

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JAMES E. GHEE
VSB DOCKET NO.: 06-000-0836

ORDER OF RECOMMENDATION

This matter came on to be heard on October 27, 2006 before a panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Robert E. Eicher, 2nd Vice-Chair, (the "Chair") Joseph R. Lassiter, Jr., William H. Monroe, Jr., Russell W. Updike, and V. Max Beard, lay member. The Virginia State Bar ("VSB" or the "Bar") was represented by Harry M. Hirsch. Charlotte Peoples Hodges represented the petitioner, James E. Ghee ("Ghee").

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, including the Chair, responded in the negative. Tracy J. Stroh, RPR, with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804-730-1222) after being duly sworn, reported the hearing and transcribed the proceedings.

All notices required by the Rules of the Virginia Supreme Court were sent by the Clerk of the Disciplinary System.

Ghee petitions for reinstatement of his Bar license, which was revoked by the Board on October 19, 1995, following Ghee's surrender of his license. Ghee offered into evidence seven exhibits, which were admitted without objection, and presented five witnesses, including himself. The Bar opposed the petition for reinstatement, and offered into evidence six exhibits, all but one of which were admitted without objection. The sixth was offered subject to

verification by witnesses, and was later admitted into evidence. The parties offered into the record a Stipulation, which was admitted. The parties stipulated that Ghee has met all of the objective criteria for reinstatement found in Part 6, Section IV, Paragraph 13.I.8.b., including passing the Multi-State Exam with a score of 85 or higher, reimbursing sums paid by the Client Protection Fund, paying the cost of prior proceedings, and completing the necessary mandatory continuing legal education. A petitioner for reinstatement is also required to prove by clear and convincing evidence that he is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law. Part 6, Section V., Paragraph 13.h., provides that in making its recommendation to the Virginia Supreme Court, the Board may consider but is not bound by the factors spelled out *In the matter of Alfred Lee Hiss*, VSB Docket No. 83-26 (Sup. Ct. July 2, 1984), commonly referred to as the *Hiss* factors.

By their nature, reinstatement hearings raise difficult questions. Lord Mansfield noted over two hundred years ago that disbarment is not punishment. *Ex parte Brounsall*, 98 Eng. Rep. 138 (1778). Commentary to the ABA Standards, Para. 2-10, states that since the purpose of lawyer discipline is not punishment, readmission may be appropriate; the presumption, however, is against reinstatement. The burden of proof for reinstatement is clear and convincing evidence. Attorney discipline is always forward-looking. In short, (1) Virginia does not subscribe to permanent disbarment, (2) disbarment is not discipline, and (3) the applicant for readmission bears a heavy burden of proving by clear and convincing evidence that he is presently fit to practice law and that the public's interests are safeguarded and the public's confidence in the administration of justice is preserved. *In re Edmunds*, Order of Recommendation, VSB No. 95-000-1155 (1995).

The Board, after consideration of all of the documentary evidence, the testimony of the witnesses, the ten *Hiss* factors, and argument of counsel, decided by majority vote not to recommend that Ghee's petition for reinstatement be approved. The Board's reasons for this decision are found in the following discussion of the ten *Hiss* factors.

Hiss Factor No. 1. The Severity of the Petitioner's Misconduct Including, but not Limited to, the Nature and Circumstances of the Misconduct.

In 1995 Ghee was indicted by Nottoway County for one count of felony embezzlement of \$38,517.10 from an estate trust account which he opened after qualifying as administrator of the John Jasper Redd estate ("Redd Estate"). Subsequently he entered into a plea agreement and pled guilty to eleven counts of misdemeanor embezzlement. Ghee was sentenced to twelve months in jail on ten counts, all suspended, and twelve months in jail with six months suspended on the remaining count, all sentences to run consecutively. Ghee reported to jail on May 20, 1996, and was subsequently assigned to work release, and thereafter to home electronic monitoring. He was released from supervised probation on November 28, 1996, and from unsupervised probation on May 15, 1998. See Stipulation.

