

**VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF:** )  
**WALTER FRANKLIN GREEN, IV** ) **VSB Docket No. 03-070-3720**

ORDER

This matter came on for hearing upon mandate and certification from the Supreme Court of Virginia.

By order dated November 27, 2006, the Supreme Court certified this matter to the Virginia State Bar Disciplinary Board (the "Board") for proceedings consistent with the opinion of the Court issued on November 3, 2006, which reversed a prior order of the Board, dated January 24, 2006, vacated the sanctions imposed in this matter and remanded this case for further proceedings consistent with the Court's opinion.

A panel of the Board consisting of V. Max Beard (Lay Member), Bruce T. Clark, Robert L. Freed, Russell W. Updike and Peter A. Dingman convened on January 26, 2007, for the mandated hearing. Messrs. Beard, Clark, Freed and Updike all sat on the panel of the Board which heard this matter on November 19, 2004, and, after the first remand, on January 10, 2006. Ann N. Kathan, who participated in both prior hearings, is no longer an active member of the Virginia State Bar. Peter A. Dingman, current Chair of the Board, was designated to sit in her place after reading transcripts and reviewing each exhibit admitted in prior proceedings. Mr. Freed, who chaired the prior hearings and recently completed a term as Chair of the Board, sat as Chair, designate, for these proceedings.

The Virginia State Bar (the "Bar") was represented by Edward L. Davis. Walter Franklin Green, IV ("Respondent"), appeared in person and represented himself. The proceedings

were transcribed by Tracey Stroh, a Registered Professional Reporter, employed by Chandler & Halasz, Post Office Box 9349, Richmond, Virginia, 23227; telephone number (804) 730-1222.

At 9:15 a.m., Mr. Freed convened the hearing, taking the oath of Ms. Stroh to faithfully transcribe the proceedings and inquiring of each member of the panel as to whether he had any personal or financial interest that might affect, or reasonably be perceived to affect, his ability to be impartial in this matter. Each member of the panel, including the Chair, answered this inquiry in the negative. The Chair then recited in summary fashion the procedural history of this matter and offered to make a detailed statement as to the manner in which the hearing would go forward. Both the Bar and Respondent waived such a statement from the Chair. The Chair also noted Mr. Dingman's substitution for Ms. Kathan on the hearing panel, and Respondent stated that he had no objection to such substitution. Further, the Chair recounted the fact that Respondent did, subsequent to the Supreme Court's order of November 28, 2006, make a request to have further proceedings conducted before a three-judge panel, a request which the Chair denied, upon the bases (i) that Respondent's request was not timely made pursuant to Part 6, Section IV, Para. 13(I)(1)(a)(1) of the Rules of the Supreme Court of Virginia; and (ii) that this matter being before the Board on a remand mandate and certification order from the Supreme Court, the Board was without authority to send the case to another forum. Respondent renewed his request, asking that the Chair's prior ruling be reversed by vote of the entire panel. After consideration by the panel, the Chair's prior ruling was affirmed, unanimously, and the hearing continued before the Board.

Each side was offered an opportunity to present an opening statement. The Bar waived opening. Respondent stated that his goal was to have the Board over turn the findings of misconduct made by the Board for the November 2004 hearing. The Chair advised Respondent his

request exceeded the authority of the Board under the mandate and certification. Respondent then said he would show that a Bar press release on November 22, 2004, coupled with newspaper accounts and a Bar website notice concerning suspension of his law license had combined to so impact his practice as to be tantamount to a two and one-half year suspension of his license.

The Bar and Respondent then presented two stipulations. First, the Bar and Respondent stipulated that, if called as a witness in this matter, Judge John Paul of the Rockingham County, Virginia, General District Court, would testify that Respondent is “a generally good lawyer” and that the Judge would “like to see him get this Bar business behind him and return to the practice of law”. Second, the Bar and Respondent stipulated that, if called to testify as a witness, George Willi, a retired Judge of the United States Claims Court, would testify in a manner consistent with an affidavit given by him on November 24, 2004, an affidavit which was subsequently introduced into evidence as Respondent’s Exhibit ‘1’.

