

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JAMES ALEXANDER BABER III**

VS B DOCKET NO. 09-000-079610

ORDER

THIS MATTER came on to be heard on the 31st day of July, 2009, before a panel of the Disciplinary Board consisting of William H. Monroe, Jr., Chair, Peter A. Dingman, Randall G. Johnson, Jr., Michael S. Mulkey, and Dr. Theodore Smith, Lay member. The Virginia State Bar was represented by Kathryn R. Montgomery. The Respondent, James Alexander Baber, III, appeared both personally and by his attorney, Michael L. Rigsby. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Jennifer L. Hairfield, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

A request for a Continuance was denied and this matter was conducted as a Private Hearing on the question of whether the Respondent currently suffers from an "impairment" as defined in Part 6, Section IV, paragraph 13 of the Rules of the Supreme Court of Virginia.

The Bar introduced the de bene esse depositions of James Levenson, M.D., on the medical/psychiatric/psychological condition of the Respondent. The Bar also called Michael Powell, a private investigator, as well as Mr. Jeffery Everhart, a former partner of the Respondent with whom he now shares office space.

At the conclusion of the Bar's evidence the Respondent made a Motion to Strike the evidence which was taken under consideration. The Respondent testified on his own behalf. At

the conclusion of all the evidence the Motion to Strike the evidence of the Bar was renewed and denied.

Taken into consideration was the opinion of the expert witness tendered by deposition, the evidence from the witnesses and their credibility, questions by the Board and argument of Counsel. In discussing the disposition of this matter the Board took special note of the Respondent's long history of practice before the Bar and the high quality of representation given by the Respondent to his clients.

The Board finds by clear and convincing evidence that the Respondent has a physical or mental condition that materially impairs his fitness to practice law and as a result thereof is "materially impaired". His license to practice law is suspended under paragraph 13(I)(6) for an indefinite period of time. The Respondent was advised of his right to further proceeding.

It is further ORDERED, pursuant to the provisions of Part Six, §IV: ¶13-29 of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney shall give such notice within fourteen (14) days of the effective date of the suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the order. The Attorney shall furnish proof to the bar within sixty (60) days of the effective date of the order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein

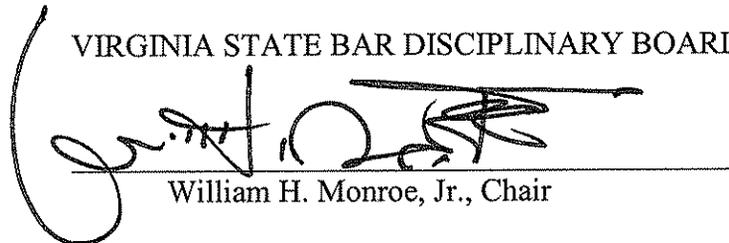
shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that James Alexander Baber III shall furnish true copies of all of the notice letters sent to all persons notified of the Administrative Suspension, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before September 29, 2009.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent, James Alexander Baber III, by certified mail, return receipt requested, to his Virginia State Bar address of record, at Rice, Everhart & Baber, Courthouse Commons, 4100 East Parham Road, Suite C, Richmond, VA 23228 and by regular mail to Michael L. Rigsby, counsel for the Respondent, by regular first-class mail, at Carrell Rice & Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, VA 23226, and by hand delivery to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA.

ENTERED THIS 24th DAY OF AUGUST, 2009

VIRGINIA STATE BAR DISCIPLINARY BOARD



William H. Monroe, Jr., Chair