

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
LARRY LYNN MILLER**

VS B DOCKET NO.: 20-000-118603

RECIPROCAL MEMORANDUM ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board (“Board”) for a hearing via video conference on July 28, 2020, on the Rule to Show Cause and Order of Summary Suspension and Hearing entered on June 29, 2020 (the “Rule to Show Cause”) to which was appended the order of the United States Bankruptcy Court, Western District of Virginia (“Bankruptcy Court”), dated March 19, 2020, suspending for 3 years effective April 20, 2020, the right of Respondent Larry Lynn Miller (“Respondent”) to practice law in the Bankruptcy Court.

The hearing was held before a panel of the Board consisting of Yvonne S. Gibney, Chair; David J. Gogal; Carolyn V. Grady; Sandra L. Havrilak; and Nancy L. Bloom, lay member (“Board Panel”). The Virginia State Bar (“Bar”) was represented by Prescott L. Prince, Assistant Bar Counsel (“Assistant Bar Counsel”). The Respondent was not present on the video conference when the hearing began.

At the onset of the hearing, the Chair stated the following:

On March 12, 2020, the Governor of Virginia declared a state of emergency regarding the novel coronavirus (COVID-19), pursuant to Executive Order 51. The state of emergency has been in place since March 12, 2020 and continues indefinitely, until revised or lifted by the Governor. Therefore, because COVID-19 has rendered it unsafe for public bodies to assemble in person, the Virginia State Bar Disciplinary Board is meeting via teleconference, with access provided to the public to observe. In addition, the meeting will be recorded, will be available for viewing on the Virginia State Bar’s website, and it will otherwise comply with Virginia’s Freedom of Information Act regarding electronic meetings, found in the Virginia Code, Section 2.2-3708.2, as supplemented by Section 4-0.01.g of Virginia House Bill 29, Chapter 1283 (2020).

Thereafter, the Clerk of the Disciplinary System (“Clerk”) notified the Board that the Respondent had telephoned shortly after the hearing began and would be participating in the hearing by telephone. Upon joining the hearing, Respondent stated that he was unable to join the hearing via video conferencing as he had computer issues and was unable to utilize his computer. The Respondent thereafter participated via telephone and represented himself.

The Respondent stated that he was unable to access the pleadings and the Bar’s pre-filed exhibits because they had been saved on his malfunctioning computer. He contended that he was therefore not prepared to proceed with the hearing. At the request of the Chair, the Clerk advised the Board Panel of the Clerk’s efforts to communicate with the Respondent prior to the hearing to address technical issues that might be encountered in utilizing the video conferencing format. The Clerk recounted numerous telephone messages and email communications to Respondent to which he did not respond. In addition, the pleadings reflect that Respondent did not move to continue the hearing or otherwise communicate with the Bar until after the hearing began, despite having received adequate notice of the hearing on or about June 29, 2020. Accordingly, the Chair advised the Respondent that the hearing would go forward. The Respondent thereafter continued to participate in the hearing.

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 Wright, Chandler and Halasz, PO Box 9349, Richmond VA 23227; (804)730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

All required notices were timely sent by the Clerk, to the Respondent by Certified Mail, in the manner prescribed by law.

In accordance with Part Six, Section IV, Paragraph 13-24 of the *Rules of the Supreme Court of Virginia* (the “*Rules*”), the purpose of the hearing was to provide the Respondent with an opportunity to show cause, if any, by clear and convincing evidence, as to why the same discipline that was imposed upon him by the Bankruptcy Court should not be imposed by the Board. The Board took Judicial Notice of the Rule to Show Cause, which included as an attachment the Order of the Bankruptcy Court, dated March 19, 2020, suspending Respondent from practicing law in the Bankruptcy Court for three years, and received them into evidence, along with the Clerk’s notice letter, as Board Exhibit 1.

Findings of Fact and Conclusions of Law

1. The Board finds that the Respondent failed to show by clear and convincing evidence the existence of any of the grounds set forth in Part Six, Section IV, Paragraph 13-24.C of the *Rules* to justify dismissal or the imposition of a lesser discipline than that imposed by the Bankruptcy Court.

2. The Bankruptcy Court is a “Jurisdiction” under Paragraph 13-24.A of the *Rules* and its Order dated March 19, 2020, to which the Respondent consented and through which the Respondent’s right to practice law in the Bankruptcy Court was suspended for three years – from April 20, 2020 until April 20, 2023 – has become final.

