

James
McCauley



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

December 10, 1992

PERSONAL AND CONFIDENTIAL

Mr. Anthony M. O'Connell
6541 Franconia Road
Springfield, VA 22150


Re: In the Matter of Edward James White
VSB Docket #93-042-0976
Complaint received on December 7, 1992
Complainant: Anthony M. O'Connell

Dear Mr. O'Connell:

This is to inform you that your correspondence regarding the above-referenced matter has been received by the Virginia State Bar. Enclosed for your information is the disciplinary pamphlet describing the disciplinary procedure followed by the Virginia State Bar.

Please be advised that your complaint is presently under investigation by the Virginia State Bar. The bar will be contacting you in the near future regarding the investigation. If you have not already done so, please provide our office with a phone number where you can be reached during the day. Thank you for your cooperation.

Sincerely,


James M. McCauley
Assistant Bar Counsel

/eww

Enclosure: Disciplinary Pamphlet



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

December 10, 1992

PERSONAL AND CONFIDENTIAL

Edward James White, Esquire
118 South Royal Street
Alexandria, VA 22314-3328

Re: In the Matter of Edward James White
VSB Docket #93-042-0976
Complaint received on December 7, 1992
Complainant: Anthony M. O'Connell

Dear Mr. White:

Enclosed is a copy of a complaint which was received by the Virginia State Bar. Pursuant to the Rules of the Virginia Supreme Court and the Virginia State Bar Council Rules for Disciplinary Procedure, Virginia State Bar staff attorneys investigate and, in the appropriate cases, prosecute Charges of Misconduct received by the State Bar.

The State Bar has docketed this complaint, and the office of Bar Counsel is conducting the initial investigation to determine if the case should be filed with a district committee. I have been assigned as the staff attorney who will investigate and prosecute any Charges of Misconduct which may be filed with a district committee as a result of this complaint.

As part of the initial investigation, please review the complaint and provide a written answer within twenty-one (21) days of the date of this letter. Your answer will be reviewed by me as the assigned staff attorney to determine whether or not the complaint should be referred to a district committee for further investigation. Also, your answer may be sent to the complainant for review and may be used by the State Bar in the State Bar's investigation and prosecution of this case.

Edward James White

Page Two

The Rules of the Virginia Supreme Court state in Part Six:
Section IV, Paragraph 13(B)(5)(a) that

. . . Any such Charges of Misconduct shall be filed with a District Committee unless such preliminary investigation clearly reveals that the Charges of Misconduct have no basis in fact or that even if proved they would not constitute Misconduct.

If you do not file an answer within twenty-one (21) days, the above-referenced case will be filed with a district committee for further action.

The Supreme Court Rules and the Council Rules of Disciplinary Procedure, as amended, can be found in the August 1992 Virginia Lawyer Register, "Professional Guidelines for the Virginia Lawyer". The Rules of the Virginia Supreme Court for Disciplining, Suspending and Disbarring Attorneys and the Virginia Code of Professional Responsibility are in Volume 11, Code of Virginia (1950), as amended.

If you have any questions about the disciplinary procedure, either you or your attorney may contact me at the Virginia State Bar.

Sincerely,



James M. McCauley
Assistant Bar Counsel

/eww

Enclosures: Complaint

pc: Anthony M. O'Connell (w/o encls.)



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

February 10, 1993

PERSONAL AND CONFIDENTIAL

Mr. Anthony M. O'Connell
6541 Franconia Road
Springfield, Virginia 22150

Re: In the Matter of Edward James White
VSB Docket No. 93-042-0976

Dear Mr. O'Connell:

This letter is in reference to your complaint against the above-referenced attorney received in our office on December 7, 1992. In addition, I acknowledge receipt of your supplemental correspondence dated January 26, 1993, received in my office on January 29. I have concluded my preliminary investigation of your original complaint and wish to advise you that your complaint presents no basis for further investigation by this office for the reasons I shall set out below.

The Respondent did not file a written answer to your complaint. However, Mr. White is represented by counsel in this matter, David R. Rosenfeld, Esquire, and I met with Mr. Rosenfeld and his associate in Alexandria to go over all of the factual matters related to this complaint.

