

STATE OF WEST VIRGINIA

At a Regular Term the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on May 9, 2018, the following order was made and entered:

Office of Disciplinary Counsel,
Petitioner

vs.) No. 18-0187

Richard T. Busch, a suspended member of
The West Virginia State Bar,
Respondent



ORDER

On March 5, 2018, the petitioner, Office of Disciplinary Counsel, by Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel, filed a petition seeking annulment of the law license in the State of West Virginia of the respondent, Richard T. Busch, pursuant to Rule 3.18, Rules of Lawyer Disciplinary Procedure.

Upon consideration and review of the petition seeking annulment, the Court is of the opinion to and does hereby grant the petition. It is therefore ordered that the license to practice law in the State of West Virginia of the respondent, Richard T. Busch, shall be, and it hereby is, **annulled.**

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court



**IN THE SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

No. 18-_____

**RICHARD T. BUSCH, a suspended member
of the West Virginia State Bar,**

Respondent.

**PETITION SEEKING ANNULMENT OF LAW LICENSE
PURSUANT TO RULE 3.18 OF THE RULES OF
LAWYER DISCIPLINARY PROCEDURE**

Rachael L. Fletcher Cipoletti
[Bar No. 8806]
Chief Lawyer Disciplinary Counsel
Office of Disciplinary Counsel
City Center East, Suite 1200C
4700 MacCorkle Avenue, S.E.
Charleston, West Virginia 25304
rfcipoletti@wvdc.org
(304) 558-7999
(304) 558-4015 – facsimile

NOW COMES the Office of Disciplinary Counsel by Rachael L. Fletcher Cipoletti, its Chief Counsel, and reports to this Court pursuant to Rule 3.18 of the Rules of Lawyer Disciplinary Procedure and Rule 35(a)(4) of the Rules of Appellate Procedure that Richard T. Busch, a suspended lawyer, (hereinafter “Respondent”) has been convicted of a crime that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer and is in direct violation of the Rules of Professional Conduct. In support of this petition, the Office of Disciplinary Counsel states as follows:

FACTS

1. Respondent was admitted to the West Virginia State Bar on April 23, 2002, and although Respondent’s license to practice law in West Virginia was suspended by the Supreme Court of Appeals in 2014, he remains subject to the lawyer disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and the Lawyer Disciplinary Board.
2. On or about November 9, 2017, law enforcement was summoned to an apartment complex in Elkins, West Virginia, regarding allegations of a domestic assault.
3. When police arrived, the victim advised that Respondent “shoved her into a vase” causing minor injuries. The criminal complaint filed in the Magistrate Court of Randolph County states that both parties were intoxicated and that Respondent denied the physical altercation.

4. The victim provided a written statement regarding the events of November 9, 2017, and also stated that the following day, Respondent hit the windshield of her car with his hand and attempted to throw a rock at the vehicle while she and her young son were inside. The victim obtained a domestic violence protective order the same day. [Attachment A -Criminal complaint - 17-M42M-01999].
5. On or about November 10, 2017, Respondent was served with the domestic violence protective order. Several hours later, the victim advised police that she had received multiple abusive voice mails from Respondent after he was served and he referenced the protective order in the telephone messages. [Attachment B - Criminal complaint - 17-M42M-02030].
6. Respondent was arraigned on criminal charges on or about November 14, 2017. A condition of his bond was that he was to have no direct, indirect physical or verbal contact with the victim.
7. On or about November 15, 2017, police were again summoned to the victim's residence wherein she advised that Respondent was sitting in his parked car in the parking lot of her apartment building, in violation of the conditions of his bond. [Attachment C - Criminal complaint - 17-M42M-2047].
8. On or about November 16, 2017, a Motion to Revoke Bond was filed by the Assistant Prosecutor of Randolph County, West Virginia. [Attachment D]

