

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JIN-HO CYNN**

VSb DOCKET NO. 19-053-115676

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER was heard via video conference on August 28, 2020, before a panel of the Disciplinary Board (“Board”) consisting of Yvonne S. Gibney, Chair; Michael A. Beverly, Stephanie G. Cox; Kamala H. Lannetti; and Tambera D. Stephenson, Lay Member. The Virginia State Bar (the “VSB”) was represented by Shelley L. Spalding, Assistant Bar Counsel. Jin-Ho Cynn (the “Respondent”) appeared in person and represented himself. 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. Lisa A. Wright, court reporter, P.O. Box 9349, Richmond, Virginia 23227, phone number (804)730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia (“Rules”).

The matter came before the Board on the District Committee Determination for Certification by the Fifth District, Section III Subcommittee, pursuant to Part Six, § IV, ¶ 13-18 of the Rules involving misconduct charges against the Respondent. Prior to the proceedings and at the final Pre-Hearing Conference VSB Exhibits 1 through 16 were admitted into evidence, without objection from the Respondent. The Respondent offered no exhibits. On August 26, 2020, the

Bar and the Respondent entered into written stipulations of fact and Rule violations, which stipulations were admitted into evidence as Board Exhibit 1.

The Board heard testimony from the Respondent, who was sworn under oath. The Board considered the testimony of the witness, the exhibits introduced by the parties, the written stipulation as to facts and Rule violations; heard arguments of Bar counsel and the Respondent; and met in private to consider its decision.

I. FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. The Respondent, Jin-Ho Cynn, who is also known as Gene J. Cynn, was initially licensed by the Virginia State Bar on September 25, 1986. Respondent's license to practice law in Virginia was administratively suspended on March 14, 2018 for his failure to comply with his Mandatory Continuing Legal Education ("MCLE") requirements. Respondent was notified of this suspension by letters from the VSB on March 14, 2018 and May 29, 2018. The Respondent knew of this suspension in May of 2018. (Board Exhibit 1; testimony of Respondent; VSB Exhibit 14.)

2. The Respondent's license to practice law in Virginia was also administratively suspended, effective October 15, 2018, for failing to pay annual dues and he was notified by the VSB by letter dated October 15, 2018. (Board Exhibit 1.)

3. Respondent's license to practice law in Virginia was reinstated on August 28, 2019, following his compliance with MCLE requirements and payment of Bar dues and reinstatement fees. (Board Exhibit 1; Bar Exhibit 14.) Between March 14, 2018 and August 28, 2019 Respondent's license to practice law in Virginia was administratively suspended.

4. During this period of suspension, Respondent represented Eastern Design Build,

LLC and Sam K. Yoon in litigation in the Fairfax County General District Court by filing an Answer and Grounds of Defense on their behalf on December 10, 2018. Respondent did not notify his clients, the Court or opposing counsel that his law license was suspended. (Board Exhibit 1; VSB Exhibit 4.) Respondent charged his clients \$500 to file the Answer and Grounds of Defense to meet the filing deadline, and represented them until March 1, 2019, when another attorney was substituted as counsel for Eastern Design Build, LLC and Sam K. Yoon in the Fairfax General District Court litigation. (VSB Exhibit 5.)

5. On May 9, 2019, Respondent signed and sent a letter to the registered agent of Lamjam, LLC, demanding the termination of a UCC financing statement against Chungsong Corporation, whom Respondent had represented since 2012. Respondent sent the demand letter on the letterhead of the “Law Office of Gene J. Cynn” and stated in the letter that “[o]ur law office has been retained to represent Chungsong Corporation.” Respondent signed the letter “Gene J. Cynn, Esq.” (VSB Ex. 7.) Respondent received no fee for preparing and sending this letter. Respondent’s license to practice law had been suspended at the time he sent the letter. After receiving Respondent’s letter, Lambros Magiafas (“Complainant”), as the owner of Lamjam, LLC, filed a formal complaint against Respondent with the VSB. (Board Exhibit 1; VSB exhibits 7 & 8; testimony of Respondent.)

6. Respondent met with and provided legal services to between 10 and 15 clients in Virginia, for which he was paid, during the period of his administrative suspension without informing the clients that his license to practice law in Virginia was suspended. These meetings often involved clients for whom English is not their native language, as Respondent was able to translate in Korean. In these meetings Respondent sometimes reviewed lease agreements, health department notices, and problems with business licenses. (Board Exhibit 1; testimony of

Respondent.) While his license was suspended Respondent also made business referrals, for which he was paid, regarding real estate title insurance. These referrals were not found to be the practice of law, however.

II. NATURE OF MISCONDUCT

The Board finds by clear and convincing evidence that the following conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

A. Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal[.]

Respondent violated this rule by falsely representing himself to the Fairfax County General District Court as an attorney in good standing, while knowing that his law license was administratively suspended; and by filing an Answer and Grounds of Defense with the Court on December 10, 2018, as counsel of record for Eastern Design Build, LLC and Sam K. Yoon.

B. Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

. . .

(c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

Respondent violated this rule by signing and filing an Answer and Grounds of Defense on behalf of Eastern Design Build, LLC and Sam K. Yoon in the Fairfax County General District Court on December 10, 2018; signing and sending a demand letter on behalf of a client to the Complainant's business on March 9, 2019 on Respondent's law firm letterhead; representing himself as an attorney in good standing; and giving legal advice and opinions to 10 to 15 clients

in Virginia on a variety of matters during the period between March 14, 2018 and August 28, 2019, while knowing that his license to practice law in Virginia was administratively suspended.