3. The Chair of the Board, in response thereto, entered the Rule to Show Cause on June 29, 2020, in accordance with paragraph 13-24.B of the *Rules*.

4. The Respondent did not file a timely written response under paragraph 13-24.C of the *Rules*.

In the evidentiary stage of the hearing, the Respondent and Assistant Bar Counsel made opening remarks.

Respondent then testified and was cross-examined by Assistant Bar Counsel. Respondent acknowledged that he had previously been subject to a six-month suspension of his right to practice in the Bankruptcy Court, but he claimed, without elaboration or documentary support, that all 14 cases that were the focus of that suspension had since been moving along sufficiently. Respondent also acknowledged that he had consented to the current three-year suspension of his right to practice before the Bankruptcy Court, but claimed that he did so because he thought it would be costly to contest the Adversary Proceeding that the Bankruptcy Court's March 19, 2020 Order ultimately resolved. The Respondent did not introduce any documentary evidence and called no witnesses other than himself.

Assistant Bar Counsel presented the Bar's case and introduced Bar Exhibits 1 to 9 without objection.¹ Assistant Bar Counsel called one witness, Mr. Herbert L. Beskin, the Chapter 13 Trustee for the Bankruptcy Court. Mr. Beskin testified under oath about Respondent's performance before the Bankruptcy Court's entry of an Order on March 25, 2014, suspending Respondent's right to practice in the Bankruptcy Court for six months. Mr. Beskin described Respondent's continued deficiencies in the representation of his clients in the Bankruptcy Court after entry of the 2014 Suspension Order, and the efforts of Mr. Beskin and the Bankruptcy Court to monitor the Respondent's filings for compliance with the Rules of the Bankruptcy Court. They found that both before and after the six-month suspension, documents Respondent filed with the Bankruptcy Court on behalf of his clients contained numerous mistakes, inaccuracies, and false statements. Assistant Bar Counsel introduced Bar Exhibit 10 into evidence through Mr. Beskin, which was a copy of United States Bankruptcy Court Rule 9011 and was admitted without objection. After a brief cross examination from the Respondent, the parties rested.

¹ Bar Counsel represented to the Board that Bar Exhibits 1-9 had been provided to the Respondent both in hard copy and electronically.

The Board then heard the closing arguments of both the Respondent and Bar. The Respondent reiterated his opening remarks and referred to some data about his case load that was not supported by any evidence. Assistant Bar Counsel then argued that the Respondent had not proven by clear and convincing evidence any of the four grounds for dismissal or imposition of lesser discipline under Paragraph 13-24.B of the *Rules*. That is, that the record of the proceeding in the Bankruptcy Court would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process; or that the imposition by the Board of the same or equivalent discipline upon the same proof would result in an injustice; or that the same conduct would not be grounds for disciplinary action or for the same or equivalent discipline in Virginia; or that the misconduct found in the Bankruptcy Court would warrant the imposition of substantially lesser discipline in the Commonwealth of Virginia. Assistant Bar Counsel argued that because the Respondent failed to present relevant evidence to support any of the four grounds, the same punishment – a three-year suspension – should be imposed by the Board.

After adjourning to a private conference to deliberate and consider the evidence and arguments of the Bar and Respondent, the Board returned to the public video conference room, and announced that the Board found that Respondent had failed to show by clear and convincing evidence why the Board should not impose the same discipline or substantially similar discipline as that imposed by the Bankruptcy Court, and a majority of the Board found that the discipline should run concurrent with the discipline imposed by the Bankruptcy Court. The findings of the Bankruptcy Court, to which the Respondent consented by consenting to the March 19, 2020 Bankruptcy Court Order, are thus conclusive of all matters for the purposes of this hearing, pursuant to Paragraph 13-24.G of the *Rules*. *See also Mississippi Bar v. Drungole*, 913 So.2d 963 (Miss. 2005) (holding that a federal bankruptcy court’s consent order was conclusive proof of

lawyer misconduct and a 30 day suspension – the same sanction imposed by the bankruptcy court – was appropriate reciprocal discipline).

Accordingly, it is ORDERED that the license of Respondent Larry Lynn Miller to practice law in the Commonwealth of Virginia should be and is hereby SUSPENDED, effective July 28, 2020, and shall remain SUSPENDED until April 20, 2023.

