

VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
DAVID GLENN HUBBARD**

**VS B Docket Nos. 12-053-092285
And 13-053-092778**

These matters came to be heard on October 25, 2013, pursuant to a Notice of Hearing on the Subcommittee Determination (Certification), as to VSB Docket No. 12-053-092285, and VSB Docket No. 13-053-092778, alleging that Respondent has violated Rules 1.3 (a), 1.4 (a), and 8.1 (c) of the Rules of Professional Conduct.

These matters were heard before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Pleasant S. Brodnax, III Chair, presiding; J. Casey Forrester, Jody D. Katz (Lay Member), Jeffrey L. Marks and Bretta M. Z. Lewis. The Virginia State Bar was represented by Prescott L. Prince, Assistant Bar Counsel. Respondent David Glenn Hubbard (hereinafter "Respondent" or "Mr. Hubbard") was not present and was not represented by counsel at the hearing.

Virginia State Bar Assistant Clerk Diane Bussee, pursuant to Board procedures, called Mr. Hubbard's name three times at 9:04 a.m. in the corridor outside of the Courtroom. Ms. Bussee was sworn and testified that she called Mr. Hubbard's name three (3) times and that Mr. Hubbard did not appear or respond. Court Reporter Teresa McLean, Certified Court Reporter with Chandler & Halasz, P.O Box 9349, Richmond, Virginia, 23327, (804)730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board for information regarding whether any of the members has a personal or financial interest which would preclude

fairly hearing the matter. Each member, including the Chair, individually responded that he/she has no such conflict. The matter proceeded without a personal appearance by Mr. Hubbard, and the following findings of fact resulted:

VSB Exhibits 1 through 24 were admitted without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

I. Findings of Fact

1. At all times relevant to the conduct set forth herein, David Glenn Hubbard (“Respondent”) was an attorney licensed to practice law in the Commonwealth of Virginia.

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2. Michael Joseph Dougherty, Sr. retained the Respondent to represent him in a partition suit to obtain full ownership of a home that he owned jointly with his ex-wife. Mr. Hubbard filed the partition suit on behalf of Mr. Dougherty in July, 2009.
3. A Commissioner in Chancery was appointed and issued his report on 29 October 2009. Mr. Hubbard filed Exceptions to the Commissioner’s Report on behalf of Mr. Dougherty on or about 12 November 2009.
4. A hearing was scheduled in April 2010 to address the exceptions noted by Mr. Hubbard. Mr. Hubbard indicated his non-availability for that date. The hearing was subsequently set for August 2011. Mr. Dougherty testified that Mr. Hubbard did not notify him of the hearing and that because he had no notice of the hearing, did not attend the hearing.
5. The August 2011 hearing resulted in an Order which provided, in pertinent part that Mr. Dougherty was to buy out his ex-wife’s interest in the home within 90 days of the date of entry of the Order.
6. Mr. Dougherty testified that he was not notified regarding his obligations under the Order and therefore did not issue payment to his former spouse during the allotted time.
7. Mr. Hubbard billed Mr. Dougherty for 4.10 hours for attending the hearing. No evidence was presented regarding whether Mr. Hubbard was, indeed, present at the hearing.

