

VIRGINIA :

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF ROBERT WILLIAM GOOKIN, ESQUIRE

VSB Docket Numbers: 02-041-1061
03-041-1066
03-041-1994
03-041-2533
03-041-2784

ORDER OF SUSPENSION

On July 23, 2004 this matter came before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Karen A. Gould, Chair, Bruce T. Clark, Robert E. Eicher, Ann N. Kathan, and Werner H. Quasebarth, lay member. The Bar was represented by Marian L. Beckett, Assistant Bar Counsel. The Respondent appeared and was represented by Timothy J. Battle. The matter was reported by Donna F. Chandler, court reporter from the firm of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia. 23227, (804) 730-1222.

At the outset of the hearing, the Chair polled the members of the panel to determine whether any member had any business or financial interests or any personal bias that would impair could be perceived to impair his or her ability to hear the matters to come before the panel fairly and impartially. Each member, including the Chair, responded in the negative.

By agreement between the Bar and the Respondent, the following Stipulations of Fact and Misconduct were submitted to the Panel:

A. STIPULATION OF FACTS

1. At all times relevant hereto, the Respondent, Robert William Gookin, (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

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2. The Respondent served as court appointed counsel for the Complainant, Ben Frank Moore (hereinafter the Complainant) related to charges of robbery and use of a firearm in the commission of a felony. The Complainant was found guilty by a jury and was sentenced to six years imprisonment for the robbery and three years for the firearm charge.

3. The Respondent filed a Petition for Appeal to the Court of Appeals of Virginia on behalf of the Complainant. Such petition was denied. The Respondent failed to inform the Complainant of the denial of his appeal to the Court of Appeals of Virginia, failed to advise the Complainant of his further right to appeal and failed to file a further appeal to the Virginia Supreme Court.

4. The Respondent further failed to provide the Complainant with a copy of the trial transcript on Complainant's request.

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5. The Respondent served as court-appointed appellate counsel for a defendant who was convicted of three counts of embezzlement following a three day jury trial.

6. The Respondent filed a Petition for Appeal consisting of six sentences in its entirety. The Petition for Appeal failed to comply with Rules 5A:12(c), 5A:20(c), 5A:20(d) and 5A:20(e) of the Rules of the Supreme Court of Virginia; failed to include any legal authority to support appellant's position; and included remarks which the Complainant found offensive.

7. The complainant is the Honorable Robert J. Humphreys of the Virginia Court of Appeals. In his October 8, 2002 Order, Judge Humphreys admonished the Respondent for the reasons noted above, denied the Respondent fees for serving as a court-appointed counsel, and removed the Respondent from the list of attorneys approved for appointment by the Court of Appeals.

As to VSB Docket No. 03-041-1994

8. The Respondent served as court-appointed appellate counsel for the Complainant, Francsiour Kemache-Webster, who was indicted for failure to return a rental car. The Complainant failed to appear for the commencement of his trial, was tried in his absence, and was found guilty of larceny.

9. The Respondent filed a Petition for Appeal but failed to have the trial transcript made a part of the record forwarded to the Court of Appeals. As a result of such failure, the Appeal was dismissed. In his response to the Bar complaint, the Respondent stated that the error involved was made by the court reporter.

10. The Complainant was subsequently awarded a delayed appeal pursuant to a Habeas Corpus Petition.

As to VSB Docket No. 03-041-2533

11. The Respondent served as court-appointed trial and appellate counsel for the Complainant, Francis Gonzales (hereinafter the Complainant).

12. The Complainant's jury trial was completed on March 6, 2002. The deadline for filing the trial transcripts for appeal was August 6, 2002. The Respondent did not file the transcripts until August 7, 2002. In addition to failing to file the transcripts by the date required, the sentencing transcript was omitted from those filed.

13. On September 26, 2002, the Virginia Court of Appeals directed the appellant to show cause on or before October 11, 2002 why the appeal should not be dismissed. The Respondent failed to respond to the show-cause order.

14. On October 18, 2002, the Court of Appeals dismissed the case for failure to timely file the conviction hearing and sentencing hearing transcripts, and for failure to respond to the show-cause order.

15. The Complainant was subsequently awarded a delayed appeal pursuant to a Habeas Corpus Petition.

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16. The Respondent served as court-appointed sentencing and appellate counsel for the Complainant, Eric Keys (hereinafter the Complainant).

17. Commencing in August of 2002, the Complainant requested information from the Respondent regarding the status of the Complainant's appeal to the Supreme Court of Virginia. On or about March 6, 2003, the Respondent wrote a letter of apology regarding his failure to inform the Complainant of the denial of the appeal. The Respondent informed the Complainant in the March 6 correspondence that the Respondent thought that the Complainant would have been informed of the denial by other sources.

B. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent constitutes a violation of the following 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.

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 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 as a lawyer[.]

Following submission of the above stipulations, both the Bar and the Respondent presented evidence to clarify the stipulations followed by presentation of evidence in support and mitigation of sanction.

C. THE BOARD'S FINDINGS

Having received the stipulations set forth above and having considered the evidence presented at the hearing clarifying same, the Panel finds that the Respondent has violated the Rules of Professional Conduct set forth in the parties' stipulations save for Rule 8.4(b). As to Rule 8.4(b), the Panel finds the evidence presented as to the same together with the stipulated facts do not rise to the level required to find a violation of this rule.

Taken alone, the Panel believes that no single violation committed by the Respondent now before the Panel would merit a response greater than a public reprimand. However, the Panel must take into consideration the number of violations that occurred within a limited time period

which, when taken together, indicate that the Respondent displayed an unacceptable level of indifference towards his duties to his clients. This finding is tempered, however, by the fact that the Respondent has no prior disciplinary record and that during his practice he has represented over one thousand criminal clients without further complaints. The matters before the Board appear to be aberrations. It is also noted that the Respondent has taken action to implement a calendar system to prevent further similar occurrences and has voluntarily attended a CLE on the appeals process. The Panel therefore finds that the appropriate sanction is a **SUSPENSION** for a period of thirty (30) days commencing on August 14, 2004 and ending at midnight on September 12, 2004 and it is so **ORDERED**. The Respondent is also advised that he should put a tickler system into place to prevent missed deadlines.

It is further **ORDERED** that, as directed in the Board's July 23, 2004 Summary Order in this matter, 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 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 August 14,2004 , 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 125 Rowell Court, Suite 101, Falls Church, Virginia 22046, by certified mail, return receipt requested, and by regular mail to Maria L. Beckett, Assistant Bar Counsel, Virginia State Bar, Suite 310 100 North Pitt Street, Alexandria, Virginia 22314-3133 and to Timothy J. Battle, counsel for the respondent, P.O. Box 19631 Alexandria, Virginia 22320-0631.

ENTERED this 29th day of July, 2004

VIRGINIA STATE BAR DISCIPLINARY BOARD

Karen A. Gould, Chair