

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF GERALD MANLEY BOWEN

VS. DOCKET NO. 08-051-071879

ORDER OF REVOCATION

THIS MATTER came on to be heard on Friday, September 24, 2010, before a panel of the Disciplinary Board consisting of William E. Glover, Chair, Nancy C. Dickenson, Michael S. Mulkey, Pleasant S. Brodnax, III, and Robert W. Carter Lay member. The Virginia State Bar was represented by Kathleen M. Uston, Assistant Bar Counsel. The respondent, Gerald Manley Bowen, did not appear. 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. Teresa L. McLean, Certified Court Reporter, Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the District Committee Determination for Certification by the Fifth District Subcommittee Section I.

I. FINDINGS OF FACT

VS. Exhibits A, B and C were admitted without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Gerald Manley Bowen, hereinafter the “respondent”, has been an attorney licensed to practice law in the Commonwealth of Virginia, not in good standing and his address of record with the Virginia State Bar has been 3174 Kirkwell Place, Herndon, Virginia 22071-3309. The respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13-12 and 13-18 A. of the Rules of Virginia Supreme Court.

2. The complainant, Florida attorney, Mark P. Dikeman, did not appear.
3. Following a hearing held on May 20, 2005, the Virginia State Bar Disciplinary Board (hereinafter the "Board") entered an Order dated June 15, 2005, which suspended the Respondent's license to practice law in the Commonwealth of Virginia based upon his failure to comply with another Order of the Board entered on November 5, 2002.
4. In its June 15, 2005, Order, the Board found that the Virginia State Bar had proven by clear and convincing evidence that the Respondent violated the Board's November 5, 2002, Order. The Board therefore suspended the Respondent's license to practice effective May 20, 2005, until such time as he complied with its November 5, 2002, Order.
5. The Board's June 15, 2005, Order also required that the Respondent give notice of his suspension by certified mail, return receipt requested, to all opposing counsel and presiding judges in pending litigation.
6. An attested copy of the June 15, 2005, Order was served upon the Respondent as required under applicable rules by certified mail, return receipt requested, at his address of record with the Virginia State Bar, that address being 3174 Kirkwell Place, Herndon, Virginia 22071-3309.
7. On August 14, 2007, Florida attorney Mark P. Dikeman notified the Virginia State Bar that the Respondent had filed a pleading with the United States District Court for the Southern District of Florida in a matter pending before that court, attempting to have himself reinstated as Plaintiff's Class Counsel in the case.¹ This case was pending at the time the Board entered its June 15, 2005, Order.
8. Documents provided by Mr. Dikeman establish that on or around July 6, 2007, the

¹ Although Mr. Dikeman is identified in the Virginia State Bar file as the complainant in this case, he has stated unequivocally that he wishes no involvement in these proceedings.

Respondent filed a pleading styled “Notice of Combined RULE 60 and Other Motions” in the United States District Court for the Southern District of Florida, seeking to have himself reinstated as Class Counsel in a case pending before that court. At this time, the Respondent’s license to practice law in the Commonwealth of Virginia was suspended, and he held no other license in good standing in any other state, facts which the Respondent failed to disclose to the court in this pleading.

9. Documents provided by Mr. Dikeman further establish that at no time did the Respondent notify either him or the Court of his suspension as he was required to do pursuant to the Board’s June 15, 2005 Order.

10. Notwithstanding his suspension, it appears as though the Respondent continues to attempt to practice law or, at a minimum, hold himself out as authorized to do so.

11. On September 10, 2007, a copy of Mr. Dikeman’s complaint was sent to the Respondent at his address of record with the Virginia State Bar together with a letter demanding the Respondent’s response to the allegations contained therein within twenty-one (21) days. The Respondent failed to file any response to the complaint despite his obligation to do so.

12. On December 10, 2008, the Respondent was served with a duly issued Subpoena Duces Tecum requiring production by him of all documents pertaining to Mr. Dikeman on or before December 31, 2008. The Respondent failed to comply with this subpoena duces tecum despite his obligation to do so.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

- (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

RULE 8.4 Misconduct

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; or
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits, upon evidence from VSB Investigator William Sterling presented on behalf of the Bar and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate.

After due deliberation the Board reconvened and stated its findings as follows:

The Board determined that the Bar did prove by clear and convincing evidence that the respondent was in violation of Rule 3.4 Fairness To Opposing Party and Counsel, by appearing as counsel in a case in Florida after his license to practice law had been suspended by the Virginia State Bar; that he was in violation of Rule 5.5 Unauthorized Practice of Law, by appearing as counsel in a case in Florida after his license to practice law had been suspended by the Virginia State Bar; that he was in violation of Rule 8.1 Bar Admission and Disciplinary Matters because of his failure to respond to the subpoena duces tecum from the VSB; and that he violated Rule 8.4 Misconduct because his actions as appearing as counsel in the Florida case resulted in dishonesty, fraud, deceit, or misrepresentation.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including respondent's prior disciplinary record and evidence of administrative suspensions. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as REVOCATION.

Accordingly, it is ORDERED that the license to practice law of the respondent, Gerald Manley Bowen, is hereby revoked, effective September 24, 2010.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation 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 Respondent shall

also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of September 24, 2010, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9 E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent Gerald Manly Bowen, at his address of record with the Virginia State Bar, being 3174 Kirkwell Place, Herndon, Virginia 22071-3309 by

certified mail, return receipt requested, and by regular mail to Kathleen Uston, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 30th day of November, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in black ink, appearing to read 'W. Glover', is written over a horizontal line. The signature is stylized and somewhat cursive.

William E. Glover, Chair