

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
THOMAS ANDREW HAWBAKER

VS. Docket No.: 12-000-090713

ORDER AND OPINION

This matter came to be heard on June 22, 2012, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Martha JP McQuade, then First Vice Chair presiding; Randall G. Johnson, Jr.; Whitney G. Saunders; David R. Schultz; and Rev. W. Ray Inscoc, Lay member. The Virginia State Bar was represented by Kara L. McGehee, Assistant Bar Counsel. The Respondent, Thomas Andrew Hawbaker, represented himself and appeared telephonically. Jennifer Hairfield, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, Virginia, 23227, telephone 804-730-1222, after being duly sworn by the Chair, reported the hearing and transcribed the proceedings.

The matter came before the Board, pursuant to Part Six, §IV, ¶13-24 of the Rules of the Supreme Court of Virginia, on the Board's Rule to Show Cause and Order of Suspension and Hearing entered on February 22, 2012, with an attached copy of the Decision and Order of Involuntary Inactive Enrollment (effectively, revocation) issued by the State Bar Court of California in the matter of Thomas Andrew Hawbaker and filed February 9, 2011 in the State Bar Court Clerk's Office Los Angeles, and the Clerk of the Virginia Disciplinary System's February 23, 2012 notice letter to the Respondent served in accordance with Rules of the Supreme Court of Virginia. The purpose of the Virginia hearing is to provide the Respondent an opportunity to show cause, by clear and convincing evidence, why the same discipline that was imposed upon him in California should not be imposed in Virginia. In this respect, the findings in the proceeding in California are conclusive of all matters except to the extent that the Respondent, within certain timeframes, files a

written response alleging, and then at the Virginia hearing proves, one or more of the following grounds: that (1) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process; and/or (2) the imposition by the Board of the same discipline upon the same proof would result in a grave injustice; and/or (3) the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

The Chair opened the hearing by polling 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, his or her ability to be impartial in this matter. Each Board member, including the Chair, responded that there were no such interests or conflicts.

The Chair then took up, as a preliminary matter, the issue of the Respondent's request for continuance contained in a letter from the Respondent dated June 21, 2012 and received by the Clerk's Office of the Virginia State Bar on the same date. Addressing the Respondent, the Chair noted that the hearing had been continued once previously, also at his request, to allow him more time to prepare for the hearing and also to allow him more time to financially afford to attend the hearing. She also noted, however, that the June 21, 2012 letter from the Respondent stated that he had the money to attend the hearing but had decided to use it for other purposes and also that the second continuance was being requested in order to increase the likelihood, rather than the certainty, that he would be able to attend a future hearing. She asked the Respondent to address those issues. The Respondent then stated that he had not known a person could appear and/or testify by phone until the Bar requested permission to present the testimony of a witness telephonically; that, since he had just decided to attend by phone, the Board did not have the documents he had intended to present as evidence at the hearing; and so he needed more time to assemble those documents and to send them to the Board in advance of a full hearing. Further, with respect to the witness the Bar

intended to present by phone, the Respondent said that he had had no opportunity to review the testimony of that witness or respond and prepare for the evidence to be submitted by this adverse witness. Also, he reported that he was calling on his cell phone, was having difficulties with the telephonic connection, and so would request a continuance so that he could call from a land line the next time, if he were still not able to attend in person.

In responsive argument, the Bar objected to any further continuance or, indeed, to the Respondent being able to present any evidence on his own behalf at the hearing, for the following reasons:

* In the Respondent's letter requesting the second continuance, he stated that he could have been present for the hearing on June 22 but chose not to be.

* The first continuance granted at the request of the Respondent had been a significant one and included not only postponing the hearing from March 23 to June 22, 2012 but also extending the Respondent's time to file his Response to the Rule for Show Cause from March 12 to June 8, 2012. The Response, however, had not been filed until June 12, 2012.

