

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 30th *day of* April, 2004.

Raymond William Konan, Appellant,

against Record No. 032298
VSB Docket Nos. 00-052-3465
and 01-052-0361

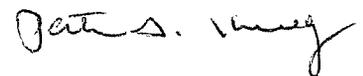
Virginia State Bar, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set
aside the judgment rendered herein on the 13th day of February, 2004
and grant a rehearing thereof, the prayer of the said petition is
denied.

A Copy,

Teste:



Clerk

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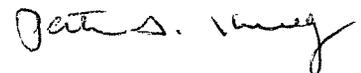
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VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
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Raymond William Konan,

Appellant,

against

Record No. 032298
VSB Docket Nos. 00-052-3465
and 01-052-0361

Virginia State Bar,

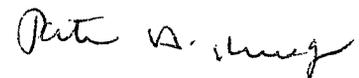
Appellee.

Upon an appeal of right
from an order entered by the
Virginia State Bar Disciplinary
Board.

On May 18, 2004 came the appellant, in proper person, and
filed a motion to defer issuance of the mandate in this case.
Upon consideration whereof, the Court denies the motion.

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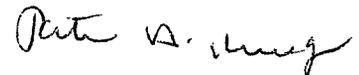
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Virginia State Bar Disciplinary
Board.

Upon consideration of the record, briefs, and argument by the appellant, in proper person, and by counsel for the appellee, the Court is of opinion there is no error in the order of the Virginia State Bar Disciplinary Board ("the Board") revoking Raymond W. Konan's ("Konan") license to practice law in this Commonwealth.

The record shows that the Board entered its written opinion revoking Konan's license to practice law on July 10, 2003, with the revocation effective as of June 27, 2003, the date of its summary order. Konan timely mailed his notice of appeal containing assignments of error, within the thirty day time period required by the Rules of Court, Pt. 6, § IV, Para. 13(J)(2). However, in his opening brief to this Court, Konan asserted new assignments of error 1, 2, 4, and 7 which were not stated with reasonable certainty in the notice of appeal. Accordingly, these new assignments of error are not timely and cannot be considered on appeal. Rules of Court, Pt. 6, § IV, Para. 13(H)(2) ("This action

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within the time prescribed is jurisdictional."); see e.g., Delk v. Virginia State Bar, 233 Va. 187, 190, 355 S.E.2d 558, 560 (1987). The Court will address appellant's remaining assignments of error.

In reviewing the Board's decision, the Court conducts an independent examination of the entire record. El-Amin v. Virginia State Bar, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999); Myers v. Virginia State Bar, 226 Va. 630, 632, 312 S.E.2d 286, 287 (1984). The Court considers the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party in the Board proceeding. El-Amin, 257 Va. at 612, 514 S.E.2d at 165; Gunter v. Virginia State Bar, 238 Va. 617, 619, 385 S.E.2d 597, 598 (1989). The Court gives the Board's factual findings substantial weight and views them as prima facie correct. El-Amin, 257 Va. at 612, 514 S.E.2d at 165; Myers, 226 Va. at 632, 312 S.E.2d at 287.

With regard to assignment of error 3, Konan contends that the Board's findings were not supported by clear and convincing evidence. However, the record establishes that Konan violated the Disciplinary Rules and the Rules of Professional Conduct on numerous occasions by engaging in conduct designed to mislead, deceive, and defraud the trial court. Furthermore, there is clear and convincing evidence in the record that Konan violated rules concerning competency, misconduct, diligence, communication, and representing clients within the bounds of the law. There was more than sufficient credible evidence in the record to support the Board's findings.

With regard to assignment of error number 6, Konan alleges the Board failed to follow the appropriate procedures and thus its

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With regard to assignment of error number 6, Konan alleges the Board failed to follow the appropriate procedures and thus its

actions and the resulting sanction were ultra vires and beyond the scope of its authority. Specifically, Konan asserts that because Noel Sengel ("Sengel"), senior assistant bar counsel for the Virginia State Bar ("Bar") and prosecutor in the action against Konan, signed the certification of charges of misconduct from the District Committee on the chairman's behalf, the Board did not acquire jurisdiction to hear the case. Konan did not raise this issue before the Board or in his opening brief, but by a later filed Motion to Vacate Revocation. While subject matter jurisdiction can be raised for the first time on appeal, the Court finds Konan's assertion to be without merit.