Your complaint alleges that the Respondent served as co-executor of your father's estate along with your mother and that the Respondent allegedly withheld certain information concerning a trust which was set up under your father's will in which you were named as a trustee.

According to your complaint, you retained the Respondent in 1987 to handle a real estate closing and you allege that the Respondent appointed himself co-trustee on the note securing that transaction. Then, the day prior to closing, Respondent allegedly informed you that he was not representing your interests in this real estate transaction. You have also claimed that the Respondent has handled your mother's estate incompetently.

With respect to your first complaint, it appears that your mother, rather than you, retained the Respondent for legal assistance in her capacity as executrix

Mr. Anthony M. O'Connell
Page 2
February 10, 1993

of your father's will. Apparently, your mother removed you from her will as a co-executor and nominated the Respondent in your place. However, none of these matters fall within the scope of the Code of Professional Responsibility particularly in view of the fact that you and the Respondent did not share an attorney-client relationship.

Your father's will poured over into a trust in which you were nominated trustee. By your own complaint, you admit that you hired another attorney to look into the funding of the trust, i.e., what distributions the estate would make to the trust. It is my understanding that you came to Virginia to qualify as a trustee. Again, in respect to that matter, there is no attorney-client relationship between you and the Respondent, Mr. White.

In the absence of an attorney-client relationship between you and Mr. White, Mr. White was under no ethical obligation to follow any of your directions or instructions nor was he obligated to communicate directly with you. His ethical duties regarding competence, promptness and communication were owed to your mother.

It is my understanding, based upon a reading of your complaint, that the Respondent and your attorney reached an agreement regarding the funding of the trust and the Respondent agreed to cooperate by providing your attorney with a draft of the final accounting of your father's estate.

Your complaint initially provoked a thought on my part as to why the father's estate remained open so long. However, as indicated in your complaint, Mr. White was not retained by your mother until 1985. Thus, while your complaint states that you were not aware of the fact that your father had appointed you as a co-trustee until 1985, and that your father passed away in 1975, the Respondent appears to have notified you of that fact after he had become involved in 1985.

You have also complained that your mother executed a codicil to her will removing you as a co-trustee and naming Mr. White in your stead. I find nothing improper about that particular matter as it was certainly your mother's prerogative to amend or modify her will and it was Mr. White's responsibility to follow her instructions in that regard.

Your second complaint involves an allegation that Mr. White undertook to represent your interests in a real estate closing in 1987. By letter dated December 28, 1987, you purportedly asked the Respondent to represent your interests in a transfer of property to the Lynch Properties Limited Partnership. You complain that the Respondent failed to notify you of the closing date which you fortuitously discovered from the purchasers just before the closing. In addition, you point out that the Respondent and another party were named as trustees on the Deed of Trust securing the purchase loan without your knowledge or consent. When you confronted Respondent about this, he advised that he did not represent your interests in this real estate

Anthony M. O'Connell
Page 2
February 10, 1993

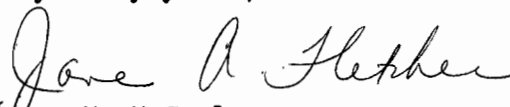
transaction.

My investigation reveals that the Respondent did not serve as settlement attorney for this transaction. In fact, the closing was handled by Coldwell Banker, and the legal instruments for the transaction were prepared under the supervision of McGuire, Woods, Battle & Boothe. I have seen the real estate closing file which was delivered to Mr. Wright by the McGuire, Woods firm, and I am firmly convinced that Mr. White took no part in that transaction other than to perhaps provide informal legal advice to your mother. Your letter of December 28, 1987 is insufficient as a matter of law to establish an attorney-client relationship unless there is some evidence that Mr. White did in fact undertake to handle the closing. Finally, there is no ethical issue raised simply because Mr. White is named as a co-trustee in the Deed of Trust securing the purchase by the Lynch Properties Limited Partnership.

