



VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF:)
)
DOMINICK ANTHONY PILLI)

VSB Docket No. 02-051-2053

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board for hearing pursuant to a Subcommittee Determination (Certification) issued January 8, 2004, certifying charges of misconduct against Respondent for hearing before the Board. The charges were duly noticed for hearing June 25, 2004, and subsequently continued for hearing on August 27, 2004. The matter was heard on that date by a panel of the Board, consisting of Karen A. Gould, Chair, Dr. Theodore Smith, lay member, William C. Boyce, Joseph R. Lassiter, Jr. and H. Taylor Williams, IV. Each member of the panel was requested by the Chair to state whether he was aware of any personal or financial interest which would affect or reasonably be perceived to affect his ability to be impartial in this case, all members responding in the negative. The Virginia State Bar (the "Bar") was represented by Noel D. Sengel, Senior Assistant Bar Counsel. Timothy J. Battle, Esquire, appeared on behalf of the Respondent, Dominick Anthony Pilli, who was present at the proceedings.

The Bar then moved into evidence a binder containing nineteen pre-numbered exhibits, all but one of which were admitted without objection. Respondent objected to the admission of Exhibit 17, which consisted of a letter addressed to the Bar and to the Board dated December 28, 2001, whereby Respondent transmitted to the addressees a copy of a judicial complaint which he had that day filed with the Judicial Inquiry and Review Commission, on the grounds that the complaint was privileged pursuant to Virginia Code Section 2.1-37.13. The panel having found that the privilege

was waived by the transmission of the complaint to the Bar and to the Board, the objection was overruled, and the entire binder of exhibits was admitted as Bar Exhibit 1. The Bar objected to Respondent's renewal of his motion to call a witness not listed on his pretrial exhibit list, which motion had been sustained by the Board Chair in a pre-hearing conference. In accordance with the rules of these proceedings, the panel retired to consider the motion and the ruling, whereupon the Bar had the clerk inform the panel that it was withdrawing its objection. During the proceedings, the Bar offered for admission an Affidavit signed by Molly Coleman, which was admitted without objection as Bar Exhibit 2. All references in this opinion shall be to the numbered exhibits in Bar Exhibit 1, and Bar Exhibit 2 will be identified as the Coleman Affidavit.

SUMMARY OF CASE

The events leading to this bar complaint were variously described in opening statements as a case of "making a mountain out of a mole hill" (bar counsel) and as a case of "the dog ate my homework" (counsel for Respondent). Both statements accurately describe the situation.

Respondent was issued a criminal show cause summons by Judge Michael Cassidy of the Fairfax County General District Court arising from Mr. Pilli's failure to appear in court on October 16, 2001, for trial of a hit and run accident charge in which he was defense counsel of record. Mr. Pilli was perhaps understandably operating under the assumption that he had continued the matter from the original trial date to a date other than October 16, since he had filed a motion for continuance in which he informed the court that he was not available on that date and provided January 17 as the police officer's next available date. Indeed, he informed his client by letter dated September 26, 2004, that the court date had been continued to January 17. There was a dispute as to whether Mr. Pilli's office confirmed with the court that the case had been continued to the January

17 date that he had requested. The court overlooked the continuance motion and continued the case to October 16.

The Show Cause summons against Mr. Pilli was set for trial on December 11, 2001. Learning of the issuance of the summons, Respondent attempted to rectify the situation with the court informally. Informed by court order entered October 18, 2001, that the case would be dealt with on December 11, Mr. Pilli appeared in the courthouse on that date. Finding the case on the docket in a courtroom other than Judge Cassidy's courtroom, Respondent checked in with the clerk and asked that the case be dropped down due to the long docket in that courtroom and Mr. Pilli's need to appear briefly on that same day in the Fairfax City General District Court, a common practice in Fairfax. During Mr. Pilli's absence, the case was transferred to Judge Cassidy's courtroom at his request, and he was tried in absentia, held in contempt and fined \$250.00. Shortly thereafter Respondent returned to the Fairfax County courthouse, discovered that the case had been transferred to Judge Cassidy's courtroom. Learning of the conviction, he filed a motion to rehear, which was heard the next day. At that time Judge Cassidy suspended all but \$100.00 of the fine, but the conviction stood.