It is further ORDERED that, as directed in the Board's July 28, 2020 Summary Order in this matter, Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the *Rules of the Supreme Court of Virginia*. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the SUSPENSION until April 20, 2023 of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent 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 Respondent's care in conformity with the wishes of the Respondent's clients. Respondent shall give such notice within 14 days of the effective date of the July 28, 2020 Order, and make such arrangements as are required herein within 45 days of the effective date of the July 28, 2020 Order. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the July 28, 2020 Order 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 the July 28, 2020 Order, the Respondent 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 July 28, 2020 Order. 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, Section IV, Paragraph 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: Larry Lynn Miller, Esq., Jordan Building, 485 Hillsdale Drive, Suite 341, Charlottesville, Virginia 22901, by certified mail, return receipt requested, and by regular mail, 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 11th day of August, 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

**Yvonne S.
Gibney**

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S. Gibney
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Yvonne S. Gibney, Chair

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**IN THE MATTER OF
LARRY LYNN MILLER**

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DISSENTING OPINION TO THE RECIPROCAL MEMORANDUM ORDER

THIS MATTER came before the Board for a hearing via video conference on July 28, 2020, on the Rule to Show Cause and Order of Summary Suspension and Hearing entered on June 29, 2020 for the purpose of providing the Respondent with the opportunity to show cause, if any he could, by clear and convincing evidence, as to why the same discipline imposed upon him by the Bankruptcy Court should not be imposed by the Board. The Respondent did not file a timely written response in accordance with Part Six, Section IV, paragraph 13-24.C of the *Rules of Supreme Court of Virginia*; and, he was not present on the video conference when the hearing began. Nevertheless, the Respondent was permitted to participate in the hearing by telephone. Following the hearing, for the reasons set forth in the majority opinion, the Board unanimously found that the Respondent had failed to show by clear and convincing evidence the existence of any of the grounds set forth in Part Six, Section IV, Paragraph 13-24.C of the *Rules* to justify dismissal or the imposition of a lesser discipline than that imposed by the Bankruptcy Court. The majority then ordered that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended effective July 28, 2020 and should remain suspended until April 20, 2023. I dissent as to the Respondent being permitted to participate in the hearing and as to the length of the Respondent's suspension.

Pursuant to Part Six, Section IV, Paragraph 13-24.C of the *Rules*, within fourteen days of the date of mailing of the Rule to Show Cause and Order of Summary Suspension and Hearing, via certified mail, to the Respondent's last address of record with the Bar, the Respondent shall

file with the Clerk of the disciplinary system a written response supporting one or more of the grounds for dismissal or imposition of a lesser sanction set forth in Paragraphs 13-24.C.1-4 of the *Rules*. If the Respondent fails to file a response in accordance with the *Rules*, the Board is permitted to refuse to consider his evidence or argument. Rules of Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-24.F. Despite having received timely notice of the hearing, the Respondent filed no response, failed to appear on the video conference at the outset of the hearing, and despite receiving numerous telephone messages and email communications from the Clerk, failed to communicate in any way with the Bar until after the hearing began. The Respondent should not have been permitted to participate in the hearing or to present evidence or argument in support of his position to the Board.

After receiving the evidence and hearing the arguments of the Bar and the Respondent, the Board determined that there did not exist, by clear and convincing evidence, any of the grounds warranting dismissal or a lesser sanction as specified in Part Six, Section IV, Paragraph 13-24.C of the *Rules*. Upon making such a finding, the Board is required to impose the same or equivalent discipline as imposed by the Bankruptcy Court. Rules of Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-24.H On March 19, 2020, the Bankruptcy Court suspended the Respondent's license to practice law in the Bankruptcy Court for a period of three years. Accordingly, the Board is required to suspend the Respondent's license to practice law in the Commonwealth of Virginia for three years. Although the majority maintains that it is suspending the Respondent's license for a period of three years, it counts the three years starting from the date that the Respondent's license was suspended in the Bankruptcy Court and, thus, concludes the suspension on April 20, 2023. However, from March 19, 2020 through July 28, 2020, the Respondent was licensed to practice law in the Commonwealth of Virginia and did

practice law in the Commonwealth of Virginia. By counting this period toward the Respondent's suspension, the majority, in effect, suspended the Respondent's license for a period of fewer than three years; and, in doing so, failed to comply with the *Rules*. I would suspend the Respondent's license to practice law in the Commonwealth of Virginia for a period of three years, commencing on July 28, 2020.

Sandra L. Havrilak, Attorney at Law
Board Member