

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JAMES MCMURRAY JOHNSON

VS. DOCKET NO. 19-060-113652

MEMORANDUM ORDER OF PUBLIC REPRIMAND

THIS MATTER came on to be heard on December 6, 2019, before a panel of the Disciplinary Board consisting of Yvonne S. Gibney, Second Vice Chair, Stephanie G. Cox, Brendan K. Feeley, John A. C. Keith, and Tamera D. Stephenson, lay member. The Virginia State Bar (the “Bar” or “VSB”) was represented by Prescott L. Prince, Assistant Bar Counsel. Respondent James McMurray Johnson (the “Respondent”) appeared in person and was represented by Bernard Joseph DiMuro, Esquire. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Jennifer L. Hairfield, court reporter, P.O. Box 9349, Richmond, Virginia 23227, (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 the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

The matter came before the Board on the District Committee Determination for Certification by the Sixth District Subcommittee, pursuant to Part Six, § IV, ¶ 13-18 of the Rules of the Supreme Court of Virginia, involving misconduct charges against the Respondent. Prior to the proceedings and at the final Pretrial Conference Bar Exhibits 1 through 12 were admitted into

evidence by the Chair, without objection from the Respondent. Prior to the proceedings and at the final Pretrial Conference, Respondent's Exhibits 1 through 5 were admitted into evidence by the Chair, without objection from the Bar. The Bar and the Respondent entered into stipulations (Bar Exhibits 13-15) as to the testimony of Deputy Matthew Flick, Deputy Andrew Kline, and Deputy Emily Lawrence, all of whom testified at a prior hearing before the Stafford County General District Court on September 13, 2018.

The Board heard testimony during the misconduct phase from the following witnesses, who were sworn under oath: James McMurray Johnson, Tara Mooney, David Jackson, and Jessica Zelaya. At the conclusion of the Bar's case, the Respondent moved to strike the evidence as to the alleged violation of Rule 1.3(a), 3.3(a)(1), 3.4(d), 8.1(a), 8.4(b) and (c). After hearing argument of counsel for the parties, the Chair announced that Board would take the Respondent's motion to strike under advisement. After Respondent presented his case, the Bar declined to offer any rebuttal evidence. The Board considered the exhibits introduced by the parties; heard arguments of counsel; 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. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was attorney of record in a case which he scheduled for a hearing on May 15, 2018 at 10:00 a.m. in the Stafford County General District Court ("Stafford GDC").
3. Respondent also had a hearing scheduled for that same date on the 9:00 a.m. docket in the Prince William County General District Court ("Prince William GDC").

4. At approximately 10:24 a.m. on May 15, 2018, the Respondent sent an electronic message to his legal assistant advising that he was still in court in Prince William County and asked her to call Stafford GDC to “tell them I’m en route from PWC” and that the client had been taken to her dialysis doctor that morning due to illness. At approximately 10:40 a.m. the Respondent’s legal assistant called the Stafford GDC clerk to advise that the Respondent was in Prince William Court and that he was on his way. There is no evidence that a message was conveyed to the Court that the client was ill and would not be present in Court. The Stafford GDC received no other communication from the Respondent or his office on May 15, 2018.
5. In an electronic message to his legal assistant at 11:51 a.m. on May 15, 2018, Respondent reported that he had a nail in his tire.
6. The Stafford GDC called Respondent’s client’s case at 12:40 p.m. and again at 1:47 p.m. and, hearing no answer, the Court, on its own motion, issued a Capias for the client’s failure to appear and a Show Cause summons for the Respondent’s failure to appear.
7. The Respondent did not enter the Stafford County Courthouse nor appear at the Stafford GDC or the Clerk’s office at any time on May 15, 2018.
8. On May 22, 2018, Respondent filed a Motion to Remove Capias on behalf of his client and a Motion to Remove Show Cause on his own behalf. In both motions the Respondent asserted, among other things, that he had a flat tire on his way to Stafford GDC on May 15, 2018, that he did arrive at court in Stafford County on that date, and that the Commonwealth’s Attorney had already left when he arrived. Respondent attached to his pleading a repair bill for patching the tire, dated May 19, 2018.
9. On May 25, 2018, Judge J. Bruce Strickland of the Stafford GDC conducted a hearing on

Respondent's Motions to Remove the Capias and the Show Cause. The Respondent testified under oath that he had a flat tire on the way to court, that he arrived at court at approximately 2:30 p.m., that Court was not in session when he arrived and that the prosecutor had left by the time he arrived at court. The Motions to Remove the Capias and the Show Cause were both set over for a full hearing on a later date.

