

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JOHN B. RUSSELL, JR.

VSB DOCKET NO. 20-000-117794

OPINION AND ORDER

This matter came to be heard before the Virginia State Bar Disciplinary Board (the “Board”) for hearing on August 28, 2020, upon the Virginia State Bar’s (the “Bar”) Petition for Show Cause Hearing For Violation of the Board’s suspension order entered November 1, 2019, requiring Respondent, John B. Russell, Jr. (“Respondent”), to show cause by clear and convincing evidence why his license to practice law in the Commonwealth should not be further suspended or revoked for failure to comply with Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia (“Paragraph 13-29”) as ordered by the Board.¹

The Panel consisted of Thomas R. Scott, Jr., 2nd Vice Chair, Presiding; Robin J. Kegley, Devika E. Davis, Bretta Z. Lewis, and Martha J. Goodman, lay member. The Bar was represented by Laura Ann Booberg, Assistant Bar Counsel. Respondent was present, without counsel. Jennifer Hairfield, court reporter, Chandler and Halasz, Inc. Post Office Box 9349,

¹ Part Six, §IV, ¶13 of the Rules of the Supreme Court reads as follows:

After a suspension against a Respondent is imposed by either a summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the dispositions of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph 13-29.

Richmond, VA 23227, (804) 730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding.²

The Chair polled members of the Panel as to whether they were conscious of any personal or financial interest or bias which would preclude fair consideration of the matter before the Panel. Each member, including the chair, replied in the negative and the hearing commenced.

As a preliminary matter the Board considered Respondent's Motion to Continue the portion of the hearing which required testimony of witnesses for the Bar connected to criminal charges pending against Respondent in Lancaster County alleging the unauthorized practice of law (UPL). Respondent argued that he would be severely limited in defending allegations that concerned allegations of UPL in the bar proceedings in light of his Fifth Amendment right against self-incrimination. The Bar conceded that the anticipated testimony of those witnesses were not necessary for a finding as to the violation of the Board's November 1, 2019, Suspension Order, but the Bar intended to present certain evidence to detail the breadth of Respondent's violation as a fact in aggravation. The Bar ultimately agreed to excuse all witnesses pertaining to the allegations of UPL in paragraphs 8 through 12 of its Petition and Respondent's Motion to Continue was withdrawn.

The case then proceeded with the Bar's opening statement (Respondent waived) and the presentation of evidence. The Bar's exhibits 1, 2, 3, 4, 8, and 10-16 were introduced without objection.

FINDINGS OF FACT

² 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 remains in effect, and will continue indefinitely, until it is revised or otherwise lifted by the Governor. In light of the Governor's Executive Order 51, the Board convened the hearing via video conferencing using the Microsoft Teams platform which provided the opportunity for members of the public to observe. The hearing was recorded and otherwise complied with the Virginia Freedom of Information Act regarding electronic meetings, found in Virginia Code § 2.2-3708.2, as supplemented by § 4-0.01(g) of Virginia House Bill 29, Chapter 1283 (2020).

1. By summary order entered on November 1, 2019, in VSB Docket Numbers 17-032-108377, 18-032-110165, and 18-032-110860, the Board suspended Respondent's license to practice law for two years. The Summary Order stated as follows:

“The Board notes concerning Paragraph 13-29 that: Respondent must comply with all requirements of Part Six , § IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice [of his suspension within 14 days of the effective date of the suspension by certified mail to all current clients, opposing attorneys, and presiding judges in pending litigation. The respondent must also make appropriate arrangements for the disposition of matters according to his clients' wishes within 45 days of the effective date of the suspension, furnishing proof of such notices and arrangements to the Bar within 60 days of the effective date.]”

2. By letter dated November 1, 2019, DaVida M. Davis, Clerk of the Disciplinary System, forwarded the Summary Order and FAQs for Lawyers Under a Suspension or Revocation Imposed by the Disciplinary Board and Paragraph 13-29 compliance affidavits by certified mail to Respondent's address of record, his electronic mail address, and sent copies to his counsel of record by electronic mail.
3. The Clerk's November 1, 2019, letter directed Respondent to provide the Clerk with proof of his compliance on or before December 31, 2019, and the Clerk enclosed forms acceptable to the Board to certify Respondent's compliance with the Rules of Court, Part Six, Section § IV, Paragraph 13-29.
4. By affidavit, the Clerk of the Disciplinary System attested the Bar had not received documentation of Respondent's compliance with Paragraph 13-29.
5. On or about December 20, 2019, Respondent's counsel filed a Notice of Appeal and Motion for Stay of Suspension Pending Appeal with the Supreme Court of Virginia. Respondent was required to notify the bar of his compliance with Paragraph 13-29 by

January 2, 2020. The Motion for Stay was denied by the Supreme Court of Virginia on January 6, 2020.

