VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 14th day of April, 2016.

Ronald Albert Robinson, Jr., Appellant,

against Record No. 151501
VSB Docket No. 13-053-093587

Virginia State Bar, Appellee.

Upon an appeal of right from an order entered by the 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 the opinion that there is no error in the order that is the subject of this appeal.

Ronald Robinson, Jr. (Robinson) represented Jill Mullins (Mullins) in marital settlement proceedings over the course of two years. Mullins initially retained Robinson on August 13, 2010, at which time she paid $2,500 and signed a representation agreement (the "out-of-court contract") which defined Robinson's services as

> Virginia family law advice and out of court settlement matters, including the possibility of drafting and/or review of settlement agreement(s) or agreed order(s). This agreement does not include appearances or filings of any kind in any Court by [Robinson's] office. Court filings or appearances require a separate contract and additional deposit.

On September 8, 2010, Mullins deposited an additional $10,000 with Robinson in conjunction with another contract (the "in-court contract") which covered

> Divorce and related matters in the Circuit Court of Stafford County, Virginia. [Robinson] shall represent the Client only in the matter set out above. This Agreement does not include appearance or filing of any kind above the level of Circuit Court.

On October 17, 2012, Mullins filed a complaint with the Virginia State Bar (VSB) alleging that over the course of the two years, she made 9 or 10 requests for invoices and 40

requests for information and updates regarding the status of her account, and that Robinson only provided her with a single invoice on September 1, 2012, when she indicated she might seek new representation. Mullins also alleged that Robinson never filed any pleadings or appeared in court on her behalf, but within weeks of being retained for in-court services he drew on and quickly depleted the $10,000 in-court deposit without informing her that he was doing so.

After investigating the complaint, the VSB issued a charge of misconduct against Robinson for violations of Rules of Professional Conduct (Disciplinary Rules) 1.2(a), 1.4(a), 1.5(b), 1.16(d) and Bar Admission and Disciplinary Matters Rule 8.1(c). In a pre-hearing order, the Fifth District Committee of the VSB (the Committee) set a hearing for May 28, 2014, which was rescheduled to June 25, 2014 at Robinson's request.

On May 21, 2014, Robinson requested summonses for Mullins' estranged husband Anthony Mullins (Anthony) and his attorney, Melissa Cupp (Cupp), as well as a subpoena duces tecum seeking emails, text messages and any other written communication from Mullins to Anthony regarding the marital settlement. The VSB opposed these requests, arguing that they were unreasonable because they were irrelevant to Robinson's alleged misconduct or defenses where the misconduct related solely to Robinson's relationship with Mullins. The Committee denied Robinson's requests.

At the June 25, 2014 hearing, Robinson noted his objection to the Committee's denial of the requests for the summonses and subpoena duces tecum but did not produce evidence or a proffer to rebut the VSB's relevance objections. The VSB submitted testimony establishing the facts alleged in Mullins' complaint and evidence that the Committee had disciplined Robinson for similar conduct on two prior occasions.[1] Robinson did not move to strike the evidence at the conclusion of the VSB's case. Robinson testified that he provided Mullins with three invoices, one in December 2010, and one in December 2011 in addition to the August 2012 invoice that

[1] On February 10, 2004, Robinson was disciplined in two separate cases. First, he received an admonition and public reprimand with terms for violating Disciplinary Rules 1.3(a), 1.4(b) and 1.5(b) by only providing his client with one bill over a 17-month period. Second, he received a public reprimand with terms for violating, inter alia, Disciplinary Rules 1.4(a) and 1.4(b) for failure to return the client's phone calls in a timely manner. In both proceedings, the Committee imposed a term requiring Robinson to engage a consultant to review and make recommendations regarding his "law practice policies, methods, systems, and procedures, including but not limited to his billing practices."

Mullins admitted receiving.

