

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
RANDALL SOUSA

VSJ Docket No. 20-000-117517

MEMORANDUM ORDER OF SUSPENSION

I. INTRODUCTION

This matter came to be heard on January 24, 2020, on the Virginia State Bar's Petition for Show Cause Hearing - Violation of a Suspension Order Entered by the Disciplinary Board issued on December 12, 2019 and the Notice of Show Cause Hearing for Failure to Comply with Paragraph 13-29 and the Rule to Show Cause issued on December 13, 2019,¹ before a panel of the Virginia State Bar Disciplinary Board ("the Board") consisting of Sandra L Havrilak, Chair (hereinafter "the Chair"), Kamala H. Lannetti, Stephanie C. Cox, Michael J. Sobey, and Stephen A. Wannall, Lay Member. The Virginia State Bar (hereinafter "the Bar") was represented by Elizabeth K. Shoenfeld (hereinafter "Senior Assistant Bar Counsel"). The Respondent, Randall Sousa ("the Respondent"), was present and proceeding pro se. Angela N. Sidener, court reporter, Chandler & Halasz, Inc., P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the proceedings.

The Chair polled the members of the Board Panel as to whether any of them had any personal or financial interest or bias which would preclude him or her from fairly hearing this matter and serving on the Board, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("the Clerk") in the manner prescribed by the *Rules of the Supreme Court of Virginia*, Part Six, §IV, ¶13-18.

¹ See Board Exhibits 1 and 2.

II. MISCONDUCT PHASE

At the commencement of the hearing on January 24, 2020, the Respondent submitted Exhibits 1, 4, and 5. The Exhibits were admitted by the Board with no objection from Senior Assistant Bar Counsel. The Respondent then requested that three witnesses be allowed to testify on his behalf. Senior Assistant Bar Counsel requested that all witnesses be sequestered, including the Bar's witnesses; and, the Chair directed the witnesses to leave the hearing room. The Respondent requested that Mr. Garcia, the Respondent's legal assistant, be allowed to remain at the Respondent's table throughout the hearing even though he intended to call Mr. Garcia to testify. The Chair suggested that Mr. Garcia testify first and then remain in the hearing chambers to assist the Respondent. The Respondent declined to have Mr. Garcia testify first and instead instructed Mr. Garcia to leave the hearing chambers. The Respondent eventually decided not to have Mr. Garcia testify or assist him during the hearing. The Respondent addressed the Board and indicated that he would be proceeding pro se.

BACKGROUND

The Respondent represented the wife in a divorce matter pending before the Fairfax County Circuit Court in June 2019.² During his representation of the wife, the Respondent was uncooperative with discovery and pre-trial motions and, on the day of trial, appeared before the Court to request a continuance because he was unprepared to proceed. The Court denied the continuance, and the trial proceeded over the Respondent's objections.

On July 30, 2019, Judge Bernhard, the presiding judge, issued a detailed opinion and imposed an \$11,000.00 fine and award of attorney's fees against the Respondent personally. Judge Bernhard also filed a complaint with the Virginia State Bar that included a copy of his July

² See VSB Exhibit 1, at 0009-0029, William Teddy Chapilliquen v. Sara Patrice Chapilliquen, CL-2018-11016 in Fairfax County Circuit Court. The procedural history of this case is complicated; however, the details of the various motions and appeals are not required to understand the Respondent's arguments.

30, 2019 Opinion.³ On August 8, 2019, Judge Bernhard filed a second complaint against the Respondent and included the July 30, 2019 Opinion as well as further explanation of the Respondent's alleged misconduct. On August 6 and 14, 2019, Senior Assistant Bar Counsel informed the Respondent of the Complaints and, in accordance with *Rules of Professional Conduct* 8.1(c), requested that the Respondent provide a response within twenty-one days.⁴ After the Respondent failed to provide a response to either complaint, the Bar issued a subpoena *duces tecum* demanding that the Respondent provide his records regarding the divorce matters no later than October 3, 2019. The Respondent failed to respond to the subpoena *duces tecum* or file objections.⁵

