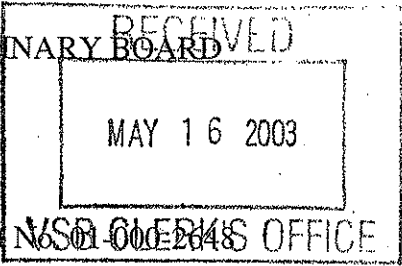


VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD



IN THE MATTER OF: )

Joseph Dee Morrissey )

VS B Docket No. 001-0002648

ORDER

THIS MATTER came on April 25, 2003, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Roscoe B. Stephenson, III (the "Chair"), V. Max Beard (Lay Member), William C. Boyce, Jr., Robert L. Freed and Peter A. Dingman, pursuant to a Show Cause Order entered September 25, 2002, and duly served upon Joseph Dee Morrissey ("Respondent"). The Virginia State Bar (the "Bar") was represented by Edward L. Davis, Esq., Assistant Bar Counsel. Appearing for Respondent were H. Morgan Griffith, Esq. ("Griffith"), and Michael L. Rigsby, Esq. ("Rigsby"). The proceedings were recorded and transcribed by Theresa S. Griffith of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia, 23227; telephone number (804) 730-1222.

The Hearing commenced promptly at 9:00 a.m., with the Chair reciting the purpose of the Hearing to determine whether, upon the allegation that Respondent had failed to comply with the obligations imposed by Part Six, Section IV, Paragraph 13.K.(1) of the Rules of the Supreme Court of Virginia, arising in relation to the suspension imposed on Respondent in a proceeding styled *Virginia State Bar, ex rel, Third District Committee, Section II, Joseph D. Morrissey*, Chancery No. HK, 1655 (Richmond Cir. Ct. Feb. 18, 2000), Respondent's license to practice law in the Commonwealth of Virginia should not be further suspended or revoked. The Chair then polled the members of the Board as to whether any of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter. Each member, including

the Chair, answering in the negative, the Hearing proceeded.

As preliminary matters, the Board was presented with a Motion for Continuance advanced on behalf of Respondent and a Motion of Rigsby for leave to withdraw as counsel, should the Hearing proceed as scheduled, on the grounds that Rigsby's testimony would be required as to some issues in the case, Respondent being absent from the Hearing and, to his counsel's knowledge, in the country of Ireland. The Board first heard argument on Rigsby's Motion to Withdraw. Griffith, arguing for Respondent, asserted that the testimony of Rigsby would be critical to the case of Respondent on the issue of notice in that Respondent was unavailable to testify to those issues, being in Ireland where Respondent is reportedly pursuing an advanced degree while teaching at a local college. The Bar responded, arguing that the absence of Respondent was voluntary, the Hearing date having been set in February by agreement with Rigsby, and Respondent having had ample opportunity to be present if he so chose. Further, the Bar stated that it would not seek sanctions against Rigsby for proceeding as attorney in this matter, nor would the Bar object to his testimony on the grounds of his participation in the case as attorney for Respondent.

The Board then retired to consider the Motion to Withdraw and, after deliberation, reserved its ruling on this Motion, electing to first hear argument on the Motion to Continue.

Griffith argued for Respondent that the matter should be continued as it was the preference of Respondent that Henry L. Marsh, III, Esq., participate as lead counsel on behalf of Respondent and Mr. Marsh was unavailable on April 25, 2003, having on April 23<sup>rd</sup>, by letter to the Chair, advised that he would be attending a conference in Boston, Massachusetts, from April 24, 2003, through April 26, 2003. Griffith stated that, if Rigsby were permitted to withdraw, Griffith would be "minimally competent" to proceed with the Hearing in this matter, but that Respondent would be

disadvantaged by the absence of his preferred lead counsel. The Bar again argued that this matter had been previously continued twice at Respondent's request and was scheduled for April 25, 2003, with the agreement of Rigsby on behalf of all of Respondent's counsel. The Board, then, retired to consider both Motions.

Upon resuming the Hearing, the Chair announced that the Motion to Continue was denied, but that Rigsby's withdrawal would be permitted, at his option. That is, counsel was advised, the Board determined that it was clear that Respondent's absence was voluntary, and that no issue was presented under Rule 3.7 of the Rules of Professional Conduct regarding Rigsby's testimony, in that the Board would not object to his testimony and the matter of filing of notices was largely uncontested. Rigsby's testimony would be limited to matters within his own personal knowledge. The Board then took a recess to allow counsel for Respondent to determine whether Rigsby would withdraw and in what fashion they would proceed given the rulings of the Board.

