

VIRGINIA:

BEFORE THE FIFTH DISTRICT COMMITTEE SECTION I
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF DAVID GLENN HUBBARD

VS B Docket Numbers: 11-051-087779
12-051-088880

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On the 17th day of April, 2012, a meeting in this matter was held before a duly convened subcommittee of the Fifth District Committee, Section I, consisting of Gary V. Davis, Esquire, Evelyn H. Sandground, Lay Member, and Debra L. Powers, Esquire, presiding.

Pursuant to Part 6, § IV, ¶ 13-15.B.4.c of the *Rules of Virginia Supreme Court*, that subcommittee of the Fifth District Committee, Section I, of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition, a Public Reprimand with Terms.

A. STIPULATION OF FACTS

1. At all times relevant hereto, David Glenn Hubbard, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 11-051-087779 (Montgomery)

2. In or around June, 2006, Johnny Lee Montgomery, Complainant herein, retained Respondent's law firm concerning a medical malpractice matter. On December 8, 2006, suit was filed with the Arlington County Circuit Court by another attorney in Respondent's firm on Mr. Montgomery's behalf.

3. Respondent took over responsibility for the handling of Mr. Montgomery's case in or around August, 2007. At this time, Respondent was advised by the first attorney handling the case that he did not believe that the malpractice case could go forward due to serious

questions as to causation. It was therefore decided that Respondent would attempt to pursue insurance claims against several policies that Mr. Montgomery had in place. Mr. Montgomery acknowledged that he was advised of this strategy.

4. Respondent thereafter filed claims with several of these insurance companies, which claims were ultimately denied. Respondent did not provide his client with copies of the denial letters.

5. On or around June 23, 2009, the Clerk of the Arlington County Circuit Court wrote to Respondent's firm, care of the attorney who had filed suit on Mr. Montgomery's behalf, concerning the inactivity in the Montgomery case. The Clerk advised that the case would be discontinued if no action were taken in the case within the next fifteen (15) days. Respondent acknowledged that he received this letter, but he did not send a copy of same to his client.

6. Because Respondent did not intend to pursue the medical malpractice case, he took no action in response to the Clerk's letter and the matter was discontinued by Order dated June 22, 2009. Respondent acknowledged that he received this Order, but he did not send a copy of same to his client.

7. By letters dated February 16, 2010, September 22, 2010, and October 29, 2010, Mr. Montgomery wrote to Respondent, and to Respondent's firm, inquiring as to the status of his case. Although the case had been concluded with the denial of the insurance claims, Respondent did not respond to these letters.

8. On or around May 13, 2011, Mr. Montgomery filed a complaint with the Virginia State Bar. This complaint was sent to Responder under cover of a letter dated May 17, 2011,

which letter demanded Respondent's response thereto within twenty-one (21) days in accordance with his obligation under Rule of Professional Conduct 8.1(c).

9. Respondent's written response to the complaint referenced above was due on or before June 7, 2011. Respondent did not submit his written, or any other, response on or before that date.

As to VSB Docket No. 12-051-088880 (Withers)

10. Respondent was retained to file a Petition for a Writ of *Habeas Corpus* on behalf of Mark Benjamin who had been convicted of capital murder, robbery, carjacking, and several other felonies. On or around June 19, 2006, Respondent filed said Petition on Mr. Benjamin's behalf, but did not send a copy of the Petition to his client.

11. On or around July 20, 2006, the Office of the Attorney General filed a Motion to Dismiss the Writ of *Habeas Corpus* on the grounds that it did not comply with Code of Virginia §8.01-855 (1950 *as amended*) insofar as an Affidavit from Mr. Benjamin had not been appended thereto. Respondent neither responded to this Motion to Dismiss nor filed an Amended Petition which included an Affidavit from Mr. Benjamin. Respondent maintains that he never received a copy of this Motion due to a series of moves that took place during this timeframe. Respondent states further that, at the time he filed Mr. Benjamin's Petition, he was aware of the requirement that an Affidavit signed by the prisoner be included, and believes he would have prepared such an Affidavit for Mr. Benjamin's signature. Due to the passage of time, however, Respondent is not able to recall why Mr. Benjamin's Affidavit was not attached to the Petition as required under Code of Virginia §8.01-855 (1950 *as amended*).

12. On May 18, 2010, an Order was entered dismissing Mr. Benjamin's Petition for a Writ of *Habeas Corpus* since no proceedings thereon had taken place for a period of in excess of three (3) years. Respondent did not advise his client that the Petition had been dismissed.

13. On or around August 9, 2011, Mr. Benjamin's mother, Larue Withers, filed a complaint with the Virginia State Bar. This complaint was sent to Responder under cover of a letter dated September 15, 2011, which letter demanded Respondent's response thereto within twenty-one (21) days in accordance with his obligation under Rule of Professional Conduct 8.1(c).

14. Respondent's written response to the complaint referenced above was due on or before October 6, 2011. Respondent did not submit his written, or any other, response on or before that date.

15. On October 25, 2011, due to Respondent's failure to respond to the complaint, this matter was referred for a more detailed investigation. Incident to that investigation, a subpoena *duces tecum* was served upon Respondent on or around October 25, 2011, seeking a copy of his file on Mr. Benjamin's case and other documents. Respondent was required to comply with this subpoena *duces tecum* on or before November 30, 2011. Respondent did not comply with the subpoena *duces tecum*.

B. NATURE OF MISCONDUCT

Such conduct by the Respondent, David Glenn Hubbard, Esquire, constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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.

- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

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. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by the deadline set forth below shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by the date certain specified are:

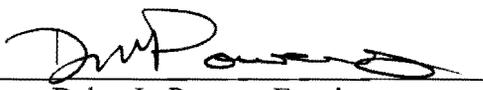
1. The Respondent shall refrain from committing any violations of the Rules of Professional Conduct cited above for the period from April 30, 2012, through October 31, 2014. If, at any point, a finding is made by any disciplinary tribunal that Respondent violated any of the Rules of Professional Conduct cited above, which violations occurred within the specified time period, then these matters shall be certified to the Disciplinary Board for Sanction Determination in accordance with Part Six, Section IV, Paragraph 13-15.G of the *Rules of the Supreme Court*, following a show cause hearing wherein the Respondent has failed to prove by clear and convincing evidence that he did not violate any of the terms set forth above.

2. If these matters proceed to the Disciplinary Board for Sanction Determination, then all matters set forth herein shall be stipulated to. Further, in accordance with Part Six, Section IV, Paragraph 13-20 of the *Rules of the Supreme Court*, these matters shall proceed upon the record only, the evidence presented to the Disciplinary Board shall be limited to evidence of aggravation and/or mitigation, and the only issue before the Disciplinary Board shall be the appropriate sanction to be imposed upon Respondent, which sanction shall be either Suspension or Revocation of Respondent's license to practice law.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand shall be imposed. If, however, the Respondent shall fail to comply with the terms and conditions set forth above, then these matters shall be certified to the Disciplinary Board for Sanction Determination upon an agreed stipulation of facts and misconduct as to the facts and misconduct as set forth herein pursuant to Part Six, Section IV, Paragraph 13-15.G of the *Rules of the Supreme Court*.

Pursuant to Part Six, Section IV, Paragraph 13.9.E of the *Rules of the Supreme Court*, the Clerk of the Disciplinary System shall assess costs.

FIFTH DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
Debra L. Powers, Esquire
Chair

CERTIFICATE OF SERVICE

I certify that I have on this 30~~th~~ day of APRIL, 2012, mailed a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) by CERTIFIED MAIL to Respondent, David Glenn Hubbard, Esquire, *pro se*, