V I R G I N I A:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
SAMMY EDWARD AYER

VSB DOCKET NOS. 17-010-108850
17-010-108870
17-010-109322
18-010-110422

ORDER OF REVOCATION

These matters came to be heard on February 15, 2019, upon Certification by the First District Disciplinary Subcommittee on or about September 4, 2018, before a panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Sandra L. Havrilak, Attorney at Law, 1st Vice Chair (the "Chair"); Steven B. Novey, Esquire; Michael J. Sobey, Esquire; Donita M. King, Attorney at Law; and Nancy L. Bloom, Lay Member. The Virginia State Bar (the "VSB") was represented by Christine M. Corey, Assistant Bar Counsel ("Assistant Bar Counsel"). The Respondent Sammy Edward Ayer ("Respondent") was present and represented himself. Tracy J. Stroh, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.[1]

The Chair called the case at the appointed time, and Assistant Bar Counsel and Respondent confirmed they were ready to proceed. At the outset of the hearing, the Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias that would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

[1] Partial Hearing Transcript (TR.) refers to the Hearing Excerpts of opening statement and testimony of Sammy Edward Ayer dated February 15, 2019.

All required notices were timely sent by the Clerk of the Disciplinary System to Respondent in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the *Rules of Supreme Court of Virginia (*hereinafter "*Rules").*

Prior to the commencement of the proceedings, Assistant Bar Counsel proposed, and Respondent and the Board agreed, to present each case separately, receive the Board's determination and finding in each case, and hold the sanctions phase at the end of the hearing after all of the matters had been heard and ruled upon by the Board.

All witnesses present, Respondent, and the Court Reporter were sworn in by the Chair at the start of the hearing, prior to the witnesses being excluded until called. Bar witnesses who arrived later during the hearing were sworn in prior to testifying before the Board. Prior to the hearing and at the final Prehearing Conference Call, VSB Exhibits 1-53 were admitted without objection. At the commencement of the hearing, the Stipulations were received as VSB Exhibit 54, without objection. During the VSB's case in chief, the Board admitted VSB Exhibits 55 and 56 over Respondent's objection. Respondent did not provide any written evidence or witnesses and limited his presentation of evidence to the Bar's Exhibits in evidence, cross-examination of the Bar's witness, and his own testimony.

MISCONDUCT

Respondent was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant to the conduct set forth herein. Based upon the evidence presented, including the Certification received into evidence as Exhibit 1, the Stipulations received into evidence as Exhibit 54, and for the reasons set forth more particularly herein below, the Board finds, by clear and convincing evidence, that Respondent's conduct constitutes misconduct in violation of *Rules* 1.1, 1.3(a), 1.4(a), 1.15(a)(1), 1.15(a)(2), 8.1(a), and 8.4(c).

I. VSB Docket Number 17-010-108850 (Complainant Ronald J. Bacigal)

Assistant Bar Counsel announced at the start of the hearing that Professor Bacigal withdrew his Complaint just prior to the hearing; and, the charge was voluntarily dismissed, without objection.

II. VSB Docket Number 17-010-108870 (Complainant Gary Eli Danovich Jr.)

In January of 2015, Complainant Gary Eli Danovich Jr. (hereinafter "Danovich") retained Respondent to represent him in an uncontested divorce case.[2] Respondent filed a Complaint for an uncontested divorce on behalf of Danovich on the grounds that he and his wife had no minor children and had lived separate and apart for more than six (6) months;[3] however, Respondent filed the Complaint less than three (3) months after the parties separated, as evidenced by the Complaint itself.[4] Respondent admitted that he filed the Complaint based upon living separate apart for six months despite his knowledge that the parties had only been separated for three months. [5]Additionally, the Complaint requested that any Property Settlement and Stipulation Agreement entered between the parties be affirmed, ratified and incorporated, but not merged, as part of any decree. Respondent knew when he filed the Complaint the parties did not have any signed agreement resolving all matters arising from their marriage. In fact, at the time he filed the Complaint for Divorce, Danovich's wife had a spousal support case pending in the Juvenile Court. According to Respondent, he would have met the six months jurisdictional requirement by the time he intended to move for entry of the Final Divorce Decree.[6] It was clear Respondent did not understand that the court lacked subject matter jurisdiction which could not be conferred on the court retroactively.

[2] *See* VSB Exhibit 13.
[3] *See* VSB Exhibit 14.
[4] *See* VSB Exhibit 14.
[5] *See* TR at 11, 41.
[6] *See* TR at 10-11.

Subsequently, Danovich's wife, by counsel, filed an Answer and Counterclaim requesting that the Court deny the relief requested by Danovich because the statutory requirements had not been met;[7] and filed a Counterclaim based upon Danovich's fault. After the Answer and Counterclaim were filed by counsel for Danovich's wife, Respondent took no corrective measures with regard to the Complaint he filed.

