

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
MICHAEL ALAN WARD,**

VS B DOCKET NO. 12-051-091819

MEMORANDUM ORDER

This matter came on to be heard on January 23, 2015, before a panel of the Disciplinary Board of the Virginia State Bar (the Board) upon the District Committee Determination for Certification by the Fifth District Section I Subcommittee entered September 9, 2014 (VSB Docket No. 12-051-091819) pursuant to Part Six, Section IV, Paragraph 13-18(A) of the Rules of the Supreme Court of Virginia. A duly convened panel of the Board consisting of Tyler E. Williams, III, Chair, Robert W. Carter, Lay Member, Jeffrey L. Marks, Esther J. Windmueller and Lisa A. Wilson (the Panel) heard the matter. Kathleen M. Uston, Assistant Bar Counsel appeared as counsel for the Virginia State Bar. The Respondent, Michael Alan Ward (Respondent) appeared *pro se*. The court reporter for the proceeding, Tracy Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone 804-730-1222, was sworn by the Chair. The Chair 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, responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (Clerk) in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court. The case was called by the Clerk and the

Respondent appeared *pro se*.

I. FINDINGS OF FACT

The Board entertained opening statements from Respondent and the VSB and received evidence. VSB Exhibits A1 – A7, B8-1 – B8-4, B8-6 – B8-10, B8-12 - B8-17, B8-19 - B8-29, B8-33 - B8-48, B8-50 - B8-52, B8-54, B8-57 and B8-59 were admitted without objection. Respondent Exhibits A1-A7 were admitted without objection. Respondent stipulated that the allegations contained in the Certification established clear and convincing evidence of a violation of Virginia Rules of Professional Conduct Rule 1.4 (a), (b) and (c). At the close of the evidence, the Board heard arguments from Respondent and the VSB. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Michael Alan Ward (hereinafter “Respondent”), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or around 2005, Complainant, Rafael Jose Jabba (hereinafter “Complainant”) contacted Respondent concerning real property which Complainant owned in Fairfax County, Virginia (hereinafter the “Assembly Drive property”). Complainant and his wife were divorced by a court in Jordan in March, 1999, but that decree was silent as to the disposition of the Assembly Drive property. At the time Complainant first met Respondent in 2005, Respondent advised Complainant that he needed to obtain an Order from the Jordanian court speaking to the disposition of the Assembly Drive property. Complainant obtained such a decree in July, 2006.
3. Thereafter, in June, 2007, Complainant signed an Engagement Agreement with Respondent engaging his services to assist in determining the respective monetary entitlement of Complainant and his wife to the Assembly Drive property in Virginia through domestication of

the Jordanian Order. Complainant advised Respondent that he did not want the property partitioned, which would result in a 50/50 split of the equity, since he paid the initial down payment and consistently paid the mortgage.

4. Respondent agreed to proceed with domestication of the Jordanian decree, and advised his client on several occasions that a court date had been set. After each of these dates, Complainant sought a status from Respondent but was unable to obtain any information from him.

5. Eventually, Complainant learned that his ex-wife had filed a partition suit against him and he sought Respondent's assistance in this regard. Respondent failed to adequately represent Complainant in this case since he failed to respond to the suit itself. Additionally, Respondent failed to respond to discovery despite being sent notices by opposing counsel and being given multiple deadline extensions. Respondent failed to respond to discovery by the initial deadline of February 17, 2011. Respondent was given an extension to February 25, 2011. However, he failed to respond. Respondent then signed an agreed Order to Compel Discovery in which he agreed to provide discovery by close of business on March 21, 2011. Respondent failed to provide discovery by the date required in the court order. Respondent did not provide a response of any kind until March 28, 2011, one week past the court ordered deadline. Respondent's failure to respond to discovery ultimately resulted in Complainant being sanctioned and prohibited from introducing certain evidence at trial.

6. In addition, Respondent failed to advise his client of the trial date and as a result, Complainant was not in attendance. Respondent did appear for trial but Complainant's ex-wife prevailed and the Assembly Drive property was ordered partitioned. Respondent did not inform Complainant that the Assembly Drive property was ordered partitioned and that Complainant

was given ninety-days from entry of the order to purchase his ex-wife's interest in the property for \$148,127.05. Complainant was also ordered to pay \$2,656.00 in attorney's fees to ex-wife's counsel. The Partition Order was entered on April 4, 2011.

7. Complainant did not learn that the Assembly Drive property was ordered partitioned until June of 2012 when he visited the property and saw a For Sale sign in the yard. By that time, the opportunity for Complainant to purchase his ex-wife's interest in the property had long since expired and the property was in the midst of being sold by a court appointed special commissioner of sale. Complainant reviewed the court file and it was only then that he learned that Respondent had failed to attend hearings, failed to respond to discovery, failed to advise him of the trial date, and failed to keep him informed about his case. Complainant also learned at that time that Respondent failed to timely file a Statement of Facts in the appeal that Respondent pursued on his behalf.

