

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DOMINICK ANTHONY PILLI

VSB DOCKET NOS.: 16-051-104493
16-051-105786

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER came on to be heard on February 17, 2017, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of John A.C. Keith, 2nd Vice Chair, Richard J. Colten, R. Lucas Hobbs, Melissa W. Robinson, and Nancy L. Bloom, Lay Member. The Virginia State Bar (“Bar” or “VSB”) was represented by Kathleen M. Uston, Assistant Bar Counsel. The Respondent, Dominick Anthony Pilli, appeared in person and was represented at the hearing by Timothy J. Battle. Roy G. Wood, court reporter, of Capitol Reporting, Inc., P.O. Box 959, Mechanicsville, Virginia 23111, telephone 804/788-4917, after being duly sworn, reported the hearing and transcribed the proceedings.

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.

All legal notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by law.

The matter came before the Board on the Subcommittee Determination (Certification) (“Certification”) by the Fifth District Section I Subcommittee (“Subcommittee”) of the Virginia State Bar, filed in the Clerk’s Office on September 16, 2016.

PROCEEDINGS AND FINDINGS OF FACT

Bar Counsel and Respondent's counsel made opening statements. VSB Exhibits 1-14, 13A and 13B, were admitted into evidence without objection. The Bar called as witnesses Rebecca W. Thacher, Jamie Moss, Sean A. Sherlock and David W. Jackson, Bar Investigator. Respondent introduced no exhibits, but called as witnesses Marvin Miller and the Respondent, Dominick Anthony Pilli.

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

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 16-051-104493:

2. In or around September, 2015, Respondent represented a client in connection with a criminal matter pending in the Juvenile and Domestic Relations Court ("J&DR Court") for the City of Alexandria. Respondent's client had been charged with two (2) felony charges arising out of a domestic dispute. On September 28, 2015, the charges against Respondent's client were amended by the Commonwealth to include two (2) misdemeanor charges, and Respondent's client agreed to plead guilty to the amended charges.
3. Respondent's client was thereafter sentenced on October 30, 2015. In imposing its sentence, the court refused to permit bond. Respondent appealed the sentence to the Circuit Court for the City of Alexandria and at the same time filed a motion seeking a bond for his client, emailing those materials to the Assistant Commonwealth's Attorney handling the matter, Sean A. Sherlock, Complainant herein, ("Complainant") with a notice of hearing incorrectly setting the Motion on the court's docket for a Wednesday morning.
4. Pursuant to long standing local practice, however, the Alexandria Circuit Court only hears criminal motions on Thursdays at 10:00 a.m. The evidence revealed that the Respondent ignored this long-standing local practice, instead setting the matter on the wrong day. Consequently, Complainant sent an email to Respondent dated November 6, 2015, to inform him of this fact. Respondent responded by email that same day and claimed, "We called n (*sic*) called n (*sic*) asked the Clerk for the timing of this Motion and then this happens!" Furthermore, Respondent could have expedited a bond hearing and brought the matter before the court at an even earlier date.