The third complaint involved an allegation that Mr. White allegedly withheld a \$75,000 distribution until you agreed to obtain your own legal counsel. With respect to this allegation, Mr. White, in his capacity as an administrator or executor of an estate is under no obligation by law to make a interim distribution to you. Whether an interim distribution is made is entirely discretionary and the law requires a distribution to be made only upon the filing of a final accounting. With regard to your allegations of incompetence and delay on the part of Mr. White in handling your mother's estate, I have determined that Mr. White has filed in a timely manner the inventory and first accounting for this estate. No delinquency notices or show cause summonses have been issued. The only possible area of neglect appears to be the late filing of Mrs. O'Connell's income tax return, however, I am advised that Mr. White paid one-half of the accrued interest to the IRS, and that no penalties were assessed. In addition, Mr. White timely requested an extension for filing the decedent's last income tax return and therefore no penalties were involved. As justification for the delay, Mr. White points out that he experienced some delay in obtaining the K-1 from you and your own complaint appears to concede that there was a problem with getting the K-1 to Mr. White.

Based on the foregoing, I see no basis in fact or in law to conclude that Mr. White has engaged in any misconduct in violation of the Code of Professional Responsibility. Therefore, please be advised that no further action will be taken on your complaint. By copy of this letter to Respondent's counsel, Mr. Rosenfeld, I am advising him of my determination.

Very truly yours,


for James M. McCauley
Assistant Bar Counsel

JMM/ge
cc: David R. Rosenfeld, Esquire



Virginia State Bar

Eighth and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2803
Telephone: (804) 775-0500

Facsimile: (804) 775-0501 TDD: (804) 775-0502

November 1, 1993

PERSONAL AND CONFIDENTIAL

Mr. Anthony M. O'Connell
6541 Franconia Road
Springfield, Virginia 22150

RE: In the Matter of Edward J. White
VSB Docket #93-042-0976

Dear Mr. O'Connell:

This letter is in response to your certified letter dated September 20, 1993, which was received in this office on September 23, 1993. As you know, the basis for my dismissal of your complaint was the absence of an attorney-client relationship between you and the Respondent. Nothing you have submitted to me under cover letter dated September 20, 1993 changes my conclusion.

The copy of Mr. White's fee statement shows an entry: "4/20 OV A. O'CONNELL." The fact that you had an office visit with Mr. White does not create an attorney-client relationship.

I note that the fee statement dated April 16, 1988 is sent to Mrs. Jean M. O'Connell and I believe that your mother is the client in this particular matter, not you.

Your original complaint alleges that the Respondent handled your mother's estate incompetently. I do not believe you have standing to complain, because you are not a client of Mr. White. The second enclosure, a list of your unreturned telephone calls to Mr. White, also does not change my conclusion. Unless you can show that you are a client of Mr. White, Mr. White was under no ethical duty or mandate to return your telephone calls. This complaint also boils down to your word against Mr. White's as to whether he was representing you at the settlement on the real estate transaction. The Bar would have to prove your position by clear and convincing evidence, and I simply do not see any clear and convincing evidence that Mr. White had agreed to represent you, or that he represented you by his conduct.

Mr. Anthony M. O'Connell

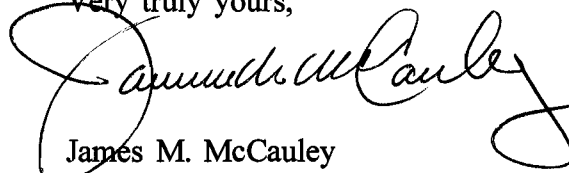
Page 2

November 1, 1993

Finally, you indicate that Mr. White, over a period of seven years, has made defamatory and divisive statements which you consider to be far more damaging than the issue regarding the real estate settlement. The Code of Professional Responsibility does not proscribe defamatory statements by an attorney, and our office is not the appropriate forum to investigate or prosecute your claim. If you feel that you have been defamed or libeled by the Respondent, then your remedy is to file a civil action, but a Bar complaint is not an appropriate vehicle to resolve that issue.

I am truly sorry that I cannot advance your claims or interest, however, I must stand on my original decision to dismiss your complaint. I trust that you will appreciate my explanation, although you disagree with it.

Very truly yours,

A handwritten signature in cursive script, reading "James M. McCauley". The signature is written in black ink and is positioned above the typed name and title.

James M. McCauley
Assistant Bar Counsel

JMM/dls