A review of Ghee's prior disciplinary record and the misconduct that gave rise to his embezzlement convictions bears scrutiny.

Ghee received a private reprimand with terms by the Fifth District Committee, effective September 24, 1990. The private reprimand arose from Ghee's failure to adequately keep trust account records, being out of trust on at least one occasion during the months of March through May, 1989, and intermingling his personal funds in his trust account during that same period. Ghee successfully completed the terms by February 3, 1992, which included unannounced audits, a certification by a certified public accountant that his trust account records conformed

with the regulations of the Virginia State Bar, and quarterly audited statements from his CPA for a period of two years that his trust accounts were in trust. See Bar Ex. 5, pg 3-8.

Ghee received two dismissals with terms from the Fifth District Committee effective June 25, 1992. One arose from a malpractice case where Ghee was retained as counsel, and did an inaccurate accounting and had record keeping violations. The other dismissal with terms involved refund of an unearned fee in a bankruptcy case from his operating account and included record keeping violations. The terms for these two cases included participation in a training session in the Safeguard system and meetings with a Virginia State Bar investigator to review Ghee's trust account records and reconciliations immediately after October 31, 1992, January 31, 1993, and July 31, 1993. See Bar Ex. 5, pgs. 15 and 22.

Ghee received a five year suspension with terms effective March 1, 1995, based upon a real estate closing which occurred on or about November 25, 1992, at which time Ghee received \$44,990.75 in settlement funds. On November 30, 1992, Ghee wrote checks in the amount of \$35,570.24 to Joan Walker, \$7,420.51 to Denise George and \$2,000.00 to himself. As of February 1, 1994, the \$7,420.51 check had still not cleared the trust account. From November 30, 1992 until February 1, 1994, the trust account balance fell below that amount on 32 separate occasions. On eight separate occasions during that period, the trust account had a negative balance. As of February 2, 1994, the trust account was out of trust \$5,035.37. Once again it was found that Ghee had failed to maintain the required books, failed to identify to the appropriate case \$30,000 paid to him, and failed to contemporaneously record information as to the source of funds deposited to the trust account. In several instances Ghee failed to prevent or promptly detect and correct the deposit of fiduciary funds to his operating account. Finally, Ghee had written checks for costs against the trust account when there were no client funds to cover those

costs. Ghee entered into an Agreed Disposition whereby his license to practice law was suspended effective March 1, 1995, for a period of five years, with half of that suspension suspended upon various conditions. Bar Ex. 5, pgs 23 - 29.

Thus, when Ghee surrendered his license on October 19, 1995, his license had already been suspended for a period of two and one-half years. Furthermore, the eleven embezzlements for which he pled guilty occurred on 3/26/93 (\$2,000), 5/20/93 (\$2,000), 6/4/93 (\$2,000), 6/25/93 (\$5,000), 7/8/93 (\$4,500), 7/16/93 (\$4,500), 7/23/93 (\$2,500), 9/29/93 (sic) (\$3,500), 8/2/93 (\$4,500), 10/22/93 (\$8,000), and 11/16/94 (\$10,000). The dates are taken from Ghee's amended indictment (Ex. G to Petitioner's Bill of Particulars), and from an investigator's reconstruction of the estate account activity in question, contained in VSB Ex. 6. (Copies of these documents are appended to the original copy of this Order for ease of reference.) The dates in question make it clear that Ghee's defalcations were premeditated. The first eight defalcations from the Redd Estate fiduciary account occurred during the period when his attorney fiduciary account was still being reviewed periodically by a bar investigator as a result of his June 25, 1992, discipline, which effectively prevented Ghee from making unauthorized withdrawals from his attorney fiduciary account. (Tr. P. 138). During this same period, Ghee engaged in the misconduct that gave rise to his five year suspension with terms, which resulted from his trust account being out of trust on numerous occasions up until February 2, 1994. The suspension order cited Ghee's "cooperative attitude toward these proceedings". Unfortunately Ghee's cooperative attitude did not include advising the Bar of the ten defalcations that had already occurred from the Redd Estate account prior to endorsement of the Agreed Disposition. Ghee initially deposited \$39,511.35 to the Redd estate account on March 25, 1993, and by his ten unauthorized withdrawals, he reduced the account to \$804.25 on October 22, 1993. Ghee