On October 8, 2019, Senior Assistant Bar Counsel wrote to the Respondent advising him that if no response was provided by October 16, 2019, a notice of noncompliance would be filed with the Board.⁶ The Respondent provided a written response on October 16, 2019 but did not include any documents. The Respondent indicated that his records were privileged communications, and he further asserted that the records of the case were public records.⁷ The Respondent did not file a privilege log with the Bar or petition the Board to withhold entry of an Interim Suspension Order.⁸

On November 6, 2019, the Board entered an order in VSB Docket No. 20-052-116377 suspending the Respondent's license to practice law in Virginia "until the Virginia State Bar Disciplinary Board determines that the Respondent Sousa has fully complied with the subpoena

³VSB Exhibit 1 at 0009-0029.

⁴VSB Exhibit 1 at 0030-0054.

⁵VSB Exhibit 1 at 0061-0065.

⁶VSB Exhibit 1 at 0066-0073.

⁷During his testimony on January 24, 2020, the Respondent also stated that the case records were public records and that the Bar could access them without the Respondent having to provide them.

⁸VSB Exhibit 2.

duces tecum issued on September 12, 2019.”⁹ The Board further required that the Respondent comply with the requirements of Part Six, §IV, ¶13-29 of the *Rules of Supreme Court of Virginia*, specifically: notification of his suspension to all clients, opposing counsel and presiding judges in all pending litigation; make appropriate arrangements for the disposition of clients matters in conformity with the wishes of his clients; and, notification to the Bar of such compliance.¹⁰

The Respondent attempted to appeal the Board’s November 6, 2019 order to the Supreme Court of Virginia, and the Bar moved to dismiss the appeal. Both the appeal and the motion remain pending and therefore the November 6, 2019 order remains in effect.¹¹ The Respondent chose not to comply with the November 6, 2019 order, and the Bar began to receive complaints regarding the Respondent’s attempts to continue to practice law and his failure to notify opposing counsel or the courts of his suspension. The Bar then sought an order for the Respondent to show cause that he had not violated the Board’s November 6, 2019 order, which is the instant matter before the Board.

FINDINGS OF FACT

The Respondent did not object to the facts presented by the Bar, and the Board accepted and admitted the Bar’s Exhibits 1-19 without objection. The Board makes the following findings of fact with regard to the evidence:

1. The Respondent was licensed to practice law in the Commonwealth of Virginia on January 17, 2017.
2. On November 6, 2019, the Board entered an order in VSB Docket No. 20-052-116377 suspending the Respondent’s license to practice law in Virginia “until the Virginia State

⁹VSB Exhibit 2.

¹⁰VSB Exhibit 2.

¹¹ Although no Order had been issued at the time of the hearing, the Virginia Supreme Court’s online docket reflects that the appeal had been dismissed.

Bar Disciplinary Board determines that the Respondent Randall Sousa had fully complied with the subpoena duces tecum issued on September 12, 2019.”¹²

3. The Board required the Respondent to comply with the requirements of Part Six, §IV, ¶13-29 of the *Rules of Supreme Court of Virginia*. Within 14 days of his suspension, the Respondent was required to “forthwith give notice by certified mail, return receipt requested, of the suspension or revocation 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.”¹³
4. The Respondent was also required to “make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients.”¹⁴
5. The Respondent attempted to appeal the November 6, 2019 order to the Supreme Court of Virginia. The Bar moved to dismiss the appeal based on the fact that the November 6, 2019 order was not a final memorandum order; and, therefore, was not subject to appeal.¹⁵ The motion to dismiss was pending as of January 24, 2020, and the Supreme Court of Virginia had neither stayed the Respondent’s suspension nor ruled on his appeal. Accordingly, the Respondent’s November 6, 2019 suspension remained in effect.
6. The Respondent failed to comply with the Board’s order regarding notification of his suspension and disposition of matters that he was handling as of the time of his suspension on November 6, 2019.
7. **Matter pending before Prince William County Juvenile and Domestic Relations District (J&DR) Court - November 20, 2019.**
 - a. Jessica Foster, Attorney at Law, submitted a declaration that the Respondent was counsel of record in a custody matter pending before the Prince William County Juvenile and Domestic Relations District Court and that she was opposing counsel. Ms. Foster stated that on November 19, 2019, the day before the matter was to be before the court, the Respondent yelled to her on the courthouse property that he would agree to any terms that she wanted in the matter the following day.¹⁶
 - b. On November 20, 2019, the Respondent and his client did not appear for the matter before the J&DR Court. On November 27, 2019, the Respondent contacted Ms. Foster to discuss the status of the case. Ms. Foster stated that the Respondent did not inform her of his license suspension. These matters happened within 13-21 days after the Respondent’s license was suspended.

