VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 8th day of December, 2016.

Jean Jerome Dandy Ngando Ekwalla, Appellant,

against Record No. 160401
VSB Docket Nos. 15-053-101414,
15-053-102415, 15-053-101351,
15-053-099896 and 15-053-100656

Virginia State Bar, Appellee.

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

Jean Jerome Dandy Ngando Ekwalla appeals from a decision of the Virginia State Bar Disciplinary Board ("Board") to revoke his license to practice law in this Commonwealth after finding more than 40 violations of the Rules of Professional Conduct ("Disciplinary Rules") relating to his firm's representation of five different clients. Because we find no error in the Board's decision, we affirm.

I.

"Consistent with well-established appellate principles, we view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the Bar, the prevailing party below." *Green v. Virginia State Bar ex rel. Seventh Dist. Comm.*, 274 Va. 775, 783, 652 S.E.2d 118, 122 (2007).

A. Dr. Ali Miamee

In March 2013, Dr. Ali Miamee retained Ekwalla's law firm to assist him in collecting a judgment he had obtained in Maryland. The retainer agreement provided that Miamee would pay the firm $1,000 "to assist in collecting the judgment" and would pay an additional fee before the firm rendered any additional services. J.A. at 268. When the attorney representing Miamee requested an additional $500 to continue attempting to collect the judgment, Miamee responded that the case was turning into a "money pit" for him and terminated the representation. *Id.* at 265. He also asked Ekwalla to return his file and issue him a refund of any unexpended funds

left over from his initial payment. Ekwalla's office manager advised Miamee that he had $452.50 left in his escrow account from his initial payment. The attorney working on Miamee's case "strongly recommend[ed]" that Ekwalla refund this money to Miamee, *id.* at 277, but Ekwalla refused and argued that Miamee was not entitled to a refund because Miamee had a flat-fee arrangement.

Thereafter, Miamee and Ekwalla engaged in a heated email correspondence. Miamee threatened to sue Ekwalla and have him disbarred. He called Ekwalla a "disgrace to [his] profession," *id.* at 284, a "scum bag," *id.* at 286, and an "unintelligent loser with a failing company," *id.* at 287. He also accused Ekwalla of "potentially criminal actions," *id.* at 284, and a "conspiracy to defraud," *id.* at 288. Ekwalla countered with his own threats:

- "Any unfounded complaint will be slanderous and expose you to liability towards the firm." *Id.* at 278.
- "I also reserve the right to commence litigation against you for defamatory comments." *Id.* at 285.
- "I will file [a] defamatory action against you and request 1 millions [sic] in damages." *Id.* at 288.

This exchange culminated in Miamee filing a bar complaint against Ekwalla in November 2014. As of October 2015, Miamee still had not received a refund.

The Disciplinary Board found that, with respect to Miamee, Ekwalla violated the following Disciplinary Rules: 1.15(b)(2)-(5) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(b) (Misconduct). J.A. at 723-24. Specifically, his misconduct under Disciplinary Rule 8.4(b) consisted of making "spurious threats of legal action against Dr. Miamee." *Id.* at 692.

B. Sandra Medina

In September 2013, Sandra Medina retained Ekwalla's law firm to represent her in a dispute with a car dealership. The retainer agreement provided that Medina would pay an initial $2,250 retainer for 10 hours of work. At least eight different attorneys, including Ekwalla, worked on her case. After filing a warrant in debt on behalf of Medina in the general district court, Ekwalla and his staff members discovered that an arbitration clause in the contract prohibited them from filing such an action. Thereafter, the attorney then assigned to Medina's case moved for and successfully obtained a nonsuit.

The entity designated by Medina's contract to conduct the arbitration contacted Ekwalla in August 2014 and scheduled a pre-arbitration conference call for September 26, 2014. The arbitration service asked for $2,850 from both parties as a retainer fee for 12 hours of arbitration. When Ekwalla told Medina that she needed to pay the arbitration fee, Medina responded that she still had money from her retainer that he could use to pay the fee. The arbitration service canceled the conference call because they had not received Medina's retainer.

Medina then gave Ekwalla a check for the exact amount of the arbitration fee ($2,850) on December 18, 2014, and wrote "arbitration" on the memo line. *Id.* at 320. Ekwalla thereafter requested an additional payment of $1,125 as an advance payment for five hours of preparation for the arbitration and the hearing itself at a rate of $225 per hour. Medina gave Ekwalla a check for $1,125 two days later, again writing "arbitration" on the memo line. *Id.* at 321. The arbitration service had scheduled the arbitration to take place on February 12, 2015 at 10:00 a.m. Subsequently, the arbitrator who was to conduct the arbitration became unavailable for a hearing at that time and agreed to do a pre-arbitration conference call that same day at 9:00 a.m. instead. However, Ekwalla never paid the arbitration fee. Instead, he converted both the $2,850 and the $1,125 into earned fees allegedly for time erroneously charged at a $0 per hour rate to Medina. He placed these funds in his firm's operating account and declined to proceed with the pre-arbitration conference call.

