

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
ELLIOT M. SCHLOSSER

VSB DOCKET: 01-010-1990

ORDER

This matter came before a duly constituted Panel of the Virginia State Bar Disciplinary Board on February 27, 2004, pursuant to a certification of a Subcommittee of the First District Disciplinary Committee. The Panel consisted of Roscoe B. Stephenson, III, Chairman, James L. Banks, Jr., William C. Boyce, Jr., Chester J. Cahoon, Jr., Lay Member, and David R. Schultz. The Respondent, Elliot M. Schlosser, appeared and was represented by Michael L. Rigsby. The Bar was represented by Assistant Bar Counsel Edward L. Davis. The hearing was recorded by Valarie L. Schmit of Chandler & Halasz, Registered Professional Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

The Chair polled the Panel members to determine whether any member had a personal or financial interest in the matter which might affect or could reasonably be perceived to affect his ability to be impartial in the proceeding. Each member, including the Chairman, answered in the negative.

I. FINDINGS OF FACT

The following findings were stipulated by the parties:

1. During all times relevant hereto, the Respondent, Elliot M. Schlosser (hereinafter Respondent or Mr. Schlosser) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On June 5, 2001, the Juvenile and Domestic Relations District Court for the City of Norfolk convicted Mr. Schlosser of stalking his estranged wife, Janet M.

Schlosser, between November 2000 and February 2001, in violation of Virginia Code Section 18.2-60.3 (1950) as amended. The court sentenced him to six months in the Norfolk City Jail, suspended, conditioned upon good behavior for a period of one year.

3. The court also convicted Mr. Schlosser of failure to appear on May 22, 2001, and contempt of court, in violation of Virginia Code Section 18.2-456. The case was originally set for trial on March 15, 2001. Mr. Schlosser's counsel asked for a continuance, and advised the court that the date of May 22 was available. The court did not accept Mr. Schlosser's explanation for failing to appear, and sentenced Mr. Schlosser to ten days in jail, with eight suspended, for a period of one year, conditioned upon good behavior.
4. In finding Mr. Schlosser guilty of contempt of court, the court specifically noted in its order that Mr. Schlosser had lied to the court about the reason for the continuance. The court announced that it had to "sleuth around" to get to the truth, that Mr. Schlosser not only had conflicts with other district courts on May 22, but was in the Hampton Circuit Court on May 22, 2001 where he was being admonished by that court for failing to appear there the day before as well.
5. Mr. Schlosser explained to the court that when he learned that the judge's secretary was handling the case, he put in a call to the judge's secretary and indicated to her that if for any reason the court was upset about the continuance situation or would not grant the continuance that he would immediately continue his cases and come over, and that he asked her to please call the office in the event that that situation developed.

6. Patricia Northcutt would say that she is the one who talked with both Mr. Schlosser and his counsel's secretary on May 21, 2001, the day before trial. She would say that she is the "Tricia" mentioned in VSB Exhibit 6, a letter from Mr. Smith, Schlosser's counsel, to the court, dated May 21, 2001. She was one of two court clerks working for this judge at the time, and was handling this case with the other clerk. She would say that she cannot remember the exact substance of her conversation with Mr. Schlosser and Mr. Smith's secretary, but that she would not have said that the attorneys did not need to appear on May 22, 2001, because she did not have the authority to do so. She would say further that if she had been asked to contact the attorney if there was a problem with the continuance, she would have said that she had no authority to excuse the attorneys from appearing the next day, but that they could submit a letter and take their chances, which is what they did. She would say that the court called the case for hearing on May 22, 2001, but that neither Mr. Schlosser nor his attorney was present, although the complaining witness, Janet Schlosser, was present. She would say that the judge issued rules to show-cause against the attorneys, and had her call several courts to try and locate Mr. Schlosser.
7. Mr. Schlosser appealed the convictions to the circuit court. On August 15, 2001, he appeared in the circuit court and plead nolo contendere to both charges. This court accepted his pleas, and fined him \$50 plus costs on the contempt charge. It also released him on the stalking charge, conditioned on participation in anger management counseling, a substance abuse evaluation, and submission of a monitoring agreement within ten days.

8. On various occasions during their marriage, from the mid-1990's to early 2001, Ms. Schlosser worked for Mr. Schlosser at his law office. One of her duties was to prepare petitions in bankruptcy for Mr. Schlosser's bankruptcy clients.
9. On several occasions, Mr. Schlosser directed Ms. Schlosser to endorse the bankruptcy petitions in the attorney's block, and then to file the petitions with the bankruptcy court without Mr. Schlosser reviewing them. Ms. Schlosser was not, and has never been, an attorney.
10. Mr. Schlosser explained to the Virginia State Bar investigator that this was not his standard practice, but that it was done to expedite the filing of the petitions when he could not be in the office.

