

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF BRIAN AUSTIN REVERCOMB
VSB DOCKET NO. 18-060-111408

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER came on to be heard on January 25, 2019, before a panel of the Disciplinary Board consisting of Bretta M.Z. Lewis, Chair Designate, Donita M. King, Michael J. Sobey, John D. Whittington, and Tambera D. Stephenson, lay member. The Virginia State Bar (the "VSB") was represented by Prescott L. Prince, Assistant Bar Counsel. Brian Austin Revercomb, (the "Respondent"). appeared in person and appeared *Pro Se*. The Chair polled the members of the 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. Jennifer L. Hairfield, court reporter, PO Box 9349, Richmond, VA 23227, 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 Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court.

The matter came before the Board on the District Committee Determination for Certification by the Sixth District Sub-Committee Section pursuant to Part Six, § IV, ¶ 13-18 of the Rules of the Supreme Court of Virginia involving misconduct charges against the Respondent. Prior to the proceedings and at the final Pretrial Conference, VSB Exhibits 1 through 10 were admitted into evidence by the Chair, without objection from the Respondent. Stipulation of misconduct consisting of violations of Rules 1.1, 1.3(a), 1.3(b), 1.4(a), 1.4(b), 1.16(d), 8.1(c), and 8.1(d) was admitted as exhibit 11.

The Board considered the exhibits introduced by the parties; heard arguments of counsel; and accepted the stipulation of misconduct as stated in Exhibit 11.

I. FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence pursuant to the stipulations of fact contained in Exhibit 11, admitted without objection. The board made no additional findings of fact and took no evidence after the Respondent, under oath at the hearing, testified that he understood the allegations regarding violations of the Rules and testified that he agreed that he had violated the rules:

1. At all times relevant, Brian Austin Revercomb (hereinafter “Respondent”) has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Russel Jackson (Jackson), the Complainant in this matter, retained Respondent in July 2017 for what appeared to be an uncontested divorce.

3. At the time of the initial meeting, Jackson reported that he and his wife had been separated for a period of six months and that they had come to an unwritten agreement regarding the separation of their marital property.

4. Jackson reported that Respondent charged a flat fee of \$1,000 attorney fees, plus \$200 for the divorce proceedings. Jackson promptly paid these fees and signed a written fee agreement; Respondent stated that he would scan the fee agreement and email Jackson a copy of the fee agreement as well as a receipt but failed to do so.

5. Respondent and Jackson agreed to meet on August 2, 2017 at which time Respondent was to provide Jackson with the Divorce Complaint for Jackson to sign and have notarized. Respondent failed to keep the August 2, 2017 appointment as well as several appointments thereafter, providing Mr. Jackson with a series of excuses.

6. Respondent and Jackson finally met on August 23, 2017. Jackson noted mistakes in the documents prepared by Respondent, and Respondent promised to make the necessary corrections and email the amended documents to Jackson that same day but failed to do so. Respondent never provided Jackson with corrected documents. Accordingly, on August 30,

2017, Jackson pen and inked the necessary changes and signed them in front of a notary at his workplace and forwarded them to Respondent.

7. Thereafter, Respondent became even more unreliable. He did not provide the written property settlement agreement as requested. Throughout the months of September and October, Jackson made multiple requests to Respondent as to the status of the written property settlement agreement and when he would receive the document. In response, Respondent provided a series of excuses for not providing the document.

8. Respondent never delivered the promised documents. On November 11, 2017, Mr. Jackson sent Respondent a text message, terminating representation and requesting a refund. Despite multiple attempts by Mr. Jackson to contact Respondent, he never responded to the termination notice or request for a refund. Thereafter, Mr. Jackson filed his bar complaint.

9. Assistant Bar Counsel Prescott L. Prince sent Respondent a letter dated January 19, 2018 enclosing a copy of the bar complaint. ABC Prince's letter demanded a response to the complaint within 21 days and identified Respondent's duty to provide lawfully demanded information to the VSB in accordance with Rule 8.1(c) of the Virginia Rules of Professional Conduct (RPC).

10. Respondent did not respond to the letter and was initially not responsive to VSB Investigator Brian Callen's attempt to contact him. Investigator Callen visited Respondent's office and noted that it was vacated and that a "For Rent" sign was in the window. Investigator Callen was eventually able to contact Respondent and met with him on March 9, 2018.

11. At the March 9, 2018 meeting, Respondent confirmed that he had vacated his office, but did not provide a new address. He acknowledged that Jackson had retained him to provide representation for an uncontested divorce but disputed that he received \$1,200 for the representation. Respondent could not specify how much money he received from Jackson, how he was paid, or whether the funds were deposited into his operating account or his trust account.

