

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

Walter Franklin GREEN, IV

VS. DOCKET No. 03-070-3720

ORDER OF SUSPENSION

This matter came to be heard on November 19, 2004, before a panel of the Disciplinary Board (the "Board") consisting of Robert L. Freed, Chair (the "Chair"), Bruce T. Clark, Russell W. Updike, Ann N. Kathan, and V. Max Beard, Lay Member. Edward L. Davis, Assistant Bar Counsel ("Bar Counsel"), represented The Virginia State Bar (the "VSB"). The Respondent, Walter Franklin Green, IV (the "Respondent"), appeared in person and represented himself.

Tracy J. Stroh, court reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804)730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair polled the members of the Board panel as to whether any of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

This matter arose from a complaint issued against the Respondent by the Honorable John J. McGrath, Jr., a Judge for the 26th Judicial Circuit, who regularly presides over cases in the Circuit Court of Rockingham County. The Respondent regularly appears

before Judge McGrath in both civil and criminal matters. Judge McGrath filed the complaint after sanctioning the Respondent on multiple occasions for failing to appear in court and for being late to court.

This matter came before the Board on the Subcommittee Determination issued on June 21, 2004 by a Subcommittee of the Seventh District Committee. Subsequently, on November 12, 2004, the Subcommittee issued its First Amended Subcommittee Determination in order to address typographical errors that appear in the original Certification. At the beginning of the hearing, Bar Counsel represented that the Amended Certification makes no substantive changes to the original Certification. The Respondent, relying upon the VSB's representation, stated that he accepted the Amended Certification.

On November 10, 2004, the Board convened a pre-hearing telephone conference in which the Respondent participated *pro se*, Mr. Davis appeared on behalf of the VSB, and Robert L. Freed, First Vice Chair, presided.

VSB's Exhibits 1 through 19 were admitted over the various objections of the Respondent. Respondent's Exhibits 1 through 3 and 7 through 36 were admitted. VSB's objections to Respondent's Exhibits 4 and 5, and Exhibit 6 and its first attachment were sustained because these exhibits relate to a complaint that the Respondent made to the Virginia Judicial Inquiry and Review Commission ("JIRC"). Pursuant to Virginia Code §17.1-913 (1950), as Amended, such papers are confidential and shall not be divulged. Attachments two through eight of Respondent's Exhibit 6 were admitted as these papers had been filed or were available from sources other than the JIRC filing.

The Chair quashed the Respondent's subpoenas issued to Barbara Ann Williams, Bar Counsel, based on Part Six, §IV, ¶13.N.8 of the Rules of the Supreme Court and

Kenneth Montero, Esquire, counsel to the Virginia Judicial Inquiry and Review Commission based on Virginia Code §17.1-913 (1950), as Amended.

Without objection from Bar Counsel, the Chair allowed the Respondent to amend his witness list to add Judge McGrath to Respondent's witness list.

By Order dated November 12, 2004, the Chair memorialized the foregoing rulings made at the pre-hearing conference. ***No challenges to the pre-hearing conference rulings were made by any party at the November 19th hearing. Furthermore, no challenges were made by any party to any rulings issued by the Chair at the November 19th hearing.***

I. FINDINGS OF FACT

The Board heard testimony from the witnesses for more than eleven hours and reviewed more than fifty-six exhibits. Taking all of the evidence together and apportioning the appropriate weight to each piece of evidence and testimony, the Board finds, *inter alia*, by clear and convincing evidence that:

1. At all times relevant to this matter, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the VSB is 77 North Liberty Street, P.O. Box 512, Harrisonburg, Virginia 22803-0512.
2. The Respondent received proper notice of these proceedings, as well as the proceedings relating to as required by Part Six, § IV, 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.
3. The Respondent accepted the First Amended Subcommittee Determination.
4. The Respondent, by his own admission, had been late for court appearances in the Rockingham Circuit Court, and Judge McGrath and Judge Lane

entered orders imposing sanctions against the Respondent for missing court appearances or being late to court.