¹²VSB Exhibit 2.

¹³VSB Exhibit 2.

¹⁴VSB Exhibit 2.

¹⁵See Va. Sup. Ct. R. 5:21(b)(2).

¹⁶VSB Exhibit 15.

8. Matter of Commonwealth v. Jorge Ponce Fuentes, Alexandria Circuit Court, trial date of January 27, 2020.

Amanda Bossie Tassa, Alexandria City Assistant Commonwealth Attorney, provided a sworn declaration that she had not been notified by the Respondent of his license suspension although the Respondent was listed as counsel of record for defendant Jorge Ponce Fuentes, who had a trial date of January 27, 2020 before the City of Alexandria Circuit Court.¹⁷ These matters were pending over 60 days after the Respondent's license was suspended.

9. Matter of L.H. in Prince William County Juvenile and Domestic Relations District Court - November 18, 2019.

- a. On November 18, 2019, in the Prince William County Juvenile and Domestic Relations District Court ("J&DR"), the Respondent represented L.H. in criminal charges. As reported to the Bar by Assistant Commonwealth's Attorney Andrew J. Pruitt, opposing counsel in the matter related to L.H., the Respondent did not inform him that the Respondent's license had been suspended.¹⁸
- b. The Respondent began discussing the merits of the case in an effort to negotiate an outcome for L.H. Mr. Pruitt had been informed by other sources that the Respondent's license had been suspended, as Mr. Pruitt so informed the Respondent. Mr. Pruitt showed the Respondent the Virginia State Bar's website which indicated that the Respondent's license had been suspended. Mr. Pruitt stated that the Respondent informed him that the Bar was in the process of reinstating his license.¹⁹ That statement was untrue.
- c. The Respondent informed the J&DR Court that he and the Bar disputed whether he was suspended and that it was his belief that he should be allowed to continue to practice law. The J&DR Court recommended that the Respondent resolve his issues with the Bar before proceeding further with the L.H. matter.²⁰ This matter happened 12 days after the Respondent's license was suspended.

10. Matter of B.G.S. in Prince William County Juvenile and Domestic Relations Court November 20, 2019.

- a. On November 20, 2019, the Respondent represented B.G.S. in a custody dispute pending before the Prince William County Juvenile & Domestic Relations ("J&DR") Court. Jessica Parker, Attorney at Law, opposing counsel in the B.G.S. matter, reported that the Respondent did not inform her that his license had been suspended although the matter had been pending for some time. Ms. Parker learned of the suspension through other means.

¹⁷VSB Exhibit 16.

¹⁸VSB Exhibit 18.

¹⁹VSB Exhibit 18.

²⁰VSB Exhibit 18.

- b. Ms. Parker reported that neither the Respondent nor his client appeared for the hearing and, as a result, the Respondent's client lost custody. This matter happened 14 days after the suspension of the Respondent's license.

11. Matter of Case No. GV19-4962 pending in Arlington County General District Court - November 21, 2019.

- a. As reported by Judge O'Brien to Lisa Wilson, the former Chair of the Disciplinary Board, a Pre-Trial Conference was scheduled for November 21, 2019 in Case No. GV19-4962.²¹ The Court did not receive notice from the Respondent regarding his suspension.
- b. The defendant, the Respondent's client, appeared that day and informed the Court that the Respondent would not make it.
- c. On December 5, 2019, the Respondent hand-delivered a letter to the Clerk of the Arlington County General District Court notifying the Clerk of his suspension. Enclosed with the Notice of Suspension, the Respondent included a Grounds of Defense which the Respondent signed as attorney for the defendant in Case No. GV19-4962. The Respondent further requested that the Court set the matter for April 2020.²² These matters happened 30 days after the Respondent's license was suspended.