testified that he replaced \$20,000 in the account from the proceeds of a personal injury settlement on November 8, 1994, and that he was unable to resist withdrawing \$10,000 of those funds from the account eight days later on November 16, 1994.

Subsequent gifts or loans from friends reduced the ultimate loss, and the surety took judgment against Ghee in the amount of \$28,117.12. Ghee satisfied the bonding company's judgment against him for the discounted sum of \$19,461.92.

Ghee's trust account problems occurred over an extended period of time from 1988 to 1995. The defalcations were deliberate and repeated. The nature and circumstances of Ghee's criminal acts can only be described as severe.

Hiss Factor No. 2. The Petitioner's Character, Maturity and Experience at the Time of his Disbarment.

Ghee was an experienced attorney at the time of his defalcations. He graduated from law school in 1973, was an Earl Warren Legal Fellow of the NAACP Legal Defense and Education Fund with the Hill, Tucker and Marsh firm in Richmond, Virginia, from 1973 - 1975, and was in solo private practice in Farmville from 1975 until his suspension and disbarment in 1995. He was and is a national director of the NAACP, and a member of its executive committee. This was not a case of a young attorney getting into trouble, nor a case of an elderly attorney who was becoming incapacitated.

Hiss Factor No. 3. The Time Elapsed Since the Petitioner's Disbarment.

It has been 11 years since Ghee surrendered his license and it was then revoked. Ghee has not previously applied for reinstatement.

Hiss Factor No. 4. Restitution to Clients and/or the Bar.

Ghee has made restitution to the Bar and to all of his clients that were harmed as a result of his acts. He paid the surety an agreed sum to satisfy the surety's judgment against him only four months after the judgment was entered against him. He did not seek relief from his debts via the bankruptcy court. Ghee's efforts to make restitution are commendable.

Hiss Factor No. 5. The Petitioner's Activities Since Disbarment Including, but not Limited to, his Conduct and Attitude During that Period.

From all evidence, Ghee has undertaken to lead an exemplary life since his disbarment and he appears to have succeeded in this effort. Ghee has been very active in his church and with the NAACP. He has been the recipient of many honors and awards, including Outstanding Virginian Award at the annual conference of the A.M.E. Church (1995), Man of the Year for his district of the A.M.E. Church, and was honored by the NAACP in 2003 for lifetime achievement.

Since his disbarment, Ghee has worked as a paralegal at the Williams, Luck and Williams law firm in Martinsville, Virginia. According to Robert A. Williams, the partner for whom he primarily works, his performance has been exemplary.

Hiss Factor No. 6. The Petitioner's Present Reputation and Standing in the Community.

Ghee is obviously held in high esteem and thought of with love and affection in his community. The letters of support for the reinstatement of his license to practice law are almost too numerous to count. They come from all walks of life, and include national figures well known to all. Julian Bond, currently a professor at the University of Virginia and American University and formerly chairman of the board of directors of the NAACP, testified by deposition. He described Ghee's fine character, his role on the executive committee as one who

easily reads trends and directions, his knowledge of the institutional history of the organization, ability to evaluate candidates for board committees, and his ability to go quickly to the heart of a matter. In addition to the many fine recommendations from national, state and community leaders, the Board must also take note of the numerous letters, often unsolicited, from ordinary citizens who took the time to share personal knowledge and relate the high esteem in which they hold Ghee. Only two letters in opposition to Ghee's reinstatement were received by the Bar, one of a general nature from an attorney who does not know Ghee personally, and one from a lay person. Many attorneys, including prosecutors, wrote letters in support of Ghee's reinstatement.