By that time Mr. Pilli and Judge Cassidy were clearly at odds. In the court's order of December 11 (Bar Ex. 13), which found Mr. Pilli in contempt, Judge Cassidy referred to the original continuance motion filed by Mr. Pilli, and seemed to have no problem with the fact that the case was continued to a date that Respondent had advised the court was unavailable for him. The order went on to state that Mr. Pilli failed to make himself available for service of the contempt citation. The order stated that Mr. Pilli had exhibited a disregard for the scheduling practices of the court, failed to make himself available for service of the show cause, and failed to appear for the show cause

hearing. Following the rehearing on December 12, Judge Cassidy issued a Supplemental Order (Bar Ex. 15), in which he excused the failure to appear at the show cause hearing on December 11 and suspended \$150.00 of the previously imposed fine. Judge Cassidy testified before the Board, and stated that he was concerned about what he felt were “shifting explanations” that he was receiving from Mr. Pilli. Originally, according to Judge Cassidy, Mr. Pilli advised the court that he failed to appear because he “presumed” the case had been continued to January 17, and that he was unable to determine whether a newly employed secretary had gotten a call back on the continuance. (Bar Ex. 8). Subsequently, at the hearing on December 12, Mr. Pilli indicated that his secretary of two years had confirmed the continuance date. (The September 26 letter to the client bears the initials of mqc as typist, and the Affidavit of Mollie Coleman, the two year secretary, offered as an exhibit by the Bar and admitted into evidence, stated that the Clerk’s Office informed her that the matter had been continued to January 17. Ms. Coleman did not testify at the show cause hearing before Judge Cassidy, but did testify at the appeal of the show cause summons to circuit court.)

Immediately following the December 12 show cause rehearing before Judge Cassidy, Respondent proceeded to lambast Judge Cassidy. Respondent filed a “Reply to Supplemental Order of Judge Cassidy” (Bar Ex. 16), a pleading not described in the rules of procedure. In that pleading, filed in the clerk’s office where Judge Cassidy sits, Respondent attacked Judge Cassidy for inappropriate and inaccurate statements, failing to tell all of the facts and failing to tell the truth, skewing the facts, and exhibiting a lack of patience and tolerance. He further asserted that he “could not tolerate a Judge lying to this Court, to this Attorney, to the Judicial Review Commission and to the Virginia State Bar.” Respondent made similar comments in the complaint that he filed with JIRC that same date, referring to the judge as the “Honorable” Judge Michael Cassidy or just

“Cassidy”. The JIRC complaint was filed not only with the Commission, but also with the Bar and the Disciplinary Board.

ISSUES

Respondent was charged with the following ethical violations:

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.
 - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

RULE 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

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 as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

DECISION

At the conclusion of the Bar’s evidence, Respondent moved to strike the evidence. Following argument, the Board retired to consider the motion. Upon due deliberation, the panel determined that there was no evidence that Mr. Pilli had made a false statement of fact to a tribunal,

offered evidence which he considered to be false, or engaged in professional conduct involving dishonesty, fraud, deceit or misrepresentation. Accordingly, the Rule 3.3 and Rule 8.4(d) violations were stricken. The Bar had admitted the Coleman Affidavit into evidence, and there was no evidence to rebut Ms. Coleman's testimony in the affidavit that she had called the Fairfax County clerk's office and confirmed the continuance to January 17. The basis of the allegation that Mr. Pilli had misrepresented anything would therefore have to lie on Judge Cassidy's testimony that Mr. Pilli's explanation had shifted from his earlier statements to the court. The earlier statements are contained in a typed transcript of a voicemail message (Bar Ex. 8) that Respondent left with Judge Cassidy on October 22, six days after the hearing that he failed to attend. The statements in that voicemail do not materially conflict with the Coleman affidavit, and can be seen as an attempt by an attorney to make sense out of what should have been a very ordinary situation but which had instead spiraled out of control.

