

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF DAVID BENJAMIN WEINBERG

**VSB DOCKET NOS.: 12-042-091044
 12-042-091092**

MEMORANDUM ORDER OF REVOCATION

THIS MATTER came on to be heard on March 22, 2013, before a panel of the Disciplinary Board consisting of Tyler E. Williams, III, 2nd Vice Chair, William H. Atwill, Jr., Whitney G. Saunders, Samuel R. Walker, and Anderson Wade Douthat, IV, Lay Member. The Virginia State Bar was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. The respondent, David Benjamin Weinberg, failed to appear in person or by Counsel. Valarie L. S. May, Registered Professional Reporter, Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227 (804/730-2612), after being duly sworn, reported the hearing.

The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent's name three times in the adjacent hall. The Respondent did not answer or appear. The Chair then 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.

The matter came before the Board on the District Sub-Committee Determination for Certification by the Fourth District Committee, Section Two. At the beginning of the hearing, Bar Counsel withdrew the violations of Rule 3.3(a)1 - Candor Toward the Tribunal, and Rule 1.16(d) - Declining or Terminating Representation, in VSB Docket No. 12-042-091092 (the Redfern and Bras case), which had been certified by the Fourth District Committee, Section Two.

In the hearing, counsel for the Bar presented testimony from the Bar's investigator, William H. Sterling, III, Carolyn Redfern, and Linda Wilkins.

I. FINDINGS OF FACT

VSB Exhibits 1-46 were admitted without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

In VSB Docket No. 12-042-091044, involving complainant, Linda S. Wilkins, after due deliberations of the evidence and argument presented, the Board made the following finds of fact on the basis of clear and convincing evidence:

1. At all times relevant, Respondent David Benjamin Weinberg was licensed to practice law in the Commonwealth of Virginia.
2. Respondent was admitted to the practice of law on May 8, 2003.
3. At all times relevant, Respondent was not in good standing with the Virginia State Bar.
4. On March 16, 2011, the Virginia State Bar administratively suspended Respondent's license to practice law for failure to be in compliance with his continuing legal education requirements.
5. On October 7, 2011, the Virginia State Bar administratively suspended Respondent's license to practice law for failure to pay dues, meet his lawyer responsibility requirements and his failure to pay client protection fund fees.
6. On April 16, 2012, Respondent was administratively suspended for his failure to comply with a subpoena *duces tecum* related to this case, which the Virginia State Bar issued on March 9, 2012.
7. On April 20, 2012, The Virginia State Bar administratively suspended the Respondent's license to practice law for failure to pay assessed costs.
8. During the time in which his license to practice law was administratively suspended, Respondent continued the practice of law despite being unauthorized to do so.
9. Ms. Linda S. Wilkins hired Respondent on November 11, 2011, despite his being administratively suspended, to represent her interests in a civil suit that had been filed against her in the General District Court of Prince William County, Virginia.

10. At no time did Respondent advise Ms. Wilkins that he was not authorized to practice law.
11. Ms. Wilkins paid Respondent \$2,000.00 for the representation.
12. Ms. Wilkins identified two court dates of November 17, 2011 and January 26, 2012.
13. Respondent was unprepared for either hearing and failed to conduct any meaningful or competent examinations of any witness that was called.
14. The Court found against Ms. Wilkins and entered judgment against her in the amount of \$14,000.00.
15. Respondent emailed the decision to Ms. Wilkins and advised her she had ten days to appeal the ruling.
16. When Respondent sent the email to Ms. Wilkins, nine of the ten days to note the appeal had already passed.
17. Ms. Wilkins filed a complaint with the Virginia State Bar on March 2, 2012.
18. The Virginia State Bar forwarded the complaint to Respondent and demanded an answer to the Complaint within twenty one days.
19. Respondent failed to answer the Complaint.
20. The complaint was referred the Virginia State Bar's investigator, William Sterling.
21. Mr. Sterling verified Respondent's residential address as 6264 Rose Hill Court, Apt. 2B, Alexandria, VA 22310.
22. On March 6, 2011, Mr. Sterling knocked at the residence but there was no answer.
23. Mr. Sterling left his business card and a hand written letter requesting that Respondent contact Mr. Sterling immediately.
24. On March 9, 2012, Mr. Sterling called at 9:45 a.m. and left a message on the answering system that identified as David Weinberg indicating that Mr. Weinberg needed to contact him as soon as possible.
25. On March 9, 2012, Mr. Sterling sent an email at 10:08 a.m. requesting that Respondent contact him to be interviewed as part of the investigation.
26. On March 13, 2012, Mr. Sterling sent an email at 9:36 a.m. requesting that Respondent contact him to be interviewed as part of the investigation.
27. As part of the March 13, 2012 email, Mr. Sterling advised Respondent that his failure to contact him could lead to a separate violation of Rule 8.1(c) of the Virginia Rules of Professional Conduct.