Because Ekwalla never paid the arbitration fee, the arbitration service once again had to cancel the arbitration call. Medina had to contact the arbitration service personally to learn that the conference call regarding her case had been canceled because the arbitration service had not received her arbitration retainer. In April, Medina filed a bar complaint against Ekwalla. Two weeks later, she terminated the representation, requesting the return of her file and a refund of any unexpended funds in her escrow account. Medina did not receive a refund, however, because Ekwalla had converted her money to an earned fee.

With respect to Medina, the Disciplinary Board found that Ekwalla had violated Disciplinary Rules 1.3(b) (Diligence), 1.4(a)-(c) (Communication), 1.15(b)(2)-(5) (Safekeeping of Property), 1.16(d) (Declining or Terminating Representation), and 8.4(a) (Misconduct). *Id.* at 724.

C. Andrea Arevalo

Andrea Arevalo retained Ekwalla's law firm in July 2014 to draft and file a property settlement agreement ("PSA") and to negotiate and secure an uncontested divorce. The retainer agreement specifically provided for a flat-fee arrangement whereby Arevalo was to pay $800 for the PSA and $1,000 for the uncontested divorce. Kristin Burr, Arevalo's second attorney at Ekwalla's firm, sent a draft PSA to Arevalo that was not fully compliant with Arevalo's requests and needed editing. Burr thereafter left the firm and sent an email notifying Arevalo of this fact, copying Ekwalla on the email. Ekwalla responded to this email, copying Arevalo, and criticized Burr for leaving the firm. Arevalo received this "unprofessional" email from Ekwalla to Burr which, along with the fact that she had now had two of her attorneys leave the firm, caused Arevalo to terminate the representation. *Id.* at 384; R. at 640-41. In September 2014, she requested a refund of the balance of her retainer and a printout of what the firm had billed to her. After several attempts to obtain a refund, she sent a certified letter demanding her refund by October 31, 2014. When Ekwalla did not provide a refund, she executed a chargeback on her credit card for the full amount of her retainer and filing fees.

When Ekwalla discovered this chargeback, he demanded full repayment of $850 for the PSA (the $800 flat fee plus a $50 administrative fee) from Arevalo. Arevalo contested the charge and said that she should only have to pay a portion of the $850 for the PSA because she only received a draft, whereupon Ekwalla threatened to file a warrant in debt against her. Arevalo decided to pay the fee and to end her dealings with Ekwalla's firm. However, several weeks later, Ekwalla contacted Arevalo via email and accused her of posting a negative review of his firm on the website Yelp. He threatened to sue her for defamation and to ensure that she spent tens of thousands of dollars in a lengthy legal battle if she did not remove the post by the next day. When Arevalo denied the accusations and even provided Ekwalla with a copy of her Yelp profile that showed all the posts that she had ever made on Yelp, Ekwalla still threatened to file a defamation suit against her. Following this email exchange, Arevalo filed a bar complaint against Ekwalla.

The Disciplinary Board found that Ekwalla's conduct toward Arevalo violated Disciplinary Rules 1.15(b)(2)-(5) (Safekeeping Property), 1.16(d) (Declining or Terminating Representation), and 8.4(b) (Misconduct). *Id.* at 724. Again, the misconduct under Disciplinary

Rule 8.4(b) consisted of Ekwalla's "spurious threats of legal action" against Arevalo because such conduct "constituted harassment as well as an improper attempt to infringe on her right of free speech." *Id.* at 703.

D. Talifa Bailey

Talifa Bailey retained Ekwalla's firm in December 2013 to represent her in a pending custody matter, paying an initial retainer of $3,000 for legal work at a rate of $225 per hour. In May 2014, she requested a refund of unexpended fees from her retainer and was told that the refund process would take up to two weeks. She made several more attempts to obtain a refund via phone and in person, only to be told each time that Ekwalla was out of town and that he was the only one who could sign the refund check.