C. 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 to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

Respondent violated this rule by falsely representing himself to the Fairfax General District Court as a lawyer in good standing by filing an Answer and Grounds of Defense on December 10, 2018 on behalf of Eastern Design Build, LLC and Sam K. Yoon; by sending a demand letter to the Complainant's business, Lamjam, LLC, on March 9, 2019, in which he misrepresented himself as an attorney in good standing, knowing that his license to practice law in Virginia was administratively suspended. In addition, though Respondent has not been charged with a criminal offense, Virginia Code Section 54.1-3904 makes the practice of law without a license punishable as a class 1 misdemeanor.

III. SANCTION PHASE

After the Board announced its findings by clear and convincing evidence, it received further evidence and argument in aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record.

In its consideration of an appropriate sanction the Board found the Respondent's misconduct reflects violations of his duties to the legal system and to the legal profession, as well as to his clients. The Board found that Respondent violated these duties knowingly, rather than

intentionally. The Board found no evidence of any actual harm to a client as a result of Respondent's misconduct.

In further consideration of an appropriate sanction, the Board considered the following aggravating factors:

1. Respondent's prior disciplinary record:

a.) In 1991, Respondent received a public reprimand for the unauthorized practice of law during a five-month administrative suspension for non-compliance with his MCLE requirements in 1989. In 1993, Respondent received a public reprimand with terms for failing to properly credit clients with interest earned in an interest-bearing trust account. Respondent timely complied with the required terms for a proper accounting and interest payments to clients. The majority of the Board did not find these prior disciplinary actions to be relevant to the current proceedings because they were too remote in time.

b.) In 2013 Respondent received a six month suspension of his license to practice law for the fraudulent completion of a HUD statement, violating the duty of safekeeping of client property, lack of diligence in obtaining an ABC license for a client, and failing to maintain client funds. The misconduct on which the suspension was based occurred in 2009 and 2010, and was therefore somewhat remote in time and not factually similar to the misconduct now before the Board. Nevertheless, the misconduct was serious and of great concern as an aggravating factor.

c.) In 2014 Respondent received a dismissal *de minimis* for a violation of Rule 5.5(a), as a result of signing retainer agreements as a representative of a legal services corporation, while Respondent's license was suspended. The legal services to which the retainer agreements pertained were to be provided by an attorney other than Respondent. The majority of the Board did not find the misconduct underlying this disciplinary action to be significantly aggravating.

2. Dishonest or selfish motive. By filing signed pleadings with the Fairfax County General District Court, and sending a letter on legal letterhead to the Complainant's business, Respondent acted dishonestly, as he purported to be a licensed attorney when he knew he was not.

3. Multiple offenses. Respondent engaged in the unauthorized practice of law and misrepresented his suspended status in multiple client relationships. Respondent's misconduct violated three Rules.

4. Respondent has substantial experience in the practice of law and knew better.

5. Respondent engaged in illegal conduct. The unauthorized practice of law is a class 1 misdemeanor under Virginia Code section 54.1-3904.

In further consideration of an appropriate sanction, the Board considered the following mitigating factors:

1. Personal or emotional problems. Respondent has experienced significant financial hardship since the collapse of his real estate practice several years ago. Respondent had to borrow approximately \$3,000 from his new law partner in order to pay the course fees to meet his MCLE requirements and the reinstatement fees to have the administrative suspension of his law license lifted on August 28, 2019. Respondent also reported bouts of severe depression which have affected his ability to work, though he produced no medical evidence in support of this condition.

2. Full and free disclosure to disciplinary board and cooperative attitude toward proceedings. Respondent freely cooperated with the Bar's investigation and admitted his misconduct. Respondent entered into written stipulations of fact and the Rule violations prior to this hearing.

3. Remoteness of prior offenses. Much of Respondent's prior disciplinary record involved conduct which occurred between 25 and 30 years ago. The most concerning conduct for which

Respondent has been disciplined occurred approximately 10 years ago and that misconduct is unlike the misconduct now before the Board.

IV. DISPOSITION

At the conclusion of the evidence in the sanction phase of this proceeding, 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.

Upon consideration of the evidence and the nature of the misconduct committed by the Respondent, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be suspended for 90 days with Terms, effective August 28, 2020. The Terms are as follows: within 90 days after the Virginia State Bar Professionalism Course is offered again, the Respondent must take the course. If Respondent fails to do so within that period of time, the Alternative Disposition shall be an additional one-year suspension of Respondent's license.

It is further ORDERED that, as directed in the Board's August 28, 2020, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, 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 suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within 60 days of the effective day of the suspension. 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 a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. 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 Suite 312, 4200 Evergreen Lane, Annandale, Virginia, 22003, by certified mail, return receipt requested, and by hand delivery to Shelley L. Spalding, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 17th day of September 2020

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney, Chair

Dissent:

Panel member Tamera D. Stephenson, Lay Member, dissents from the Board's decision to impose a sanction of a 90-day suspension with terms for the following reasons:

Respondent received a public reprimand in 1991 for continuing to practice law after being notified that his license was suspended for failing to complete his MCLE requirements. This is the same misconduct now before the Board. He has since been disciplined twice more for other misconduct. Respondent's discipline history reflects that he has not appreciated and learned from that discipline.

Respondent does not seem to appreciate the wrongfulness of his conduct. In his testimony Respondent rationalized his misconduct by stating that his priority was making money to support his family and that he could not afford to pay his Bar dues or pay for the MCLE courses because of his financial circumstances. While Respondent acknowledged his violation of the Rules, he did not express remorse for his conduct.

Respondent has been practicing law since 1986. He has had experience with the disciplinary process several times before. It does not appear that he has learned from his prior mistakes, which raises my concern for his future ability to practice law without violating the Rules.

Given Respondent's history, a suspension of nine months to one year and one day would be a more appropriate sanction.