VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
WILLIAM P. ROBINSON, JR.

VSB Docket No.: 04-022-2192

SUSPENSION ORDER

THIS MATTER came on to be heard on October 28, 2005, before a panel of the Disciplinary Board consisting of Robert L. Freed, Chair, Bruce T. Clark, Esquire, W. Jefferson O'Flaherty, Lay member, David R. Schultz, Esquire, and Rhysa Griffith South, Esquire. The Virginia State Bar ("VSB" or "the Bar") was represented by Paul D. Georgiadis, Esquire. The Respondent, William P. Robinson, Jr., appeared in person and was represented by Michael L. Rigsby, Esquire. The Chair polled the members of the Board Panel as to whether any of them was 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. Teresa L. McLean, court reporter, P.O. Box 9349 Richmond, VA 23227, (telephone: 804-730-1222), after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the Second District Committee Section II Subcommittee's Determination for Certification. .

I. FINDINGS OF FACT

On July 6, 2005, the Board entered a Pre-Hearing Order, which among other things, set deadlines for filing witness lists and exhibits. The Clerk of the Disciplinary System served the Pre-Hearing Order on the Respondent. The Respondent and the Bar filed witness lists. The Respondent did not file any exhibits. The VSB Exhibits were admitted without objection during the Pre-Trial Conference conducted by telephone on October 19, 2005. During the October 28,

2005 hearing, counsel for the Bar and Respondent's counsel presented for the Board's consideration, witnesses *ore tenus*, additional exhibits and oral argument. Based on all the evidence before it, the Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, William P. Robinson, Jr., hereinafter the "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 256 West Freemason Street, Norfolk, VA 23510-1221. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

2. On July 11, 2005, Peter A. Dingman, Esquire, Second Vice Chair acting as Presiding Board Member of the VSB Disciplinary Board entered an Order denying Respondent's request that these proceedings be terminated in favor of a Three-judge Panel. On July 15, 2005, Respondent, by counsel, filed a Petition for a Writ of Prohibition appealing this decision. The Virginia Supreme Court has refused the Petition. During the October 28, 2005 preceding before the Disciplinary Board, Respondent's counsel renewed his objection to the jurisdiction of the Board, which objection was overruled by Robert L. Freed, Chair.

3. On November 2, 1996, the Complainant, Nathaniel Langston and his wife Elsie Langston retained Respondent to represent them in a personal injury action arising out of a three-vehicle accident that occurred in the City of Norfolk. At the time of the accident, Langstons were in route to an appointment with Respondent on an unrelated matter. Langstons related to the Respondent that at the time of the accident Mr. Langston was driving and Mrs. Langston was his passenger and while they were stopped at a red light, a Mr. Johnson drove his vehicle through a red light striking a vehicle operated by Mr. Spivey causing Spivey's vehicle to collide with Langston's vehicle.

4. Allstate Insurance's representative testified that Allstate had determined that neither of the Langstons nor Spivey (who was also an Allstate insured) were at fault in causing the accident and because the at-fault driver was uninsured, on or about May 20, 1997 Allstate settled the UM claim as presented by Spivey's attorney Hawkins.

5. On January 5, 1998[1], Respondent sent Langstons' insurance carrier "Allstate Insurance Company" a letter advising that he represented Langstons and asserting a potential claim under Langstons' uninsured motorist coverage, as it appeared that Johnson was an uninsured motorist.

6. On June 22, 1998, Respondent sent Allstate Insurance another letter asserting Langstons claim and enclosing draft motions for judgment. The letter stated, "...this claim is being made pursuant to the uninsured motorist provisions of the Langston's policy."

7. On or about July 7, 1998, Respondent filed two motions for judgment in the Norfolk Circuit Court styled *Nathaniel Langston v. Tremayne D. Johnson and Rudolph Spivey,* and *Elsie M. Langston v. Tremayne D. Johnson and Rudolph Spivey.* Notwithstanding the requirements of Virginia Code § 38.2-2206 F,[2] Respondent at no time served Allstate with the Langstons' motions for judgment.

8. Between August 11, 1998 and September 4, 1998, Allstate Insurance's representative called Respondent at his office on at least six occasions in an attempt to reach Respondent and discuss the merits of the Langston claims and a potential resolution of them.

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[1] The parties agree that the letter incorrectly shows a January 5, 1997 date.

[2] If any action is instituted against the owner or operator of an uninsured or underinsured motor vehicle by any insured intending to rely on the uninsured or underinsured coverage provision or endorsement of this policy under which the insured is making a claim, then the insured shall serve a copy of the process upon this insurer in the manner prescribed by law, as though the insurer were a party defendant. The provisions of § 8.01-288 shall not be applicable to the service of process required in this subsection. Virginia Code § 38.2-2206(F).

Respondent failed to respond on five occasions, and on the sixth occasion refused to give any information, stating that he would provide a demand package which he sent on September 16, 1998. During the aforesaid time and thereafter, Respondent never attempted to and in fact conducted no negotiations with Allstate Insurance to resolve the Langstons' claims.

9. After Respondent caused the Langstons' motions for judgment to be served upon the named defendants and trial was set for September 23, 1999, defendant Spivey's counsel on July 26, 1999 took the depositions of the Langstons. Respondent failed to notice either of the defendants for their depositions at that time and failed to take any depositions or propound discovery.