The Committee found Robinson guilty of violating Disciplinary Rule 1.4(a) but found that the VSB failed to prove the other alleged violations. The Committee found that

> 6. On multiple occasions throughout the course of the representation, Ms. Mullins requested information regarding the status of her account, with the first such request occurring as early as 10 August 2011. Mr. Robinson sent no more than three billing statements during the time he represented Ms. Mullins, those being on 17 December 2010, 20 December 2011 and 30 August 2012. Ms. Mullins asserted that she only received the 30 August 2012 billing statement.
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> 7. The panel did not make a determination as to whether Ms. Mullins had, in fact, received the 17 December 2010 and 20 December 2011 invoices, but determined that it was misconduct for Mr. Robinson to fail to promptly provide Ms. Mullins with written invoices upon her request for such information or to otherwise provide timely periodic billing statements to Ms. [Mullins].

The Committee imposed a public reprimand with terms, which, relevant to this appeal, required Robinson to engage a consultant for the purposes of reviewing and making recommendations regarding his "methods and timeliness of client communication, fee agreements and billing practices." The consultant was then to report to the VSB on Robinson's compliance with his or her recommendations and to "periodically examine [Robinson's] law practice" for 12 months following the consultant's initial certification of compliance. Robinson's counsel participated in the fashioning and imposition of these terms without objection, even conceding that they were appropriate for the situation.

Robinson appealed to the VSB Disciplinary Board (the Board) on September 4, 2014, pursuant to Va. Sup. Ct. R. Part 6, § IV, ¶ 13-17(A). He argued in relevant part that (1) the Committee erred by failing to issue the three subpoenas, denying him evidence that Mullins understood the billing process; (2) the record did not substantially support the Committee's findings of fact; (3) there was not clear and convincing evidence of a Disciplinary Rule 1.4(a) violation; and (4) some of the sanctions imposed were beyond the Committee's authority and "not justified by a reasonable review of the record."

After a May 15, 2015 hearing, the Board held unanimously that Robinson did not show substantial evidence that the Committee erred in (1) denying Robinson's request for the summons and subpoena; (2) its findings of fact; (3) finding a Disciplinary Rule 1.4(a) violation; or (4) imposing terms requiring Robinson to establish a regular billing practice and engage a

consultant for the purposes of reviewing his methods and timeliness of client communication, fee arrangements and billing practices. Robinson appeals.

In his appeal, Robinson first contends that the Committee erred in failing to issue his summons and subpoena requests because they were not unreasonable. In attorney disciplinary hearings,

> The Respondent may request Bar Counsel or the Chair of the District Committee to issue summonses or subpoenae for witnesses and documents. Requests for summonses and subpoenae shall be granted, unless, in the judgment of the Chair of the District Committee, such request is unreasonable. Either Bar Counsel or Respondent may move the District Committee to quash such summonses or subpoenae.

Va. Sup. Ct. R. Part 6, § IV, ¶ 13-16(E).

The Committee may rule on the admissibility of evidence and quash any summons or subpoena. Va. Sup. Ct. R. Part 6, § IV, ¶ 13-7(A)(6),(7). "Like a trial court, the Disciplinary Board's decision to admit or exclude evidence is a discretionary matter and will not be overturned on appeal unless the record shows an abuse of that discretion." Green v. Virginia State Bar, 272 Va. 612, 616, 636 S.E.2d 412, 415 (2006).

In order to show that the circuit court abused its discretion in rejecting an offer of evidence, the proponent must show that the evidence was relevant and that its exclusion resulted in prejudice. See Barkley v. Wallace, 267 Va. 369, 374, 595 S.E.2d 271, 274 (2004) (holding that "[i]n a civil case, the erroneous exclusion of evidence is reversible error when the record fails to show plainly that the excluded evidence could not have affected the verdict"). This can be done with a proffer, an unchallenged unilateral avowal, or mutual stipulation of what the evidence would have shown. Whittaker v. Commonwealth, 217 Va. 966, 969, 234 S.E.2d 79, 81 (1977).

