

1 Present: Carrico, C.J., Lacy, Keenan, Koontz, and Kinser,
2 JJ., and Compton and Stephenson, Senior Justices

3
4 VICTOR ALAN MOTLEY

5
6 v. Record No. 000392

OPINION BY
CHIEF JUSTICE HARRY L. CARRICO
September 15, 2000

7
8 VIRGINIA STATE BAR

9
10 FROM THE VIRGINIA STATE BAR DISCIPLINARY BOARD

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12 This appeal presents for review an order of the
13 Virginia State Bar Disciplinary Board (the Disciplinary
14 Board) involving Victor Alan Motley (Motley), a Richmond
15 attorney. Dated September 29, 1999, the order imposed upon
16 Motley a public reprimand for failing to inform a client in
17 a criminal case of the denial of his appeal by the Court of
18 Appeals of Virginia in time for him to decide whether to
19 seek an appeal to this Court. Motley is here on an appeal
20 of right. Finding no error in the order of the
21 Disciplinary Board, we will affirm.

22 Background

23 Motley's public reprimand resulted from his handling
24 of a criminal case involving Brian Lee Rowe (Rowe) in the
25 Circuit Court of the City of Richmond. Motley was retained
26 by Rowe's parents and received from them a retainer fee of
27 \$1,000. Originally, Rowe was charged with two counts of
28 capital murder, one count of robbery, and three counts of
29 use of a firearm. However, at the time Motley was

1 retained, the capital murder charges had been reduced to
2 first degree murder. Motley was retained for the purpose
3 of arranging for Rowe to plead guilty to "the lowest
4 possible charges."

5 Motley was successful in arranging with the prosecutor
6 for Rowe to plead guilty to two counts of second degree
7 murder, one count of robbery, and three counts of use of a
8 firearm. Rowe and his parents expected that Rowe would
9 receive a sentence of no more than thirteen years and two
10 months, which, according to what Motley told them, was the
11 maximum punishment under the sentencing guidelines. Motley
12 argued for application of the guidelines, but the court
13 sentenced Rowe to serve a total of ninety-three years.

14 Rowe's parents then asked Motley "what could be done,"
15 and Motley agreed to appeal the case for an additional fee
16 of \$2,000. Motley filed a motion in circuit court to
17 withdraw Rowe's guilty pleas or, in the alternative, for
18 reconsideration of the sentence. The motion was denied,
19 and Motley appealed the denial to the Court of Appeals.
20 That court denied the petition for appeal by unpublished
21 order. (No. 2718-95-2, April 15, 1996). The court noted,
22 inter alia, that the circuit court had found the sentencing
23 guidelines inapplicable to permit a sentence of thirteen
24 years and two months because Rowe "faced a mandatory

1 thirteen years on the firearms charges alone, without the
2 additional charges of robbery and murder." Id.

3 Rowe had thirty days after entry of the order of April
4 15, 1996, within which to file a notice of appeal with the
5 clerk of the Court of Appeals (Rule 5:14(a)) and a petition
6 for appeal with the clerk of this Court (Rule 5:17(a)(2)).
7 Neither document was filed within the prescribed time.¹

8 On June 24, 1996, Rowe's mother, Clareth A. Rowe,
9 filed with the Virginia State Bar a complaint against
10 Motley alleging that he had failed to inform Rowe or his
11 parents of the Court of Appeals' denial of Rowe's petition
12 for appeal until it was too late to petition this Court for
13 an appeal. The Third District Committee, Section Two (the
14 Committee), determined that Motley had failed timely to
15 inform Rowe or his parents of the Court of Appeals' action.
16 The Committee decided it would offer Motley an opportunity
17 to comply with certain terms and conditions as a predicate
18 to the imposition of a private reprimand with terms but,
19 failing such compliance, that it would impose a public

¹ This Court awarded Rowe a delayed appeal on March 6, 1997, following a finding by the Circuit Court of the City of Richmond in a habeas corpus proceeding that Motley had been ineffective for "[f]ailing to perfect an appeal to [this Court] following the Virginia Court of Appeal's refusal to hear [Rowe's] appeal." The petition for appeal filed pursuant to the award of the delayed appeal was refused by this Court.