8. The Assembly Drive property was sold in August of 2012 for \$253,094.21 and the proceeds of the sale were approved for disbursement by court order dated September 14, 2012. Pursuant to the 2011 Partition Order, Complainant's share of the proceeds was reduced by \$2,656.00 to pay his ex-wife's attorney's fees. Complainant ultimately received payment in the amount of \$118,663.63 while his ex-wife received \$124,400.58.

9. During the course of the investigation of this matter, Respondent submitted to an interview with Virginia State Bar Investigator Ronald H. McCall. At this time, Respondent conceded that he lied to his client about having obtained a court date for the domestication of the Jordanian order. Specifically, in his October 28, 2010 email to Complainant, Respondent stated, "The court hearing was scheduled for October 28 (tomorrow)." Respondent then went on to

advise his client that the case had been continued to November 29th because the judge who was to hear the matter had a trial spill over into the following day. Respondent admitted to Investigator McCall that nothing was pending at this time, and that he sent the email to “put his client off.”

10. In addition, in his email of December 8, 2010 to Complainant, Respondent advised him that the November 29th hearing was simply to set a date for the trial and further advised that, “The new (and hopefully final) court date is February 11, 2011.” During his interview with Investigator McCall, Respondent claimed that this email was “inartfully” (sic) worded since he did not mean to communicate that the case was actually set for trial, but that it would be when his client provided him with a new order from the Jordanian court. Respondent admitted that nothing had been filed at that point in time.

11. Throughout the course of the case, Respondent failed to keep his client informed of developments in the case and the important dates and deadlines. As noted above, Respondent failed to fully respond to discovery in the case, resulting in prejudice to his ability to present his client’s case at trial. Respondent claimed that he notified his client of discovery obligations through a letter mailed to the Assembly Drive property, where he knew Complainant did not live.

12. After Complainant’s case was lost, Respondent appealed the matter to the Virginia Supreme Court, but failed to timely file a Statement of Facts. The appeal was taken but cert was denied. In addition, after Respondent filed the Statement of Facts, he set the matter for a hearing in the Fairfax County Circuit Court, but then failed to appear at the hearing.

13. During the investigation of the case, Respondent produced to the Bar several letters and billing statements allegedly sent to his client, which Complainant denies ever having seen. Again,

as with the discovery propounded by Complainant's ex-wife, it appears as though Respondent sent this correspondence to the Assembly Drive property where he knew his client did not live. Complainant stated, and emails obtained from him confirm, that Complainant had specifically advised Respondent of his whereabouts and how best to reach him.

II. MISCONDUCT

The Certification 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 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(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 lawyers' fitness to practice law[.]

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits A1 – A7, B8-1 – B8-4, B8-6 – B8-10, B8-12 - B8-17, B8-19 - B8-29, B8-33 - B8-48, B8-50 - B8-52, B8-54, B8-57 and B8-59, and Respondent's stipulation as to violation of Rule 1.4, upon evidence presented by Respondent in the form of his own testimony and Exhibits A1 – A6, and at the conclusion of the evidence regarding misconduct, 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 that Respondent was in violation of Rule 3.4 (g).
2. The Board determined that the Bar did prove by clear and convincing evidence that Respondent was in violation of Rule 1.1, Rule 1.3 (a) and (b), Rule 1.4 (a), (b) and (c) and Rule 8.4 (a), (b) and (c).

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar

and Respondent, including Respondent's prior disciplinary record (admitted as VSB Exhibit A8). The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction as suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of twelve (12) months. Upon motion of the Respondent, the Board agreed to stay the imposition of said suspension to February 22, 2015 in order to avert harm to other clients of Respondent whose cases cannot be timely referred to other attorneys.

It is further **ORDERED** that Respondent must comply with the requirements of Part 6, 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 which he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall give notice within fourteen (14) days of the effective date of this Order and make such arrangements as are required within forty-five (45) days of the effective date of this Order. The Respondent shall also furnish proof to the VSB within sixty (60) days that such notices have been timely given and such arrangements made for the disposition of such matters.

It is further **ORDERED** that if 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. All issues concerning the adequacy of the notice and arrangements required by Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia shall be determined by the Board.

It is **ORDERED** that in accordance with Part 6, Section IV, Paragraph 13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against Respondent.

It is further **ORDERED** that the Clerk shall mail an attested copy of this Order to Respondent, Michael Alan Ward, by certified mail at his address of record with the Virginia State Bar, 4085 Chain Bridge Road, Suite 301, Fairfax, VA 22030 and hand delivered to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, Bank of America Building, 1111 East Main Street, Richmond, VA 23219-3565.

ENTERED THIS 16th DAY OF FEBRUARY, 2015

VIRGINIA STATE BAR DISCIPLINARY BOARD



Tyler E. Williams, III, Chairman