

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
TODD JAY FRENCH, ESQUIRE**

**VS B Docket No.s: 05-033-2615
05-033-2803
05-033-3362
05-033-4079
05-033-4131
05-033-4132**

ORDER OF REVOCATION

THESE MATTERS came on to be heard on September 23, 2005, before a panel of the Disciplinary Board consisting of James L. Banks, Jr., 2nd Vice Chair, William E. Glover, Robert E. Eicher, V. Max Beard, Lay Member, and William H. Monroe, Jr. The Virginia State Bar was represented by Barbara A. Williams, Bar Counsel. At the direction of the Chair, the case was called three times with a request that all parties report to the hearing room. The Respondent, Todd Jay French, did not respond nor did he attend the hearing. No counsel responded or appeared on behalf of the Respondent. 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. Ms. Tracy J. Stroh, a Registered Professional Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

These matters came before the Board on the District Committee Determinations for Certification by the Third District Committee, Section III. VSB Exhibits 1 thru 51 were placed into evidence by the Bar and were admitted without objection. VSB Exhibit 2(a) was introduced

and admitted into evidence without objection. Exhibit 2(a) is a copy of correspondence dated April 18, 2005, sent by the VSB to Respondent as his last address of record in Richmond, Virginia. This correspondence provided Respondent with notice of his administrative suspension as well as a copy of the suspension Order. VSB Exhibit 3(a) was introduced and admitted into evidence without objection showing a United States Postal Service confirmation of delivery of the notice letter (VSB Exhibit 2(a)) to the Respondent in Muskegon, MI, on August 30, 2005 at 2:59 pm. VSB Exhibit 52 was also introduced and admitted into evidence without objection. Exhibit 52 confirmed that the Notice of Hearing dated August 25, 2005, was received and signed for by the respondent, Todd Jay French on August 30, 2005. All required notices were properly sent by the Clerk of the Disciplinary System.

Upon motion by the Bar, Bar Counsel asked that case number 05-033-4131 be removed from the Board's consideration. The Motion was granted and the Bar proceeded to present evidence regarding all other properly noticed matters as stated *supra*. Complainants in attendance for the hearing included Mr. Charles Baskerville, Ms. Wilma Quesenbery, Mr. Tony George and attorney, Jose ("Jay") A.G. Martelino, Esquire.

After the admission of the aforesaid VSB Exhibits into evidence, Bar Counsel called VSB Investigator, Cam Moffatt, to testify as a witness for the VSB. Ms. Moffatt has been an investigator with the VSB for approximately eleven years. Ms. Moffatt testified that the Respondent had not been cooperative with the Bar's investigation of these complaints. The Respondent had never filed any written answer or explanation to the complaints made against him. Furthermore, the Respondent hindered the Bar's investigation by failing to respond to all subpoenas from the Bar seeking records and trust account information.

Despite numerous telephone calls and emails sent to the Respondent requesting an opportunity to meet with him, the Respondent ignored all but one such request. On or about June 16, 2005 the Respondent was to meet with Ms. Moffatt at 10:00am. The Respondent appeared at 2:00pm instead and failed to bring any of the files and documents requested by the Bar.

At the June 16, 2005 meeting, the Respondent admitted to Ms. Moffatt that he failed to notify the Court, counsel or clients of his interim suspension as required by the Rules of the Supreme Court of Virginia and as stated in the Interim Suspension Order of April 18, 2005. Respondent said he thought his law partner would handle these matters. Respondent also failed to advise the Bar of his change of address to Muskegon, Michigan.

It was agreed that the Respondent and Ms. Moffatt would meet the next day, June 17, 2005, to further discuss the complaints at issue and to provide the Respondent with the opportunity to comply with subpoenas issued by the Bar seeking certain files and documentation. The Respondent was additionally asked to provide the Bar with signed releases authorizing the Bar to speak with health care representatives who could confirm Respondent's alleged diagnosis of depression and anxiety. The Respondent refused to provide the Bar with any such authorizations and did not appear for the June 17, 2005 meeting. All efforts to reschedule the meeting were unsuccessful.

The Bar did eventually obtain documents from the Respondent's law partner. They included correspondence from the Bar Association of Maine (VSB Exhibit 53, admitted without objection) advising the Respondent of an incomplete application to sit for the Maine Bar examination. They also included an alleged Final Divorce Decree from the Henrico Circuit Court (VSB Exhibit 54, admitted without objection). This Decree, on its face, indicated a final

divorce from the Respondent's spouse. Further investigation revealed that no such Decree had been entered by the Henrico Circuit Court.

Ms. Moffatt testified that he found the Respondent to be rational and coherent during his meeting of June 16, 2005, even though the Respondent represented that he was on medication at that time.