In his complaint against Respondent, Danovich asserted that, throughout the course of the representation, Respondent was difficult to reach and often failed to respond or provide sufficient communication. During the hearing, Danovich testified that he called Respondent's cell phone on multiple occasions and it either went straight to voicemail or rang and then went to voicemail. Danovich also sent numerous emails to Respondent in April and May of 2017 to which Respondent never responded.[8] The VSB Investigator Pohrivchak (hereinafter "Investigator Pohrivchak") also testified that, when trying to reach Respondent, he called repeatedly and either got voicemail or received a message that Respondent's voicemail box was full. In fact, Investigator Pohrivchak sent two emails on December 19, 2017 to Respondent reiterating that he tried leaving him a voicemail but the recording stated his mailbox was full and would not accept a message.[9] Also, on February 5, 2018, Investigator Pohrivchak sent a subsequent email, again advising Respondent that he was not able to leave a message on either of the two phone numbers he had for him as both mailboxes were full.[10] Respondent denied these allegations and testified that he spoke with Danovich regularly by

[7] *See* VSB Exhibit 14.
[8] *See* VSB Exhibit 26.
[9] *See* VSB Exhibit 29.
[10] *See* VSB Exhibit 29.

phone and also communicated by text and letters.[11] Respondent did not have any documents to corroborate his testimony, and the Board does not find his testimony to be credible.

Respondent also failed to provide Danovich's discovery responses to the opposing party until after an order compelling his client to do so was entered, despite the fact that Danovich provided discovery responses to Respondent no later than May 12, 2015[12] and was billed by Respondent for his time spent preparing the discovery responses.[13] According to Danovich, he prepared his answers and finished them with Respondent on May 13, 2015. Respondent confirmed Danovich's testimony; however, Respondent initially maintained that he sent the discovery to opposing counsel and opposing counsel told him that he reviewed the discovery responses and they were deficient.[14] In fact, Respondent changed his testimony several times and finally admitted that he never sent the handwritten Interrogatories to his opposing counsel and only later sent typed answers after a compel order was entered and after nearly two (2) years had lapsed as set forth herein below.[15] Immediately after offering testimony that he did not send the handwritten Interrogatories, he maintained that he prepared the responses and sent them over, but that his opposing counsel contested they were complete.[16] Based on the evidence presented, the Board finds Respondent's testimony is not credible.

The evidence shows that on November 17, 2015 counsel for Mrs. Danovich filed a Motion to Compel against Danovich that Danovich failed to respond to the discovery propounded[17] and an Order compelling Danovich to respond to the discovery requests was

[11] *See* TR at 10.
[12] *See* VSB Exhibits 16 and 17.
[13] *See* VSB Exhibit 17.
[14] *See* TR at 27-29, 50.
[15] *See* TR at 49.
[16] *See* TR at 50.
[17] See VSB Exhibit 18.

entered on March 17, 2017.[18] During his testimony, Danovich maintained that he never received notice of the Motion to Compel from Respondent; and, again without notice, Respondent delivered Danovich's discovery responses to the opposing counsel on March 17, 2017, despite the fact that Danovich had not had the opportunity to revise and/or update the responses that he had submitted to Respondent nearly two years prior.[19] Moreover, the Answers submitted were the same except someone typed the responses and Respondent signed the interrogatory answers on behalf of Danovich.[20]

On April 24, 2015, during the course of the divorce proceedings, Danovich provided Respondent with his new address via email.[21] Danovich testified that he also had a verbal communication with Respondent during which he informed Respondent of his change of address. Nevertheless, Respondent continued to send pertinent mailings and communications to Danovich's old address.[22] In fact, Respondent claimed Danovich was sending email to the wrong email address and that he never received the address change.[23] When questioned about VSB Exhibit 15, the email from Danovich to Respondent's correct email address with notice of the address change, Respondent had no explanation for why he did not send Danovich information to his correct address.[24]

On June 7, 2017, an Order permitting Respondent to withdraw as counsel for Danovich was entered by the court; however, Danovich was never provided with formal notice of Respondent's Motion to Withdraw as the letter from Respondent notifying Danovich

[18] *See* VSB Exhibit 18.
[19] *See* VSB Exhibit 23.
[20] See Exhibit 23.
[21] *See* VSB Exhibit 15.
[22] *See* VSB Exhibits 20 and 24.
[23] *See* TR at 26.
[24] *See* TR at 31.

of his intent to withdraw was not sent to Danovich's new address.[25] Danovich also pointed out to Investigator Pohrivchak that, although the letter referenced a meeting that took place on March 23, 2017, no such meeting ever occurred. Moreover, Danovich never endorsed the Order allowing Respondent to withdraw as his counsel and never consented to it.[26]

Additionally, Respondent testified that despite Danovich refusing to consent to his withdrawal as counsel, Respondent still submitted an Order of Withdrawal that stated it came on the joint motion of Danovich and Respondent that Respondent be relieved as counsel.[27] The Court entered the Order of Withdrawal on June 7, 2017.[28]

Respondent maintained that, if Danovich called him and was unable to reach him, Respondent would call him back the same day or the next day. He also stated that he kept in contact with Danovich through written correspondence; however, he provided no explanation for sending letters to the wrong address. Instead of taking responsibility for his actions, Respondent blamed Danovich and stated that Danovich failed to cooperate and provide Respondent with documents needed to comply with discovery requests, but no documentation was offered to substantiate Respondent's testimony. In addition, while Respondent testified that Danovich would not agree to Respondent's withdrawal from his case, he could not deny that he nevertheless filed documentation with the Court stating that Danovich agreed to Respondent's withdrawal.