6. Respondent testified he never provided notice to his clients by certified mail and he never filed an affidavit with the Clerk of the Disciplinary System, nor did he notify opposing counsel.
7. Respondent claimed to have met with his seven clients, in person, and made arrangements to transfer their cases but did not possess any documentation of the names of those clients, the dates of the meetings, or of any arrangements he made in accord with his clients' wishes.
8. Respondent took no action to notify opposing counsel or presiding judges in active cases of his suspension as required. Respondent relied on motions to withdraw as counsel as his notice to presiding judges.
9. Respondent met with Bar Investigator Powell at Respondent's former law office some time in December of 2019 and discussed the transfer of cases with only one case being discussed specifically by name. At the time of this meeting Respondent had taken no action to remove the signage outside his office which bore his name and title and Respondent continued to employ a secretary.
10. At the time of the hearing Respondent continued to be listed as an attorney on www.jbrussellaw.com, a website set up by the wife of a former business associate of Respondent. Respondent testified he is not authorized by the website host to make changes to the account and Respondent testified he has never had a direct method of contacting his former associate's wife.
11. Respondent defended Leonard Cipolla in United States District Court in connection with criminal charges which resulted in a guilty plea in September of 2019.

12. Following Cipolla's guilty plea, Respondent communicated with Benjamin Tyree, Esquire, on behalf of Cipolla on several occasions in November and December of 2019, after his suspension. Mr. Tyree served as counsel in an ongoing civil matter involving Cipolla's removal as administrator of an estate. Although Respondent never formally entered an appearance with the Court in the civil matter, email communications between Tyree and Respondent indicated Respondent was representing Cipolla. Respondent never notified Mr. Tyree of his suspension and Tyree only learned of the suspension because of an electronic publication sent out by the Virginia State Bar.
13. Respondent represented a client, RG, in connection with a criminal investigation by the Tax Division of the Department of Justice. William Montague, Esquire, was co-counsel in the matter and met with Respondent for a "reverse proffer" on November 1, 2019,³ in which Respondent made a proposal to avoid indictment of RG.
14. On November 14, 2019, Mr. Montague emailed Respondent regarding pre-indictment discovery in the case and Respondent provided his mailing address in reply.
15. Respondent communicated with Mr. Montague between November 1, 2019, and November 14, 2019, via telephone and electronic mail and never notified Montague of his suspension.
16. On November 20, 2019, Mr. Montague, after having learned of Respondent's suspension, emailed respondent and inquired if RG was aware of the suspension. Respondent did not respond to this email. Mr. Montague sent a follow-up email on December 2, 2020, to which Respondent replied with the name of RG's new counsel.

³ Respondent had requested the November 1, 2019, meeting with Mr. Montague and never told Montague the date would conflict with his hearing before the Disciplinary Board. Respondent had moved to continue the hearing and averred to the Board that the November 1, 2019, date was the only date available for the meeting and it could not be rescheduled without prejudice to RG. Montague denied these claims and testified that alternate dates could have been chosen for the meeting.

Upon consideration of the testimonial evidence and the Bar's exhibits presented to the Board at the August 28, 2020, hearing, the Board FOUND that Respondent failed to show by clear and convincing evidence that he complied with the provisions of Part Six, § IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, as to his obligation to give notice of the suspension of his license to practice law to all clients, opposing counsel, and judges presiding over pending matters within 14 days of his suspension, to make arrangements in accordance with the wishes of his clients within 45 days, and to furnish proof of compliance to the Clerk of the Disciplinary System within 60 days of the effective date of his suspension.

Thereupon the matter proceeded for the Board's determination of sanction wherein the Board received further evidence and argument in mitigation and aggravation. Respondent adopted the testimony from his prior examination as a witness in lieu of testifying and the Bar submitted the 33 prior rule violations which formed the basis for Respondent's November 1, 2019, suspension. The Bar sought revocation of Respondent's license arguing that Respondent's complete failure to comply with any portion of Paragraph 13-29 demonstrated the Board would have no assurances of Respondent's future compliance and revocation was necessary to protect the public. Respondent acknowledged his noncompliance but believed his actions of continuing to handle client matters were strictly to advance his clients' interests. Respondent claimed he did not receive any compensation for these actions and believed his actions were in accord with the requirements of Paragraph 13-29. Respondent cited his 40-year legal career and requested the Board not further suspend or revoke his license.

The Board retired to consider the appropriate disposition and unanimously concluded Respondent failed to demonstrate that further suspension or revocation was not warranted.

The Board ORDERED Respondent's license to practice law in the Commonwealth be suspended for an additional period of three (3) years which shall commence upon the expiration

of the November 1, 2019, suspension. Since the November 1, 2019, suspension is still in effect and Respondent should not have clients on the effective date of the suspension ordered herein, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. All issues concerning the adequacy of notice and requirements of Paragraph 13-29 shall be determined by the Board; and pursuant to Part Six, §IV, Paragraph 13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs and a true and attested copy of this Order shall be mailed by certified mail, return receipt requested, and by regular mail and electronic mail, to Respondent at his address of record with the Bar, 9017 Forest Hill Ave., Suite A, Bon Air, VA 23235, and via electronic mail to Laura Booberg, Esquire, Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

Entered this 21st day of September, 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Thomas R. Scott Jr.
Thomas R. Scott, Jr., 2nd Vice Chair