FINDINGS OF FACT RELEVANT TO ALL CASES

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

I. General Factual Allegations

1. Mr. French was admitted to the practice of law in the Commonwealth of Virginia on October 11, 2002.
2. He was active and in good standing to practice law in the Commonwealth of Virginia until April 18, 2005, when the Disciplinary Board administratively suspended him for failing to comply with the subpoena duces tecum served in connection with two of the above-referenced matters, VSB Docket Nos. 05-033-2615 and 05-033-2803.
3. Mr. French's current address of record with the Virginia State Bar is 4209 Fitzhugh Avenue, Richmond, Virginia 23230, but based upon information and belief, he moved to Michigan in July, 2005 and did not change his address of record.
4. Mr. French has neglected and failed to communicate or respond to the Bar's lawful demands for information in five matters, VSB Docket Nos. 05-033-2615, 05-033-2803, 05-033-3362 and 05-033-4079, and 05-033-4132, by disregarding the order the Disciplinary Board imposed, effective April 18, 2005, administratively suspending him from the practice of law in Virginia

II. VSB Docket Nos. 05-033-2615, 05-033-2803, 05-033-3362 and 05-033-4079

A. Factual Allegations

VSB Docket No. 033-2615 – Complainant: Charles L. Baskerville

5. On or about December 13, 2004, Charles L. Baskerville complained to the bar that he had paid Mr. French a \$1,000.00 retainer on August 25, 2004, to represent Mr. Baskerville in a divorce action and that Mr. French subsequently failed to communicate with him and respond to his inquiries about the status of the matter.
6. Mr. French did not respond to the bar's efforts to deal with the complaint proactively, failed to submit a written response to the bar complaint and failed to respond to the subpoena duces tecum requiring him to produce the client file and trust account records.
7. Mr. French appealed a default judgment that Mr. Baskerville secured against him in the Henrico County General District Court to recover the \$1,000.00 retainer; the Circuit Court dismissed the appeal and entered another default judgment against Mr. French after he failed to appear in Circuit Court on the trial date.

VSB Docket No. 05-033-2803 – Complainant: Wilma Jean Quesenberry

8. On or about January 27, 2005, Wilma Jean Quesenberry complained to the bar that Mr. French had failed to file a Chapter 7 petition on her behalf after she paid him \$795.00 to do so.
9. Ms. Quesenberry conferred with Mr. French in April 2003, while he was associated with the Affiliated Attorneys law firm; Mr. French advised her that he would file a Chapter 7 bankruptcy petition for her after she paid him \$795.00.
10. Ms. Quesenberry made the last of a series of installment payments totaling \$795.00 in February 2004.
11. After receiving a call from a collection agency in November 2004, Ms. Quesenberry contacted Affiliated Attorneys and learned that Mr. French had left the firm to go into practice with Keith Pagano.
12. Ms. Quesenberry contacted Mr. French, who assured her that he would take care of her bankruptcy matter.
13. Ms. Quesenberry was ill with cancer and did not follow up with Mr. French again until she was served with a warrant in debt the Virginia Credit Union filed against her in the City of Richmond General District Court.

14. On January 27, 2005, after unsuccessfully attempting to reach Mr. French, Ms. Quesenberry appeared in court *pro se* to defend the warrant in debt.
15. The court entered a judgment against her after a public defender ascertained that Mr. French had never filed a bankruptcy petition on Ms. Quesenberry's behalf.
16. In March 2005, after the judgment had been entered, Ms. Quesenberry received a letter from Mr. French stating that he had been unable to reach her by telephone to advise that she needed to come to his office and sign the bankruptcy petition.
17. During the same period, Ms. Quesenberry's creditors had no difficulty reaching her.
18. Mr. French failed to submit a written response to the bar complaint and did not respond to the subpoena duces tecum requiring him to produce the client file and trust account records.

VS B Docket No. 05-033-3362 – Complainant: Angela Bailey-Ghee

19. On or about March 15, 2005, Angela Bailey-Ghee complained to the bar that she paid Mr. French \$525.00 to represent her in a civil action for damages her automobile sustained in an accident.
20. Mr. French lost the case in the Henrico County General District Court because he was not well prepared.
21. Ms. Bailey-Ghee appealed the case *pro se* to Circuit Court after Mr. French failed to do so.
22. The Circuit Court recessed on the day of trial after Mr. French, who was counsel of record, failed to appear to represent Ms. Bailey-Ghee.
23. The bailiff located Mr. French in the courthouse and escorted him to the courtroom.
24. Mr. French was not prepared to try Ms. Bailey-Ghee's case and moved for a continuance.
25. The court denied the motion, the case was tried and there was a defense verdict.
26. Mr. French promised to pay Ms. Bailey-Ghee \$2,000.00 in damages she sought to recover for damages to her automobile but has not done so.
27. Mr. French did not submit a written response to the bar complaint and failed to respond to the subpoena duces tecum requiring him to produce the client file and trust account records.