Hiss Factor No. 7. The Petitioner's Familiarity with the Virginia Code of Professional Responsibility and his Current Proficiency in the Law.

Ghee has fulfilled all of the requirements for Continuing Legal Education since his disbarment in 1995. He twice passed the Ethics exam required for reinstatement with a score of 94, well in excess of the requirement. Robert Williams of the Williams law firm unequivocally testified as to Ghee's current proficiency in the law in the area in which he has been focusing as a paralegal. Furthermore, Williams indicated that they will hire Ghee as an attorney if his license is reinstated. Bonds' testimony further corroborated Ghee's continuing proficiency and judgment.

Hiss Factor No. 8. The Sufficiency of the Punishment Undergone by the Petitioner.

Ghee's punishment would appear to be an appropriate one. Counsel for Ghee spoke of his long fall from grace. The loss of his Bar license, the shame and humiliation resulting from the criminal convictions and having to live under this cloud, unquestionably were a severe

punishment. Although his actual days incarcerated were limited, they were undoubtedly sufficient. The Commonwealth's Attorney stated, in the stipulation that was admitted into evidence, that the reduction of Ghee's charges from a felony to 11 misdemeanor counts was done not to lighten the punishment or because Ghee was an attorney, but solely to permit him to retain his right to vote, the significance of which is quite understandable. Ghee has undergone more than sufficient punishment.

Hiss Factor No. 9. The Petitioner's Sincerity, Frankness and Truthfulness in Presenting and Discussing Factors Relating to Disbarment and Reinstatement.

The Board is troubled by Ghee's apparent failure to recognize the true extent of his criminal activity, and by Ghee's testimony and the testimony of several of his character witnesses who suggest that he should not be entrusted with the responsibility for handling client funds.

Ghee's testimony, that of his witnesses, and many of his letters of recommendation characterize his theft from the Redd Estate account as a one time aberration, considered by them to be inexplicable and totally out of character. In truth, as noted above under Hiss Factor No. 1, Ghee's repeated defalcations from the Redd Estate account were not a one time occurrence. There were eleven separate defalcations over a two year period, and continued so long as there was money to take. Furthermore, Ghee testified that he had never previously taken client funds from his trust account. No less than four prior disciplinary proceedings for trust account violations belie that assertion.

Ghee and several of his witnesses were asked why he took the money. The only explanations offered were that at that time, Ghee was married to a wife who had expensive tastes

and that she quit her employment to start her own business (Tr. P. 41), that he was heavily involved in preparation for an anniversary celebration of the landmark decision in *Brown v Board of Education* to the sacrifice of his law practice (Tr. P. 124), that creditors were calling him about payments of debts (Tr. P. 124), that clients were not paying their fees, that he had already borrowed money from friends and could not go back to them (Tr. P. 125), and that out of pride (which he now sees as wrong), he did what he needed to keep afloat. The explanations indicate that Ghee has not fully taken upon himself the blame for his actions.

Ghee called five witnesses on his own behalf, including himself. All of them testified at least to some extent that if Ghee got his license back, he should be monitored. Ghee himself testified that if his license were reinstated, he would practice only as an associate with a law firm, and would not have access to trust account funds. (Tr. P. 214). Ghee testified that he is a "horrible bookkeeper." (Tr. P. 124). Ghee testified that he would not practice law as a sole practitioner, or handle a trust account without supervision. (Tr. P. 139 - 140). Williams, who currently employs Ghee as a paralegal, testified that if his firm employed Ghee as an associate attorney, Ghee would not have access to the trust account (Tr. P. 37), which is understandable for a non-equity attorney. James H. Lyle, an entrepreneur called as a character witness by Ghee, testified that he knew of Ghee's financial problems and had lent money to Ghee to permit him to makeup shortfalls in his attorney trust account (Tr. P. 81 - 86), to the extent that Ghee's bank would call Lyle to see if he would agree to make good on shortfalls in Ghee's account. (Tr. P. 86-87, 98 - 99, 110-112). Lyle agreed that Ghee might be better off if he didn't handle money when he got his license back. (Tr. P. 104-105). E. M. Wright, Jr., Esquire, testified that Ghee should be monitored if he got his license back. Unfortunately, a license to practice law cannot be

