

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE: Charles Daugherty Fugate, II
VSB Docket No. 06-000-2393

ORDER OF RECOMMENDATION

This matter came before the Virginia State Bar Disciplinary Board, pursuant to notice, on November 17, 2006 upon a referral to the Disciplinary Board from the Virginia Supreme Court. The purpose of the referral from the Virginia Supreme Court was to consider the petition for reinstatement of the license of Charles Daugherty Fugate, II, and to make a recommendation to the Virginia Supreme Court as to whether that petition should be granted or denied.

Hearing Procedure and Evidence

The Disciplinary Board panel was composed of Peter A. Dingman, Chair, David R. Schultz, William C. Boyce, William E. Glover, and W. Jefferson O'Flaherty, lay member. The Petitioner was present and *pro se*. The Petitioner was also assisted in the matter by Roy Jessee, The Bar was represented by Richard E. Slaney, Assistant Bar Counsel. The Chair of the panel convened the hearing at 9:00 a.m. The matter was reported by Donna Chandler, of Chandler & Halasz, Registered Court Reporters, Post Office Box 9349, Richmond, Virginia, 23227, (804) 730-1222.. The Chair swore the court reporter and introduced the panel. The Chairman canvassed the panel to determine if any member of the panel had a bias or conflict. Each member of the panel identified himself and stated that he had no bias or conflict.

The Chair then summarized the procedure to be followed in the hearing of the matter. Both the Petitioner and the Bar Counsel stated that they understood the procedure and were satisfied with the Chair's explanation.

The Petitioner moved the admission of two exhibits, comprising all of the documents previously provided to (and read by) the panel, and that motion was granted without objection by Bar Counsel. Exhibit 1 consists of a November 6, 2006 letter and enclosures from Barbara Lanier, Clerk of the Disciplinary System, to the members of the panel conveying copies of various documents more fully detailed in her letter, including the record of the prior disciplinary case (VSB Docket No. 00-000-1475) and related proceeding (Record No. 022259) in the Virginia Supreme Court which resulted in the revocation of Petitioner's license together with the pleadings and papers related to the current proceeding.

Prior to the Board hearing, on or about October 11, 2006, the Virginia State Bar issued a press release to various media companies (print, broadcast and radio) and sent notices to persons and institutions likely to have an interest announcing the pendency of Fugate's petition for reinstatement. The Board received letters in support of Fugate's petition and one letter in opposition. Those letters were disclosed to the Petitioner and provided to the Bar and the Board. Those letters not included in Exhibit 1 comprise Exhibit 2. The Bar had previously received numerous letters prior to the initial sanctions hearing on May 17, 2002. Each of those letters was included in Exhibit 1 and admitted as evidence in this proceeding.

The Petitioner then inquired of the Chair as to whether the Petitioner should be sworn prior to opening argument. The Chair responded that the Petitioner, as well as any other witness, would be sworn prior to testifying, but no oath was required for purposes of opening statement.

The Bar then moved for a rule on witnesses. The Petitioner identified four witnesses other than himself who he intended to call in the proceeding. One of those four witnesses was not present; the other three were called before the Court and sworn. The three witnesses so sworn were then admonished not to discuss the matter between them while they were excluded from the courtroom and were sent out of the courtroom. The Petitioner also agreed to ensure that the witness who was not present would not enter the courtroom during the testimony of any other witness.

The Petitioner then gave an opening statement. The Bar responded in opening statement stating that the Bar took, at the outset of the hearing, no position on the request for reinstatement and did not intend to present evidence in opposition to the petition.

The Petitioner testified as his first witness. Following his testimony, he responded to the questions of Bar Counsel and the Board. The Petitioner did not restate all of the facts recited in the petition and Bill of Particulars, but did discuss the changes he had experienced in his life since his guilty plea and incarceration on the felony charges, and his subsequent release and employment in risk management for a grocery store chain. The Petitioner detailed his activities to stay abreast of the law, including a continuing subscription to Virginia Lawyer, Virginia Lawyer Register, and Lawyer's Weekly. He detailed his CLE classes and his examination and passage of the MPRE. He recited that his civil rights have been restored and detailed his community service and volunteer activities during the six years since his suspension and revocation.