VS B Docket No. 05-033-4079 – Complainant: Tony George

- 28. On or about April 5, 2005, Tony George complained to the bar that on March 23, 2005, he had paid Mr. French \$240.00 to represent him in a divorce proceeding but that Mr. French had not responded to Mr. George’s inquiries about whether his wife would agree to an uncontested divorce.
- 29. After Mr. George filed the bar complaint, Mr. Pagano refunded the fee Mr. George had paid Mr. French.
- 30. Mr. French failed to submit a written response to the bar complaint and did not respond to the subpoena duces tecum requiring him to produce the client file and trust account records.

B. Charges of Misconduct

VS B Docket Nos. 05-033-2615, 05-033-2803, 05-033-3362 and 05-033-4079

The factual allegations set forth in paragraphs 1-30, *supra*, give rise to the following

Charges of Misconduct:

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 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, 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

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III. VSB Docket No. 05-033-4132
Complainant: Jose A. G. Martelino

A. Factual Allegations

31. Mr. French was administratively suspended on April 18, 2005, after he failed to comply with the subpoena duces tecum the Bar issued in VSB Docket Nos. 05-033-2615 and 05-033-2803 and failed to request a hearing on the Notice of Interim Suspension the bar issued.
32. The Bar duly notified Mr. French of the suspension by sending a copy of the Order of Suspension, by certified mail, to Mr. French's last address of record with the bar.
33. On May 11, 2005, attorney, Jose A. G. Martelino, reported that Mr. Pagano had contacted him on May 10, 2005, and asked Mr. Martelino to represent Joseph McFadden, who had retained Mr. French to represent him at a parole hearing the next day.
34. Mr. Martelino subsequently learned that the court date was actually for a felony sentencing and that Mr. French had not advised Mr. McFadden or the court that he could not appear and represent the client.
35. Because Mr. Martelino was not Mr. McFadden's counsel of record, he could not review the pre-sentence report and requested a continuance, which the court granted.
36. Mr. Martelino's report gave rise to VSB Docket No. 05-033-4132.
37. Mr. French knew he was administratively suspended and could not represent Mr. McFadden but contends he thought that Mr. Pagano or another attorney with his former firm would handle the sentencing.
38. Mr. French did not notify Mr. McFadden, the Commonwealth Attorney's Office or the court that his license had been suspended as required by the Suspension Order issued by the Disciplinary Board and the Part Six, Section IV, Paragraph 13 of the Rules of Court.

B. Charges of Misconduct

The factual allegations set forth in paragraphs 1-4, and 31-38, give rise to the following Charges of Misconduct:

RULE 3.4 Fairness to Opposing Party And Counsel

A lawyer shall not:

* * *

- (d) Knowingly disobey . . . a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

* * * *

DISPOSITION

Upon consideration of the foregoing, following deliberation in closed session, the Board reconvened in open session and the acting Chair announced the Board's determination that complaint number 05-033-4131 was dismissed, the Bar having chosen not to proceed on the matter. The acting Chair further announced the Board's determination that the VSB had proven by clear and convincing evidence the Respondent's violation of Rules 1.3, 1.4, 8.1 and 3.4 of the Virginia Rules of Professional Conduct, as charged in the Certifications.

SANCTION

The Board called for evidence in aggravation or in mitigation of the misconduct found. Bar Counsel presented Respondent's prior disciplinary record (VSB Exhibit 55, admitted without objection), consisting of the Interim Suspension Order of April 18, 2005.

Following deliberation in closed session, the Board reconvened in open session and the acting Chair announced the Board's decision that the Respondent's license to practice law in the Commonwealth of Virginia should be REVOKED, effective immediately.

Accordingly, it is ORDERED that the license of the Respondent to practice law in the Commonwealth of Virginia be and hereby is REVOKED, effective September 23, 2005.

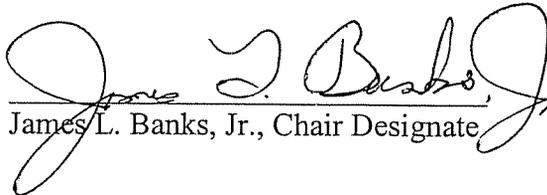
It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth 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 clients. 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 revocation, 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 (M) 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.B.8.c. 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 of Revocation to Respondent at 621 Waterstone Drive, Muskegon, MI, 49441 and to his address of record with the Virginia State Bar, being 4209 Fitzhugh Avenue, Richmond, Virginia, 23230, each by certified mail, return receipt requested, and by regular mail to Barbara A. Williams, Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED the 7th day of December, 2005
VIRGINIA STATE BAR DISCIPLINARY BOARD


James L. Banks, Jr., Chair Designate