10. The Respondent's client was not served with the Capias until the hearing date on May 25, 2018. She was apparently released at that time and that matter was eventually dismissed against her on September 18, 2018.
11. At the Respondent's Show Cause hearing on September 13, 2018, before Judge Strickland, the Respondent pleaded "no contest" and acknowledged his failure to appear for the May 15th court date. Testimony was presented by Assistant Commonwealth's Attorney Tara Mooney at that hearing that established the following facts:
 - a. The "command log" documented that Court did not adjourn on May 15, 2018 until 3:25 p.m., approximately an hour after the time the Respondent had previously testified he had come to court and found court no longer in session.
 - b. Security camera footage of the Stafford County Courthouse presented by Deputy Kline established that Respondent had never entered the Courthouse on May 15, 2018.
12. Ms. Mooney, the Commonwealth's Attorney assigned to court on May 15, 2018, remained at the Stafford County Courthouse on that date until approximately 5:00 p.m., well after Court had adjourned and the time Respondent claimed that he had arrived and found that the Commonwealth's Attorney had left.
13. At the September 13, 2018 hearing, the Respondent did not attempt to correct, amend or

otherwise address the Commonwealth's evidence, which directly contradicted Respondent's assertions in his May 22, 2018 written pleadings and his sworn testimony to Judge Strickland on May 25, 2018.

14. On September 13, 2018, the Respondent was found guilty of violating Va. Code Section 18.2-456 and sentenced to 10 days in jail, with 8 days suspended. Respondent thereafter served his jail term.
15. On September 17, 2018 Judge Strickland filed a Complaint with the Bar based on the Respondent's failure to appear for a scheduled court date and his subsequent misleading and/or false representations made to the Court, under oath, in defending his failure to appear.
16. On October 4, 2018, Tara Mooney filed a Complaint with the Bar alleging Respondent's lack of candor toward the tribunal and misconduct.
17. In Respondent's October 12, 2018 written response to the Bar complaints filed, Respondent made the following representations.
 - a. Respondent left the Prince William GDC at approximately 11:00 a.m. on May 15, 2018.
 - b. Respondent got a flat tire on the way to Stafford GDC and he arrived at the Courthouse parking lot between approximately 2:00 p.m. and 2:30 p.m.
 - c. Respondent did not actually go into the Courthouse when he arrived but rather stayed in his vehicle in the parking lot where he observed that the parking lot was "almost empty."
 - d. While sitting in his vehicle, he checked the Virginia Case Information online records and discovered that his client's case had been continued. He left the parking

lot and went home.

18. On April 9, 2019, during Respondent's interview with Bar Investigator David Jackson, the Respondent made the following representations:

a. Respondent left the Prince William County Courthouse at around 11:00 a.m. He was about 15 minutes from the Stafford County Courthouse when he stopped to change the flat tire near North Stafford High School and believes he would have been at court by noon if he had not had a flat tire. Respondent believes he spent approximately an hour and a half to two hours dealing with the flat tire. His phone was charged and operational the entire time. He did not contact the Court at any point.

b. Respondent again stated that he arrived at the Stafford County Courthouse parking lot at approximately 2:30 p.m. He stated he did not know the exact time he arrived. He stated that he remained in the parking lot for less than 5 minutes before leaving to go home in frustration. He did not leave his vehicle or enter the Courthouse. Respondent stated that during this time in the parking lot he checked the online records and saw that his client's case had been continued. In his online review, he did not see that a Capias or Show Cause had been issued at that point.