The Petitioner then called Lloyd C. (Sonny) Martin as his witness. Mr. Martin is the president of a bank in Pennington Gap, and has known Charles Fugate since Fugate was a child. Martin testified that Fugate's reputation in his community for honesty and trustworthiness was very good. He further testified that the community in which his bank was located and in which he lived was, he believed, hopeful that the Bar would reinstate Fugate's license.

The next witness was Sheriff Gary Parson, Sheriff of Lee County. He testified that he was aware of the nature of the criminal charges of which Mr. Fugate had been convicted. He, in fact, stated that his office had instigated the original investigation which ultimately led (through further investigation by the FBI) to the charges against Mr. Fugate. Sheriff Parson testified that he believed that Petitioner was honest and trustworthy, and further believed that the community

in which he served as Sheriff was hopeful that the Bar would grant the request for reinstatement of Fugate's license.

The next witness called by the Petitioner was Jerry Kilgore. Mr. Kilgore, a former prosecutor in Lee County, as well as the former Secretary of Public Safety and former Attorney General of Virginia, testified that he had known Mr. Fugate and his family since childhood; that he was well aware of Mr. Fugate's reputation in the community and further that he was certain that the community favored the return of Mr. Fugate to the practice of law.

Finally, the Petitioner called Steven Smith, Chief Executive Officer of the grocery store chain which employs the Petitioner. Smith testified that he did not know the Petitioner prior to his criminal conviction, but hired the Petitioner on a part-time basis after the Petitioner was released from prison and was living in a halfway house. Smith described the Petitioner's promotion to a position of trust within the company, and expressed his confidence in the Petitioner and the Petitioner's honesty and trustworthiness. Smith also extolled the Petitioner's character and relationships with other people within the company and its customers and vendors.

At the close of the Petitioner's evidence, the Bar made no motion and presented no evidence. The panel then heard closing statements from the Petitioner and the Bar. Following the closing statements, the panel deliberated to determine what recommendation should be made upon the petition.

Discussion

Paragraph 13(I)(8), Part VI, Section IV, Rules of the Supreme Court of Virginia, provide that an attorney whose license has been revoked may petition for reinstatement, setting forth in his petition the reasons why he should be reinstated. Whether or not the petition is to be granted is for the Supreme Court to decide after receiving the recommendation of this Board. The rules do not provide any mandatory waiting period and the language of the rules and prior decisions of this body dictate that the Board evaluate each case on its own merits. Factors which may be considered in reinstatement cases are clearly set out "in the matter of Albert L. Hiss", Docket No. 83-26, Opinion of the Board dated May 24, 1984 and they are:

1. The severity of the Petitioner's conduct including but not limited to the nature and circumstances of the Misconduct
2. The Petitioner's character, maturity and experience at the time of his or her Disbarment.
3. The time elapsed since the Petitioner's Disbarment.
4. Restitution to clients and/or the Bar.
5. The Petitioner's activities since Disbarment including but not limited to his or her conduct and attitude during that period of time.
6. The Petitioner's present reputation and standing in the community.
7. The Petitioner's familiarity with the Rules of Professional Conduct and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the Petitioner.

9. The Petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his or her Disbarment and Reinstatement.
10. The impact upon public confidence in the administration of justice if the Petitioner's License to practice law is restored.

In this case, the panel determined that the evidence submitted by the Petitioner addressed each of the ten factors of Hiss.

The severity of the Petitioner's conduct which led to his disbarment was grave. He betrayed both the trust vested in him as a lawyer and as an officer of the hospital, upon whose Board of Directors he served. He pled guilty to, and was convicted of felony charges in Federal Court and served prison time as a result of that misconduct.