Following these events, Bailey filed a bar complaint. The following day, July 2, Bailey received a check from Ekwalla's law firm, which was dated June 13, 2014. Bailey filed a second bar complaint when she discovered a $25 administrative charge on her last invoice. She unsuccessfully attempted to cash the check twice, and the second attempt occurred after Ekwalla's office manager had told her that the problem preventing her from cashing the check should be fixed. She filed a third bar complaint against Ekwalla because she was only able to deposit the check instead of cashing it.

Ekwalla testified under oath that he did not write the check and stated both in a letter to the VSB's investigator and in an objection during the disciplinary proceeding that the reason the bank would not allow Bailey to cash the check was because the signature did not appear to be his. *Id.* at 110, 183-85, 432. In that same letter to the VSB's investigator, however, Ekwalla stated that he had told the bank that the signature was his. *Id.* at 183-85, 432.

With respect to these facts, the Disciplinary Board found that Ekwalla violated Disciplinary Rules 1.15(b)(2)-(5), (d)(1) (Safekeeping Property) and 1.16(d) (Declining or Terminating Representation). *Id.* at 724.

E. Tonya Diamond

Diamond retained Ekwalla's firm in December 2013 to assist her in filing for bankruptcy. She paid a $2,250 retainer fee for the representation. Her first attorney did no significant work on the case for several months and then informed Diamond that he was leaving the firm. Diamond's second attorney began to assess the available bankruptcy options with hardly more

diligence than her first attorney. Several times, Diamond drove to the office for appointments with her new attorney only to find that he was out of town and that the appointment never should have been scheduled. She continually had to check on the status of her case, and she even had to re-take the required credit counseling course for bankruptcy that expires after six months. Ultimately, Diamond's second attorney concluded that Diamond did not qualify for bankruptcy. Diamond then terminated the representation and requested a refund of her entire retainer.

For nearly two months following the termination, Diamond made several attempts to obtain a refund and was continually told that Ekwalla was out of town. Finally, the legal services organization that referred Diamond to Ekwalla's firm recommended that she file a bar complaint, which she did in September 2014. Diamond did not receive a refund check until November 2014. In his October 14, 2014 response to Diamond's bar complaint, however, Ekwalla stated that he had already signed the check and asked his office manager to send it out. *Id.* at 460. When Diamond finally received her refund check in November, approximately three-and-a-half-months after initially requesting it, the check was dated August 5 and was for $1,225, which was $1,025 less than her initial retainer. *Id.* at 462, 465.

The Disciplinary Board found that Ekwalla violated the following Disciplinary Rules with respect to Diamond: 1.3(a) (Diligence), 1.15(b)(4) (Safekeeping Property), 1.16(d)-(e) (Declining or Terminating Representation), 8.1(a) and (d) (Bar Admission and Disciplinary Matters), and 8.4(c) (Misconduct). *Id.* at 724.

F. Violations Common to All Complaints

In response to these and other complaints, the VSB investigated Ekwalla's law practice. On January 21, 2015, the VSB issued a subpoena duces tecum requiring Ekwalla to produce all records pertaining to his trust accounts by February 11. The VSB granted Ekwalla an extension until February 16, but by March 2, he had still not provided the requested documents. The VSB threatened to issue a notice of non-compliance and to request an interim suspension of Ekwalla's license if he did not comply by March 23. Thereafter, he provided some documents to the VSB, but remained noncompliant with the subpoena.

On March 25, the VSB's counsel filed a notice of noncompliance and a request for an interim suspension of Ekwalla's license. Ekwalla had until April 4 to request a hearing whereby he could demonstrate good cause as to why his license should not be suspended. On April 1,

Ekwalla provided an additional 500 pages of documents to the VSB and stated that he was now in full compliance with the subpoena. The following day the VSB notified the Clerk of the Disciplinary System that Ekwalla had complied with the subpoena.

On June 8, the VSB issued two further subpoenas requiring Ekwalla to produce all documents pertaining to thirteen particular cases and all communications pertaining to those cases between Ekwalla and his staff members by June 29. Ekwalla requested an extension until July 10, and although the VSB did not formally grant him this extension, it declined to take any action until July 15, when it issued another notice of noncompliance and request for interim suspension. This time, Ekwalla requested a hearing to show good cause why his license should not be suspended, which was subsequently scheduled for August 28. However, on August 24, Ekwalla provided the VSB with 5,000 pages of documents, which the VSB initially determined to be "substantially compli[ant]" with the subpoenas, and the VSB advised the Clerk of the Disciplinary System that there was no longer a need for the hearing. *Id.* at 507. Regarding his response to the VSB's subpoenas, the Disciplinary Board found that Ekwalla violated Disciplinary Rule 8.1(c) (Bar Admission and Disciplinary Matters). *Id.* at 724.