12. Matter of Marcelo Marquez in Fairfax County General District Court - November 26, 2019.

- a. On November 26, 2019, Marcello Marquez, defendant, appeared in Fairfax County General District Court for a preliminary hearing. Although the Respondent was listed as representing Mr. Marquez in the matter before the Court, the Respondent did not appear but instead sent his non-attorney assistant to appear with Mr. Marquez.²³
- b. When the case was called, Mr. Marquez requested a continuance and informed the Court that he had only learned that day, November 20, 2019, that the Respondent's license was suspended. The Bar's Investigator, James Houghton (hereinafter "Investigator Houghton"), testified that he was present in the Courtroom that day and heard Mr. Marquez make this statement to the Court.

²¹VSB Exhibits 8.

²²VSB Exhibit 9.

²³See Petition for Show Cause Hearing Violation of a Suspension Order Entered by the Disciplinary Board filed on December 12, 2019, at 4-5.

13. Matter in Fairfax County J&DR District Court - December 4, 2019.

- a. On December 4, 2019, the Respondent appeared in Fairfax County Juvenile and Domestic Relations District Court (“J&DR”) on a matter before Judge Kimberly Daniel. When the case was called, the Respondent stood at counsel table. Judge Daniel was aware through other sources that the Respondent’s license had been suspended and questioned the Respondent as to whether his status had changed.²⁴
- b. The Respondent told Judge Daniel that he intended to continue appearing in court despite the suspension. Judge Daniel did not allow the Respondent to represent the client in the matter before her. Although the Respondent had another matter before Judge Daniel that day, he did not appear. This matter happened 30 days after the suspension of the Respondent’s license.

14. Matter of Commonwealth v. Paul Kim FE2019-776 before Fairfax County Circuit Court - December 6, 2019.

- a. On December 6, 2019, the Respondent appeared before Judge Thomas Mann to represent a defendant in a child pornography case in Commonwealth v. Paul Kim, FE2019-776, before the Fairfax County Circuit Court.²⁵
- b. When Judge Mann called the case, the Respondent stepped forward and identified himself. The Respondent informed Judge Mann that he was having “trouble with the Bar” but that he was “openly practicing law.”
- c. Judge Mann required the Respondent to step back so that he would not be engaging in the unauthorized practice of law. Judge Mann left the courtroom to allow the defendant to speak with the Public Defender. The Respondent attempted to speak with the defendant, but the Public Defender would not allow it and the Respondent was escorted from the courtroom by the supervising Sergeant. This matter happened 30 days after the suspension of the Respondent’s license.

15. Investigator Houghton was called to testify on January 24, 2020. Investigator Houghton received verification from the Virginia Supreme Court that the Respondent was listed as legal counsel in 52 cases pending before Virginia Courts as of November 6, 2019. Investigator Houghton noted that not all Virginia courts use the online court case system so there may be more cases for which the Respondent was listed as counsel. The City of Alexandria and Fairfax County Circuit Courts do not use the online case system.²⁶

16. Investigator Houghton began to investigate reports that the Respondent was continuing to represent clients in court proceedings although he had been informed that his license had been suspended. Investigator Houghton was in court on November 20, 2019 and witnessed Mr. Marquez inform the Court that the Respondent had only informed him that

²⁴VSB Exhibit 10.

²⁵VSB Exhibits 11 & 12.

²⁶VSB Exhibit 14.

day that his license had been suspended and that Mr. Marquez needed a continuance because he was unprepared to proceed that day.