5. Complainant and Respondent had at least one in-person telephone call between November 6th and November 10th, 2015, wherein Complainant suggested that Respondent's bond motion be resolved by way of an agreed order since Complainant did not object to Respondent's client receiving a bond. During this conversation, the terms to be included in any agreed order were discussed in detail. Complainant also advised Respondent that any agreed order would have to include the terms of a Pre-Trial Order, and that both documents (the agreed order and the Pre-Trial Order) had to be filed simultaneously since pre-trial supervision was one of the bond requirements. Complainant made clear to Respondent that, if these pleadings were not filed simultaneously, Respondent's client could not be released on bond.
6. On November 10, 2015, Respondent sent an "Agree to Order to Set Bond" ("Respondent's Draft Order") to Complainant via email attachment. Complainant reviewed Respondent's Draft Order and found it to be deficient in several respects.
7. First, Respondent's Draft Order referenced the two (2) J&DR Court case numbers, not the Circuit Court case number. Second, Respondent's Draft Order set bond in the amount of \$7,500.00 for each of the J&DR cases thus doubling the amount of the bond required. Third, Respondent's Draft Order failed to include all of the terms of release agreed upon between Respondent and Complainant. Specifically, Respondent's Draft Order failed to include the requirement that Respondent's client comply with the Pretrial Release Conditions including, *inter alia*, screening for substance abuse, weekly random drug and alcohol testing, having no contact with the victim in the case, and entering into and successfully completing substance abuse group counseling. Fourth, Respondent failed to include the necessary Pre-Trial Order, without which his client would not be released without posting bond.
8. Upon receiving Respondent's Draft Order, Complainant made the necessary corrections and returned it to Respondent via email attachment on November 11, 2015. In this email, Complainant advised Respondent's staff, "Let me know if I have Dominick's permission to sign his agreement. Once I have his permission I will sign it and file it."
9. On Thursday, November 12, 2015, Respondent appeared in Alexandria Circuit Court. Complainant was not present in court that day and thus the matter was being handled by Senior Assistant Commonwealth's Attorney David Lord. Respondent presented Respondent's Draft Order to Mr. Lord for entry, representing to him that Respondent's Draft Order had been reviewed and approved by Complainant. Mr. Lord stated that Respondent left him with the impression that Respondent's Draft Order had been reviewed by Complainant who requested some changes, which changes had been incorporated into Respondent's Draft Order prior to it being submitted to Mr. Lord for his signature. Mr. Lord noted further that Respondent's Draft Order had lines for additional terms to be added by the Commonwealth if necessary but that, based upon Respondent's statements, he assumed any additional terms that Complainant wished to have included in the Order had already been inserted. Mr. Lord thus signed Respondent's Draft Order and presented it to the Circuit Court for entry.

10. Later in the afternoon of November 12, 2015, following entry of Respondent's Draft Order, Complainant received multiple telephone calls and emails from personnel at the detention center and the Circuit Court Clerk's office concerning the fact that Respondent's Draft Order utilized the J&DR case numbers, that the bond was incorrect as a result, and that no Pre-Trial Order had been submitted.
11. After finally determining what had happened, Complainant telephoned Respondent and confronted him. Respondent pointed the finger of blame for the errors at Mr. Lord and the Clerk's office, and denied any wrongdoing.
12. As a direct result of the above, Respondent's client was forced to spend an additional day in jail.
13. During the course of the hearing of this matter before the Board, Complainant Sean A. Sherlock verified all of the information he had previously provided to Investigator David W. Jackson. On cross-examination, he unequivocally detailed the false statements made by Respondent to Senior Assistant Commonwealth's Attorney Lord and to the Court in knowingly allowing an Order which did not contain required terms of the release agreement between Complainant and Respondent to be presented to the Court as an agreed Order. In the course of his examination by the Board Panel, Complainant further elaborated on the standard procedure for scheduling bond hearings pursuant to the local rules and which would normally have been employed by a criminal defense attorney in seeking the release of a criminal defendant on bond when an agreement is in place with the Commonwealth. Such use of the local rules and procedures were not employed by Respondent for the benefit of his client.
14. During the course of the hearing of this matter before the Board, the Respondent testified and admitted on cross-examination and in response to examination by the Panel, among other things, that he knew certain required terms of the Commonwealth were not contained within the Order which he presented to Mr. Lord and the Court as the agreed Order in the case.

As to VSB Docket No. 16-051-105786:

15. On or around December 17, 2015, Respondent represented a client who was entering a guilty plea to a charge of Distribution of a Schedule I or II Controlled Substance, a felony, before the Prince William County Circuit Court. The Assistant Commonwealth's Attorney who handled the matter that day was Rebecca Thacher, Complainant herein ("Complainant.") After Respondent's client entered her guilty plea, the case was continued to March 24, 2016, for sentencing.
16. On March 24, 2016, Respondent and his client appeared for the sentencing hearing. Complainant was not present and the hearing was handled by Assistant Commonwealth's Attorney Brian Boyle. Complainant had not made a recommendation for sentencing in the case at Respondent's request since he intended to argue for sentencing on the low end of the guidelines. At this hearing, Respondent's client was sentenced to incarceration for a period of five (5) years with four (4) years and five (5)

months of that incarceration suspended. The court noted specifically that Respondent's client would be permitted to participate in electronic home incarceration.