Finally, Ekwalla maintained several accounts at various financial institutions and moved money between them, apparently in order to protect client money from IRS liens pertaining to payroll taxes. He admitted that none of his accounts were properly established trust accounts according to the Disciplinary Rules. For his improper maintenance of these supposed trust accounts, the VSB found that Ekwalla violated Disciplinary Rules 1.15(a), (b)(2)-(5), (c)-(d), all pertaining to safekeeping client property. *Id.* at 724.

II.

The VSB instituted disciplinary proceedings against Ekwalla by a petition for an expedited hearing. Ekwalla responded with a demand for a three-judge panel pursuant to Part 6, § IV, Para. 13-18(D)(5) of the Rules of Court. This provision requires the attorney subject to the disciplinary hearing to provide dates on which he is available for a hearing no less than 30 days and no more than 120 days after the date of the Board's order granting the expedited hearing. Va. Sup. Ct. R., Part 6, § IV, ¶ 13-18(D)(5). Ekwalla, however, stated that he could not be available during that 90-day time frame and offered dates after the 120-day deadline.

The Board denied Ekwalla's demand for a three-judge panel because he had failed to provide available dates for a hearing between 30 and 120 days after the Board's order granting an expedited hearing. As a result, the Board heard Ekwalla's case. *See* Va. Sup. Ct. R., Part 6, § IV, ¶ 13-18(D)(5) (providing that a failure to provide available dates as required shall be deemed consent to the jurisdiction of the Board). Based upon the violations outlined above, the Board revoked Ekwalla's license to practice law. *Id.* at 725.

III.

In reviewing an appeal from VSB disciplinary proceedings, we make an "independent examination of the whole record, giving the factual findings of the Disciplinary Board substantial weight and viewing them as prima facie correct." *Blue v. Seventh Dist. Comm.*, 220 Va. 1056, 1061-62, 265 S.E.2d 753, 757 (1980). These findings are "not given the weight of a jury verdict" but "will be sustained unless it appears they are not justified by a reasonable view of the evidence or are contrary to law." *Id.* at 1062, 265 S.E.2d at 757. The interpretation of the Disciplinary Rules, however, is a question of law we review de novo. *Zaug v. Virginia State Bar ex rel. Fifth Dist.-Section. III Comm.*, 285 Va. 457, 462, 737 S.E.2d 914, 916-17 (2013).

A. Assignment of Error 1: The Three-Judge Panel

In addition to his answer and demand for a three-judge panel, an attorney who is the subject of a disciplinary proceeding must "simultaneously provide available dates for a hearing not less than 30 days nor more than 120 days from the date of the Board order" granting an expedited hearing. Va. Sup. Ct. R., Part 6, § IV, ¶ 13-18(D)(5). This Rule also provides that "[i]f the Respondent fails to file an answer, or an answer and a demand, *and* provide available dates, *as specified above*," he will be "deemed to have consented to the jurisdiction of the Board." *Id.* (emphases added). In other words, the failure to provide available dates within 30 to 120 days of the Board's order is as much a procedural default as failing to file an answer or failing to file a demand for a three-judge panel. The Rule makes clear that procedural default in any of these forms is consent to the jurisdiction of the Board.

The Board issued its order granting an expedited hearing on September 23, 2015. Therefore, Ekwalla was required to provide, in his demand for a three-judge panel, dates on which he was available for a hearing between October 23, 2015, and January 21, 2016. When he failed to provide any available dates during this time frame, he failed to satisfy the requirements

to obtain a hearing before a three-judge panel. Thus, his demand for that hearing was procedurally defaulted. We have previously held under a predecessor rule that the time frame of 30 to 120 days applies only to the defendant in a disciplinary proceeding before the Board and that the rule does not require the three-judge panel to actually schedule the hearing within that time frame. *See Green*, 274 Va. at 788, 652 S.E.2d at 124. The plain language of the Rule required Ekwalla, and only Ekwalla, to submit dates on which he was available within the specified time frame. He failed to do so.[1] Moreover, the Rule itself contains no good cause or ends-of-justice exception. Therefore, the Board did not err in denying Ekwalla's demand for a three-judge panel.

B. Assignment of Error 2: Dr. Ali Miamee

Regarding the Board's findings pertaining to Miamee, Ekwalla only contests the finding that he violated Disciplinary Rule 8.4(b). That Rule states: "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." Va. Sup. Ct. R., Part 6, § II, ¶ 8.4(b). The Board found that Ekwalla committed an act of misconduct by threatening to sue Miamee. We agree.