17. Sandra Heinzman, Assistant Clerk of the VSB Disciplinary System, provided a sworn statement that the Respondent had not furnished proof of compliance with Paragraph 13-29 of the *Rules of the Supreme Court of Virginia*, nor had the Respondent certified that he does not have clients.²⁷

At the conclusion of the Bar's case, the Respondent presented evidence on his own behalf. The Respondent provided a convoluted explanation of his position on the matters before the Panel. He testified that Judge Bernhard's order was "void" and, therefore, "all born of the order" was void. The Respondent stated that if Judge Bernhard's order was void, then the Bar did not have jurisdiction to investigate the matter. If there were no jurisdiction for the Bar to investigate, then any subpoena for documents or any order suspending his license for failure to comply was also void.

The Respondent admitted that he was overwhelmed by his caseload as well as Judge Bernhard's orders and did not initially respond to the Bar's request to respond to the Complaints filed against him. The Respondent did not differentiate between his challenges to Judge Bernhard's order and his professional obligation to comply with the VSB disciplinary process. The Respondent testified that he perceived his defiance as a form of legal activism on behalf of attorneys who fight for the rights of their clients.

The Respondent justified his defiance of the subpoena *duces tecum* and the November 6, 2019 order by stating that "if there is an infection to justice then you have to cut it off sometimes - its messy then cauterize it." He further stated that "my compliance is my noncompliance." The Respondent stated that the "Board were nice people but I have to practice law as I see fit." The Respondent noted multiple times during the hearing that he was practicing law in an "open" manner and was not hiding.

²⁷VSB Exhibit 17.

The Respondent appeared confused that there was a hearing before the Board on November 6, 2019, and stated that he did not attend the November 6, 2019 hearing before the Board to dispute the imposition of an interim suspension of his bar license and to address his reasons for failing to comply with the Bar's subpoena duces tecum.²⁸ The Respondent admitted that he had notice of the November 6, 2019 hearing [order],²⁹ but offered no explanation or excuse for his failure to attend other than to state he was disorganized. The Respondent testified that he had a lot of clients and could not afford, nor did he have sufficient staff, to comply with the November 6, 2019 order regarding notifications. The Respondent stated that he did try orally to notify some courts and clients regarding his suspension. He failed to produce copies of the suspension notifications which he testified his staff hand delivered to some courts. The Respondent stated that in other cases, he had a moral duty to continue to represent some clients and could not discontinue such representation.

The Respondent testified that he provides litigation services to many clients who might not otherwise be able to hire an attorney. Many of his clients are immigrants or citizens who do not speak English well or understand the American justice systems. Two of the Respondent's witnesses who testified that the Respondent told them about his suspension appeared to struggle with comprehending questions asked of them during the hearing, and it was unclear to the Board whether the witnesses understood to what they were testifying.³⁰

The Respondent testified that he had more pending cases than the fifty plus cases identified by Investigator Houghton because he also had matters pending in the Virginia

²⁸ In fact, the Board, without a hearing, entered its Interim Suspension Order on November 6, 2019 for the Respondent's failure to comply with the Subpoena *duces tecum*. See VSB Exhibit 2.

²⁹ As stated in Footnote 28, there was no hearing.

³⁰ One of the witnesses, Sara Patricia Chapilliquen, was the client represented by the Respondent in the divorce matter that Judge Bernhard issued opinions on, and she testified that the Respondent continues to represent her interests in the divorce case.

Worker's Compensation Commission and the federal courts. The Respondent further testified that he did not have access to all of his clients' addresses because many of his clients were immigrants who often changed addresses and telephone numbers. It appeared to the Board that this information was provided to explain why the Respondent continued to handle matters for his clients after his license was suspended and why it was his intent to continue to provide legal services.

At the conclusion of the evidence, the Board recessed to deliberate; and, after considering the evidence presented, the witnesses testimony, the argument of Senior Assistant Bar Counsel and the Respondent, the Board reconvened and announced its finding that the Respondent failed to prove by clear and convincing evidence that he complied with the Board's order of November 6, 2019 in that he failed to comply with Part Six, §VI, ¶13-29 of the *Rules of the Supreme Court of Virginia*.

