia and any other jurisdiction where the lawyer is admitted.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board ORDERS the SUSPENSION of the Respondent's license to practice law in the Commonwealth of Virginia for a period of THREE AND ONE-HALF YEARS, effective May 18, 2012, the date that this matter was scheduled to be heard by the Virginia State Bar Disciplinary Board.

It is further ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 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 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 the suspension, 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 costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this order to Martin Joseph Sweaney by certified mail to his last address of record with the Virginia State Bar, at Federal Bureau of Prisons, South Central Regional Office, Suite 300, 4211 Cedar Spring Road, Dallas, TX 75219, and hand delivered to Edward L. Davis, Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Tracy J. Stroh, RPR, CCR, CLR, Chandler & Halasz, P.O. Box 9349, Richmond,
Virginia 23227, (804) 730-1222, was the court reporter for the hearing and transcribed the
proceedings.

ENTERED:

May 3, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Pleasant S. Brodnax III
Pleasant S. Brodnax, III, 2nd Vice Chair

¹ In 1997, to ensure compliance with the bar membership requirement, DOJ initiated the practice of requiring DOJ attorneys to certify that they are “fully licensed and authorized to practice” in at least one jurisdiction. Attorney Personnel Memorandum No. 97-6, May 29, 1997.

² 28 U.S.C. 530c (c) (1) provides that no funds available to the Attorney General may be used to pay compensation for services provided by an individual employed as an attorney (other than an individual employed to provide services as a foreign attorney in special cases) unless such individual is duly licensed and authorized to practice as an attorney under the law of a State, a territory of the United States, or the District of Columbia.

³ Code of Federal Regulations, Title 28 (Judicial Administration) Section 45.13 - Duty to cooperate in an official investigation - Department employees have a duty to, and shall, cooperate fully with the Office of the Inspector General and Office of Professional Responsibility, and shall respond to questions posed during the course of an investigation upon being informed that their statement will not be used to incriminate them in a criminal proceeding. Refusal to cooperate could lead to disciplinary action. [Order No. 2835-2006, 71 FR 54414, Sept. 15, 2006]. See also 18 U.S.C. 1621 making it a criminal offense to commit perjury, when an individual who, having taken an oath before a competent officer to testify truthfully in a matter, willfully testifies to “any material matter which he does not believe to be true.”