The Bar then offered in evidence its Exhibit ‘1’, a compilation of seven prior dispositions in disciplinary matters regarding this Respondent. Initially, Respondent objected to the introduction of the Bar’s Exhibit ‘1’, arguing that nine of the eleven referenced Bar docket numbers arose from a single case, his representation of a woman charged with capital murder. When the Bar, in response to Respondent’s argument, noted that the proffered Exhibit was exactly the same as the certification of prior disciplinary record admitted in two prior proceedings in this matter, Respondent withdrew his objection to the Exhibit. The Bar then rested.

Respondent, on his own behalf, at various stages of the proceedings, offered twenty Exhibits, all of which were admitted into evidence, and the testimony of three witnesses, including himself.

Respondent was sworn and testified as his own witness, stating that, immediately following the initial hearing in his matter, which commenced on November 19, 2004, concluding in the early morning hours of November 20, 2004, his practice was substantially adversely affected by a perception in the community where Respondent practices (the vicinity of Harrisonburg, Virginia) that his license had been immediately suspended. Despite the fact that neither a summary order nor a memorandum order were entered until several weeks after the hearing, and further despite the fact that the suspension imposed by the Board was not to take effect until January 15, 2005, Respondent testified that his practice was immediately adversely affected. He asked the Board to pay particular attention to Respondent's Exhibit '7' (newspaper articles concerning the disposition of his disciplinary matter) and Respondent's Exhibit '8' ("screen shots" of a notation on the Virginia State Bar website concerning the status of his license, showing it as suspended) and testified that he lost hundreds of thousands of dollars in income and saw his practice reduced from several lawyers and multiple support staff to himself and a single secretary in consequence of the understanding in the community that Respondent was "not able to work".

Respondent further testified that he returned unearned advanced legal fees to as many as 30 or 40 clients who requested such refunds immediately after the November 2004 hearing. Respondent further stated that he felt he had done nothing wrong in this matter and that he did not know why he had been suspended. He stated that he did not bring in financial records of his practice or tax returns to show lost income because he felt it would be too complicated to demonstrate the loss to the Board. He estimated, though, that his gross income declined from \$250,000.00 in 2004, to approximately \$100,000.00 in 2005. Responding to cross-examination by the Bar, Respondent maintained that "everybody" saw the Bar website and that most of his clients would not take the time

to review the portion of the website which noted Respondent's appeal from the prior disposition in this matter.

Respondent called as a witness Gregory Lewis, a man who has known Respondent since childhood, some 40 to 50 years. He stated that he became aware of Respondent's suspension in late 2004 and that many people in the community asked him when Respondent would get his license back. He stated that, prior to the November 2004 hearing, Respondent's practice as extremely busy. Mr. Lewis stated that, prior to the hearing, it was difficult for him to obtain an opportunity to visit with his friend because Respondent was so busy working as a lawyer. After the hearing, it became much easier for Mr. Lewis to contact Respondent.

Mr. Lewis further stated that he reacted to questions in the community as to when Respondent would get his license back by pointing out to people that Respondent continued to practice on a daily basis and was frequently reported in the local newspapers for the cases he was handling. Responding to cross-examination, he stated that he did not believe any of the people who spoke to him had actually read the Virginia State Bar website. Mr. Lewis conceded that he himself did not have a computer and had never visited the Virginia State Bar website.

Respondent called as his final witness, Jack L. Stayner, who testified that the newspaper articles reporting Respondent's suspension had a negative impact on the volume of his practice. Mr. Stayner noted that at one time Respondent's practice required two people to answer the telephones, but that task can now be handled by one person, the witness, who is helping out his friend, Respondent. Under cross-examination and questioning from members of the Board, the witness noted that the steep decline in telephone calls to Respondent's office had actually commenced on or about January 1, 2007 (which coincides with the imposition of a suspension of

Respondent's law license in a separate matter), and that Respondent's practice had been in decline since "as far back as 2002". He stated that "the wheels started to come off the cart" as early as 1995, when Respondent was representing a woman in a capital murder case. The witness stated that it was this representation which "disturbed the peace and good order of the community". At the time of that case, the witness told the Board, Respondent was in a firm of three to four lawyers, but by the year 2000 or 2002, Respondent had become a sole practitioner.