8. When Mr. Dougherty failed to issue payment within 90 days under the Order of the Circuit Court, a Special Commissioner in Chancery was appointed to sell the residence. Mr. Dougherty testified that he was unaware of these occurrences until the Special Commissioner contacted him to arrange for making the home available for inspection to facilitate the sale of the home.
9. After learning of the situation from the Special Commissioner, Mr. Dougherty testified that he made numerous unsuccessful attempts to contact Mr. Hubbard by telephone and by e-mail.
10. Mr. Dougherty testified that he went to Mr. Hubbard's office and confronted Mr. Hubbard as to what had transpired in the case without his knowledge. Mr. Hubbard was reportedly apologetic about the situation, but did not take personal responsibility for failing to inform Mr. Dougherty of the hearings or the contents of the Order.
11. Subsequent to Mr. Dougherty confronting Mr. Hubbard regarding his failure to communicate with him, Mr. Hubbard reportedly resumed assisting Mr. Dougherty. Mr. Dougherty testified that he worked directly with the Special Commissioner to refinance the home and to make the ordered payments to his ex-wife.
12. As the result of Mr. Hubbard's failure to keep Mr. Dougherty informed about his case and his obligations under the Order, Mr. Dougherty had to pay additional fees in the approximate amount of \$2,000 to the Special Commissioner for his actions in attempting to sell the home. Mr. Dougherty testified that he originally believed his payment to the Special Commissioner would be \$1,000 and that his former wife would pay \$1,000 but that he had actually paid the entire \$2,000 with no reimbursement from his former wife.
13. On or about 21 June 2012, Mr. Dougherty filed a complaint with the Virginia State Bar in regards to the above described actions. As the result of Mr. Dougherty's complaint, Assistant Bar Counsel Prescott L. Prince sent a letter to Mr. Hubbard, 15 Charnwood Road, Richmond, VA 23229, that being his last address of record with the Virginia State Bar, dated 29 June 2012 that informed Mr. Hubbard, *inter alia*, that a Bar Complaint had been filed against him and that further informed him that the letter constituted a lawful demand for information pursuant to Virginia Rule of Professional Conduct 8.1(c) and that, pursuant to said Rule 8.1(c), he had a duty to comply with the Bar's lawful demands

for information and that failing to respond in a time manner could result in the imposition of disciplinary sanctions. Mr. Hubbard did not respond to this letter.

14. As a result of allegations complained about by Mr. Dougherty, as described above as well as Mr. Hubbard's failure to respond to Assistant Bar Counsel Prince's 29 June 2012 letter, the matter was referred for further investigation.

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15. Don W. Oliveira filed a Complaint with the Virginia State Bar dated 3 July 2012 in which he alleged that he retained Mr. Hubbard to represent him on a change of venue child support matter. Mr. Oliveira identified himself as an active duty member of the United States Marine Corps, holding the rank of Master Gunnery Sergeant (MGSgt). MGSgt Oliveira asserted that Mr. Hubbard failed to diligently pursue the matter in that he was constantly late in filing documents. MGSgt Oliveira further stated that Mr. Hubbard did not honestly represent what work he was doing on the case and then billed MGSgt Oliveira for work he falsely claimed was performed.
16. As the result of MGSgt Oliveira's Complaint, Assistant Bar Counsel Prescott L. Prince sent a letter to Mr. Hubbard at 15 Charnwood Road, Richmond, VA 23229, that being his last address of record with the Virginia State Bar, dated 13 August 2012 that informed Mr. Hubbard, *inter alia*, that a Bar Complaint had been filed against him and that further informed him that the letter constituted a lawful demand for information pursuant to Virginia Rule of Professional Conduct 8.1(c) and that, pursuant to said Rule 8.1(c), he had a duty to comply with the Bar's lawful demands for information and that failing to respond in a timely manner could result in the imposition of disciplinary sanctions. On 12 September 2012 letters containing the same information were sent to Mr. Hubbard at 3407 Thornsett Drive, Chester, VA 23831 and to P.O. Box 7328 Richmond, VA 23221-0328, those being additional addresses known to the Virginia State Bar. Mr. Hubbard did not respond to any of these letters.
17. As a result of the Complaint filed by MGSgt Oliveira and the failure of Mr. Hubbard to respond to Assistant Bar Counsel Prince's 13 August 2012 and 12 September 2012 letters, the matter was referred for a more detailed investigation. Pursuant to the investigation, VSB Investigator Sterling conducted a telephonic interview of MGSgt

Oliveira; the interview was conducted by telephone since MGSgt Oliveira then resided in California. MGSgt Oliveira restated and reaffirmed the allegations he made in his earlier written complaint to the Virginia State Bar. Investigator Sterling was subsequently not able to re-establish contact with MGSgt Oliveira despite several attempts to do so.