Here, Robinson did not proffer to the Committee the substance of the evidence he expected to gain from the requested subpoenas. In noting his objection to the denial at the outset of the Committee hearing, Robinson stated only that he "believe[d] they had probative information to offer relevant to the Bar's charges" and "to this particular matter." Indeed, in oral argument before this Court, while Robinson stated he believed testimony from Anthony and Cupp could show Mullins knew about the fee arrangements as a result of a four-way settlement conference, he still conceded that he was not actually sure what they would say. Because

Robinson failed to make a proffer establishing the materiality of the excluded evidence, we have no basis upon which we can conclude that the Committee abused its discretion in denying the requests.

Moreover, even if the testimony would have shown that Mullins had knowledge of the billing practices, such evidence was nonetheless irrelevant and therefore the request was properly deniable as unreasonable. The issue before the Committee was Robinson's repeated failure to provide Mullins with information and invoices despite her numerous requests, not what Mullins may or may not have told third parties about her client relationship with Robinson. Thus, any evidence of what Mullins told Anthony or Cupp was irrelevant to the sanctionable behavior and the requests therefore were properly deniable as unreasonable.

Robinson also maintains that there was insufficient evidence to support a finding that he violated Disciplinary Rule 1.4(a). First, he contends that the rule does not apply to billing matters. Second, he claims that even if it does, the "mere questioning of a balance a few times over two years" is not clear and convincing evidence that he failed to keep Mullins informed.

With regard to the applicability of Disciplinary Rule 1.4(a) to billing matters, we review the Board's interpretation and application of the Rules of this Court de novo. See LaCava v. Commonwealth, 283 Va. 465, 469-70, 722 S.E.2d 838, 840 (2012). The Preamble to the Disciplinary Rules informs their scope and applicability, explaining that they "provide a framework for the ethical practice of law" and apply to "all professional functions" and "communication . . . concerning representation." Va. Sup. Ct. R. Part 6, Preamble. It provides that for the purposes of the Disciplinary Rules, the term "reasonably" "denotes the conduct of a reasonably prudent and competent lawyer." Id.

Disciplinary Rule 1.4, titled "Communication," provides in subsection (a) that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Because it applies to "communication with a client concerning representation" and to "all professional functions," it plainly encompasses billing matters.

Further, "[e]very lawyer in Virginia is expected to be fully aware of each and every disciplinary rule," so Robinson's contention that he was not aware that Disciplinary Rule 1.4(a) applied to billing matters is unavailing. Shea v. Virginia State Bar Disciplinary Bd., 236 Va.

442, 444, 374 S.E.2d 63, 64 (1988).

> The rules are public and are disseminated to the bar in the Virginia State Bar Professional Handbook. No lawyer can escape a finding of a violation or the imposition of an appropriate sanction by saying, "I did not know I was violating the rules." Such an argument is nothing more than a recitation of the often made and always rejected excuse of ignorance of the law.

Id.

With regard to sufficiency of the evidence to support a Disciplinary Rule 1.4(a) violation, in attorney disciplinary proceedings the VSB "has the burden of proving by clear and convincing evidence that the attorney violated the relevant Rules." Weatherbee v. Virginia State Bar ex rel. Fourth Dist., 279 Va. 303, 306, 689 S.E.2d 753, 754 (2010). "In reviewing a District Committee Determination [on appeal], the Board shall ascertain whether there is substantial evidence in the record upon which the District Committee could reasonably have found as it did." Va. Sup. Ct. R. Part 6, § IV, ¶ 13-19(E). In reviewing decisions of the Board, this Court

> conduct[s] an independent examination of the entire record pertaining to the charge before us. We consider 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. We accord the Board's factual findings substantial weight and view those findings as prima facie correct. Although we do not give the Board's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears that they are not justified by a reasonable view of the evidence or are contrary to law.

Pilli v. Virginia State Bar, 269 Va. 391, 396, 611 S.E.2d 389, 391 (2005) (citations omitted).