Although the Rules of Court provide for the certification of charges of attorney misconduct to the Board, see Rules Pt. 6, § IV, Para. 13(G)(1)(b), the Rules do not specify the method of certification by the District Committee to the Board. Sengel submitted an affidavit to this Court stating she "drafted the certification at the Subcommittee's direction" and sent a copy to the chairman of the subcommittee for his approval and signature. Once approved, the chairman authorized Sengel to sign the certification form on his behalf, which Sengel did, noting her own initials below the signature line to indicate who had actually signed it. Konan did not make an objection to this Court's consideration of Sengel's affidavit.

Part 6, § IV, Para. 13(E)(1) of the Rules provides that "substantial compliance with the provisions hereof shall be sufficient, and no Charge of Misconduct shall be dismissed on the sole ground that any such provision has not been strictly complied with." Since the Rules provide no specific method by which

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Part 6, § IV, Para. 13(E)(1) of the Rules provides that "substantial compliance with the provisions hereof shall be sufficient, and no Charge of Misconduct shall be dismissed on the sole ground that any such provision has not been strictly complied with." Since the Rules provide no specific method by which

certification is to be made, and as the signature for certification was authorized in this case, the certification from the District Committee substantially complied with the procedures set forth in the Rules and vested the Board with jurisdiction over the matter.

In addition to his argument that the Board was without jurisdiction, Konan also avers through assignment of error 6 that the Board revoked his license without making the requisite determination that Konan's "continued practice of law constitutes an imminent danger to the public." However, such a finding is only required by the Rules when an expedited hearing is sought by Bar counsel or a District Committee chairperson. See Rules Part 6, § IV, Para. 13(I)(1)(b)(1); Part 6, § IV, Para. 13(B)(5)(a)(6). The charges against Konan were not adjudicated pursuant to the expedited hearing process and thus an "imminent threat" determination was not required.

In assignment of error 5, Konan contends that revocation of his license to practice law was an abuse of discretion by the Board and not proportional to any acts of misconduct he may have committed. The record shows that Konan had been sanctioned over \$20,000 for multiple actions taken before the trial court. In addition, Konan was held in contempt of court for failing to pay the sanctions. Based on the charges certified by the District Committee, the Board found that Konan had violated, inter alia: DR 7-102(A)(2), (3), and (5) and analogous Rule 3.1 (Representing a Client Within the Bounds of the Law); DR 1-102(A)(3) and (4) and analogous Rule 8.4 (committing deliberately wrongful act and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation reflecting adversely on the lawyer's fitness to

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practice law); and DR 6-101 and analogous Rules 1.1, 1.3 and 1.4 (competence and promptness).

When discussing Konan's violations the Board explained:

The facts discussed above are examples of the conduct engaged in by Mr. Konan. There was additional testimony and documentary evidence of similar behavior. It was the totality of the evidence, as established by the testimony and the documentary evidence, that persuaded the Board that Mr. Konan had engaged in a pattern and practice of ill founded and vexatious litigation, and that he did not consider himself bound by any duty of truthfulness. He played fast and loose with the truth in his factual representations to the court, as well as in his legal pleadings, irrespective of whether they were well based in law or fact.

When determining the appropriate sanction, the Board considered Konan's lack of remorse, his prior receipt of both public and private reprimands, and his failure to amend his behavior. The Board found that Konan "was a danger to the integrity of the legal system in Virginia." Given the Board's thorough documentation of Konan's violations of the Disciplinary Rules and the Rules of Professional Conduct as well as our independent review of the entire record, the Court finds the Board's decision to revoke Konan's license was not an abuse of discretion.

For the reasons set forth above, all of Konan's motions are denied and the order of the Disciplinary Board is affirmed. The appellant shall pay to the appellee thirty dollars damages.

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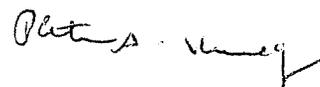
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This order shall be certified to the Virginia State Bar
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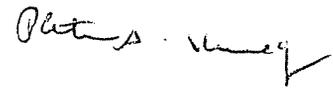


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