28. On March 13, 2012 at 10:00, Mr. Sterling left another message on Respondent's voice mail.
29. On March 28, 2012, Mr. Sterling verified that both vehicles that were registered to Respondent were in the parking lot at the apartment complex at 6264 Rose Hill Court, Apt. 2B, Alexandria, VA 22310.
30. Mr. Sterling knocked on the door but there was no answer.
31. On March 28, 2012, Mr. Sterling left another voice mail message on Respondent's voice mail stating it was imperative he contact the Bar.
32. Despite the multiple efforts to reach out and contact him, Respondent has refused to cooperate in any way with the Bar's investigation into this matter.
33. By secreting himself to avoid the Bar's investigator, Respondent has attempted to obstruct the Bar's investigation.
34. By refusing to respond to the Bar's subpoena concerning his trust account records, Respondent has obstructed the course of this investigation.
35. As part of his investigation, Mr. Sterling searched the Virginia Courts System Inquiry and confirmed that there were at least twenty instances where Respondent was identified as counsel of record in twenty cases in courts throughout Northern Virginia while his license was administratively suspended.

In VSB Docket No. 12-042-091092, involving complainants, Carolyn Redfern and Mario Bras, after due deliberations of the evidence and argument presented, the Board made the following findings of fact on the basis of clear and convincing evidence:

36. At all times relevant, Respondent David Benjamin Weinberg was licensed to practice law in the Commonwealth of Virginia.
37. Respondent was admitted to the practice of law on May 8, 2003.
38. At all times relevant, Respondent was not in good standing with the Virginia State Bar.
39. On March 16, 2011, the Virginia State Bar administratively suspended Respondent's license to practice law for failure to be in compliance with his continuing legal education requirements.
40. On October 7, 2011, the Virginia State Bar administratively suspended Respondent's license to practice law for failure to pay dues, meet his lawyer responsibility requirements and his failure to pay client protection fund fees.

41. On April 16, 2012, Respondent was administratively suspended for his failure to comply with a subpoena *duces tecum* related to this case, which the Virginia State Bar issued on March 9, 2012.
42. On April 20, 2012, The Virginia State Bar administratively suspended the Respondent's license to practice law for failure to pay assessed costs.
43. During the time in which his license to practice law was administratively suspended, Respondent continued the practice of law despite being unauthorized to do so.
44. Carolyn Redfern, along with her husband and Mario Bras, retained Respondent to represent their interests in various legal matters.
45. On August 16, 2011, they signed a retainer agreement with Respondent and paid him \$2,500.00.
46. Ms. Redfern retained Respondent to represent them in a boundary dispute, a garnishment action and to prepare wills and estate documents for them.
47. Respondent made one phone call to the bank with respect to the garnishment action.
48. As a result of that phone call, she received some but not all of the money she was due and owing.
49. With respect to the boundary dispute, Ms. Redfern provides Respondent with numerous documents he asked her to procure but he did nothing with him.
50. Respondent has done nothing with respect to the drafting of the wills and trusts that Ms. Redfern and Mr. Bras requested.
51. Ms. Redfern made numerous phone calls from her phone to Respondent inquiring about the status but he failed to answer his phone.
52. The one time that Respondent did answer a phone call from Ms. Redfern was from a telephone number that was not hers.
53. During the phone call from the undisclosed number, Ms. Redfern demanded a refund of her retainer.
54. Ms. Redfern has heard nothing from Respondent since that call and has not received a refund.
55. Ms. Redfern and Mr. Bras filed complaints with the Virginia State Bar on February 27, 2012.
56. The Virginia State Bar forwarded the complaint to Respondent and demanded an answer to the Complaint within twenty one days.
57. Respondent failed to answer the Complaint.