9. Respondent was subsequently arrested, revoked and incarcerated for approximately two months.
10. On or about February 13, 2018, Respondent pleaded guilty of One Count of Domestic Assault and one count of Violation of a Protective Order. In exchange, One Count of Domestic Battery and One Count of Violation of a Protective Order were dismissed.
11. On the first charge, Respondent was sentenced to six months in jail, credit for time served, suspension of the remainder of the sentence with one year of probation and on the second charge he was sentenced to one year in jail, suspended for one year of probation. Respondent was further ordered to have no contact with the victim in the matter and to seek out-patient drug/alcohol rehabilitation and to provide documentation of the same in quarterly reports during the probation. [Attachment E].
13. Rule 3.18(c) of the Rules of Lawyer Disciplinary Procedure provides that “[a] plea or verdict of guilty or a conviction after a plea of nolo contendere shall be deemed to be a conviction within the meaning of this rule.”
14. Rule 3.18(d) of the Rules of Lawyer Disciplinary Procedure provides that “[a] lawyer shall be deemed to have been convicted within the meaning of this rule upon the entry of the order or judgment of conviction and such lawyer’s license may be suspended or annulled thereupon notwithstanding the pendency of an appeal from such conviction.”

15. Respondent has been convicted of a crime within the meaning of Rule 3.18 of the Rules of Lawyer Disciplinary Procedure. “Where there has been a final criminal conviction, proof on the record of such conviction satisfies the Committee on Legal Ethics’ burden of proving an ethical violation arising from such conviction.” Syllabus Pt 2, Committee on Legal Ethics v. Six, 181 W.Va. 52, 380 S.E.2d 219 (1989).
16. Because Respondent pleaded guilty and was convicted of criminal acts he has violated Rule 8.4(b), Rule 8.4(c) and Rule 8.4(d) of the Rules of Professional Conduct which state in pertinent part:

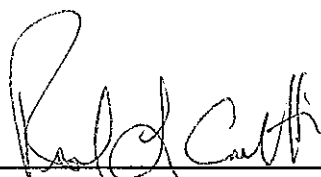
Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, after affording the right of Respondent to file a written request with the Chairperson of the Hearing Panel of the Lawyer Disciplinary Board for a mitigation hearing within thirty (30) days of the date of the filing of this Petition pursuant to Rule 3.18(e) of the Rules of Lawyer Disciplinary Procedure, the Office of Disciplinary Counsel requests that this Honorable Court issue an Order which annuls Respondent’s law license based on Rule 3.18 of the Rules of Lawyer Disciplinary Procedure and legal precedent of this Court.

Respectfully submitted,
Office of Disciplinary Counsel



Rachael L. Fletcher Cipoletti [Bar No.8806]

Chief Lawyer Disciplinary Counsel

Office of Disciplinary Counsel

City Center East, Suite 1200C

4700 MacCorkle Avenue SE

Charleston, West Virginia 25304

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rfcipoletti@wvode.org

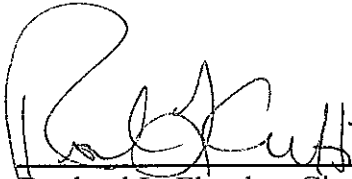
CERTIFICATE OF SERVICE

This is to certify that I, Rachael L. Fletcher Cipoletti, Chief Lawyer Disciplinary Counsel for the Office of Disciplinary Counsel, have this day, the 2nd day of March, 2018, served a true copy of the foregoing **“PETITION SEEKING ANNULMENT OF LAW LICENSE PURSUANT TO RULE 3.18 OF THE RULES OF LAWYER DISCIPLINARY PROCEDURE”** upon Respondent Richard T. Busch, Esquire, by mailing the same, United States Mail with sufficient postage, to the following address:

Richard T. Busch
134 Buffalo Street
Elkins, WV 26241

And to the Chair of the Hearing Panel of the Lawyer Disciplinary Board:

Steven K. Nord, Esquire
Post Office Box 2868
Huntington, WV 25728



Rachael L. Fletcher Cipoletti

Attachment A

IN THE MAGISTRATE COURT OF Randolph COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.
Richard Talbot Busch
 Defendant
310 Beverly Pike Apt. 2 Elkins, WV 26241
 Address
09/09/1969 E433187
 Date of Birth Driver's License No.

Case No. 17-M42M-01999

☒ Misdemeanor
☐ Felony

CRIMINAL COMPLAINT

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about November 9th 2017 in Randolph County, West Virginia, in violation of W. Va. Code (cite specific section, subsection, and/or subdivision as applicable) 61-2-28(a) 61-2-28(b) Domestic Battery Domestic Assault Richard Talbot Busch the defendant did (state statutory language of offense) See attached page #2.