The Hearing then resumed with Rigsby electing to remain as counsel. The Hearing proceeded then with the Bar presenting its evidence through its exhibits, filed, received and heard herein, and its witnesses: Vivian Byrd, Deputy Clerk of the Disciplinary System, Barbara Sayers Lanier, Clerk of the Disciplinary System, Michael Huberman, Assistant Commonwealth Attorney for Henrico County, Kevin Watson, a former client of Respondent who testified via telephone from the Stone Mountain Correctional Center in Norton, Virginia, Clady Watson, Kevin Watson's grandmother, and Talaya Glenn, an Assistant Clerk of the Disciplinary System. For the record it is noted that Kevin Watson gave his testimony at the Stone Mountain Correctional Center in Norton, Virginia, before Craig Miller, of Linda C. Miller, Court Reporters, P.O. Box 115, Norton, VA 24273; telephone (276) 679-1000, who transcribed his testimony.

After the Bar rested its case, Respondent presented his evidence through his exhibits filed, received and read herein and the testimony of Alice David, a former legal assistant of Respondent, and Rigsby. Respondent then rested and the parties argued their case.

The Board then retired to consider the evidence and arguments presented to it. The Board concluded that the following facts had been proved by clear and convincing evidence:

1. That on February 18, 2000, a three-judge court entered an Order of Suspension in Chancery No. HK-1655, Circuit Court of the City of Richmond, which order included requirements imposed by Part Six, Section IV, Paragraph 13.K.(1) (hereinafter cited as "Rule 13K"), requiring in brief summary:

that 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 clients. The Respondent shall give such notice within 14 days of the effective date of the suspension order, and make such arrangements as are required herein within 45 days of the effective date of the suspension order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the suspension order that such notices have been timely given and such arrangements for the disposition of matters made . . . .

2. Respondent pursued an appeal from the above-described Order of Suspension and on March 27, 2000, the Supreme Court of Virginia stayed the suspension of Respondent's

license pending the appeal. On November 3, 2000, the Supreme Court of Virginia affirmed the judgment of the three-judge court and on December 15, 2000, the three-judge court entered an "Order Imposing Suspension". That later order did not reference Rule 13K.

3. On January 18, 2001, Vivian R. Byrd sent a letter to Respondent enclosing a copy of the "Order Imposing Suspension", reminding Respondent of "your duty under the Rules of Court" and quoting Rule 13K which is, by its own terms, applicable to "any attorney who is disbarred or suspended".

4. On January 22, 2001, by courtesy copy sent to Ms. Byrd of a letter addressed to James T. Maloney, Respondent acknowledged receipt of Ms. Byrd's January 18, 2001, letter and asked Mr. Maloney to assist with preparation of a list of all clients "so that [Respondent] can formally notify them".

5. On February 13, 2001, Ms. Byrd wrote to Respondent reminding him of his obligations under Rule 13K.

6. On June 21, 2001, Barbara Sayers Lanier, Clerk of the Disciplinary System, wrote to Respondent again reminding him of his obligations under Rule 13K and again quoting the Rule in its entirety.

7. On September 5, 2001, Ms. Lanier again wrote to Respondent reminding him of his responsibilities under Rule 13K and noting that the Bar, as of that date, had not received any proof of his compliance with Rule 13K.

8. On December 28, 2001, Respondent sent a letter to Ms. Lanier which, among other things, asserted that he "gave notice of my suspension to all of my clients following the December 15, 2000, suspension".

9. On January 7, 2002, Ms. Lanier wrote to Respondent informing him, among other things, that "at this time, our office has not received copies of the suspension notification letters with certified return receipts".

10. On January 11, 2002, Respondent wrote to Ms. Lanier asserting that "there were no suspension notification letters because I had no clients at the time".

11. On January 15, 2002, Ms. Lanier responded to that letter, sending to Respondent a copy of his January 22, 2001, letter which indicated that "you intended to comply with this Rule" [Rule 13K].

12. No proof of notification was thereafter received by the Bar prior to the issuance of the Show Cause Order in this matter.

13. Exhibits presented by Respondent at the Hearing and the testimony of Ms. David and Rigsby indicated that, on or about February 9, 2001, Respondent did send notice letters to a number of clients and that many such letters indicated copies were also sent to opposing counsel. Some courts may also have been notified at that time.