17. Respondent's client was remanded to the jail with the expectation that home incarceration would be possible. Approximately one or two days after the March 24, 2016, sentencing hearing, jail personnel informed the court's clerk, however, that home incarceration was not possible given the statutory provision under which Respondent's client was found guilty.
18. Upon receipt of this information, the court clerk alerted Jamie Moss, Law Clerk to the Honorable Kimberly A. Irving, the judge who presided at the sentencing of Respondent's client. Ms. Moss thereafter telephoned Respondent's office to advise of the problem. Ms. Moss stated that Judge Irving would entertain any motion, argument, or authority that Respondent wished to present to address the sentencing issue.
19. On April 6, 2016, Respondent left a voice mail message for Complainant (full text shown at VSB Exhibit 13A) wherein he stated:

"Hi Rebecca. This is Dominick Pilli calling you **'cause uh Judge Irving had called me.** This Daniels case, Betty Daniels, she's not qualified for house arrest with her sickness under the distribution charge . . . **so the judge called me and asked me if I could talk to someone at the Commonwealth and try to rework this so she would qualify if the Commonwealth's agreeable.** If not, it's over at that point. . . . The judge (inaudible) . . . I tried I tried I tried to get this to a possession but you wouldn't go there **and Judge Irving was like, 'Why can't we or why wasn't this reduced?' And I said 'Your Honor** it was Ms. Thacher and me and that was the best offer that Ms. Daniels could get. . . . ' So I was asking you if you'd consider some other charge where Ms. Daniels could qualify for house arrest as to work release. I know the answer's probably no but I have to extend this out to ask you **and then I'll call Judge Irving back and tell her what I could work out or what I couldn't work out 'cause she's holding up the order kinda waiting for me to get a motion on of some kind . . .**" (emphasis added.)

20. After Complainant did not return his telephone call, Respondent left another voicemail message for her on April 8, 2016 (full text shown at VSB Exhibit 13B). In this message, Respondent stated,

"Rebecca – this is Dominick. Would you please call me on this Betty Daniels matter. The judge is trying to ask us to work something out so that she can be on house arrest . . . and I'm just trying to see if we can modify this before . . . there's no way under the distribution charge that she can get house arrest. It has to be something different **and the judge has asked me to try to contact you to see if you'll be a little more lenient perhaps for some other charge . . .** I need some modification or else her whole family suffers. . . **the judge wants me** to put some sort of motion on for the 14th or 15th to try to resolve this. . . ." (emphasis added.)