* Pursuant to Rule 13-24, at the hearing on the Rule to Show Cause, the Respondent is limited to presenting evidence in support of specific arguments and only if such arguments were raised in the Response. Since the Response was not timely filed, in effect, no such specific arguments had been raised, and so no evidence in support could be presented by the Respondent at the hearing, whenever it was held.

The Bar also objected to the Respondent being allowed to testify by phone since he had made no arrangements for a Court Reporter or other person authorized to administer oaths to be present at his physical location to swear him in.

Finally, the Bar also noted that the Respondent having filed a late Response was the reason the Bar had had to arrange for the telephonic, rather than in-person, testimony by its witness from California.

In response to the Bar's arguments, the Respondent stated that he had contacted Vivian Byrd in the Virginia State Bar Clerk's Office and believed that electronic submission of his Response to her on June 8, 2012, along with his having mailed the Response to the Clerk that same day, was sufficient to meet the deadline.

After a short recess, the Chair reconvened the hearing and asked the Clerk in attendance, Louise Tilley, whether she had been able to contact Ms. Byrd to determine whether she had received an e-mail transmitting the Respondent's Response to Order Show Cause on June 8, 2012. Ms. Tilley stated that Ms. Byrd reported to her that she had checked her e-mail records and that she had not received any electronic communication from the Respondent on June 8, 2012.

The Board then went into deliberation. Upon reconvening, the Chair announced that the second continuance requested by the Respondent was denied. Further, she announced that the Board found the Response filed by the Respondent on June 12, 2012 was untimely.

Without objection by the Respondent, the following was moved and admitted into evidence collectively as VSB Exhibit No. 1: the Board's Rule to Show Cause and Order of Suspension and Hearing entered on February 22, 2012, with an attached copy of the Decision and Order of Involuntary Inactive Enrollment issued by the State Bar Court of California in the matter of Thomas Andrew Hawbaker and filed February 9, 2011 in the State Bar Court Clerk's Office Los Angeles, and the Clerk of the Virginia Disciplinary System's February 23, 2012 notice letter to the Respondent served in accordance with Rules of the Supreme Court of Virginia.

The Bar also moved for the admission of three exhibits filed in the California State Bar Court Review Department before the final Decision and Order of Involuntary Inactive Enrollment. However, admission of these exhibits was denied by the Chair after objection from the Respondent.

After all further argument, with no evidence having been presented by the Respondent, and after due deliberation, the Board found that the Respondent has failed to prove by clear and convincing evidence why the same discipline imposed upon him in California should not also be imposed by Virginia.

Accordingly, it is hereby ORDERED that, pursuant to Part Six, §IV, ¶13-24(A) of the Rules of the Supreme Court of Virginia, the license of the Respondent to practice law in the Commonwealth of Virginia is hereby Revoked effective June 22, 2012, this being the same discipline that was imposed by the State Bar Court of California.

It is further ORDERED that, as directed in the Board's June 22, 2012 Summary Order in this matter, a copy of which was served on the Respondent by certified mail, Respondent must comply with the requirements of Part Six, §IV, ¶13-29(A) of the Rules of the Supreme Court of Virginia. 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. Respondent shall give notice within 14 days of the effective date of this Order and make such arrangements as are required within 45 days of the effective date of this Order. Respondent shall also furnish proof to the Bar within sixty days that such notices have been timely given and such arrangements made for the disposition of such 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. All issues

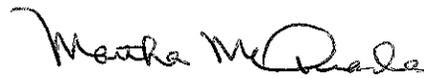
concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Board.

It is further ORDERED that in compliance with Part Six, §IV, ¶13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against Respondent.

It is further ORDERED that the Clerk shall mail an attested copy of this Opinion and Order to Respondent, Thomas Andrew Hawbaker by certified mail, at his address of record, 2217 South 163 Circle, Omaha, NE 28130 and by regular mail to Kara L. McGehee, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Richmond, Suite 1500, Virginia 23219-2803.

ENTERED on August 8, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD



Martha JP McQuade, Chair