1 reprimand. Motley appealed the Committee's determination
2 to the Disciplinary Board.

3 After a hearing, the Disciplinary Board affirmed the
4 District Committee's determination but imposed as a
5 sanction an opportunity to comply with altered terms and
6 conditions as part of a private reprimand, with the proviso
7 that if Motley failed to comply with the terms and
8 conditions, a public reprimand would be imposed. On
9 September 29, 1999, the Disciplinary Board entered an order
10 stating that Motley had "willingly failed and refused to
11 comply with the terms of [the] Private Reprimand" and,
12 therefore, a public reprimand was imposed.

13 Disciplinary Rule 6-101(C) of the Virginia Code of
14 Professional Responsibility, which was in effect at all
15 times pertinent to the present controversy, provided that
16 "[a] lawyer shall keep a client reasonably informed about
17 matters in which the lawyer's services are being rendered."²
18 In imposing a public reprimand upon Motley, the
19 Disciplinary Board found that he had "failed to timely
20 inform either Rowe or his parents of the denial of the
21 petition [for] appeal by the Court of Appeals in time to

² Effective January 1, 2000, the Virginia Code of Professional Responsibility was replaced by the Virginia Rules of Professional Conduct. The subject of reasonable

1 allow them to decide whether to appeal further to the
2 Virginia Supreme Court" and, therefore, that Motley had
3 "engaged in misconduct in violation of DR-6-101C of the
4 Virginia Code of Professional Responsibility."

5 Issues on Appeal

6 1. Unconstitutional Vagueness

7 Motley argues that DR 6-101(C) is unconstitutionally
8 vague. Citing Grayned v. City of Rockford, 408 U.S. 104,
9 108 (1972), Motley opines that the vagueness doctrine
10 requires that a statute give a person of ordinary
11 intelligence a reasonable opportunity to know what conduct
12 is commanded or prohibited. He says the phrase "reasonably
13 informed" in DR 6-101(C) is not defined and "gives no
14 guidelines as to what is reasonable and leaves respondent
15 at the [whim] of the personalities making up [the
16 Disciplinary Board]."

17 We disagree with Motley. Disciplinary Rule 6-101(C)
18 is presumed to be constitutional, and we will resolve any
19 doubt regarding its constitutionality in favor of its
20 validity. See Pulliam v. Coastal Emergency Servs., Inc.,
21 257 Va. 1, 9, 509 S.E.2d 307, 311 (1999). Furthermore,
22 "[v]agueness challenges to statutes not threatening First

communication between lawyer and client is now contained in
Rule 1.4(a),(b), and (c) of the new Rules.

1 Amendment interests are examined in light of the facts of
2 the case at hand; the statute is judged on an as-applied
3 basis." Maynard v. Cartwright, 486 U.S. 356, 361 (1988).

4 We find nothing vague about the language of DR 6-
5 101(C) with respect to the conduct commanded of Motley in
6 light of the facts of this case. Beyond any question, the
7 conduct commanded was for Motley to inform Rowe of the
8 denial of his appeal by the Court of Appeals in time for
9 him to decide whether to appeal the denial and, if his
10 decision was affirmative, to file the notice of appeal and
11 petition for appeal within the thirty-day period prescribed
12 by Rules 5:14(a) and 5:17(a)(2).

13 2. Sufficiency of Evidence

14 Motley argues that the finding of the Disciplinary
15 Board that he failed timely to inform Rowe of the denial of
16 his appeal is not justified by a reasonable view of the
17 evidence. On review of a disciplinary proceeding, "we will
18 make an independent examination of the whole record, giving
19 the factual findings of the Disciplinary Board substantial
20 weight and viewing them as prima facie correct. While not
21 given the weight of a jury verdict, those conclusions will
22 be sustained unless it appears they are not justified by a
23 reasonable view of the evidence or are contrary to law."
24 Blue v. Seventh Dist. Comm., 220 Va. 1056, 1061-62, 265

1 S.E.2d 753, 757 (1980). And we view the evidence in the
2 light most favorable to the side that prevailed below.
3 Rutledge v. Virginia State Bar, 214 Va. 312, 313, 200
4 S.E.2d 573, 574 (1973).