Having considered the witnesses testimony and evidence presented as well as the arguments of Assistant Bar Counsel and Respondent, the Board recessed to deliberate; and, after due deliberation, reconvened and stated its finding that the VSB had proven, by clear and

[25] *See* VSB Exhibit 24.
[26] *See* VSB Exhibits 27 and 28.
[27] *See* VSB Exhibit 27 and TR at 30.
[28] *See* VSB Exhibit 28.

convincing evidence, that Respondent's conduct, as set forth herein, constitutes misconduct in violation of *Rules* 1.1, 1.3(a), and 1.4(a).

The Board finds by clear and convincing evidence that Respondent took actions in violation of *Rule* 1.1 of the *Rules of Professional Conduct*. *Rule* 1.1 requires a lawyer to provide a client with competent representation, which consists of the legal knowledge, skill, thoroughness, and preparation necessary for representation.[29] Relevant factors for determining whether a lawyer employs the requisite knowledge and skill in a particular matter include the relative complexity and specialized nature of the matter, the lawyer's general expertise, the lawyer's training and experience in the field in question, and the preparation and study the lawyer is able to give the matter.[30] Despite the fact that Respondent practiced in the field of domestic relations and the fact that Danovich's case was relatively straightforward, Respondent's actions in this matter exhibit his lack of the legal knowledge, skill, thoroughness, and preparation necessary to competently represent Danovich. Not only did he file a Complaint for Divorce that failed to satisfy the jurisdictional requirements (and did not take corrective measures when he had an opportunity to do so), but he also filed discovery responses two years after the information was provided to him by Danovich and only after a compel order was entered to the detriment of his client, evidencing the fact that the case was not prepared or managed with the thoroughness required of a competent attorney.

The Board further finds by clear and convincing evidence that Respondent's actions constituted misconduct in violation of *Rule* 1.3(a). Pursuant to *Rule* 1.3(a), a lawyer shall act with reasonable diligence and promptness in representing a client,[31] and a lawyer should act

[29] *Va. Rules of Prof'l Conduct Rule* 1.1.
[30] *Va. Rules of Prof'l Conduct Rule* 1.1, Cmt. 1.
[31] *Va. Rules of Prof'l Conduct Rule* 1.3(a).

with commitment and dedication to the interests of the client.[32] Throughout his representation of Danovich, Respondent failed to act with the diligence and promptness required of him. In particular, Respondent's failure to provide Danovich's discovery responses to the opposing counsel until two years after timely receiving them from Danovich and following the entry of a Compel Order against Danovich exhibits his failure to comply with *Rule* 1.3(a). Moreover, as of February 15, 2019, over four years after retaining Respondent to represent him with respect to his divorce, Danovich is still not divorced. Respondent's failure to adequately communicate with Danovich also exhibits his lack of commitment and dedication to the interests of Danovich.

Finally, the Board finds by clear and convincing evidence that Respondent failed to keep his client reasonably informed about the status of his case and failed to promptly comply with reasonable requests for information in violation of *Rule* 1.4(a). In accordance with *Rule* 1.4(a), the client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.[33] In this matter, Respondent failed to promptly respond to Danovich's requests for information when he repeatedly failed to take or return Danovich's phone calls, when he failed to send correspondence to Danovich's correct address, and when he failed to respond to emails from Danovich regarding the status of his case. Moreover, Respondent failed to notify Danovich of the Motion to Compel filed against him and his withdrawal from representation or the related hearings.

[32] *Va. Rules of Prof'l Conduct Rule* 1.3(a), Cmt. 1.
[33] *Va. Rules of Prof'l Conduct Rule* 1.4, Cmt. 5.

For the foregoing reasons, the Board finds by clear and convincing evidence that Respondent engaged in conduct in violation of *Rules* 1.1, 1.3(a), and 1.4(a). Sanctions were reserved for the conclusion of all three cases against Respondent pending before the Board.

III. VSB Docket Number 17-010-109322 (Complainant Carolyn Ruth Martinez)

On April 7, 2015, Complainant Carolyn Ruth Martinez (hereinafter "Martinez") hired Respondent to represent her in an uncontested divorce case;[34] and, on May 14, 2015, Respondent sent a Complaint to the Hampton Circuit Court on behalf of Martinez.[35] As of February 15, 2019, Martinez was still not divorced; and, Respondent was still counsel of record for Martinez.