Ekwalla threatened Miamee with the assertion that any "unfounded complaint will be slanderous" and thus "expose" him to "liability towards the firm." J.A. at 278. "I will file [a] defamatory action against you," Ekwalla warned, "and request 1 millions [sic] in damages." *Id.* at 288. His threat implied that if the VSB found his complaint unfounded, Miamee would automatically be subject to liability for defamation. This implication was overstated at best.

A determination by the VSB that a bar complaint was "unfounded," *id.*, would not necessarily mean that the complaint was tortious under Virginia defamation law. No principle of

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[1] Ekwalla's excuses for not providing available dates included unspecified "court dates," J.A. at 79, an assertion wholly uncorroborated by any evidence presented at his evidentiary hearing. He also claimed he had no available dates because of his "daughter's sickle cell treatments." *Id.* But the sparse evidence he offered on this subject failed to substantiate his claim that his daughter's medical condition somehow prevented him from listing *any* available dates over a 90-day period as required by Part 6, § IV, Para. 13-18(D)(5) of the Rules of Court. Finally, Ekwalla alleged he had no available dates because of his wife's "cancer doctor's appointments." *Id.* Once again, however, he failed to present any evidence regarding his wife's diagnosis or treatment, or any evidence that her care would prevent him from listing any available dates during the required 90-day period.

claim or issue preclusion would require a judge or jury in a defamation action to find the VSB's rejection of a bar complaint rendered it per se defamatory. Under Code § 54.1-3908, "No person shall be held liable in any civil action for words written or spoken in any complaint regarding . . . the professional conduct of any member of the Virginia State Bar, unless it is shown that such statements were false and were made willfully and maliciously." Private defamation plaintiffs generally have to prove at least negligence in the publication of the defamatory statements. *See The Gazette, Inc. v. Harris*, 229 Va. 1, 15, 325 S.E.2d 713, 724-25 (1985). However, bar complaints receive a form of qualified privilege under Code § 54.1-3908 requiring the attorney to prove willfulness and malice to succeed in a defamation suit against a client based upon a bar complaint. *Compare* Code § 54.1-3908 *with New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964) (requiring public officials to prove "actual malice," i.e., knowledge that the statement was false or a reckless disregard for its truth or falsity).

In addition to this statutory hurdle, Ekwalla would also have had to prove that Miamee's statements, among other things, (i) were published to a third party besides Ekwalla, *see Food Lion, Inc. v. Melton*, 250 Va. 144, 150, 458 S.E.2d 580, 584 (1995); (ii) were factually false, *see id.*; (iii) were statements of fact rather than opinion, *see Tharpe v. Saunders*, 285 Va. 476, 481, 737 S.E.2d 890, 893 (2013); and (iv) caused injury to his reputation, *see Schaecher v. Bouffault*, 290 Va. 83, 92-94, 772 S.E.2d 589, 594-95 (2015); *Moseley v. Moss*, 47 Va. (6 Gratt.) 534, 538 (1850).

In short, Ekwalla's threat — that any "unfounded" bar complaint would be "slanderous," J.A. at 278 — was a coercive overstatement. It was plainly motivated, as the Bar found, by Ekwalla's desire to intimidate Miamee into not filing a bar complaint against him. On this ground, the Board thus did not err in finding that Ekwalla committed misconduct in violation of Disciplinary Rule 8.4(b).[2]

[2] The VSB has identified similar behavior as attorney misconduct in a legal ethics opinion commenting on an attorney's threats of legal action against a non-party witness over alleged defamatory statements. *See* Va. Legal Ethics Op. 1736 (1999). The opinion finds that the threat of legal action becomes misconduct when the legal action "is without legal basis in law or fact, and the threatened suit is made merely to harass and intimidate the witness, or influence the witness not to come forward with truthful and relevant information." *Id.*

C. Assignments of Error 3 and 4: Sandra Medina

Out of 10 specific violations that the Board found with respect to his representation of Medina, Ekwalla challenges only the violation of Disciplinary Rule 8.4(a). His second assignment of error pertaining to Medina does not actually address a finding of the Board. That assignment asserts that the Board erred in finding that his refusal to provide Medina with a refund constituted a ratification of the actions of lawyers and non-lawyer staff in his firm, in violation of Disciplinary Rules 5.1 and 5.3. However, the VSB has conceded in its brief that the Board found "no violation of Rules 5.1 or 5.3." Appellee's Br. at 29. The Board's factual findings did state that Ekwalla's actions were a ratification of the conduct of his staff members and that Disciplinary Rules 5.1 and 5.3 "provide that under such circumstances . . . [Ekwalla] *may be held accountable* for the violations . . . committed by Ngando Law Firm attorneys and/or non-lawyer staff." J.A. at 698 (emphasis added). The Board simply noted that Ekwalla's ratification of the actions of his staff members may give rise to professional liability and made no finding that he actually violated either Disciplinary Rule 5.1 or 5.3. In fact, the Board specifically found that he had not violated these Rules. *Id.* at 723 (noting a "woeful lack of supervision" by Ekwalla but finding that the Board failed to prove a violation of Disciplinary Rules 5.1(c) and 5.3(c) by clear and convincing evidence).