5 Here, the evidence was in sharp conflict. Motley
6 testified that he informed both Rowe and his mother of the
7 Court of Appeals' denial of Rowe's petition for appeal
8 within the thirty-day period following the denial. Both
9 Rowe and his mother denied receiving knowledge of the Court
10 of Appeals' action within the thirty-day period.

11 Motley introduced telephone bills which showed collect
12 calls ostensibly placed by Rowe to Motley's office from
13 Southampton Reception Center on April 22, 1996, and from
14 Brunswick Correctional Center on April 30, 1996. Both
15 these dates were within the thirty-day period after the
16 Court of Appeals' denial of Rowe's petition for appeal, and
17 Motley claimed that on both occasions he informed Rowe the
18 appeal had been denied. Rowe testified, however, that he
19 was not confined at Southampton Reception Center on April
20 22, 1996. He also said that on the one occasion he reached
21 Motley by telephone from Brunswick Correctional Center
22 within the thirty-day period following April 15, 1996,
23 Motley told him he "hadn't heard anything" concerning the
24 outcome of the appeal.

1 Rowe testified further that he received nothing from
2 Motley in the mail within the thirty-day period following
3 April 15, 1996, and that it was not until June that Motley
4 told him in a telephone conversation that the appeal had
5 been denied. A "couple of days later," on June 18, 1996,
6 Rowe wrote Motley requesting a copy of the Court of
7 Appeals' decision and received a copy in the mail.

8 Motley also claimed that, in the thirty-day period, he
9 mailed Rowe's mother a copy of the Court of Appeals' order
10 denying Rowe's appeal, but he could not document the
11 mailing with a copy of a cover letter or otherwise. In
12 addition, Motley introduced a memorandum prepared by his
13 secretary stating that Ms. Rowe called the office on April
14 5, 1996, and left a message that she would make a payment
15 on Motley's fee on April 15. Motley also introduced a copy
16 of a receipt dated May 10, 1996, for a payment of \$100
17 purportedly made on that date by Ms. Rowe on a visit to
18 Motley's office.

19 However, Ms. Rowe testified that she received nothing
20 in the mail from Motley within the thirty-day period
21 following April 15, 1996, and that she only learned of the
22 denial of the appeal when Rowe informed her in late May or
23 June that Motley had just told him the appeal had been
24 denied. Ms. Rowe then contacted Motley, and he confirmed

1 that the appeal had been denied and told her that it was
2 "too late" to appeal further.

3 Ms. Rowe also denied that she "left a message" with
4 Motley's office promising to make a payment on his fee on
5 April 15, 1996, and she said that she did not recall
6 visiting Motley's office on May 10, 1996, when Motley
7 claimed she made a payment in the office. She insisted,
8 instead, that March 6, 1996, was the last date upon which
9 she made a payment.

10 Motley says Rowe and his mother were "not credible
11 witnesses." We disagree. Their testimony was not
12 inherently incredible, and it was for the Committee, as
13 trier of fact, to determine the credibility of the
14 witnesses and to resolve the conflicts between Motley's
15 testimony and the testimony of Rowe and his mother.

16 The burden was on the Bar to establish Motley's
17 violation by clear proof. See Blue, 220 Va. at 1062, 265
18 S.E.2d at 757. With the conflicts resolved against Motley,
19 the evidence constituted clear proof to support the finding
20 by the Disciplinary Board that Motley violated DR 6-101(C).

21 3. Prior Disciplinary Record

22 Motley argues that the Disciplinary Board erred in
23 considering his prior disciplinary record in determining to