21. The matter was subsequently brought to Judge Irving's attention and a hearing was convened on April 15, 2016, on Respondent's motion to modify the sentence so that his client would be eligible for work release. During the course of the hearing, the subject of Respondent's voicemails to Complainant was discussed. Judge Irving asked Respondent directly, on the record, "My question to you is, did you indicate to the Commonwealth's Attorney that you had spoken to me and that I wanted you to make – I wanted the Commonwealth to make this more lenient?" Respondent answered, "No your honor, that was not my message. It was that the clerk's office was calling us."
22. As detailed in Paragraphs 19 and 20, above, this representation was false. In his April 6, 2016, voicemail, Respondent stated, ". . . and Judge Irving was like, 'Why can't we or why wasn't this reduced?'" In Respondent's April 8, 2016, voicemail, he stated, "[A]nd the judge has asked me to try to contact you to see if you'll be a little more lenient perhaps for some other charge. . ."
23. Respondent went on to represent to the court, "And it wasn't a request from the judge, it was a request from the clerk's office calling me through the judge to get in touch with her, which I've been trying to do around my other case load."
24. The court then pressed Respondent further, inquiring, "Is it your assertion that somehow the clerk through the judge was asking the Commonwealth to give your client more leniency?" Respondent again falsely answered, "No."
25. These statements by Respondent directly contradict the actual content of his voicemail messages.
26. The court then directed Respondent and Complainant to leave the courtroom so that Complainant could play the voicemail messages for Respondent. After doing so, the matter reconvened and the court inquired, "Do I have any update as to what was said?" Respondent once again dissembled, stating, "Your Honor, I listened to the tape that Ms. Thatcher provided, and if you want, we can listen to it back in chambers. This happened from a series of calls that came from your office and my staff conveying to me, which (*sic*) I didn't bring my staff here today, and they would say the judge has called, they didn't say the clerk's called. So I would get a message when I might be driving my car back to the office and I would call them back and say – my message from my staff was, 'The judge called.'"
27. During the course of the investigation of this matter, the two (2) staff members employed by Respondent during the relevant time period were interviewed by Virginia State Bar Investigator David W. Jackson. Each was specifically asked if they, at any time, told Respondent that Judge Irving herself had called for Respondent. One staff member, Ms. Danny Zathoff, stated that she worked in a back office and therefore did not answer the telephone. Ms. Zathoff stated that at no time did she ever speak to Judge Irving, and she had no knowledge of ever receiving any calls regarding the Daniels case from the Clerk's office.

28. The second staff member, Ms. Dina Gonzalez, was also interviewed during the course of the investigation of this case. Ms. Gonzalez stated that she was employed by Respondent as his receptionist, responsible for handling telephone messages, email, and office voice mail messages. Ms. Gonzalez recalled having taken two (2) messages from the Prince William County Circuit Court concerning the Daniels case. Ms. Gonzalez stated that it was her best recollection that the caller identified herself as "Moss" and she denied ever receiving any call wherein Judge Irving's name was mentioned.
29. Both Ms. Zathoff and Ms. Gonzalez described the method by which Respondent's staff took and conveyed messages to him and stated that carbon message books were utilized. A copy of an undated message taken by Ms. Gonzalez was obtained by the Bar in its investigation of this case. That message has the word "URGENT" in all capital letters written across the top and states, "Tammy Moth (sic) Judge Clerk of PWCt in Re: Betty Ann Daniels . . . for status update please pick a date." This message was taken by Ms. Gonzalez and given to Respondent.
30. During the course of the investigation of this case, Ms. Moss was also interviewed by Investigator Jackson. Ms. Moss stated that she called Respondent's office several times since Respondent's client was incarcerated and the matter was therefore urgent. Ms. Moss stated that on one occasion, she spoke directly to Respondent himself and clearly identified herself as Judge Irving's law clerk. Ms. Moss recalled that, during the course of this conversation, Respondent raised the issue of amending or reducing the charges in the case. Ms. Moss responded that anything Respondent wished to file would be considered and she requested that a courtesy copy be provided to Judge Irving's chambers. No such courtesy copy was ever provided.
31. During the course of the investigation of this case, Respondent was also interviewed by Investigator Jackson. Respondent repeated the same false assertions concerning the series of events that are detailed above to the Bar Investigator. Investigator Jackson's testimony before the Board during the hearing of this matter echoed his earlier report concerning his investigation of this matter.
32. During the course of the hearing of this matter before the Board, Complainant Rebecca Thacher testified in a manner consistent with her earlier statements to the Bar and Investigator Jackson. Ms. Thacher, during her examination and cross-examination also testified that she unequivocally understood the Respondent, in his voice mail messages, to be falsely representing to her that she needed to be more lenient in her handling of the underlying criminal matter based on ex parte statements made by the presiding judge to the Respondent. Ms. Thacher did not believe these false statements but testified that she perceived that the Respondent made them in an effort to gain an advantage for his client. She further testified that his false representations compelled her from an ethical standpoint to report the conduct to the Bar. Finally, she elaborated on the reasons why she had not taken a position on the sentencing in the underlying action as part of the plea agreement with Respondent, despite his later suggestions to the trial court to the contrary. The Respondent conceded the benefit to his client in Ms. Thacher not taking a position on sentencing of his client during his testimony.