Throughout Respondent's representation of her, Martinez testified that she was unable to get in touch with Respondent. Respondent frequently scheduled appointments with her, which he then cancelled at the last minute, and he rarely answered telephone calls or text messages from Martinez. Martinez also testified that, when she attempted to contact Respondent, she was often unable to leave a voicemail due to his voicemail box being full. Consequently, she left notes on Respondent's vehicle in order to attempt to get in touch with him. During this period, Respondent also changed firms and failed to notify Martinez or obtain her consent to her case moving to his new firm.[36] When asked by Investigator Pohrivchak to provide any support that he had to corroborate his position that he adequately communicated with Martinez, Respondent provided his complete file, which according to Investigator Pohrivchak did not contain any evidence of any communication with Martinez after April of 2017.

[34] *See* VSB Exhibit 32.
[35] *See* VSB Exhibit 33.
[36] *See* VSB Exhibit 42.

Martinez further testified that Respondent never provided her with any filings and that she did not recall that Respondent ever explained to her how the divorce process worked. Respondent eventually informed Martinez that he went to court on April 26, 2017 for entry of her final decree of divorce despite the fact that Martinez had never seen or approved the final decree. Martinez never heard back from Respondent regarding the status of entry of the final decree, and Respondent later told the VSB Investigator that the divorce was never finalized because Martinez's husband would not agree to the terms of the divorce.

Respondent also failed to communicate with Hope Hutchinson, counsel for Mr. Martinez, who informed Investigator Pohrivchak that she represented Mr. Martinez from January of 2016 through November of 2017. Ms. Hutchinson testified that although Respondent initially responded to her correspondence, particularly regarding her filing a late answer, subsequently he failed to respond to her letters and telephone calls.[37] Moreover, on March 14, 2017, Respondent sent his Notice and Motion for Entry of Final Decree directly to Mr. Martinez despite the fact that Mr. Martinez was represented by counsel and Respondent was aware of this.[38] Respondent did not offer any testimony regarding this issue; and, no explanation was offered regarding the fact that the proposed Final Decree contained a waiver of spousal support, referenced an agreement that did not exist, and contained a signature line for Ms. Hutchinson.[39] Investigator Pohrivchak later learned that neither Mr. Martinez nor Ms. Hutchinson ever received the document that appeared to have been sent by Respondent; and, according to the Hampton Circuit Court online court information system, the last pleading filed

[37] *See* VSB Exhibits 43, 48 and 49.
[38] *See* VSB Exhibit 46.
[39] *See* VSB Exhibit 46.

in the case was filed by opposing counsel on February 23, 2016.[40] Apparently, Respondent never even filed the Motion.

At his first meeting with Martinez on April 7, 2015, Respondent was made aware of the fact that Mr. Martinez was retired military having served over twenty years and was receiving retirement pay.[41] This was the day Martinez hired Respondent.[42] Martinez's husband retired from the military and, based upon Martinez's testimony, was receiving military benefits for approximately four years by the time of this hearing, while Martinez has received nothing despite having a marital interest in said benefits. The notes from Respondent's file show that he knew the same issues existed on June 28, 2016.[43]

Despite the fact that Martinez needed spousal support and was arguably entitled to a part of Mr. Martinez's military retirement pay, Respondent filed a Complaint for Divorce that failed to even mention a request for spousal support or equitable distribution, but merely stated that any Property Settlement Agreement executed by the parties be affirmed, ratified, and incorporated but not merged into the any Decree of the court [44] despite the fact that this was a contested divorce and no agreement was reached by the parties.

Martinez also testified that, as a result of the stress of going through the divorce case with Respondent as her counsel, she was forced to leave her job as a teacher. She also has not pursued her divorce case. At the time of this hearing, Respondent was still counsel of record for Martinez.

Upon the conclusion of the evidence, the Board recessed to deliberate; and, after considering the evidence presented, the witnesses testimony, and the arguments of Assistant

[40] *See* VSB Exhibit 47.
[41] *See* VSB 31.
[42] *See* VSB 32.
[43] *See* VSB Exhibit 31.
[44] *See* VSB Exhibit 33.

Bar Counsel and Respondent, the Board reconvened and announced its finding that the VSB had proven, by clear and convincing evidence, that Respondent's actions, as set forth herein, constitute misconduct in violation of *Rules* 1.1, 1.3(a), and 1.4(a).

The Board finds by clear and convincing evidence that Respondent took actions in violation of *Rule* 1.1, which requires a lawyer to provide a client with competent representation consisting of the legal knowledge, skill, thoroughness, and preparation necessary for representation.[45] The Board further finds by clear and convincing evidence that Respondent's actions constituted misconduct in violation of *Rule* 1.3(a). Pursuant to *Rule* 1.3(a), a lawyer shall act with reasonable diligence and promptness in representing a client,[46] and a lawyer should act with commitment and dedication to the interests of the client.[47] The fact that Martinez is still not divorced nearly four years after her Complaint was filed and the fact that she has not received any portion of her husband's military retirement benefits to which she is entitled, not only demonstrates Respondent's lack of knowledge, skill, thoroughness, and preparation necessary to provide Martinez with competent representation but also Respondent's failure to act with commitment and dedication to the interests of his client. Moreover, Respondent's failure to communicate with opposing counsel constitutes a violation of his duty to act with diligence and promptness in representing a client.