The witness further noted that more than five years ago, he was instrumental in getting Respondent into a 12-step program and that Respondent had been sober for at least the past five years. Following Mr. Stayner's testimony, Respondent, rested his case. By way of rebuttal, the Bar introduced its Exhibit '2', a "screen shot" from the Virginia State Bar website showing the fact of an imposition of suspension in this matter, coupled with an explanatory note stating that the suspension had been stayed pending appeal.

The Bar and Respondent then argued their positions. The Bar asked the Board to consider the facts found at the November 2004 hearing of this case, which the Bar asserted amounted to "egregious" misconduct, Respondent's stated lack of remorse, or even acceptance of culpability, and Respondent's damning prior record.

Respondent argued that he had been through two and one-half years of "pure hell" because of these proceedings. He stated, "I did not do anything wrong" and that he would not have agreed to disposition in prior disciplinary matters had he known he would be before the Board in this matter. Respondent argued that the publication of the result of the November 2004 hearing on the Bar's website and by press release to state and local newspapers by the Clerk of the Disciplinary System was an abuse of power by the Bar and had caused an impact on his practice which amounted

to sufficient punishment for the misconduct found by the Board in his matter.

The Board then retired to consider all of the evidence adduced at the hearing, the prior proceedings in this matter, including the opinions and orders of the Supreme Court of Virginia, and the argument of counsel. The Board specifically considered the “factors to be considered in imposing sanctions” set out in the *Standards for Imposing Lawyer Sanctions* (1991 Edition, published by the American Bar Association), and factors in mitigation and/or aggravation of sentencing discussed in the *Judge’s Bench Book*.

Weighing all this, the Board found, as factors of aggravation, Respondent’s lack of remorse and/or recognition of misconduct in this matter, his significant record of prior discipline and his unwillingness to accept responsibility for the consequences of his conduct. Respondent is, and was at the time of the misconduct, a lawyer with substantial experience. As factors of mitigation, the Board found Respondent has successfully participated in a 12-step program and has been sober for over five years. In consideration whereof, it is,

ORDERED, that Respondent’s license to practice law is suspended for a period of forty-five (45) days, such period to commence on July 1, 2007; and

FURTHER, ORDERED, that Respondent must comply with the requirements of Part 6, Section IV, Para. 13(M) of the Rules of the Supreme Court of Virginia. 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 lawyers 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 each client. Respondent shall give notice within fourteen (14) days after July 1, 2007, and

make such arrangements as are required herein within forty-five (45) days after that date. Respondent shall also furnish proof to the Bar within sixty (60) days after July 1, 2007, that such notices have been timely given and such arrangements made for the disposition of all client matters. If Respondent is not handling any client matters on July 1, 2007, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Para. 13(M) shall be determined by the Virginia State Bar Disciplinary Board unless Respondent makes a timely request for hearing before a three-judge panel; and, it is

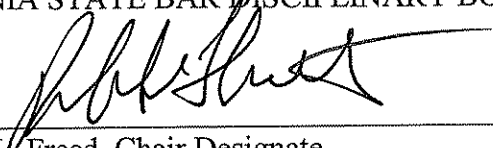
FURTHER, ORDERED, that, pursuant to Part 6, Section IV, Para. 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs of this matter against Respondent; and, it is

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 Bar, 77 North Liberty Street, Harrisonburg, Virginia, 22802, by hand delivery or regular mail to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219.

ENTERED this 28<sup>th</sup> day of February, 2007.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:

  
Robert L. Freed, Chair Designate