Here, there was substantial evidence that Robinson violated Disciplinary Rule 1.4(a)'s duty to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." First, Mullins testified that she understood the $10,000 account would only be used in the event of court filings or appearances, an understanding supported by the in-court contract language. Nevertheless, Robinson testified that he drew from that account without ever having done either of those things. Second, there was evidence that Mullins requested invoices on nine or ten occasions, and Robinson admitted that he sent, at most, three such invoices. Thus, based on an independent examination of the entire record, giving the Committee's factual findings substantial weight and viewing them as prima facie correct, we find substantial evidence to support the conclusion that Robinson violated Disciplinary Rule 1.4(a).

Finally, Robinson contends that the VSB lacks authority to impose the term requiring him to engage a consultant to review and amend his client communication, fee agreements and billing practices. We review the Board's imposition of discipline for abuse of discretion. Tucker v. Virginia State Bar, 233 Va. 526, 534, 357 S.E.2d 525, 529-30 (1987) (observing that "[t]he Board's options in the determination of appropriate discipline are wide" and that "[t]o substitute our personal preferences for the Board's judgment would be entirely inconsistent with the wide grant of discretion made to the Board by the Rules"). While "the Board's discretion is not beyond review," "the penalty imposed by the Board in a disciplinary proceeding will be viewed on appeal as prima facie correct and will not be disturbed unless, upon our independent examination of the whole record, it appears unjustified by a reasonable view of the evidence or is contrary to law." Id.

Both the Committee and the Board are authorized to issue a public reprimand with terms for a violation of the Disciplinary Rules. Va. Sup. Ct. R. Part 6, § IV, ¶¶ 13-16(X)(4), -19(G)(2). "Terms" are conditions "that require the Respondent to perform certain remedial actions as a necessary condition for the imposition of an Admonition, a Private or Public Reprimand, or a Suspension." Va. Sup. Ct. R. Part 6, § IV, ¶ 13-1. In determining appropriate sanctions, the Committee "shall consider the Respondent's Disciplinary Record," and in reviewing those sanctions, the Board may consider any exhibits received by the Committee of that record. Va. Sup. Ct. R. Part 6, § IV, ¶¶ 13-16(X), -19(C); see also Tucker, 233 Va. at 533, 357 S.E.2d at 529 (holding that "it is clearly the Board's duty, in determining an appropriate penalty, to consider whether the attorney before it has demonstrated a history of professional conduct harmful to his clients").

Here, as discussed above, there was clear and convincing evidence that Robinson violated Disciplinary Rule 1.4(a). Accordingly, the Committee had authority to impose a public reprimand with terms. The terms here required that the consultant ensure Robinson comply with "the provisions of the [Disciplinary Rules] regarding client communication, fee agreements, and billing practices," areas that correspond to the standards in Disciplinary Rules 1.4 (communication) and 1.5 (fees). This term is not vague or unspecific, because, as discussed above, "[e]very lawyer in Virginia is expected to be fully aware of each and every disciplinary

rule." Shea, 236 Va. at 444, 374 S.E.2d at 64. Additionally, the Board properly considered Robinson's two previous disciplinary actions for almost identical misconduct. While the Rules do not explicitly provide for the challenged term, they do not forbid it, and Robinson provides no authority for his position that such a sanction is beyond the Committee's authority.[2]

Given that the VSB has the power to suspend or revoke an attorney's license for misconduct, it follows that the VSB also possesses the lesser power to require an attorney with a history of problematic billing practices to engage a consultant to review and improve those practices to conform to the minimum level of professional competency. See Va. Sup. Ct. R. Part 6, § IV, ¶ 13-20(E).

In conclusion, having found no reversible error in the proceedings that are the subject of this appeal, this Court affirms the decision of the Board. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the Virginia State Bar Disciplinary Board.

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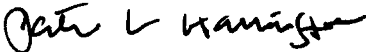

Clerk

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[2] We note further that the Board had already imposed this exact term for two prior Disciplinary Rule violations for similar conduct, to which Robinson did not object. Moreover, Robinson's counsel confirmed during the Committee hearing that the term was acceptable.