The Board also finds by clear and convincing evidence that Respondent failed to keep his client reasonably informed about the status of her case and failed to promptly comply with reasonable requests for information in violation of *Rule* 1.4(a). Respondent repeatedly failed to communicate with Martinez to the extent that she was forced to leave notes on his car in an

[45] *Va. Rules of Prof'l Conduct Rule* 1.1.
[46] *Va. Rules of Prof'l Conduct Rule* 1.3(a).
[47] *Va. Rules of Prof'l Conduct Rule* 1.3(a), Cmt. 1.

effort to acquire information about the status of her case. Such conduct is a clear violation of *Rule* 1.4(a).

For the foregoing reasons, the Board finds by clear and convincing evidence that Respondent engaged in conduct in violation of *Rules* 1.1, 1.3(a), and 1.4(a). Sanctions were reserved for the conclusion of all three cases against Respondent pending before the Board.

IV. VSB Docket Number 18-010-110422 (Complainant Jacquelyn Tieri)

On January 24, 2017, Complainant Jacquelyn Tieri (hereinafter "Tieri") asked Respondent to represent her in order to have her driving privileges restored following a three-year suspension of her license.[48] In March of 2017, Tieri paid Respondent five hundred dollars ($500.00) in cash, three hundred fifty dollars ($350.00) of which Respondent told Tieri was to pay a filing fee.[49]

Tieri testified that, throughout her case, Respondent failed to communicate with her and intentionally misrepresented facts regarding the status of her case and the actions that he took in furtherance of the representation. On more than one occasion, Respondent informed Tieri that he scheduled court dates when no such dates were scheduled. Moreover, in August of 2017, Tieri called the court and was informed by court staff that nothing had been filed on her behalf to obtain a restricted license, that no filing fee was required, and that she did not need a lawyer to obtain a restricted license. Tieri then proceeded to obtain her restricted license without any help from Respondent; and, although she has requested a refund from Respondent, she initially did not receive one. Tieri testified that during the time she was waiting for her case to be resolved with the assistance of Respondent, she expended thousands of dollars in paying for transportation necessary for her to maintain her employment.

[48] *See* VSB Exhibit 50.
[49] *See* VSB Exhibit 50.

Respondent informed Investigator Pohrivchak that he did not recall ever receiving five hundred dollars ($500.00) from Tieri and that he had no explanation for what he did with the money. When Tieri produced a receipt for the payment, Respondent told Investigator Pohrivchak that he would have deposited the funds into his trust account at Bayport Credit Union and that he would contact his credit union to see where the money was deposited. Respondent never provided Investigator Pohrivchak with anything to corroborate his statement that he had deposited the funds in his trust account. In response to a subpoena *duces tecum*, Bayport Credit Union provided a statement that Respondent does not have a trust account at Bayport Credit Union but that he had two personal accounts and two business accounts on which he was an authorized signatory.[50] Moreover, Bayport Credit Union is not on the list of approved depositories for attorney trust accounts.

When Investigator Pohrivchak asked Respondent about Tieri's statement that Respondent told her that he needed a filing fee, Respondent denied ever making such a statement. Investigator Pohrivchak then showed Respondent his own texts with Tieri that discuss the filing fee,[51] and Respondent could not explain them. During the hearing, Respondent testified that the three hundred fifty dollars ($350.00) was for an office administration fee.[52] Respondent could not offer any reasonable reason as to why his text message stated it was a filing fee.[53] Later in his testimony, Respondent claimed that while he remembered some of the communications [the text messages], he went on to testify that they seemed altered.[54] When asked directly whether or not he was suggesting to the Board that the text messages were altered, he responded "as I'm looking - - as I look through some of them, I

[50] *See* VSB Exhibit 52.
[51] *See* VSB Exhibit 50.
[52] TR at 57.
[53] TR at 57.
[54] TR at 66.

don't recall writing some of these things."[55] When further pressed, he stated, "I'm saying that I don't recall writing some of these things, and I'm not sure how they could have been altered or if they are altered. But some of them definitely - - they don't even look like my writing style in some of this stuff." The Respondent's assertion that the text messages, which were actually photographs of the text messages, were altered, was not credible.

