

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
KEVIN MICHAEL CUNNINGHAM

VS. B Docket No. 09-000-078512

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on March 27, 2009, before a duly convened panel of the Board consisting of Robert E. Eicher, Chair, presiding; John S. Barr, Michael S. Mulkey, Robert L. Freed and W. Ray Inscoc, lay member. M. Brent Saunders, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("Bar"). Kevin Michael Cunningham ("Respondent") did not appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The court reporter for the proceeding, Tracy J. Johnson, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone number 804-730-1222, was duly sworn by the Chair. The Chair then inquired of each member of the panel as to whether any of them had any personal or financial interest or any bias which would preclude, or reasonably could be perceived to preclude, their hearing the matter fairly and impartially. Each member, including the Chair, answered in the negative.

The matter came before the Board as a result of the Respondent being disbarred from the practice of law in the State of South Carolina, effective January 8, 2007, by order entered by the Supreme Court of the State of South Carolina of the same date. Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.1.7, a Rule to Show Cause and Order of Suspension and Hearing was entered by the Board on February 27, 2009, and properly served on the Respondent.

The Clerk of the Disciplinary System timely sent all legal notices of the date and place of this hearing in the manner prescribed by law.

Part Six, Section IV, Paragraph 13.1.7 of the Rules of the Supreme Court, specifies how the Board is to proceed upon receiving notice of disbarment of a Virginia attorney in another jurisdiction. The rule states that the Board shall impose the same discipline as was imposed in the other jurisdiction unless the Respondent proves by clear and convincing evidence one or more of the following three grounds for an alternative, or no sanction, being imposed:

- (1) That the record of the proceeding in the other jurisdiction clearly shows that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process;
- (2) That the imposition by the Board of the same discipline upon the same proof would result in a grave injustice; or,
- (3) That the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

The following items were admitted into evidence without objection: Board Exhibit 1, Receipt from certified mailing of notice; Board Exhibit 2: the notice from Barbara Sayers Lanier, the Clerk of the Disciplinary System, sent by certified mail return receipt requested to the Respondent, dated February 27, 2009 with its enclosures including the Rule to Show Cause and Order of Suspension and Hearing of the Board entered February 27, 2009, and the order of the Supreme Court of the State of South Carolina entered January 8, 2007.

The Respondent filed no response to the Rule to Show Cause and Order of Suspension and Hearing.

After receiving the evidence and hearing the argument of Assistant Bar Counsel, the Board retired to deliberate in closed session. The Board reconvened in open session and the Chair announced that the Board found, by clear and convincing evidence, that the Respondent

has failed to show cause why the same discipline imposed in South Carolina should not be imposed by the Board.

Accordingly, it is hereby ORDERED that Kevin Michael Cunningham's license to practice law in the Commonwealth of Virginia be, and hereby is, revoked effective March 27, 2009.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13.M 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 clients. The Respondent shall give such notice within 14 days of the effective date of the revocation, and shall 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 Virginia State Bar within 60 days of the effective date of the revocation that such notices have been timely given and such arrangements made for the disposition of these matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the revocation, 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.M. shall be determined by the Board, unless the Respondent makes a timely request for a hearing before a three-judge circuit court.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Kevin Michael Cunningham at his address of record with

the Virginia State Bar, 8019 Kiwi Point, Tega Cay, SC 29708, by certified mail return receipt requested and by hand delivery to M. Brent Saunders, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Richmond, VA 23219.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

ENTERED this 14th day of April, 2009

Virginia State Bar Disciplinary Board



Robert E. Eicher, Chair

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