5. Since 1997, Judge McGrath and Judge Lane issued at least seven sanction orders against the Respondent for failing to appear in court and failure to appear on time.
6. The Respondent exhibited a pattern of failing to act with reasonable diligence and promptness in representing his clients.
7. In the *Armando Diaz* matter, Respondent: failed to appear at proffer sessions; failed to reasonably communicate with the Assistant Commonwealth's Attorney; failed to take appropriate actions to represent Mr. Diaz; and failed (after several requests by the Assistant Commonwealth's Attorney) to obtain a reduction of a sentence of 40 years with 20 years suspended imposed on Mr. Diaz by Judge McGrath. The evidence clearly and convincingly demonstrated that another attorney who replaced the Respondent in the *Diaz* matter was able to quickly obtain a reduction of the sentence to 20 years with 13 years suspended.
8. In the *Vernon Hensley* matter, the Respondent failed to appear at two reinstatement hearings, and as a result Judge Lane fined the Respondent \$100.00. According to the Respondent, he did not appear at a license reinstatement hearing because his client had been convicted of a DUI, and the Respondent believed that his client would lie to the Court about the DUI conviction. According to the Respondent, he saw no purpose for attending the hearing.

II. MISCONDUCT

Based, *inter alia*, upon the foregoing findings of facts, the Board unanimously determined that the VSB proved by clear and convincing evidence that the Respondent violated Rule 1.3(a) and Rule 8.4(b) of the Rules of Professional Conduct.

Rule 1.3(a) provides in part as follows:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

The Respondent's conduct, by his own admission and Judge McGrath's testimony, left no doubt that the Respondent engaged in a pattern of activities that evidenced Respondent's repeated failures to act with reasonable diligence and promptness while representing his clients.

In particular, the Respondent's lack of diligence in the *Diaz* matter considering the fact that it was the Assistant Commonwealth's Attorney who requested the reduction in sentence and that the Respondent's successor obtained a reduction of more than two-thirds of the original sentence with relative ease, can only lead to a conclusion that the Respondent totally failed to "act with reasonable diligence and promptness in representing" Mr. Diaz and that such failure was egregious.

Rule 8.4(b) provides in part as follows:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) . . .

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

With respect to the *Hensley* matter, the Board concluded that not only did the Respondent fail to request that his client disclose the DUI to the court considering the client's drivers license reinstatement, but that the Respondent absented himself from the hearing to allow his client to perpetrate a fraud on the court. Both of these failures support a finding of a Rule 1.6(c) violation which in turn supports the conclusion that the Respondent's actions in the *Hensley* matter violated Rule 8.4(b).

All other Charges of Misconduct were either withdrawn by the VSB or were not proved by clear and convincing evidence, and, accordingly, were dismissed.

III. SANCTIONS

After determining that the Respondent engaged in Misconduct, the Board received further evidence in aggravation and mitigation of sanctions from the VSB, which included Respondent's prior disciplinary record. The Respondent's disciplinary record contains seven matters consisting of three public reprimands, two admonitions (with one having terms), and two private reprimands with terms. Based on this evidence, the Board unanimously imposed a suspension of the Respondent's license to practice law in the

Commonwealth of Virginia for sixty (60) days with said suspension to begin on January 15, 2005.

IV. ORDERS

Accordingly, it is **ORDERED** that the license of Respondent, Walter Franklin Green, IV, to practice law in the Commonwealth of Virginia is hereby suspended for sixty (60) days with said suspension to begin on January 15, 2005.

It is further **ORDERED** that the 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 clients. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the VSB within sixty (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. 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, at 77 North Liberty Street, P.O. Box 512, Harrisonburg, Virginia 22803-0512, by certified mail, return receipt requested, and by hand to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 21st day of December 2004

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Robert L. Freed, First Vice Chair

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