The following additional facts were found to have been established by clear and convincing evidence:

11. In each bankruptcy filing on which Mr. Schlosser's secretary signed Mr. Schlosser's name, a declaration of divisional venue was also filed. These declarations were also signed by Mr. Schlosser's secretary in Mr. Schlosser's name, without Mr. Schlosser's review.
12. Regarding the language in stipulation number 7 which says that the circuit court "released him on the stalking charge, conditioned on", the court actually imposed a so-called suspended imposition of sentence, which was suspended for three years conditioned on Mr. Schlosser completing anger management, substance abuse evaluation, and the entry into a monitoring agreement. Mr. Schlosser abided by the court's conditions and the stalking charge was eventually dismissed.

II. MISCONDUCT

The Board finds by clear and convincing evidence that Mr. Schlosser violated the following rules:

DR 3-101 Aiding unauthorized practice of law.

(A) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy petitions and declarations of divisional venue, without his review, requires the secretary to make legal judgments which are reserved to licensed lawyers. The secretary's actions were not mere ministerial acts.

The result of the filing of these bankruptcy petitions is, among other things, to stay foreclosures and other proceedings to collect debts. This directly affects the rights of the creditors. It is distinctly possible that such a stay might arise in a case in which a petitioner was actually unqualified for bankruptcy. To deprive these creditors of their rights without reviewing the petition is to aid the unauthorized practice of law.

DR 3-104 Nonlawyer Personnel

(A) A lawyer or law firm may employ nonlawyer personnel to perform delegated functions under the direct supervision of a licensed attorney, but shall not permit such nonlawyer personnel to:

(3) Engage in the unauthorized practice of law.

(D) The delegated work of nonlawyer personnel shall be such that it will assist only the employing attorney and will be merged into the lawyer's completed product. The lawyer shall examine and be responsible for all work delegated to nonlawyer personnel.

For the reasons cited in the discussion of Disciplinary Rule 101, Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy pleadings without his review constitutes a violation of this disciplinary rule.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

For the reasons cited in the discussion of Disciplinary Rule 101, Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy pleadings without his review constitutes a violation of this disciplinary rule.

RULE 5.5 Unauthorized Practice of Law

- (A) A lawyer shall not:
 - (2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

For the reasons cited in the discussion of Disciplinary Rule 101, Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy pleadings without his review constitutes a violation of this disciplinary rule.

RULE 3.4 Fairness to Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

The Board finds by clear and convincing evidence that Mr. Schlosser violated this rule in that he disregarded standing rules of the United States Bankruptcy Court. Local Rule 5005-1 of the United States Bankruptcy Court for the Eastern District of Virginia state as follows:

(B) Proponent to Be Member of Bar

Any attorney offering a petition, pleading or other paper, other than a request for notices under FRBP 2002(g), for filing on behalf of a client must be a member in good standing of the Bar of this Court.

- (4) (1) *Voluntary Petitions*. Each petition filed must include an unsworn declaration with the signature of all debtors and must be verified by the signature of the debtor's attorney, if any.

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 as a lawyer.

The Board finds by clear and convincing evidence that Mr. Schlosser's conduct in stalking his wife constitutes a violation of this Rule. Likewise, Mr. Schlosser's being held in contempt of court violates this Rule. While the effect of a suspended imposition of sentence followed by dismissal of the original criminal charge can be argued, the Board is of the opinion that a conviction is not a prerequisite to a violation of this Rule.

III. SANCTION

The Board was impressed with Mr. Schlosser's actions since these violations occurred. Mr. Schlosser completed his misdemeanor probation relating to the stalking charge. He also completed the required counseling and followed his counselor's suggestions strictly. Mr. Schlosser has expressed remorse and has had no contact with his wife for approximately three and one-half years. Mr. Schlosser's entire disciplinary record consisted of a 1997 dismissal with terms relating to the mishandling of a client's appeal. After consideration of the foregoing mitigating and aggravating factors, as well as Mr. Schlosser's disciplinary record, the Board imposes a public reprimand effective upon entry of this order. It is so ordered.

It is ordered pursuant to Part Six, Section IV, Paragraph 13.B.8.C of the Rules of the Supreme Court of Virginia, that the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is finally ordered that the Clerk of the Disciplinary System shall forward a copy of this

order, certified return receipt requested, to Elliot M. Schlosser, at his address of record with the Virginia State Bar, 47 West Queen's Way, Hampton, Virginia 23669, by regular mail to Michael L. Rigsby, Counsel for Respondent, at Carrell, Rice & Rigsby, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226, and hand delivered to Edward L. Davis, Assistant Bar Counsel to Virginia State Bar, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this _____ day of _____, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____
Roscoe B. Stephenson, III, Chairman