Respondent further testified that Tieri became frustrated with the process and released him as counsel. At that point, he testified he refunded her the retainer payment. When she testified that he never told her that she could obtain a restricted license without counsel, he said, "I definitely explained that to her in our first meeting."[56]

Respondent also told Tieri that he filed and docketed the Petition [for a restricted license]. When Tieri inquired what happened at court, his text message response stated that he would have to go to the court to find out what happened. When Tieri confronted him that she contacted the court system and was told nothing was filed and that she could do it herself, he told her the case had to be non-suited. When Tieri texted Respondent and asked why she didn't hear anything from him and that she was starting to get worried, especially since he told her the court date was the second week of May, she asked what was going on and stated she wanted her money back. In the text, Respondent told her he had to request a certified transcript from DMV and continued her hearing 30 days to June 22, 2017 at 11:00 a.m. He then proceeded to tell her that if she wanted him to voluntarily non-suit her case and refund the money, he could do that, too. He went on to say, "I am prepared to get your driving privileges reinstated, at our upcoming hearing, but you can let me know how you wish to proceed."[57] When Respondent sent those texts, he was lying. There was no court date, there was never a court date, and he

[55] TR at 72.
[56] TR at 58.
[57] *See* VSB Exhibit 50.

didn't file anything. In fact, Tieri had to get her license back herself. When asked what he meant by getting it non-suited, he testified "I just meant I was basically going to close out her file and eliminate all of the paperwork."[58] Respondent also sent a text to Tieri telling her that he set it for the second week in May,[59] but in fact, he never set it at that time either. He admitted that he had to file the Petition and confirm the date, but nothing was set as he told his client.[60] Respondent further admitted that he led Tieri to believe that he had docketed the case for the second week of May.[61]

Respondent also admitted sending Tieri a text on March 31 that, "I apologize for the delay in confirming your trial date. I will try to look online when I get back home so I can confirm the date with you this evening." However, Respondent admitted there was no date at that point.[62] He also acknowledged there wouldn't have been any case information online because he didn't file anything.[63] It should also be noted that Respondent once again testified that the text seemed to be altered.[64]

At the conclusion of the evidence, the Board recessed to deliberate; and, after considering the evidence presented, the witness testimony, and the arguments of Assistant Bar Counsel and Respondent, the Board reconvened and announced its finding that the VSB had proven, by clear and convincing evidence, that Respondent's actions, as set forth herein, constitute misconduct in violation of *Rules* 1.3(a), 1.4(a), 1.15(a)(1), 1.15(a)(2), 8.1(a), and 8.4(c).

[58] TR at 59.
[59] *See* VSB Exhibit 50.
[60] TR at 61.
[61] TR at 62.
[62] TR at 63.
[63] TR at 64.
[64] TR at 66.

The Board finds by clear and convincing evidence that Respondent's failure to keep Tieri reasonably informed of as to the status of her case, lying to Tieri about the status of her case, and his failure to promptly comply with her requests for information, including failing to notify her that she did not need a lawyer to obtain a restricted license, constitute misconduct in violation of Rules 1.3(a) and 1.4(a).

The Board further finds by clear and convincing evidence that Respondent's actions constituted misconduct in violation of *Rule* 1.15(a)(1) and 1.15(a)(2). Pursuant to *Rule* 1.15(a)(1), a lawyer must deposit funds held on behalf of a client into a trust account;[65] and, *Rule* 1.15(a)(2) requires that the trust account be maintained at a financial institution approved by the Virginia State Bar.[66] Respondent's failure to deposit Tieri's retainer fee into a trust account is a violation of *Rules* 1.15(a)(1) and 1.15(a)(2). Moreover, the non-existent trust account was identified by Respondent as being at a financial institution not approved by the Virginia State Bar.

The Board also finds by clear and convincing evidence that Respondent took actions in violation of *Rule* 8.1(a), which prohibits a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter.[67] The Board finds that Respondent made several false statements throughout the investigation of this matter. Respondent initially denied receiving five hundred dollars ($500.00) from Tieri until Investigator Pohrivchak showed him the receipt. Respondent denied stating to Tieri that he needed a filing fee and was unable to explain his own text messages directly contradicting his statements to Investigator Pohrivchak, and Respondent then testified during the hearing that he did, in fact, collect the three hundred fifty dollars ($350.00) from Tieri but maintained that it was for an office administration fee, not

[65] *Va. Rules of Prof'l Conduct Rule* 1.15(a)(1).
[66] *Va. Rules of Prof'l Conduct Rule* 1.15(a)(2).
[67] *Va. Rules of Prof'l Conduct Rule* 8.1(a).

a filing fee. Respondent also told Investigator Pohrivchak that he deposited the money in his trust account when in fact he did not deposit the funds in a trust account.

Additionally, the Board finds by clear and convincing evidence that Respondent's actions violated *Rule* 8.4(c). *Rule* 8.4(c) prohibits a lawyer from engaging in conduct that involves dishonesty, fraud, deceit, or misrepresentation adversely reflecting on the lawyer's fitness to practice law.[68] While representing Tieri, Respondent knowingly made false statements to her, including informing her that he had scheduled court dates when no such dates had been scheduled, and he knowingly took money from Tieri for a filing fee that did not exist. Such conduct involves dishonesty, deceit, and misrepresentation that adversely reflects on Respondent's fitness to practice law.