I further state that this complaint is based on the following facts: See attached page #3

The defendant is/has:

- ☐ The victim's spouse or ex-spouse
☐ A parent or guardian of the victim
☐ A child in common with the victim

- ☒ Living with the victim or had lived with the victim
☐ A person who may be classified as a spouse, parent or guardian to the victim
☐ None of the above connections to the victim

Continued on attached sheet? ☒ yes ☐ no

Complainant (who appears before magistrate):

Deputy A.B. Beverly
 Name

32 Randolph Ave. Suite 201

Address

304-636-2111

Telephone

Randolph County Sheriff's Office Deputy

Office or title, if any

Aaron Beverly 11-10-17
 Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by complainant in my presence, the item(s) checked below apply:

- ☒ Probable cause found
☐ Summons issued
☒ Warrant issued
☐ Warrantless arrest
☐ No probable cause found

[Signature]
 Magistrate Signature

11/13/17
 Date

Return
Defendant
File
Complainant
Prosecutor

CASE NO. 17-M42M-01999

(Criminal Complaint Continued)

§61-2-28. Domestic violence

(a) Domestic battery. -- Any person who unlawfully and intentionally makes physical contact force capable of causing physical pain or injury to his or her family or household member or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor

(b) Domestic assault. -- Any person who unlawfully attempts to use force capable of causing physical pain or injury against his or her family or household member or unlawfully commits an act that places his or her family or household member in reasonable apprehension of immediately suffering physical pain or injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than \$100, or both fined and confined.

George Newman 11-10-2017

<input type="checkbox"/>	Return
<input type="checkbox"/>	Defendant
<input type="checkbox"/>	File
<input type="checkbox"/>	Complainant
<input type="checkbox"/>	Prosecutor

CASE NO. 17-M42M-01999

(Criminal Complaint Continued)

On Thursday November 9th, 2017, I Deputy A.B. Beverly was dispatched along with SGT. B.A. Talkington, Cpl. D.D. Pennington, and Deputy E.B Carr to 310 Beverly Pike Apt. 2 in reference to a domestic altercation. Upon our arrival, we spoke with the resident of the home later identified as Amber Click. Amber click advised that prior to calling 911, her boyfriend Richard Busch had shoved her into a vase resulting in a scrape on her shin, and a swollen wrist which was documented by photographs. At this time Mr. Bush exited the house to speak with us. Both Amber Click and Mr. Busch stated that they had been drinking, and both parties admitted to being intoxicated. Mr. Bush denied that there was any physical altercation, and stated that the argument was only verbal. Amber Click agreed to spend the remainder of the night at her next door neighbors residence. We suggested that both parties refrain from making contact with each other for the remainder of the night. Furthermore, we advised Amber Click to contact us the following day to provide us with a written statement. Amber Click was also informed that she had the option to pursue a protective order.

At approximately 1052 hours on November 10th Lt. R.K. Swisher obtained a written statement from Amber Click in reference to the events that took place on November 9th, 2017. This statement also includes an event that took place on November 10th, 2017 where Amber Click states that Mr. Busch slammed his hand on her car windshield, and attempted to throw a rock at her car while her son was in the backseat. Also on Friday November 10th, 2017 Amber Click obtained a protective order against Mr. Busch, which was served to Richard Busch on this same day at approximately 1300 hours by the Randolph County Sheriffs Office. All of these events took place in Randolph County, WV.

- Deputy A.B. Beverly

[Signature] 11-10-17

<input type="checkbox"/>	Return
<input type="checkbox"/>	Defendant
<input type="checkbox"/>	File
<input type="checkbox"/>	Complainant
<input type="checkbox"/>	Prosecutor

Attachment B

IN THE MAGISTRATE COURT OF Randolph COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

v.
Richard Talbot Busch
 Defendant
310 Beverly Pike Apt. 2 Elkins, WV 26241
 Address
09/09/1969
 Date of Birth
E433187
 Driver's License No.