partially reinstated. If reinstated, it must be done so without terms. The attorney is free to practice in any area of law, and the Board cannot bar him from handling client funds. When Ghee and his own witnesses express reservations about his ability to handle client funds, it is difficult for the Board to reach a conclusion that he should be reinstated.

Hiss Factor No. 10. The Impact Upon Confidence in the Administration of Justice if the Petitioner's License to Practice Law was Restored.

This factor is always difficult. In the abstract, most members of the general public have severe difficulty understanding why the license of any attorney who stole money would ever be reinstated. On the other hand, the cases and commentators dealing with reinstatement have made it clear that disbarment is not punishment, and that one who has been disbarred can be rehabilitated and should be permitted to have his or her license reinstated, even in cases involving theft. The response from Ghee's own community is overwhelmingly in favor of reinstatement.

After correctly noting that reinstatement cases must be considered on a case by case basis and are not easily decided on precedent, counsel for petitioner argues that the case of *In re James T. Edmunds*, VSB Docket No. 95-000-1155 (1995) is instructive when considering Ghee's case. The Board finds that Ghee's petition has more in common with *In re William McMillan Powers*, VSB Docket No. 05-000-3014 (2005). In the Powers case, the Board recommended reinstatement, but noted that, at a prior reinstatement hearing in 1999, Powers had failed to convince the Board that he had accepted responsibility for his conduct, and may in fact have blamed others for it. The Board cannot find that Ghee appreciates the severity and magnitude of, and has accepted responsibility for, the misconduct resulting in the revocation of his license to

practice law in 1995. The lapse of time alone does not commend reinstatement. Ghee testified that he intended to replace the money when he misappropriated it from the Redd Estate. The Board notes that he deposited \$20,000 from his personal funds into the Redd Estate on November 8, 1994, and eight days later wrongfully took \$10,000. (VSB Ex. 11) The Board notes, too, that Ghee sent the heirs of the Redd Estate a Final Accounting as of November 1, 1994, setting forth the amount each heir was to receive. (VSB Ex. 9) Ghee's Final Accounting was fraudulent. It did not show the thousands of dollars he had misappropriated that otherwise would have been distributed to the heirs.

Upon consideration of the foregoing, the Board by majority vote recommends to the Supreme Court of Virginia that the petition for reinstatement not be approved.

As required by Part 6, Section IV, Paragraph 13.8.c.(5), the Board finds that the costs of this proceeding are as follows:

Copying Invoices:	\$ 331.19
Court Reporter Fees:	\$1,354.50
Mailing Fees:	\$ 58.43
Mailing Notice:	\$ 440.62
Legal Notices:	\$ 94.39
Administrative Fee:	\$ 750.00
Total Costs:	\$3,029.13

It is ORDERED that the Clerk of the Disciplinary System forward this order of Recommendation and the record to the Virginia Supreme Court for its consideration and disposition. It is further ORDERED that the Clerk of the Disciplinary System forward an attested copy of this Order of Recommendation by certified mail return receipt requested, to Charlotte Peoples Hodges, Counsel for the Petitioner, P.O. Box 4302, Midlothian, Virginia 23112-4302

and shall deliver the same by hand to Harry M. Hirsch, Deputy Bar Counsel, Virginia State Bar,
Eighth and Main Building, 707 East Main Street, Richmond, Virginia 23219-2803.

Entered this 6th day of December, 2006.

Virginia State Bar Disciplinary Board

By: Robert E. Eicher
Robert E. Eicher
2nd Vice Chair