12. Respondent claimed that he delayed providing the written property settlement agreement to Jackson because he believed that information presented by Jackson regarding the

separation date was inaccurate and he wanted to be sure that the full statutory separation period had passed prior to filing the divorce. Respondent acknowledged that he did not clearly explain to Jackson the reason for delay.

13. Respondent failed to bring Jackson's client file to the meeting as requested. He stated he did not bring the file because he was searching for handwritten notes that he took during his first meeting with Jackson and wanted to include the notes in the file.

14. At the conclusion of the meeting, Investigator Callen requested that Respondent produce the Jackson client file, banking information regarding how the funds provided by Jackson were handled, and all correspondence with Jackson. Respondent agreed to provide the requested documents by Monday, March 19, 2018.

15. Respondent failed to produce the requested documents. Investigator Callen attempted to contact Respondent by telephone on March 19, 2018 but was unsuccessful. His subsequent attempts to contact Respondent were also unsuccessful.

16. On March 23, 2018 a subpoena duces tecum was issued requiring that Respondent provide, inter alia, a copy of his client file for the Jackson matter, copies of all trust account and accounting records related to said case, and copies of all communications with Jackson and others regarding the case. The subpoena duces tecum was sent by certified mail to Respondent at 9428 Kings Highway, P. O. Box 610 King George, Virginia, that being Respondent's address of record with the VSB, but was subsequently returned as undeliverable. Thereafter, a copy of said subpoena duces tecum was posted on the door at said address.

17. Respondent did not respond to the subpoena duces tecum and on June 8, 2018, the VSB Disciplinary Board entered an Interim Suspension Order suspending Respondent's license until such time as he fully complied with the subpoena duces tecum.

18. Respondent admits that as of the date of this Stipulation, he continuously failed to respond to the subpoena duces tecum.

II. NATURE OF MISCONDUCT

The Respondent stipulated that the conduct contained in the Findings of Fact above constitutes misconduct in violation of the following provisions of the Rules of Professional

Conduct:

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.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

Rule 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.16 Declining or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing for time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

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 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:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or
- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

III. IMPOSITION OF SANCTION

Thereafter, the Board received further evidence and argument in aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record, which was admitted without objection as Bar Exhibit 12. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed.

The Chair announced the sanction as Respondent's license to practice law in the Commonwealth of Virginia is suspended for a period of six (6) months, the Respondent shall pay restitution to the Complainant in the amount of \$1,200 within six (6) months of this order and the Respondent shall engage the services of Lawyers Helping Lawyers ("LHL").

Accordingly, it is ORDERED that the Respondent, Brian Austin Revercomb's license to practice law in the Commonwealth of Virginia is suspended for a period of six (6) months effective January 25, 2019, the Respondent shall pay restitution to the Complainant in the amount of \$1,200, within six (6) months, and shall engage the services of LHL with the following specific provisions:

Not later than three (3) days after the date of this hearing, Respondent shall contact LHL to schedule an evaluation to be conducted by LHL. Thereafter, Respondent shall fully participate in the evaluation conducted by LHL and shall implement all of LHL's recommendations. The Respondent shall enter into a written contract with LHL for a minimum period of two (2) years and shall comply with the terms of such contract, including, inter alia, personally meeting with LHL and its professionals, as directed. The Respondent authorizes LHL to provide periodic reports to the Office of Bar Counsel stating whether Respondent is in compliance with LHL's contract with the Respondent. The Office of Bar Counsel shall be bound by LHL's contract with the Respondent with respect to confidentiality and disclosure of information. If the Respondent fails to comply with the terms and conditions herein ordered, the

alternative sanction of a two-year suspension of his license to practice law would then be imposed.

It is further ORDERED that the Respondent shall satisfy all outstanding financial obligations to the VSB and shall comply with all MCLE requirements required to bring him into compliance with MCLE prior to restoration of his license to practice law.

It is further ORDERED that, as directed in the Board's January 25, 2019, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § 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 client. Respondent shall give such notice within fourteen (14) days of the effective date of the Suspension, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension. The Respondent shall also furnish proof to the Bar within sixty (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 January 25, 2019, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective day 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 9428 Kings Highway, P. O. Box 610 King George, Virginia 22485, by certified mail, return receipt requested, and to 10066 Kings Highway, King George, Virginia 22485, his alternate address and by hand delivery to Prescott L. Prince, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 15th day of February, 2019

VIRGINIA STATE BAR DISCIPLINARY BOARD



Bretta M. Z. Lewis, Chair Designate