For the foregoing reasons, the Board finds by clear and convincing evidence that Respondent engaged in conduct in violation of *Rules* 1.3(a), 1.4(a), 1.15(a)(1), 1.15(a)(2), 8.1(a), and 8.4(c). Sanctions were reserved for the conclusion of all three cases against Respondent pending before the Board.

SANCTIONS PHASE OF HEARING

After the Board announced its findings by clear and convincing evidence that Respondent had committed the *Rule* violations charged in the Certification, it received further evidence regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed. During the sanctions phase of the hearing, the Board admitted VSB Exhibits 57 and 58, without objection. VSB Exhibit 59 was also admitted during the sanctions phase of the hearing over the objection of Respondent.[69]

[68] *Va. Rules of Prof'l Conduct Rule* 8.4(c).
[69] VSB Exhibit 59 consisted of photographs of Respondent's vehicle and its contents, which were admitted into evidence and considered by the Board during the sanctions phase of the hearing for the sole purpose of impeachment.

The Board heard testimony from Investigator Pohrivchak, Sgt. Hubert A. Nealy, and Respondent. Investigator Pohrivchak testified that because Respondent was not being responsive to his messages, the only way he could locate Respondent was through his defense attorney, Mario Stellute. Mr. Stellute represented Respondent on a criminal contempt charge in the Circuit Court of York County – City of Poquoson. In that court, the Respondent was found guilty of contempt for failure to appear on October 24, 2017. The court sentenced the Respondent to ten days in jail, 10 days suspended and a $50 fine.

The Board also received evidence that Respondent was involved in an asset forfeiture case as a result of a serious automobile accident that he was in on or about October 18, 2017. According to Respondent, he was significantly injured and was out of commission for approximately four or five weeks.[70]

According to Respondent in his testimony during Danovich's case, he testified he left the scene of the accident but called the police. He ran into a tree. In viewing the pictures, his airbags deployed and the car was totaled.[71] Respondent further testified that he walked home from the accident and called the non-emergency line for York County. He further stated that he had pretty significant injuries and did not want to just go knock on somebody's door at 2:00 a.m., so he walked home.[72] He was never able to articulate why he did not use his cell phone to call the police. He testified that in his car were some of the documents that he used for work and his briefcase. While he did not believe he left them or abandoned them, his airbag had deployed and because he was never in an accident like that before, he was afraid his vehicle was either smoking or was on fire.[73] According to Respondent, he left the vehicle at the

[70] TR at 17.
[71] *See* VSB Exhibit 59.
[72] TR at 18.
[73] TR at 21 and 23.

accident, it was totaled, and he was bleeding.[74] The automobile he was driving was impounded.[75] Based upon the Information filed by the Commonwealth's Attorney of York County, it was alleged that the property was seized because it was in substantial connection with the (a) illegal manufacture, sale or distribution of a controlled substance or possession with intent to sell or distribute controlled substance in violation of §18.2-248; or, (b) the sale or distribution of marijuana or possession with intent to distribute marijuana in violation of subdivisions (a)(2), (a)(3), and (c) of §18.2-241.1; or (c) a drug related offense in violation of §18.2-474.1; or was furnished or intended to be furnished in exchange for a controlled substance in violation of §18.2-248 or for marijuana in violation of §18.2-248.1 or for a controlled substance or marijuana in violation of §18.2-474.1; or was money or other property traceable to such an exchange; or was interest or profits derived from the investment of such money or other property. It was a civil action for forfeiture of seized property pursuant to §19.2-368.1 and §19.2-386.22 of *Code of Virginia.* This information was filed by Benjamin M. Hahn, Commonwealth's Attorney. Respondent was served with Notice of Seizure and Obligation to Show Cause and, on November 21, 2017, Mr. Stellute, counsel for Respondent in the forfeiture case, notified the court that while Respondent had no interest or claim of ownership in the currency and did not contest the Commonwealth's forfeiture, he did file a request for return of seized property.[76] Based upon the record, the Virginia State Police seized property from the car and Respondent's personal residence. The property being sought to be returned contained (1) a briefcase with any and all files, documents or other similar paperwork contained therein; (2) court calendars; and (3) a 2017 Nissan Armada that was in the custody of the Sherriff's Department. Respondent entered into a Consent Order of Forfeiture specifically

[74] TR at 19.
[75] *See* VSB Exhibit 55.
[76] *See* VSB Exhibit 56.

forfeiting the one thousand and forty dollars ($1,040.00) in cash. Although he only forfeited the cash, he has not been able to get the other items requested. Respondent was only allowed to get his calendar and a few items; however, some items were either crushed in the vehicle or were not accessible.[77]

When questioned about the accident during the Sanctions phase of the case, Respondent declined to answer questions about the accident because formal charges were not filed at that time and he wanted to speak with counsel. Despite being told he has a Fifth Amendment privilege in this case, Respondent went on to testify that the car did contain an Uzi machine gun, which he maintained his father gave him.[78] When asked whether or not the Uzi belonged to Timothy Hankins, his previous employer, he said no. Sgt. Nealy testified that Mr. Hankins contacted him when he learned of the Uzi being located and advised him that it was stolen from his office. Upon investigation, Sgt. Nealy was able to determine that the Uzi in question was in fact the Uzi taken from Mr. Hankins's firm.