Facts common to VSB Docket Nos. 12-053-092285 and 13-053-092778

18. In furtherance of the investigation opened by the Virginia State Bar, Bar Investigator Sterling made numerous attempts to contact Mr. Hubbard but Mr. Hubbard did not respond to any such attempts to contact him. The attempts to contact Mr. Hubbard included telephone messages, left on voice mail at the last known telephone number for Mr. Hubbard, e-mail communication through Mr. Hubbard's last known e-mail address, and certified mail at Mr. Hubbard's last known mailing address.
19. On 8 April 2013 a subpoena was sent by certified mail to Mr. Hubbard at 2414 New Berne Road, Richmond, VA 23228-5918, that being Mr. Hubbard's then address of record with the Virginia State Bar ordering Mr. Hubbard to appear in person at 10:00 a.m. on 25 April 2013 at the Prince William Judicial Center in the interview room in the public law library, basement level, at 931 Lee Avenue, Manassas, VA to meet with Virginia State Bar Investigator, William H. Sterling, III to be interviewed in connection with complaints that were the subject of VSB Docket Nos. 12-053-092285 and 13-053-092778. Investigator Sterling appeared at said location at 9:40 a.m. on 25 April 2013 and remained at said location until at least 10:40 a.m. At no time did Mr. Hubbard appear.
20. On 18 October 2013, Virginia State Bar Investigator Sterling spoke to Mr. Hubbard by telephone, after first reaching his wife and asking her to give Mr. Hubbard the message to contact him. Mr. Hubbard contacted Mr. Sterling shortly after Mr. Sterling's contact with Mr. Hubbard's wife. Mr. Sterling testified that he informed Mr. Hubbard of the Board Hearing scheduled for 25 October 2013, and informed him of the location of the hearing. Mr. Sterling testified that Mr. Hubbard was "non-committal" regarding whether he would attend the hearing.

II. NATURE OF MISCONDUCT

The Bar alleges that the conduct detailed herein by David Glenn Hubbard constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct as specified for each matter:

As to VSB Docket No. 12-053-092285 (Complainant: Michael Joseph Dougherty, Sr.)

Rule 1.3: Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

As to VSB Docket No. 13 -053--092778 (Complainant: MGSgt Oliveira)

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:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

III. DISPOSITION

A. **As to VSB Docket Number 12-053-092285 (Complainant: Michael Joseph**

Dougherty, Sr.): After hearing evidence from the Bar including testimony of the Complainant and the Investigator, and after reviewing the Exhibits, and after having provided an opportunity for the Respondent to respond, the Board finds by clear and convincing evidence that the Complainant has violated the following Rules of Professional Conduct:

Rule 1.3 (a), Rule 1.4 (a), and Rule 8.1 (c)

B. **As to VSB Docket No. 13 -053--092778 (Complainant: MGSgt Oliveira):**

After hearing evidence from the Bar including testimony of the Investigator, and after reviewing the Exhibits, and after having provided an opportunity for the Respondent to respond, the Board finds by clear and convincing evidence that the Complainant has violated the following Rule of Professional Conduct: Rule 8.1 (c)

Sanction Phase

After receiving evidence of aggravation and mitigation from the Bar and the Respondent, and after receiving the Respondent's prior Disciplinary Record consisting of four (4) prior matters, the Board recessed to deliberate regarding the appropriate sanction. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced that the matters warranted imposition of the following sanction:

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is suspended for a term of three (3) years, effective October 25, 2013.

It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 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 client. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation 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 his revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. 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, § IV, ¶ 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 mail an attested copy of this order to respondent at his address of record with the Virginia State Bar, being 2414 New Berne Rd, Richmond, Virginia 23228-5918 and a copy hand-delivered to Prescott L. Prince, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 20th day of November, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Pleasant S. Brodnax III

Pleasant S. Brodnax, III, Chair