Therefore, Ekwalla only assigns error to one actual finding of the Board — the violation of Disciplinary Rule 8.4(a). That Rule states: "It is professional misconduct for a lawyer to: (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another." Va. Sup. Ct. R., Part 6, § II, ¶ 8.4(a). Ekwalla is correct that the Rule also requires the Board to include within its memorandum order "a brief statement of the findings of fact; the nature of the Misconduct shown by such finding of facts; the Disciplinary Rules found to have been violated by clear and convincing evidence; [and] the sanction imposed." Va. Sup. Ct. R., Part 6, § IV, ¶ 13-1. He is also correct that the factual findings pertaining to Medina do not specifically describe a violation of or cite to Disciplinary Rule 8.4(a). *See* J.A. at 693-99. However, the Board discussed its factual findings pertaining to Ekwalla's representation of Medina at length, *see id.*, and the factual discussion describes specific actions that violated other Disciplinary Rules, *see id.* at 697-99. We find that such discussion describes the "nature of the misconduct" alleged, Va. Sup. Ct. R., Part 6, § IV, ¶ 13-1,

because Disciplinary Rule 8.4(a) itself defines misconduct as any violation of the Disciplinary Rules. Moreover, in the disposition section of its order, the Board specifically states that it found by clear and convincing evidence that Ekwalla violated Disciplinary Rule 8.4(a) and that the sanction imposed is revocation. J.A. at 723-25.

The record demonstrates that the Board listed all of its factual findings pertaining to Ekwalla's representation of Medina and described in detail how his conduct violated several Disciplinary Rules. These violations also constitute, in themselves, a violation of Disciplinary Rule 8.4(a), which the Board included in its disposition. The Board included in its revocation order all that the Rules require and thus did not err in finding that Ekwalla violated Disciplinary Rule 8.4(a).

D. Assignment of Error 5: Andrea Arevalo

Ekwalla does not contest any of the Board's findings regarding his dealings with Arevalo, except the finding that Ekwalla made, as he did with Miamee, "spurious threats of legal action" against Arevalo in violation of Disciplinary Rule 8.4(b). *Id.* at 703. We find no error in the Board's decision.

Ekwalla threatened to sue Arevalo for defamation and to force her to spend thousands of dollars on legal fees even if he was unsuccessful. Ekwalla attempted to intimidate Arevalo into removing a negative review of his firm on Yelp, even though Arevalo denied making it. In a defamation suit against Arevalo, Ekwalla would have to prove not only that Arevalo made the post but also that she was negligent as to the truthfulness of her comments. *See The Gazette,* 229 Va. at 15, 325 S.E.2d at 724-25. He would also have to prove that the comments (1) were false, *see Food Lion*, 250 Va. at 150, 458 S.E.2d at 584; (2) were statements of fact rather than opinion, *see Tharpe*, 285 Va. at 481, 737 S.E.2d at 893; and (3) caused injury to his reputation, *see Schaecher*, 290 Va. at 92-94, 772 S.E.2d at 594-95; *Moseley*, 47 Va. (6 Gratt.) at 538.

Ekwalla presented no credible evidence to the Board suggesting that, at the time he threatened Arevalo, he possessed any evidence that he could use later in litigation to satisfy the elements of defamation liability. This fact strongly implies that his use of such dubious threats of litigation was meant solely to intimidate Arevalo.[3] We agree with the Board that this conduct

[3] *See* Va. Legal Ethics Op. 1736, *supra* note 2 (concluding that a threat of legal action that "is without legal basis in law or fact" and "is made merely to harass and intimidate the

constituted "harassment" and an "improper attempt" to intimidate Arevalo. J.A. at 703.

