

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF HECTOR INES HERNANDEZ, SR.

VSB Docket No 10-053-080171

ORDER OF SUSPENSION

THIS MATTER came to be heard on December 14, 2012, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Martha JP McQuade, Chair, presiding; Richard J. Colten; Melissa W. Robinson; David R. Schultz; and Lay Member Anderson W. Douthat. The Virginia State Bar (the "Bar") was represented by Assistant Bar Counsel Prescott L. Prince. The Respondent, Hector Ines Hernandez, Sr. ("Mr. Hernandez" or the "Respondent"), appeared in person and represented himself. Tracy J. Stroh, certified court reporter, Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, 804-730-1222, reported the hearing.

The Chair polled the members of the panel as to whether any of them had any personal or financial interest which would preclude them from fairly hearing this matter, to which inquiry, each Board member, including the Chair, answered in the negative.

PROCEDURAL BACKGROUND

This matter came before the Disciplinary Board pursuant to a Fifth District-Section III Subcommittee Determination (Certification) dated June 27, 2012, and also upon the Stipulations of Fact and Violated Rules of Professional Misconduct (the "Stipulation") entered into, and submitted to the Board by, the Bar and the Respondent. The Stipulation is essentially and materially identical to the Subcommittee's findings of fact and nature of misconduct.

The Bar's Exhibits A (tabs 1 - 11), B (the Stipulation) and C (statement that the Respondent has no disciplinary record as of the time of the hearing) were offered and received into evidence without objection.

I. FINDINGS OF FACT - As stipulated:

1. Respondent was licensed to practice law in the Commonwealth of Virginia on 25 April 1991. At no time relevant to the conduct set forth herein was the Respondent actively licensed to practice law in any other jurisdiction.

2. On 29 March 2005, the Respondent's license to practice law in the Commonwealth of Virginia was suspended for failure to comply with Mandatory Continuing Legal Education (MCLE) Requirements. This suspension continued without interruption from 29 March 2005 to 13 November 2008, on which latter date the Respondent's license to practice law in Virginia was reinstated by the Virginia State Bar.

3. Based upon a referral, the Complainant contacted the Respondent in September of 2008, who was then residing in Puerto Rico, concerning the Complainant's need for representation in Virginia to recover damages arising from an investment which the Complainant was allegedly fraudulently induced to make regarding an international scrap metal purchase and sale venture.

4. By letter dated 28 September 2008, the Respondent agreed to represent the Complainant and his "companies" at an hourly rate of \$125.00. He candidly disclosed that his license to practice law was not yet active, but he nonetheless solicited funds from the Complainant, stating in the said letter that "I shall need an advance from you in order that I may relocate, activate my Bar license and put my personal matters in order such that I can concentrate on your work and other endeavors outlined above."

5. At the inception of the representation, and before the Respondent's license to practice law had been activated, the Complainant wired funds to the Respondent's brother's bank account, inasmuch as the Respondent did not then have a bank account of his own. At no time during the course of the representation did the Respondent deposit unearned fees advanced by the Complainant into an escrow account. The Respondent admitted to a Virginia State Bar investigator at an interview conducted in person on 16 June 2011 that even after moving back to Virginia, the Respondent did not establish a trust account. The Respondent used the Complainant's funds for a variety of personal expenses during the course of the representation, with the Complainant's knowledge.

6. Between 27 September 2008 and 8 November 2008, during the period that his license was suspended, the Respondent performed legal services on behalf of the Complainant and billed him 55.5 hours.

7. The Respondent filed suit on the Complainant's behalf following reinstatement of the Respondent's law license. The Respondent stated to a Virginia State Bar investigator that he made it clear to the Complainant that the Respondent could handle the case up to the time of trial, but that a trial attorney would need to be engaged if the matter went to trial. On 25 June 2009, the Complainant engaged other counsel to handle the legal matter, with the understanding that the Respondent would continue as co-counsel. However, on or about 9 July 2009, the Complainant terminated the Respondent's representation, and new counsel continued representation of the matter.

8. The Respondent advised the VSB investigator that the Complainant had paid him a total of \$22,000.00 and that he was owed more by the Complainant, but did not know how much more was owed.

II. NATURE OF MISCONDUCT - As stipulated:

Such conduct by Hector Ines Hernandez, Sr., constitutes misconduct in violation of the following provisions of the Rules of Professional Misconduct:

Rule 1.15 Safekeeping Property

- (a) Depositing Funds.
 - (2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.
- (c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:
 - (3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

- (c) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

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[.]

III. DISPOSITION

Upon review of the foregoing Stipulations of Facts and Misconduct, the Exhibits admitted, the Bar's and the Respondent's proposed dispositions, the Respondent's testimony, all evidence presented in aggravation and mitigation, and all argument by the Bar and the Respondent, the Board

recessed to deliberate as to an appropriate sanction. After due deliberation, the hearing was reconvened and the Board announced that, given the serious violations to which the Respondent had stipulated and the explanations for such misconduct offered by him in his own testimony, the only appropriate disposition was a suspension of 60 days effective immediately.

ACCORDINGLY, it is ORDERED that the license of the Respondent, Hector Ines Hernandez, Sr., be suspended for a period of 60 days, effective December 14, 2012.

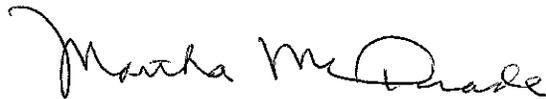
It is FURTHER ORDERED that Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the 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. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Virginia State Bar within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters. It is FURTHER ORDERED that, if the Respondent is not handling any client matters on the effective date of the suspension, he shall forthwith submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. It is FURTHER ORDERED that all issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is FURTHER ORDERED that, pursuant to Part Six, Part 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 the Respondent.

It is FURTHER ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order, by certified mail, to the Respondent, Hector Ines Hernandez, Sr., at his last address of record with the Virginia State Bar, which is Law Office of Hector I. Hernandez, Sr., 140 Hughey Court, Fredericksburg, Virginia 22401, and shall hand deliver a copy to Prescott L. Prince, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED December 31, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in cursive script, reading "Martha JP McQuade".

Martha JP McQuade, Chair