33. During the course of the hearing of this matter before the Board, Jamie Moss testified that in her direct conversation with the Respondent, she never suggested that Judge Irving wanted the Assistant Commonwealth's Attorney to be more lenient or agree to reword the underlying criminal matter. Ms. Moss repeatedly testified that she was calling the Respondent for dates for a new hearing for the Court to consider any new motions he might be filing in light of the difficulties with the prior sentencing Order.

NATURE OF MISCONDUCT

The Certification charges violations of the following provisions of the Virginia Rules of Professional Conduct:

As to VSB Docket No. 16-051-104493:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a . . . deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

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

As to VSB Docket No. 16-051-105786:

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[.]

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law[.]

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;
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

DISPOSITION

Based upon exhibits and testimony offered into evidence by the Bar and Respondent, the Board deliberated and reached the following determinations:

1. The Board determined that the Bar met its burden of proving by clear and convincing evidence the following allegations set forth above:

(a) VSB Docket No. 16-051-104493. Paragraphs 1 through 14, inclusive.

(b) VSB Docket No. 16-051-105786. Paragraphs 1, 15 through 33, inclusive.

2. Further, such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

(a) VSB Docket No. 16-051-104493. Rule 1.1; Rule 1.3(a); Rule 4.1(a); Rule 8.4(a)-(c).

(b) VSB Docket No. 16-051-105786. Rule 3.3(a)(1); Rule 4.1(a); Rule 8.1(a)-(b); Rule 8.4(a)-(c).

Thereafter, the Board received further evidence of aggravation and/or mitigation, including Respondent's prior disciplinary record, admitted into evidence without objection as VSB Exhibit 15, which consisted of six prior disciplinary violations. The prior disciplinary violations include two private reprimand sanctions, three public reprimand sanctions, and a 90-day suspension. Included therein are findings of trust account violations, a lack of candor to the tribunal violation, and reference to a criminal contempt finding and conviction by the court. The Respondent introduced no evidence regarding mitigation. The Board then recessed to deliberate as to an appropriate sanction to impose upon its findings of Respondent's misconduct. The Board found that the Respondent failed to accept any responsibility for his actions, by deflecting blame to various other attorneys, staff employees at his office and court personnel. There was no

acknowledgement of unacceptable and deceptive behavior or indication of contrition. After due deliberation, the Board reconvened to announce the sanction imposed.

Accordingly, it is ORDERED that the license of Respondent, Dominick Anthony Pilli, to practice law in the Commonwealth of Virginia is **SUSPENDED** for one year plus one day, effective February 28, 2017, at 5:00 p.m.

It is further ORDERED that the Respondent shall not accept any new clients or cases between the date of the hearing on February 17, 2017, and the effective time and date of his suspension, February 28, 2017, at 5:00 p.m.

It is further ORDERED that the Respondent must comply with the requirements of Pt. 6, § IV, ¶ 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** 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. Respondent shall give such notice within 14 days of the effective date of February 28, 2017, 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 day 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 February 28, 2017, at 5:00 p.m., he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by ¶ 13-29 shall be determined by the Virginia State Bar

Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Pt. 6, § 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 a copy teste of this Order shall be mailed by certified mail, return receipt requested, to Respondent, Dominick Anthony Pilli, at his address of record with the Virginia State Bar, being Dominick Anthony Pilli, Law Offices of Dominick A. Pilli P.C., 4103 Chain Bridge Road, Suite 302, Fairfax, VA 22030; by first class mail, postage prepaid, to Timothy Joseph Battle, counsel for Respondent, at Law Office of Timothy J. Battle, P.O. Box 320593, Alexandria, VA 22320-4593; and by hand delivery to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED this 27th day of February, 2017.

VIRGINIA STATE BAR DISCIPLINARY BOARD

John A. C. Keith

Digitally signed by John A. C. Keith
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John A.C. Keith, 2nd Vice Chair