E. Assignments of Error 6 and 7: The Subpoenas

Ekwalla next contends that the Board erred in finding that he violated Disciplinary Rules 8.1(c) and (d) with respect to his response to the VSB's three subpoenas duces tecum. However, the record shows, and the VSB concedes, that the Board did not find a violation of Disciplinary Rule 8.1(d). *See* J.A. at 723; Appellee's Br. at 31 n.2. Ekwalla is correct when he observes that the Board did describe his response to the subpoenas as a violation of Disciplinary Rule 8.1(d) in its findings of fact. *See* J.A. at 714. However, the disposition section of the order clearly states that the Board found no violation of Disciplinary Rule 8.1(d). *Id.* at 723. We accept the VSB's concession to this fact as well. Therefore, we will treat the assignment of error as to Disciplinary Rule 8.1(d) as moot.

With respect to his violation of Disciplinary Rule 8.1(c), Ekwalla contends that the VSB "cannot later seek sanctions including revocation of [his] license merely because the documents were not all produced before the original return date on the subpoena" when the VSB decided not to pursue requests for interim suspensions of his license pursuant to Part 6, § IV, ¶ 13-6(G)(3) of the Rules of Court. Appellant's Br. at 43.

We addressed a similar issue in *Rice v. Virginia State Bar*, 267 Va. 299, 300-01, 592 S.E.2d 643, 644-45 (2004). There, we held that a "summons to appear at a [disciplinary] hearing" could be considered a "demand for information" under Disciplinary Rule 8.1(c). *Id.* at 300, 592 S.E.2d at 644. A subpoena for documents, no less than a summons to appear, constitutes a "demand for information." Va. Sup. Ct. R., Part 6, § II, ¶ 8.1(c); *see Rice*, 267 Va. at 300, 592 S.E.2d at 644. In *Rice*, however, the record did not demonstrate that the VSB "was unable to gather information from Rice as a result of Rice's failure to appear." *Rice*, 267 Va. at 301, 592 S.E.2d at 644. Ekwalla relies upon our holding in *Rice* to argue that we must reverse the Board's finding that he violated Disciplinary Rule 8.1(c) because the Board did not make a finding that the VSB suffered prejudice as a result of his failure to comply timely with the subpoenas. We disagree.

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witness, or influence the witness not to come forward with truthful and relevant information" would be misconduct).

In *Rice*, we held that a simple factual finding that an attorney failed to appear at a disciplinary hearing pursuant to a properly issued summons, without more, was insufficient to substantiate the charge that he violated Disciplinary Rule 8.1(c). *See id.* at 300-01, 592 S.E.2d at 644-45. We required evidence of prejudice in that case because we determined that, "[w]hile Rule 8.1(c) *may* be violated by failure to appear at a hearing before a disciplinary committee or Board, *in this case*, the Disciplinary Board's *findings of fact do not support its conclusion* that Rice violated the rule." *Id.* at 300, 592 S.E.2d at 644 (emphases added). In other words, in the specific context of an attorney failing to appear at a disciplinary hearing, the Board must find that the failure to appear prejudiced VSB's factual investigation or the timeliness and orderliness of the disciplinary proceeding in order to substantiate its finding that an attorney violated Disciplinary Rule 8.1(c). *See id.* at 300-01, 592 S.E.2d at 644-45.

Assuming, without deciding, that the prejudice analysis in *Rice* applies to VSB document subpoenas, the record in this case provides ample basis for concluding that Ekwalla violated Disciplinary Rule 8.1(c). Despite being given several extensions, Ekwalla waited until days or weeks after the extended deadlines had passed, the VSB had filed notices of noncompliance, and in one instance until days before an interim suspension hearing to produce thousands of pages of documents.[4] *See* J.A. at 479-80; *id.* at 485-86; *id.* at 492; *id.* at 494-96; *id.* at 507. By doing so, Ekwalla delayed the work of the VSB investigators, required the VSB counsel to file multiple notices of noncompliance, and made it necessary to schedule and later cancel an interim suspension hearing. The Board found that Ekwalla failed to respond to each subpoena "in a timely manner," *id.* at 714, that he "remained in substantial non-compliance" with the first subpoena after his initial attempt to produce documents, *id.* at 711, and that "On 24 August 2015, four days before the [interim suspension] hearing, [Ekwalla] did *finally* provide documents *in partial compliance* with the" second and third subpoenas, *id.* at 714 (emphases added). These findings, along with the other extensive evidence of prejudice in the record, demonstrate that the Bar was both thwarted and delayed by Ekwalla's late and partial compliance with the subpoenas.

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[4] Many of these documents proved to be essential to the disciplinary proceeding. *See, e.g.*, J.A. at 485–86 (listing all trust account records which Ekwalla provided to the VSB in response to the first subpoena, though untimely); *id.* at 498–99 (second subpoena demanding files pertaining to a list of 13 cases, including the cases of all five individuals discussed in the order).