The Board finds that Respondent is completely lacking in credibility in both in his filings with the court, his interaction with his clients, and his testimony to the Board.

The Board also received into evidence and considered Respondent's disciplinary record which showed that he had no prior public or private disciplinary record as of January 28, 2019.[79] Also, according to Respondent, at the time of the hearing, he was practicing law for about five years.[80]

In addition to not being responsive to Investigator Pohrivchak, Respondent failed to respond to any of the complaints in this action, nor did he file an exhibit or witness list. The

[77] TR at 70.
[78] TR at 77.
[79] *See* VSB Exhibit 57.
[80] TR at 80.

first time Respondent became involved in this case was at the pre-hearing conference call held on February 6, 2019.

It is clear from Respondent's testimony that he lacks all understanding with regard to the harm he has caused. He suggested to the Board that if permitted, he would like to reach out to Ms. Martinez and conclude her divorce.[81] He further tried to explain that he has been very cooperative with everything in the criminal process (as a result of his automobile accident)[82] and that he asked for mercy and leniency because he enjoyed his role as an attorney and he took it very seriously. While he understood that if he needed to be listed and publicly shamed in Virginia Lawyer's Weekly, it was well-deserving, but he should not be suspended or revoked because he takes it very seriously and wanted to have the opportunity to help other people and work hard to advocate on their behalf.[83] Despite the foregoing, Respondent testified that he believe he did everything he could to move the Danovich case forward and tried to get him [Danovich] to cooperate with him to move his case forward.[84] He also believed he accommodated Danovich a lot and would meet with him pretty regularly despite the evidence that was presented.[85]

Respondent also believed regarding Tieri that he was doing her a favor and it was very informal communication with her. He believes he is competent to handle criminal and divorce cases, and except for wanting to get Martinez divorced, at no point did Respondent take responsibility for his failure to comply with the *Rules* or the harm he has caused.

[81] TR at 80.
[82] TR at 82.
[83] TR at 83.
[84] TR at 84.
[85] TR at 85.

DISPOSITION

At the conclusion of the evidence in the sanctions phase of the proceeding, the Board recessed to deliberate. After due deliberation and review of the foregoing findings of fact, upon review of exhibits presented by Assistant Bar Counsel on behalf of the VSB, upon the testimony from the witnesses presented on behalf of the VSB, upon Respondent's testimony and argument of Respondent and Assistant Bar Counsel, the Board reconvened and stated its finding that, when considered together, Respondent's pattern of misconduct demonstrates a serious failure to uphold his duties to the profession.

During its deliberation and in determining the appropriate sanction to impose, the Board considered the mitigating and aggravating factors set forth herein above as well as the American Bar Association's Standards for Imposing Lawyer Sanctions.[86] According to the ABA Standards, "disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding."[87] In these matters, the Board was particularly troubled by the harm caused to the complainants by Respondent's conduct, including the fact that Danovich and Martinez still are not divorced, Martinez has not been able to collect a portion of her husband's retirement benefits that she is entitled to and Tieri was forced to expend thousands of dollars in order to maintain her employment while Respondent repeatedly failed to take any action with respect to her case and lied to her about her case. The Board was also concerned with Respondent's lack of candor, failure to maintain personal integrity, failure to take responsibility for his actions, and failure to demonstrate an

[86] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015).
[87] ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 289 (2015).

appreciation for the serious nature of his misconduct. Respondent's actions and blatant lies to his clients and the Board demonstrate his lack of a moral compass. Accordingly, any sanction other than revocation would be a disservice to the Virginia legal community and the public at large.

Upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by unanimous vote of the Board, that Respondent's license to practice law in the Commonwealth of Virginia be revoked, effective February 15, 2019.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section § IV, ¶ 13-29 of the *Rules of Supreme Court of Virginia*. Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation 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. 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 revocation and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective day of the revocation. All issues concerning the adequacy of the notice and arrangements required by

Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose additional sanctions for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part 6, Section, § IV, ¶ 13-9(E) of the *Rules of Supreme Court of Virginia*, the Clerk of the Disciplinary System shall assess all costs against 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, Sammy Edward Ayer, Esquire, The Law Office of Sammy E. Ayer, 104 Clearwater Court, Yorktown, Virginia 23692, certified mail, return receipt requested, with the Virginia State Bar, and a copy shall be hand-delivered to Christine Corey, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

Entered: March 22, 2019.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Sandra L. Havrilak

Digitally signed by Sandra L. Havrilak
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Date: 2019.03.22 17:09:36 -04'00'

Sandra L. Havrilak, 1st Vice Chair