19. The Case Management System for Prince William GDC showed that the Respondent's client's case in that court was concluded by 10:45 a.m. on May 15, 2018. The Case Management System for Stafford County GDC showed that the Respondent's client's case in Stafford County was updated on May 15, 2018 at 3:44 p.m., well after 2:30 p.m., the time when Respondent reported he had viewed this online update in the parking lot of the Courthouse.

20. Respondent's testimony in this proceeding concerning the time of his arrival at the Stafford

County Courthouse was not credible.

21. Respondent assumed, but did not know, whether the Commonwealth's Attorney had already left or whether the Court was no longer in session by the time he "arrived at court" on May 15, 2018. Yet, he included both statements in his Motions to remove the capias and show cause.
22. Respondent did not disclose in his Motions on May 22, 2018, during his sworn testimony before Judge Strickland on May 25, 2018, or during his show cause hearing on September 13, 2018 that he never "arrived at Court," but instead had only driven to the parking lot for a few minutes and then left the area. Respondent had several opportunities to correct the misleading impression he had created with the Court about his missed court appearance on May 15, 2018, but failed to do so until after a Bar Complaint was filed.

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's actions that violated this rule include, but are not limited to, the following:

1. In Respondent's signed, written pleadings to the Court dated May 22, 2018, filed in an attempt to have the Show Cause issued for his failure to appear in court withdrawn, Respondent represented that he was running late, but had arrived at the Stafford GDC on May 15, 2018, suggesting that he had entered the courthouse. He also represented, without any factual basis, that the Commonwealth's Attorney had already left by the time he arrived at court thereby

furthering the false impression that Respondent came to Court on that date, when he had not. The statements in Respondent's written pleadings were inaccurate, self-serving, and intended to mislead the court into believing that Respondent had actually appeared on May 15, 2018, albeit late. Respondent admitted in this proceeding that he never entered the courthouse on May 15, 2018 and had no factual basis for stating in his pleading that the Court had adjourned and that the Commonwealth's Attorney had departed. Respondent could not reasonably and truthfully represent that he had appeared at or in a court when he merely pulled into a parking lot and then left without attempting to enter the Courthouse.

2. Respondent testified under oath on May 25, 2018, that he arrived at Court at about 2:30 p.m. on May 15, 2018, that court was not in session when he arrived that day, and that there was no prosecutor present. At no time during the May 25, 2018 hearing did the Respondent admit to the Court that he never entered the Courthouse. Instead, he perpetuated the false impression he had created in his pleadings that he had merely arrived late. The Respondent knew that these assertions were false or misleading to the Court in the context of the Show Cause hearing and Judge Strickland's questions regarding his failure to appear on May 15, 2018.

3. Respondent compounded his violation of this Rule by failing to correct his inaccurate and intentionally misleading statements to the Court during hearings on the matter before Judge Strickland in the Stafford GDC on May 25, 2018 and again on September 13, 2018.

B. Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact.

Respondent's actions that violated this rule include, but are not limited to, the following:

1. The Respondent's lack of candor to the Bar is reflected in his changing version of when or if he appeared at the Stafford GDC on May 15, 2018. In Respondent's response to the Bar complaint filed on October 12, 2018, the Respondent stated that he arrived in the Courthouse parking lot at what he believed to be between 2:00 p.m. and 2:30 p.m., which is consistent with the time, if not the location, that he testified to under oath on May 25, 2018. During his follow-up interview with Bar Investigator David Jackson on April 9, 2019, the Respondent again estimated that he arrived at the Stafford County Courthouse parking lot at 2:30 p.m. Respondent stated that he stayed for less than 5 minutes in the courthouse parking lot. In that time he checked the online Case Management System and discovered that his client's case had been continued to another date. For this reason he drove away without going in the Courthouse at all. Because the Case Management System for Stafford County GDC did not update the Respondent's client's case until 3:44 p.m. that day, however, Respondent's claimed 2:30 p.m. arrival appeared to be inaccurate.