III. SANCTIONS PHASE

After the Board announced its finding that the Respondent had not established by clear and convincing evidence that he had complied with the Board's November 6, 2019 order in that he had violated Part Six, §IV, ¶13-29 of the *Rules of the Supreme Court of Virginia*, the Board received additional evidence regarding aggravating and mitigating factors applicable to the appropriate sanction.

The Board received evidence demonstrating that the Respondent had a pattern of noncompliance with court procedures and a disregard for court orders and this Board's order. The Respondent did not comply with multiple requests for information regarding complaints and failed to comply with the Bar's subpoena *duces tecum*. The Respondent, on at least six occasions after the Board's November 6, 2019 order, attempted to practice law in many courts,

and in multiple incidents failed to inform clients, opposing counsel and the courts of his suspension. The Respondent stated that he did not accept the Bar's jurisdiction to investigate the complaints and that he had, and would continue to, openly practice law his way. The Respondent disparaged several judges and opposing counsel for filing complaints and displayed an open hostility toward the disciplinary proceedings. At no point did the Respondent acknowledge his wrongdoing other than to state that he had no excuse for not attending the November 6, 2019 hearing.³¹

The Board finds the fact that the Respondent represented particularly vulnerable clients who had limited English speaking skills and limited understanding of the American judicial systems to be a further aggravating factor. The Respondent's two witnesses demonstrated this point to the Board. The Respondent also testified that he had many clients who were disabled, who had immediate business needs that would be adversely affected by lack of representation, or who had immigration matters pending. The Respondent's clients have been, and will continue to be, prejudiced in their legal matters based on his failure to notify them of his suspension and to make arrangements for their cases.

Regarding mitigating factors in this matter, the Board found that the Respondent had no prior disciplinary action;³² and, in fact, this case is not a misconduct case but arises solely from his failure to comply with the Interim Suspension Order, for non-compliance with Part Six, § IV, ¶ 13-29. The Board also noted that the Respondent had only been licensed to practice in Virginia since 2017. Additionally, the Respondent admitted the facts of this matter, met with the Bar's investigator, and willingly testified before the Board. The Respondent mentioned financial

³¹ As stated in Footnote 28, there was no hearing.

³²VSB Exhibit 20.

problems that affected his business as well as bankruptcy and a divorce; however, little clarification was provided.

IV. DISPOSITION

At the conclusion of the evidence in the sanctions phase of this proceeding and argument by Senior Assistant Bar Counsel and the Respondent, the Respondent asked to address the Board and was given the opportunity to do so. He informed the Board that he would appeal the finding of the Board; that he did not want the Board to take it as a sign of disrespect; that the Board were all nice people, but he would do what he had to do. He stated that “based on the evidence presented, you had no choice but to do what you did.”

The Board then retired to deliberate. After due deliberation and review of the evidence and testimony presented, and the argument of Senior Assistant Bar Counsel and the Respondent, the Board reconvened and stated its finding that the Board imposed a three-year suspension of the Respondent’s license to practice law in the Commonwealth of Virginia, effective January 24, 2020.

It is further ORDERED that the 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 this 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 January 24, 2020 and make such arrangements as are required herein within 45 days of the effective date of this suspension. The Respondent shall also furnish proof to the VSB

within 60 days of the effective date of this 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 24, 2020, he shall submit an affidavit to that effect to the Clerk at the VSB within 60 days of the effective date of this suspension. All issues concerning the adequacy of the notice and arrangements required by ¶13-29 shall be determined by the Board, which may impose an additional sanction of Revocation or 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 shall assess all costs against the Respondent.

It is further ORDERED that the Clerk shall forward an attested copy of this Order to the Respondent, Randall Sousa, Esq., The Law Offices of Randal Sousa, P.C., 3007 Williams Drive, Fairfax, VA 22031 by certified mail, return receipt requested; and by hand delivery to Elizabeth Shoenfeld, Esq., Senior Assistant Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

This Order is final.

ENTERED: February 25, 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Sandra L. Havrilak, Chair