Case No. 17-M42M-02030

☒ Misdemeanor
☐ Felony

CRIMINAL COMPLAINT

I, the undersigned complainant, upon my oath or affirmation, state the following is true and correct to the best of my knowledge and belief. On or about November 10th 2017 in Randolph County, West Virginia, in violation of W.Va. Code (cite specific section, subsection, and/or subdivision as applicable) §48-27-903 violation of protective order Richard Talbot Busch the defendant did (state statutory language of offense) Misdemeanor offenses for violation of protective order.

(a) A person is guilty of a misdemeanor if the person knowingly and willfully violates:

(1) A provision of an emergency or final protective order entered

I further state that this complaint is based on the following facts: See attached sheet page #2

The defendant is/has:

- ☐ The victim's spouse or ex-spouse
☐ A parent or guardian of the victim
☐ A child in common with the victim
☒ Living with the victim or had lived with the victim
☐ A person who may be classified as a spouse, parent or guardian to the victim
☐ None of the above connections to the victim

Continued on attached sheet? ☒ yes ☐ no

Complainant (who appears before magistrate):

A.B Beverly
 Name
32 Randolph Ave. Suite 201
 Address
304-636-2111
 Telephone
 Deputy
 Office or title, if any

A.B Beverly 11-14-2017
 Complainant Signature

On this complaint, sworn or affirmed before me and signed this date by complainant in my presence, the item(s) checked below apply:

- ☐ Probable cause found
☐ Summons issued
☒ Warrant issued
☐ Warrantless arrest
☐ No probable cause found

George M. Leggett
 Magistrate Signature

Date 11/15/17

	Return
	Defendant
	File
	Complainant
	Prosecutor

(Criminal Complaint Continued)

On Friday November 10th, 2017 at approximately 1600 hours, I Deputy A.B. Beverly learned that an emergency protective order requested by petitioner Amber Click, had been served to the respondent Richard Busch at approximately 1300 hours on November 10th, 2017. At approximately 1728 hours on this same day, Amber Click arrived at the Randolph County Sheriffs office, and advised that Mr. Busch had made several telephone calls, and left multiple voice mails attempting to contact her after the protective order was served and in effect. Amber Click provided us with a written statement advising that she had received (7) phone calls from Mr. Busch after she had obtained the protective order. Amber Click also advised that some of the voice mails left by Mr. Busch were verbally abusive in nature, and provided us with the recordings of (5) voice mails that were left by Mr. Busch. Amber Click began receiving voice mails at approximately 1350 hours, and continued to receive additional voice mails at approximately 1359, 1406, and 1417 hours on November 10th, 2017. Mr. Busch references the protective order repeatedly throughout the messages, and states that it makes him want to be aggressive with her (Amber Click). Mr. Busch also uses phrases like "fuck you, you cunt", and "why won't you answer your phone bitch" throughout the messages. All of these events took place in Randolph County, WV. - DEPUTY A.B. BEVERLY *Amber Beverly* 11-14-2017

	Return
	Defendant
	File
	Complainant
	Prosecutor

Attachment C

IN THE MAGISTRATE COURT OF RANDOLPH COUNTY, WEST VIRGINIA

State of West Virginia

Case No. 17-M42M-02047

v.

RICHARD T. BUSCH

XXX-XX-

09/09/1969

Defendant (Full Name)

Social Security Number

Date of Birth

UNKNOWN

Address

Driver's License / Identification Number

UNKNOWN

City, State & Zip Code

Phone Number(s)

Charge(s): VIOLATION OF DOMESTIC VIOLENCE ORDER

ARREST WARRANT / CAPIAS RECALL ORDER

Mag. Ct. Criminal Procedure Rule 4(d)(4), W. Va. Code § 50-5-15

ARREST WARRANT RECALL

☒ It is hereby ORDERED that the warrant for the arrest of RICHARD T. BUSCH, issued on the 15th day of November, 2017, and all copies thereof be returned forthwith to the issuing magistrate court along with this order because the defendant voluntarily appeared in court to answer to the charge.