14. After Rigsby was consulted by Respondent regarding the Show Cause Order in this matter, in October or November of 2002, Ms. David found a file containing copies of letters to clients and certified mail, return receipt cards in Respondent's former offices. This file was offered to the Bar, for the first time, on April 1, 2003, and was retrieved by the Bar from Rigsby's office on April 23, 2003.

15. Kevin Watson was a client of Respondent who had been represented by Respondent in trial court proceedings and in appellate proceedings before the Court of Appeals of Virginia. On January 3, 2001, Mr. Watson's Petition for Appeal was scheduled to be heard by an

authorized representative of the Supreme Court of Virginia. Mr. Watson and his grandmother both testified that neither was advised prior to the date and time of that hearing of the fact of Respondent's suspension or that the matter would be presented not by Respondent, but by James T. Maloney. This unadvised and unapproved substitution was particularly egregious given the grandmother's testimony that she had advised the Respondent that she had little money for lawyers and that the Respondent had assured her that he got good results in Henrico County. Michael Huberman, the Assistant Commonwealth's Attorney responsible for the prosecution of the matter in which Mr. Watson was a defendant, testified that he was also not advised of the suspension of Respondent's license by Respondent either prior to or subsequent to the hearing on the Petition for Appeal. The Exhibits submitted by the Bar included a letter from the office of the Clerk of the Supreme Court of Virginia attesting that the Court never received notice from, prior to the hearing in the Watson case, that his license had been suspended.

**IN CONSIDERATION WHEREOF, THE BOARD FINDS:** That the matters presented to the Board at the Hearing on April 25, 2003, showed by clear and convincing evidence that Respondent failed to comply with the requirements of Rule 13K, as to his obligation to give timely notice to his clients, opposing counsel and courts before which matters were pending, to make appropriate arrangements in compliance with the wishes of his clients and to furnish proof thereof to the Bar.

The Board thereupon invited the parties to submit such evidence and arguments as they might offer respecting the appropriate sanction to be imposed in this matter. The Bar submitted a summary of Respondent's previous record regarding professional disciplinary matters which includes, three matters which were dismissed with terms, one private reprimand, one public reprimand, one six-

month suspension, a three-year suspension (the underlying matter), and his disbarment by the United States District Court for the Eastern District of Virginia. The Bar requested that the Board revoke the license of Respondent, arguing that the circumstances of this case and his prior record demonstrate a lack of the necessary respect for his profession and merits the complete revocation of his license. Respondent's counsel argued that the Board should draw a distinction between cases of active misconduct and violations of administrative requirements, suggesting that compliance with Rule 13K is an administrative matter, that "umbrage by the Bar" at the tardiness of the delivery of certain proofs of notice does not merit revocation and that the evidence showed substantial compliance with Rule 13K.

The Board retired to consider the appropriate disposition and, by unanimous decision, concluded as follows:

ORDERED that, the license of Respondent, Joseph Dee Morrissey, to practice law in the Commonwealth of Virginia, be, and the same hereby is, REVOKED, effective April 25, 2003 (a summary order being entered that date); and

FURTHER, ORDERED that, as directed in The Board's April 25, 2003, Summary Order in this matter, a copy of which was served on Respondent by certified mail, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13 (M), of the Rules of the Supreme Court of Virginia. All issues concerning the adequacy of the notice and arrangements required by the Summary Order shall be determined by the Board; and

FURTHER ORDER that, pursuant to Part Six, Section IV, Paragraph 13.B.8(C), of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs; and

FURTHER, ORDERED that, an attested true copy of this Order shall be mailed (i) by



certified mail, return receipt requested, to Respondent at his address of record with the Virginia State Bar, Seven South Adams Street, Richmond, Virginia, 23220-5601; (ii) by first-class mail to Respondent's counsel, Henry L. Marsh, III, Esq., Hill Tucker Marsh & Jackson, P.L.L.C., 600 East Broad Street, Suite 402, Richmond, Virginia, 23219; Michael L. Rigsby, Esq., Carrell Rice & Rigsby, 7275 Glen Forest Drive, Forest Plaza II, Suite 309, Richmond, Virginia, 23226; H. Morgan Griffith, Esq., Post Office Box 1250, Salem, Virginia, 24153; and by hand delivery to counsel for the Bar, Edward L. Davis, Esq., 707 East Main Street, Suite 1500, Richmond, Virginia, 23219.

ENTERED this 15<sup>th</sup> day of May, 2003.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:

  
Roscoe B. Stephenson, III, First Vice Chair