The Petitioner's character, maturity and experience at the time of his disbarment were also considered by the panel. The Petitioner cooperated with Federal investigators in connection with their investigation of others involved in the same set of operative events. Nearly six years have elapsed since his disbarment and restitution has been made as required by his plea agreement.

Much of the evidence submitted by the Petitioner in his papers and in Court addressed his activities since his disbarment and his present reputation and standing in the community. The Petitioner has worked diligently to restore his reputation serving as a volunteer, participating in church activities, and in his children's school activities. With one exception, all of the letters written to the Bar in connection with his current application supported the Petitioner's request for reinstatement. Among the materials received and reviewed by the Board were letters of support from two Commonwealth's Attorney's, a Senior United States District Judge, the Clerk of the Circuit Court and scores of lawyers practicing in Petitioner's home area. Three voluntary Bar Associations (Wise County, Lee County and the City of Norton) endorsed Petitioner's request. All of the witnesses testified that the Petitioner's reputation and standing in the community were excellent.

The Board was persuaded that the Petitioner remained familiar with the rules of professional conduct and that he had maintained his proficiency in the law. Further, the Board believes that the punishment undergone by the Petitioner was sufficient and had addressed the concerns of both the community and the Bar.

Further, the Petitioner's sincerity, frankness and truthfulness as he discussed the matters that lead to his convictions and the revocation of his license left the panel with the unanimous opinion that the Petitioner understood and regretted his actions, made no excuses for his past conduct, and would be unlikely to repeat the misconduct.

The witnesses, including a community banker, the CEO of a local grocery store chain, the Sheriff of Lee County and the former Attorney General for the Commonwealth of Virginia, discussed the impact upon public confidence in the administration of justice if the Petitioner's license to practice law was restored. Those witnesses, and the persons who wrote letters to the Bar, expressed an overwhelming sense that the community would support and, in fact, participate with the return of Mr. Fugate to the practice of law.

For all of these reasons, the panel unanimously found that the Petitioner had established by clear and convincing evidence that each of the ten factors in Hiss has been satisfactorily addressed, that the testimony and exhibits received in evidence demonstrate that his license to practice law in the Commonwealth of Virginia should be reinstated, that, upon complying with the further requirements of the Court (including, without limitation, successfully completing the Virginia State Bar Exam) Petitioner ought to be again permitted to take the oath and be admitted to the bar of the Supreme Court of Virginia; and it is, therefore,

The respectful recommendation of the Disciplinary Board of the Virginia State Bar that the Virginia Supreme Court grant the petition and provide for the reinstatement of the license of Charles Daugherty Fugate, II.

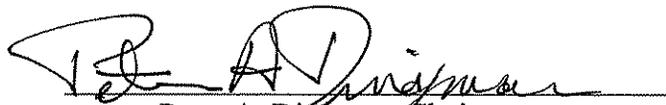
As required in Paragraph 13.B.8.(c) of the Rules of Court, Part VI, Section IV, the Board finds the costs in the proceeding to be as follows:

Copying	\$602.10
Court Reporter Fees	\$ 89.00
Transcript and hearing fee	\$478.50
Mailing of Notice and Postage	\$718.33
Administrative Fee	\$750.00
Bristol Courier Newspaper and Press Release	\$251.40
Certifieds	<u>\$ 13.92</u>
Total	\$2,903.25

It is requested and ordered that the Clerk of the Disciplinary System forward this Order of Recommendation to the Virginia Supreme Court for its consideration and disposition; and

Further requested and ordered that the Clerk forward certified copies of this Order of Recommendation to Charles Daugherty Fugate, II, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 20233 Colony Lane, Bristol, Virginia 24202 and to Richard E. Slaney, assistant Bar Counsel, by hand delivery to 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this 7th day of DECEMBER 2006.


Peter A. Dingman, Chair