After having been confronted with these factual inconsistencies, Respondent testified in this proceeding that he did not know what time he arrived at the Stafford County Courthouse parking lot on May 15, 2018. He stated that his prior and repeated assertions that he arrived between 2:00 p.m. and 2:30 p.m. were only guesses or estimates and he must have been mistaken. He further claimed that he never looked at a clock when he arrived in the Courthouse parking lot, despite knowing that he was extremely late for his 10:00 a.m. hearing. The Respondent stated that he sat in his vehicle for a moment when he arrived and then checked his phone, not for the time, but for the online case update. The Board found Respondent's statement that he was unaware of the time of day and never checked the time when he finally arrived at his Stafford County destination to be incredible under the circumstances and indicative of the Respondent's evolving

version of his actions on May 15, 2018 when confronted time and again with evidence to the contrary.

C. Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Respondent's actions that violated this rule include, but are not limited to, the following:

1. Respondent's signed written pleadings to the Court, dated May 22, 2018, substantially misrepresented facts related to his failure to appear for Court on May 15, 2018, specifically, his assertion that he had actually arrived at Court on that date and that the Commonwealth's Attorney had already left by the time he arrived. Both statements were misleading at best and untruthful at worst.

2. Respondent testified under oath on May 25, 2018 that he arrived at Court at about 2:30 p.m., in response to Judge Strickland's direct question on the time of his arrival on May 15, 2018. Respondent further testified before Judge Strickland that court was not in session when he arrived and that there was no prosecutor present. Respondent's sworn testimony about his arrival time at court perpetuated the misrepresentations he made in his written pleadings that Respondent had arrived at Court, but was merely late. His testimony that when he arrived for Court on May 15, 2018 that Court was no longer in session and that the prosecutor had left by the time he arrived was based on speculation, rather than fact. Respondent's sworn testimony before Judge Strickland on May 25, 2018 was misleading at best and untruthful at worst.

The Board did not find that the Bar met its burden of proving violations of Rules 1.3(a), 3.4(d), or 8.4(b) by clear and convincing evidence and those charges are dismissed.

III. IMPOSITION OF SANCTION

Thereafter, the Board received further evidence and argument in aggravation and mitigation from the Bar and Respondent, including Respondent's disciplinary record (Bar Exhibit 16), which reflected no prior discipline, and the testimony of Andrew Johnson and Carlos Flores Laboy on behalf of the Respondent.

In its consideration of an appropriate sanction the Board found the Respondent had violated his duties to the legal system and the legal profession with his lack of candor to the tribunal and to the Bar. The Board also found that there was little to no actual injury to his client as a result of his misconduct.

In its consideration of an appropriate sanction the Board found the following aggravating factors: While Respondent ultimately took responsibility for his failure to appear in Court and served his jail sentence, he has failed to acknowledge that his deliberate representations to the Court in his written pleadings, as well as his testimony under oath, were self-serving and misleading to the tribunal. The Board found the following mitigating factors: There was no actual harm to the client; the Respondent was convicted by the Stafford County General District Court of a violation of Virginia Code §18.2-456 and served a two day active jail sentence; Respondent has no prior disciplinary record with the Virginia State Bar; and there was ample evidence of Respondent's general good character and years of volunteer service within the community.

Upon receipt of all evidence presented in mitigation or aggravation of the findings of misconduct, the Board heard argument of counsel and then 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.

Therefore, upon consideration of the evidence and the nature of the misconduct committed by the Respondent, it is ORDERED that the Respondent should receive a PUBLIC REPRIMAND, effective December 6, 2019.

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, James McMurray Johnson, at his address of record with the Virginia State Bar, being Johnson Law Firm, PC, 13478 Minnieville Road, Suite 204, Woodbridge, Virginia 22192, by certified mail, return receipt requested, by regular mail to Respondent's Counsel, Bernard J. Dimuro, Esq., at 1101 King Street, Suite 610, Alexandria, Virginia 22314, and by hand delivery to Prescott L. Prince, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 18th day of December, 2019.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney Digitally signed by Yvonne S. Gibney
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Yvonne S. Gibney, Second Vice-Chair