☐ Upon request of the prosecuting attorney, it is hereby ORDERED that the warrant for the arrest of _____, issued on the _____ day of _____, 20_____, is declared null and void, and is hereby cancelled. It is further ORDERED that the unexecuted arrest warrant and all copies thereof be returned forthwith to the issuing magistrate court along with this order.

CAPIAS RECALL

It is hereby ORDERED that the capias for the arrest of _____, issued on the _____ day of _____, 20_____, is declared null and void, and is hereby cancelled. It is further ORDERED that the unexecuted capias and all copies thereof be returned forthwith to the issuing magistrate court along with this order.

Date

Magistrate

Copies Sent To _____

Date Sent/Faxed: _____

Attachment D

IN THE MAGISTRATE COURT OF RANDOLPH COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
Plaintiff,

vs.

CASE NO.: 17-M42M-01999

RICHARD TALBOTT BUSCH,
Defendant.MOTION TO REVOKE BONDThe State of West Virginia
in the above-styled case hereby moves or requests that this court:

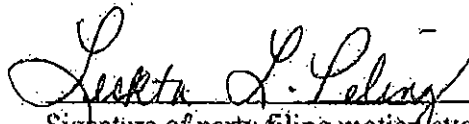
- ☐ Remove this case to circuit court (if civil) _____
☐ Continue this case from the currently scheduled date of _____
☐ Other (specify): REVOKE DEFENDANT'S BOND

This motion is based upon the following grounds:

That the Defendant was charged with the instant offenses of Domestic Battery and Domestic Assault stemming from an incident that occurred on or about November 9, 2017. The Defendant was also charged with violation of a Domestic Violence Protective Order from an incident that occurred on or about November 10, 2017 with the same victim resulting in Case No. 17-M42M-02030.

The Defendant was arraigned on November 14, 2017, wherein a condition of his bond was to have NO DIRECT OR INDIRECT PHYSICAL OR VERBAL CONTACT with the Victim. (See Attached "Exhibit A", attached hereto and incorporated herein by reference.) The Defendant was then subsequently arrested for a second violation of a Domestic Violence Protective Order alleged to have occurred on or about November 15, 2017 with the same Victim less than 24 hours after being arraigned and being placed on bond.

The Defendant has failed to comply with the terms and conditions of his bond, and committed additional criminal offenses with the same victim resulting in new criminal charges. For all the foregoing reasons, the State hereby moves for the Defendant's bond to be revoked and this matter be set for hearing.



Signature of party filing motion/attorney for the party/prosecutor

11-16-17

Date

NOTICE TO PARTY FILING MOTION: One copy of this motion must be filed with the court and one copy must be mailed or delivered by hand to the attorneys for all other parties or to the parties themselves if they are not represented by attorneys.

Attachment E

IN THE MAGISTRATE COURT OF RANDOLPH COUNTY, WEST VIRGINIA
STATE OF WEST VIRGINIA
Plaintiff,

v.
Richard Talbott Busch
Defendant.

CASE NO. 17-m42m-01999
17-m42m-02030
17-m42m-02047

PLEA AGREEMENT

On this Date, February 13, 2018

The Defendant agrees to plead GUILTY NOLO CONTENDRE to:

- 1) Domestic Assault (17-m42m-01999)
- 2) Violation of Protective Order (17-m42m-02047)
- 3) _____
- 4) _____

The State agrees to DISMISS / REDUCE:

- 1) Violation of Protective Order (17-m42m-02030)
- 2) Domestic Battery (17-m42m-01999)

The State agrees the appropriate SENTENCE for each guilty plea is as follows:

- 1) 6 months in jail, Credit for time served, suspend remainder for 1 year probation - No Contact with Victim, direct or indirect, unless approved by Court Order.
- 2) 1 year in jail. Suspended for 1 year probation. No Contact with Victim, direct or indirect, unless approved by Court Order.
- 3) Defendant agrees to seek ^{OUT-}patient drug/alcohol rehabilitation services and provide documentation to Court quarterly during probation until further Order of Court.
Restitution? Yes/No \$ _____ TO: _____
- 4) Defendant's firearm(s) to be transferred to a 3rd party

[Signature]
DEFENDANT

[Signature]
COUNSEL FOR DEFENDANT

[Signature]
PROSECUTING ATTORNEY

MAGISTRATE