10. On August 19, 1999 Respondent corresponded with Mr. Langston stating that " I am recommending that we non-suit your wife's case because I do not believe she will be in a position to testify in a sufficiently cogent manner in connection with her case." Respondent admits that it was a mistake for him to have failed to advise the Langstons that as an injured passenger, Mrs. Langston's claim was viable even though she suffered from a non-accident related disability and may not have been able to testify as to the events or her medical bills.

11. On or about October 1, 1999, Respondent non-suited each of the Langston suits without advising the Langstons of the non-suits, of the import of the non-suits, of the possibility of a second opinion by other counsel, nor of the possibility of taking other steps and approaches to prosecuting or resolving the Langstons' claims.

12. Thereafter, Respondent failed to take any actions to protect the Langstons interests in pursuing their personal injury claim. Respondent by letter dated February 6, 2002 and referenced "Langston v. Johnson" assured Mr. Langston "We certainly intend to take care of your situation as expeditiously as possible." By this time, Langstons had been sued and a

judgment taken against them for medical treatment related to the accident. Respondent assisted the Langtons in corresponding with the judgment creditor's attorney and Langstons paid the medical bills over time and the judgments were released in 2003.

13. At no time during Respondent's course of representing Langstons from 1996 when he was retained in the personal injury case through 2003 when the accident-related medical bills judgments were satisfied, did he ever advise them of their right to collect under their medical payments coverage although Respondent had had in his possession a copy of the Langstons' insurance policy as referenced in his January 5, 1997 transmittal letter to Allstate Insurance.

14. In response to Mr. Langston's inquiry about the status of the Langstons' personal injury case, Respondent sent Langston a letter dated February 10, 2004 advising that Respondent had not pursued Langstons' cases because Respondent had only gotten door (posted) service on the negligent party Johnson; that the second defendant Respondent had named in the suit Spivey had not been negligent; that because it appeared that Johnson lacked insurance there were no funds available to pay the award; and that Mrs. Langston's mental capacity issues caused her case to be terminated. Again, Respondent did not advise the Langstons of their right to collect under their medical payments coverage although Respondent had had in his possession a copy of the Langstons' insurance policy as referenced in his January 5, 1997 transmittal letter to Allstate Insurance.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Rules of the Virginia Code of Professional Responsibility (for actions prior to January 1, 2000) and the Virginia Rules of Professional Conduct (for actions after January 1, 2000):

DR 6-101. Competence and Promptness.

(A) A lawyer shall undertake representation only in matter in which:

(1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

(2) The lawyer has associated with another lawyer who is competent in those matters.

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

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.

DR 2-108 Terminating Representation

(D) Upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by applicable law.

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel and the Respondent, upon evidence from witnesses presented on behalf of the Bar and upon evidence presented by Respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence a violation of DR 6-101 (A).

2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of DR 6-101 (B) by failing to attend promptly to the Langstons' personal injury cases until completed.

3. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of DR 6-101 (C) by failing to keep Langstons reasonably informed about the status of their cases until eight years after he accepted the representation and that when he did finally advise them of the status of the cases, Respondent misrepresented the grounds for his failures to timely advance their cases.

4. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.1 in failing to advise the Langstons of their rights to medical payments coverage, even though Respondent was aware that Langstons were subject to collection actions for accident related medical bills through 2003 and Respondent knew or should have known that Langstons' had medical payments coverage available to them.

5. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.3 in that Respondent failed to act diligently and promptly in handling Langstons' personal injury case or to re-file the non-suited cases within six months (i.e., by April 1, 2000) or to advise Langstons of the need to do so.

6. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule DR 2-108(D) when he admittedly non-suited and then abandoned Mrs. Langstons' case in 1999, and knowing that she had a diminished mental capacity, took no steps to re-file her case or any other actions to protect her interests.

7. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.16 (d) in effectively terminating his representation of Langstons and not timely advising them of the many mistakes he made during the course of his representation, and thereby prejudicing them and preventing them from pursuing their viable claims.

Sanction

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record. 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 a three (3) year suspension of the Respondent's license to practice law in the Commonwealth of Virginia with such suspension effective October 28, 2005. The Board's unanimous finding is based upon the totality of the circumstances, including Respondent's

failure to take any actions to protect the legal rights of the Langstons, his actions to cover up his mistakes and neglect in handling the Langston's case and the Respondent's lengthy and significant disciplinary record.

Accordingly, it is ORDERED that the Respondent, William P. Robinson, Jr.'s, license to practice law in the Commonwealth of Virginia is hereby suspended for three (3) year effective October 28, 2005.

It is further ORDERED that 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 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 (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 256 West Freemason Street, Norfolk, VA 23510-1221, by certified mail, return receipt requested, and by regular mail to his counsel, Michael L. Rigsby, Esquire, Carrol, Rice & Rigsby, 7275 Glen Forest Drive, Forest Plaza II, Suite 310, Richmond, Virginia, 23226, by first-class mail, and a copy to Paul D. Georgiadis, Esquire, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 3rd day of November, 2005

VIRGINIA STATE BAR DISCIPLINARY BOARD

Robert L. Freed, Chair