

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF**

**DAVID HARRIS MILLER**

**VSB DOCKET NO.: 20-000-117085**

**MEMORANDUM ORDER OF REVOCATION**

This matter came to be heard on February 21, 2020 before a panel of the Virginia State Bar Disciplinary Board (the “Board”). The panel members consisted of Yvonne S. Gibney, Chair; David J. Gogal; Martha J. Goodman, lay member; Donita M. King; and Steven B. Novey. At the outset of the hearing, the Chair inquired of each member of the Board whether any of them had any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel. All members of the Board, including the Chair, responded in the negative.

The Virginia State Bar (“Bar”) was represented by Kathleen M. Uston, Assistant Bar Counsel. David Harris Miller was not present in person and was not represented by counsel. The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent’s name three times in the adjacent hall. The Respondent did not answer or appear.

Angela N. Sidener, Court Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn by the Chair, reported this matter and transcribed the proceedings.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (hereinafter referred to as “the Clerk”) in the manner prescribed by the *Rules of Supreme Court of Virginia* (hereinafter referred to as the “*Rule(s)*”), Part Six, §IV, ¶ 13-22.

This matter came before the Board on the Rule to Show Cause and Order of Summary Suspension and Hearing entered on October 22, 2019 in accordance with Part Six, § IV, ¶ 13-22 of the *Rules*. Upon receiving written notification that the Respondent had been found guilty of a Crime in the United States District Court for the Eastern District of Virginia, Alexandria Division, the Board entered the Rule to Show Cause and Summary Order, pursuant to the *Rules*. The Summary Order summarily suspended the Respondent’s license to practice law in the Commonwealth of Virginia and ordered him to show cause as to why his license should not be further suspended or revoked. The Summary Order and written notification were served upon the Respondent in accordance with Part Six, § IV, ¶ 13-12 of the *Rules*.

This matter was originally scheduled to be heard on November 15, 2019. At the November hearing, counsel for the Bar notified the November Board panel that Notice of the Rule to Show Cause, that was the subject of the hearing, had been sent to the Respondent via certified mail, but the envelope had been returned, marked “RETURN TO SENDER NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD.” Bar Counsel further disclosed that the Respondent, as a result of a criminal conviction, was on “house arrest” in a residence in the State of Maryland.

The November Board hearing panel questioned whether this matter ought to be continued in that it did not appear that the Respondent had been properly notified of the hearing on the Rule to Show Cause, as the notice sent under the circumstances was not reasonably calculated to

apprise Respondent of the pendency of the action and of an opportunity to be heard, as required by due process.

The Bar argued against continuing this matter, contending that Respondent had not notified the Bar of his current address, as required. After conferring, the November Board hearing panel continued the hearing, to be reconvened after sufficient notice of the Rule to Show Cause had been served on the Respondent, including but not limited to personal service on him in the State of Maryland by a Bar Investigator.

### **MISCONDUCT PHASE**

At the hearing on February 21, 2020, the Board took judicial notice of the Board's Rule to Show Cause and Order of Summary Suspension and Hearing and the attachments thereto and the Clerk's notice letter and received them in evidence collectively as Board Exhibit 1. The Board then accepted into evidence the following Exhibits from the Bar: 1) the Virginia State Bar Membership Affidavit for David Harris Miller and 2) a Certification from the Clerk's Office of the Bar as to the Respondent's prior disciplinary record, reflecting that Respondent had received no prior public or private discipline.

The Bar made an opening statement and confirmed that notice of the hearing and of the Rule to Show Cause had been provided by mail to both Respondent's address of record with the Bar, as well as the address in Maryland where the Respondent was under house arrest. The Bar further provided the Board with a Proof of Service, signed by Investigator Edward S. Bosak, reflecting that he served the Notice of Hearing and Show Cause (with the Rule to Show Cause attached) on Respondent in person on December 17, 2019, which Proof of Service was received into evidence as Board Exhibit 2. The Bar also confirmed its understanding that although Respondent had been sentenced by United States District Judge T.S. Ellis III to 88 months in

prison, he was not incarcerated on the date of the hearing, as he was not required to surrender himself for imprisonment until March 3, 2020, as reflected in the Sentencing Minutes, dated January 24, 2020, in United States v. Miller, Case No. 1:17-cr-00213-TSE-1. The Bar called no witnesses to testify, but made a closing argument, after which the Board retired to deliberate before returning to announce its decision.

Based on clear and convincing evidence, the Board found that the Respondent was found guilty by a jury sitting in the United States District Court for the Eastern District of Virginia (Alexandria Division) of a Crime, as defined by the *Rules*, Part Six, § IV, ¶ 13-1, having been convicted of ten (10) felony counts. The felonies of which Respondent was convicted include Conspiracy to Commit Mail and Wire Fraud, Conspiracy to Launder Monetary Instruments, Mail Fraud, Wire Fraud, and Aggravated Identity Theft in a scheme in which he and his wife embezzled \$1,640,665 from Respondent's employer while Respondent was serving as its general counsel, from the Campaign of Senator Richard Saslaw while Respondent's wife served as its treasurer, and from a charity Respondent and his wife founded: Community College Consortium on Autism and Intellectual Disabilities. The Board further found that Respondent had failed to prove by clear and convincing evidence that his license should not be further suspended or revoked.

### **SANCTION PHASE**

In its deliberations the Board found that Respondent's misconduct involved violations of duties he owed to his client by knowingly converting funds and violations of duties he owed to the public by engaging in serious criminal conduct involving theft, for which revocation is the appropriate sanction, absent mitigating circumstances. *See Annotated Standards for Imposing Lawyer Sanctions*, Standards 4.11 and 5.11 (American Bar Association, 2015). The only

mitigating factor reflected in the record is that Respondent had no prior public or private disciplinary history, but the Board found that this was greatly outweighed by many aggravating factors, including Respondent's dishonest or selfish motive, his pattern of misconduct, his multiple offenses, his illegal conduct, and the seriousness of the offenses of which he was convicted.

Following deliberation of the appropriate sanction, the Board reconvened and announced its decision. Having considered the evidence presented and argument of counsel, it is

ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is hereby REVOKED, effective February 21, 2020.

It is further ORDERED that 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 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. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care and conformity with the wishes of his clients. The Respondent shall give such notice within fourteen (14) days of the effective date of this order, and he shall make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

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 costs against the Respondent.

An attested copy of this Memorandum Order of Revocation will be mailed to the Respondent by certified mail, return receipt requested, to his Virginia State Bar address of record, David Harris Miller, 4551 Forest Drive, Fairfax, Virginia 22030, and to 100 Riverton Avenue, Denton, Maryland 21629 and by hand delivery to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 1111 E. Main Street, Suite 700, Richmond, Virginia 23219.

ENTERED THIS 27th DAY OF February 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

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Yvonne S. Gibney  
Second Vice Chair