Following the conclusion of all of the evidence, counsel argued the remaining two issues. Those issues boiled down to whether the imposition of the criminal contempt order (Bar Ex. 13 and 15) and/or the failure of Mr. Pilli to accept service of the contempt summons constituted a criminal or deliberately wrongful act that reflects adversely on the lawyer's fitness as a lawyer, and whether statements made by Mr. Pilli constituted statements made with reckless disregard as to their truth or falsity concerning the integrity of Judge Cassidy.

At the outset, it should be stated that the Board did not consider any statements made by Mr. Pilli in the Complaint that he filed with JIRC. Although Exhibit 17 was admitted into evidence, it was felt that the statements therein were directed at the judicial complaint that Mr. Pilli was filing, which was otherwise privileged. Although he waived that privilege by also filing that complaint

with the Virginia State Bar and with the Virginia State Bar Disciplinary Board, he did not publicize it publicly. Also, the Board did not find the evidence to be sufficient to establish that Mr. Pilli had avoided service of the show cause summons. In fact, he had filed a motion with the court concerning the summons, which arguably subjected him to the jurisdiction of the court, and he did in fact appear in court on the return date and reported to the clerk in the court to which the case was assigned on the docket.

The conviction of criminal contempt is troubling. On appeal, the circuit court found Mr. Pilli guilty for the reasons stated in the orders entered by Judge Cassidy (Ex 13 and 15). Exhibit 13 makes explicit findings that Mr. Pilli exhibited disregard for the scheduling practices of the court and failed to make himself available for service of the summons. The conviction by the circuit court was not appealed to the court of appeals, and stands as a criminal conviction. However, Mr. Pilli was not even charged with the failure to accept service of the summons. Furthermore, it is clear from the record that Respondent followed the procedures of the court in requesting the continuance, the case was continued to a date he did not have available, and he genuinely believed that the case had been continued to a later date. Accordingly, we fail to find clear and convincing evidence that Mr. Pilli has violated Rule 8.4(c).

The Board finds by clear and convincing evidence that Respondent made statements with reckless disregard concerning Judge Cassidy's qualifications and integrity, and has accordingly violated Rule 8.2. The "Supplemental Reply" (Bar Ex. 16) that Mr. Pilli filed in the clerk's office on December 12, 2001, contains numerous statements which are inappropriate, without basis in fact, and which clearly accuse Judge Cassidy of mendacity and incompetence.

SANCTIONS

After finding Respondent guilty of having violated Rule 8.2, the panel reconvened to hear evidence concerning sanctions. A copy of Mr. Pilli's prior disciplinary record was admitted into evidence. Thereupon, the Board retired to consider the appropriate sanction. Mr. Pilli's prior disciplinary record consisted of two private reprimands and two public reprimands, including one prior case in 1998 involving a contempt citation. See *Moore v Hinkle*, 259 Va. 479, 485; 527 S.E.2d 419, 422 (2000). In addition, Mr. Pilli was held in contempt of court by Judge Mark Simmons of the Fairfax City General District Court on December 27, 2001, and was again found guilty on appeal to the Circuit Court of Fairfax County by order entered June 11, 2002. With due regard to Respondent's prior disciplinary record, the panel unanimously determined that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of ninety (90) days, with the effective date of the suspension to be October 1, 2004.

It is accordingly, ORDERED that, pursuant to Part 6, Section IV, Paragraph 13.I(5)(c)(2) of the Rules of the Supreme Court of Virginia, the license of Dominick A. Pilli to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED effective October 1, 2004.

It is further ORDERED that, as directed in the Board's August 27, 2004, Summary Order in this matter, 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 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 client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the 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 suspension, 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 the Clerk of the Disciplinary System shall send an attested and true copy of this Order to Respondent by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 10560 Main Street, Suite 308, Fairfax, Virginia 22030, and to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

The proceedings in this matter were reported by Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

The Clerk of the Disciplinary System shall assess costs pursuant to Rules of the Supreme Court, Part 6, Section IV, Paragraph 13.B.8.C.

So ordered this 20th day of September, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 

Karen A. Gould, Chair