58. On March 9, the Virginia State Bar issued the Respondent a subpoena *duces tecum* to produce documents in connection with his trust accounts.
59. Respondent failed to respond to the Bar's subpoena and was administratively suspended.
60. The complaint was referred the Virginia State Bar's investigator, William Sterling.
61. Mr. Sterling verified Respondent's residential address as 6264 Rose Hill Court, Apt. 2B, Alexandria, VA 22310.
62. On March 6, 2011, Mr. Sterling knocked at the residence but there was no answer.
63. Mr. Sterling left his business card and a hand written letter requesting that Respondent contact Mr. Sterling immediately.
64. On March 9, 2012, Mr. Sterling called at 9:45 a.m. and left a message on the answering system that identified as David Weinberg indicating that Mr. Weinberg needed to contact him as soon as possible.
65. On March 9, 2012, Mr. Sterling sent an email at 10:08 a.m. requesting that Respondent contact him to be interviewed as part of the investigation.
66. On March 13, 2012, Mr. Sterling sent an email at 9:36 a.m. requesting that Respondent contact him to be interviewed as part of the investigation.
67. As part of the March 13, 2012 email, Mr. Sterling advised Respondent that his failure to contact him could lead to a separate violation of Rule 8.1(c) of the Virginia Rules of Professional Conduct.
68. On March 13, 2012 at 10:00, Mr. Sterling left another message on Respondent's voice mail.
69. On March 28, 2012, Mr. Sterling verified that both vehicles that were registered to Respondent were in the parking lot at the apartment complex at 6264 Rose Hill Court, Apt. 2B, Alexandria, VA 22310.
70. Mr. Sterling knocked on the door but there was no answer.
71. On March 28, 2012, Mr. Sterling left another voice mail message on Respondent's voice mail stating it was imperative he contact the Bar.
72. Despite the multiple efforts to reach out and contact him, Respondent has refused to cooperate in any way with the Bar's investigation into this matter.
73. By secreting himself to avoid the Bar's investigator, Respondent has attempted to obstruct the Bar's investigation.

74. By refusing to respond to the Bar's subpoena concerning his trust account records, Respondent has obstructed the course of this investigation.

75. As part of his investigation, Mr. Sterling searched the Virginia Courts System Inquiry and confirmed that there were at least twenty instances where Respondent was identified as counsel of record in twenty cases in courts throughout Northern Virginia while his license was administratively suspended.

II. MISCONDUCT

In Case No. 12-042-091044 (the Wilkins case)

After due deliberations, the Board found, on the basis of clear and convincing evidence, that the Respondent, David Benjamin Weinberg, has violated the provisions of the following Rules of Professional Conduct, as charged by the Bar:

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 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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 5.5 Unauthorized Practice of Law; Multijurisdictional

- (c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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:

- (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.

The Board found, on the basis of clear and convincing evidence, that the Respondent, David Benjamin Weinberg, has not violated the provisions of the following Rules of Professional Conduct, as charged by the Bar:

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 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:

- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or 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.

In VSB Docket No. 12-042-091092, (the Redfern and Bras case)

After due deliberations, the Board found, on the basis of clear and convincing evidence, that the Respondent, David Benjamin Weinberg, has violated the provisions of the following Rules of Professional Conduct, as charged by the Bar:

RULE 1.3 Diligence

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

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.

RULE 5.5 Unauthorized Practice of Law; Multijurisdictional

- (c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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- (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[.]

The Board found, on the basis of clear and convincing evidence, that the Respondent, David Benjamin Weinberg, has not violated the provisions of the following Rules of Professional Conduct, as charged by the Bar:

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 1.4 Communication

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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- (d) obstruct a lawful investigation by an admissions or disciplinary authority.

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It is professional misconduct for a lawyer to:

- (b) commit a criminal or 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.

III. DISPOSITION

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including the Respondent's prior disciplinary record. After due deliberation, the Board announced the appropriate sanction as REVOCATION.

Accordingly, by this Memorandum Order and in accordance with the Summary Order issued on March 22, 2013, it is ORDERED that the license of the Respondent, David Benjamin Weinberg, is REVOKED effective March 22, 2013.

It is further ORDERED that, as directed in the Board's March 22, 2013, 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 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. 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 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

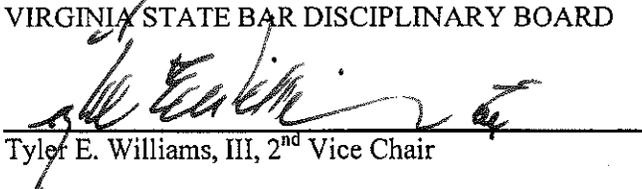
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of March 22, 2013, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 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 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 Law Offices of David B. Weinberg, PLLC, P. O. Box 4134, Alexandria, VA 22303. Box , by certified mail and by regular mail to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 15th day of April, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD


Tyler E. Williams, III, 2nd Vice Chair