

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
WAYNE RICHARD HARTKE**

VSB DOCKET NO. 14-051-098765

ORDER OF SUSPENSION

THIS MATTER came on to be heard on March 27, 2015, before a panel of the Disciplinary Board consisting of Tyler E. Williams, III, Chair, Rev. Dr. Theodore Smith, Lay member, Tony H. Pham, Melissa Robinson and John A.C. Keith (collectively, the “Board”). The Virginia State Bar (“Bar”) was represented by Ms. Kathleen M. Uston, Assistant Bar Counsel. The respondent, Mr. Wayne R. Hartke, appeared via telephonic conference and represented himself. Jennifer Hairfield, a registered professional court reporter, Chandler & Halasz, P.O. Box 9349; Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair polled the members of the Board as to whether any of them had any personal or financial interest that could affect, or reasonably be perceived to affect their ability to be impartial in this matter. Each Board member, including the Chair, responded that there were no such interests or conflicts.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 of the Rules of Court. The case was called by the Clerk and the Respondent appeared by telephone conference call.

I. FINDINGS OF FACT

The Respondent and the Bar entered a “Stipulations of Fact and Misconduct” and stipulated the following facts to the matter:

1. On January 8, 2014, Respondent attended a Continuing Legal Education program at the Crowne Plaza Hotel in Tyson’s Corner, Virginia. The program, sponsored by Virginia CLE, was

a video presentation of the qualification course for attorneys wishing to serve as guardians *ad litem* for children and was scheduled to run from 8:30 a.m. to 4:15 p.m. There were approximately twelve to fifteen (12-15) attorneys present for this program, including Respondent, and the program was held in a small conference room.

2. Respondent was a walk in registrant to the above referenced CLE program and he arrived late.

3. During the morning session of the program, Respondent sat in the back of the room and shortly after arriving fell asleep and began snoring. Respondent's snoring was so pronounced and loud that the site coordinator for Virginia CLE, Ms. Hope Linzer, was alerted and had to come in to the room to wake Respondent from a deep sleep. During the morning session, Respondent's snoring was heard by numerous attendees and was disruptive of the class.

4. During the afternoon session of the program, Respondent moved to the front of the room and began talking loudly at the video screen. Respondent's outbursts were disruptive to the class and once again Ms. Linzer was alerted to the situation by another attendee, G. Burke. Ms. Linzer entered the room and asked Respondent to refrain from disrupting the class in this fashion. Despite this, Respondent continued to talk loudly at the video screen.

5. Because Respondent's outbursts continued, he was led from the room by one of the attendees, John Primeau, Esquire. Mr. Primeau would testify that the odor of alcohol emanated very strongly from Respondent, that he was unsteady on his feet, and that Respondent admitted to Mr. Primeau that he had been drinking. Mr. Burke would testify that Respondent appeared to be intoxicated and that he smelled of alcohol. Mr. Burke would also testify that he personally observed a bottle of liquor amongst Respondent's belongings which Respondent had left in the back of the room following the morning session.

6. Both Mr. Burke and Ms. Linzer observed a bottle of alcohol amongst Respondent's belongings. Mr. Burke also observed that the liquor bottle, which contained a clear liquid, was nearly empty.

7. In his written response to the bar, Respondent denied that he consumed alcohol during

the CLE program and denied that he was intoxicated during the program. Respondent claimed that he had a drink during the lunch break only and that during the CLE program he consumed only the bottled water provided by Virginia CLE.

8. During the investigation of this case, Virginia State Bar Investigator David G. Fennessey interviewed Respondent on May 20, 2014. During this interview, Respondent denied that he was sleeping and snoring during the morning session and had to be awakened, stating instead that he was taking notes. Respondent also denied that he was intoxicated during the afternoon session, although he did concede that he was speaking out loud at the video screen and was led from the seminar room by an attendee as a result. Respondent denied that he was intoxicated, and denied that he had alcohol with him in the seminar room.

9. During discussions with Assistant Bar Counsel Kathleen M. Uston, Respondent admitted that his representations to the bar as set forth in Paragraph 7 and 8 above were not accurate and that he should have corrected these representations at some point during the investigation of this matter.

10. The Virginia State Bar and Respondent acknowledge and agree that a stipulation to a violation of Rule of Professional Conduct 8.1(b) is being made despite the fact that this Rule of Professional Conduct was not originally charged in the Certification. Respondent hereby waives any defect in the pleadings as well as his right to raise that issue in any appeal. Respondent hereby further waives his right to appeal the stipulations as to Misconduct in this matter.

II. MISCONDUCT

The Parties further stipulated to the following violations of the Virginia Rules of Professional Misconduct:

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:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter; and

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; and

III. DISPOSITION

The Board reviewed the Stipulations of Fact and Misconduct. The Board further accepted and reviewed the Respondent's disciplinary record. The Board recessed to deliberate the sanctions portion of this matter. After due deliberation and considering the factors in aggravation and mitigation argued by the Bar and Respondent, the Board reconvened and stated its findings as follows:

1. It is ORDERED that the license of Respondent, Wayne Richard Hartke, to practice law in the Commonwealth of Virginia is SUSPENDED, with terms, for a period of six (6) months effective March 27, 2015; and
2. The Respondent is to enter into an agreement with Lawyers Helping Lawyers and comply with and complete any and all recommendations made by Lawyers Helping Lawyers for a period of two (2) years.
3. The alternative sanction should the Respondent fail to do so will be a suspension of his license to practice law in the Commonwealth of Virginia for a period of three (3) years.

In accordance with Paragraph 13-29 of the Rules, if he has not already done so, it is further ORDERED that Respondent, Wayne Richard Hartke, shall forthwith give notice, by certified mail, 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 the presiding Judges in pending litigation. The Respondent shall give such notice within 14 days of

the effective date of the suspension order, and make arrangements as are required herein within 45 days of the effective date of this Order.

It is further ORDERED that pursuant to Part Six, Section IV, Paragraph 13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall send a certified copy of this Order by certified mail to Respondent, Wayne Richard Hartke, at his last address of record with the Virginia State Bar and shall hand-deliver a copy to Kathleen Uston, Assistant Bar Counsel.

ENTERED this 17th day of April, 2015.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Tyler E. Williams, III, Chair