The Board thus substantiated its finding that Ekwalla failed to respond to the VSB's lawful demands for information, and therefore did not err in finding that this conduct violated Disciplinary Rule 8.1(c).

F. Assignment of Error 8: Ekwalla's Trust Accounts

Ekwalla next alleges that the Board erred in finding that he admitted during his hearing that he moved money between accounts to avoid overdue tax obligations and potential IRS liens. However, this statement was part of the Board's findings of fact. *See* J.A. at 716. As such, we consider this finding prima facie correct and will not disturb it unless such finding is "not justified by a reasonable view of the evidence" or is "contrary to law." *Blue*, 220 Va. at 1062, 265 S.E.2d at 757.

Here, the Board's finding of fact was justified by the evidence. Ekwalla admitted that he withdrew money from his SunTrust client trust account in order to prevent the IRS from reaching it. J.A. at 182, 186, 226-27. The VSB specifically *did not* allege, contrary to Ekwalla's implication, that Ekwalla was avoiding *personal* IRS obligations. *See* Reply Br. at 13 (arguing that Ekwalla denied "transferring funds to evade *his* overdue tax obligations" when the VSB never alleged personal tax evasion (emphasis added)). We interpret this factual finding by the Board to be a simple statement that Ekwalla moved money between several different accounts to prevent the IRS from reaching it. Whether he did so because it was client money that he wanted to protect or for some other purpose is irrelevant.

The VSB did not allege, and the Board did not find, any violation of the Disciplinary Rules on the basis of tax evasion. Although this factual finding by the Board does not expressly state the full context in which Ekwalla admitted to transferring the funds (i.e., that Ekwalla made the transfers to protect client money and was not attempting to avoid personal tax obligations), the record does reflect that he did admit to transferring money between accounts to prevent the IRS from levying the money for overdue tax obligations. Therefore, we hold that this finding was justified by the evidence and not in error.

G. Assignment of Error 9: Revocation

Finally, Ekwalla assigns error to the Board's ultimate decision to revoke his license to practice law as opposed to a lesser sanction. We accord great weight to the Board's decisions regarding proper sanctions, considering only "whether the sanction is within the limits prescribed

by the rules and whether the Board properly exercised its discretion." *Wright v. Virginia State Bar*, 233 Va. 491, 499, 357 S.E.2d 518, 522 (1987). The sanction of revocation is clearly within the limits set forth in the Rules, which allow the Board, upon finding misconduct by clear and convincing evidence, to impose the sanction of revocation. *See* Va. Sup. Ct. R., Part 6, § IV, ¶ 13-18(M)(2)(d). We also cannot say that the Board abused its discretion in finding that Ekwalla's conduct merits revocation. Ekwalla does not challenge the vast majority of the Board's findings regarding his ethical violations. He does not contest that he violated a wide variety of Disciplinary Rules, including those pertaining to diligence in representation, communication with the client, safekeeping client property, and terminating a representation. The Board found more than 40 violations affecting several clients and the VSB itself. Therefore, the Board did not abuse its discretion in finding that Ekwalla's conduct warranted the revocation of his license to practice law.

H. Post-Oral Argument Supplemental Authority

After oral argument on appeal, Ekwalla's counsel informed this Court of supplemental authority pertaining to this appeal pursuant to Rule 5:6A. The supplemental authority consisted of a decision of the VSB Clients' Protection Fund Board denying Tonya Diamond's petition for reimbursement for the $1,025 not refunded from her original retainer.[5]

The decision of the Clients' Protection Fund Board has no effect on this case. Ekwalla did not assign error to any finding of the Board specific to his representation of Diamond. The decision, moreover, only operates to overturn the finding that Ekwalla's *failure to issue a full refund* violated Disciplinary Rules 1.15(b)(4) and 1.16(d). *See* J.A. at 709-10. The Disciplinary Board, however, found that Ekwalla committed a separate and independent violation of these Disciplinary Rules for failing to provide Diamond a "prompt" refund and copy of her file. *Id.* at 709. The decision also does not operate to overturn any factual findings of the Board regarding Ekwalla's representation of the other four complainants or his sanctionable response to the VSB's subpoenas. Therefore, it has no material impact on our decision to affirm the Board's ultimate sanction of revocation.

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[5] The Board contends the decision concerning the Clients' Protection Fund does not constitute a proper "Citation of Supplemental Authorities" under Rule 5:6A. We assume without deciding that it does.

IV.

Because the Board committed no reversible error, we affirm.

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

A Copy,

Teste:

Clerk