

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MICHAEL DENIS KMETZ

VS. DOCKET NO. 19-000-116040

MEMORANDUM ORDER OF SUSPENSION

A panel of the Virginia State Bar Disciplinary Board (the “Board”) heard this matter on October 23, 2020, by video conference. The panel members consisted of Yvonne S. Gibney, Chair; Nancy L. Bloom; Lay Member; Stephanie G. Cox; Donita M. King; and John A.C. Keith. 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.

The Virginia State Bar (the “Bar”) was represented by Christine M. Corey, Assistant Bar Counsel. Respondent Michael Denis Kmetz (the “Respondent”) was present and represented himself.

Lisa A. Wright, court reporter, Chandler and Halasz, 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 the Part Six, § IV, ¶ 13-18 of the Rules of the Supreme Court of Virginia (“Rules”).

The matter came before the Board on the Bar’s Notice of Noncompliance and Request for Suspension of Respondent’s License to Practice Law for Failure to Comply with Terms and the Amended Notice of Show Cause Hearing for Terms Failure, pursuant to Part Six, § IV, ¶ 13-18. O of the Rules, which provides, in relevant part, that whenever it appears that a respondent has not complied with a Term imposed in a prior disposition, Bar Counsel shall serve notice requiring such

respondent to appear and show cause why the alternative disposition stated in the prior disposition should not be imposed. Paragraph 13-18. O further places the burden of proof on the respondent to show compliance by clear and convincing evidence. If the Board finds that the respondent has failed to comply with a Term of the prior disposition, “the alternative disposition shall be imposed.”

I. PROCEDURAL BACKGROUND

By order of the Disciplinary Board entered on May 15, 2019 in VSB Docket No. 18-022-109905 (the “Prior Order”), the Respondent and the Bar stipulated that Respondent engaged in misconduct, specifically violating Rules of Professional Conduct 1.1, 1.3(a), 1.4(a), and 1.15(a), (b), (c), and (d). In the Prior Order, the Disciplinary Board imposed a nine-month suspension of Respondent’s license to practice law in Commonwealth of Virginia, and a Term that required the Respondent to refund Two Thousand Four Hundred Dollars (\$2,400) to the Complainant, Richard A. McCracken, by June 15, 2019. The Prior Order further provided that if Respondent failed to comply with that Term, Respondent’s license to practice law in the Commonwealth of Virginia shall be suspended for Two Years.

II. PROCEEDINGS AND FINDINGS OF FACT

During the hearing in this matter the Board heard testimony from the following witnesses, who were sworn under oath: the Respondent, Richard McCracken, and John Pucky, a Bar Investigator. Respondent offered no exhibits. The Board admitted VSB Exhibit 1, over Respondent’s objection, and VSB Exhibit 2. The Board considered the testimony of the witnesses, heard arguments of the Respondent and Bar Counsel; and met in private to consider its decision.

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

1. The Disciplinary Board entered the Prior Order on May 15, 2019, which imposed a nine-month suspension of Respondent’s license to practice law with terms.

2. A specific term of the Prior Order was that Respondent refund the sum of Two Thousand Four Hundred Dollars (\$2,400) to the Complainant, Richard A. McCracken, by June 15, 2019. If Respondent did not meet this term by the June 15, 2019 deadline, the Disciplinary Board would impose a two-year suspension pursuant to Part Six, § IV, ¶ 13-18. O of the Rules.

3. The Respondent has the burden of proving his compliance with the terms of the Prior Order by clear and convincing evidence.

4. The Respondent admitted that he failed to refund the sum of Two Thousand Four Hundred Dollars (\$2,400) to the Complainant by the required deadline but made payment sometime in early August 2019.

Following deliberation, the Board determined that the Respondent has not proved by clear and convincing evidence that he complied with the terms imposed in the Prior Order.

Accordingly, it is ORDERED that the license of Respondent Michael Denis Kmetz to practice law in the Commonwealth of Virginia is hereby suspended for Two Years, effective October 23, 2020.

It is further ORDERED that, as directed in the Board's October 23, 2020, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules. The 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 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 date 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 October 23, 2020, 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 date 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 P.O. Box 64547, Virginia Beach, Virginia 23467-4547, by certified mail, return receipt requested, and by electronic mail to Christine M. Corey, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 28th day of October 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney, Chair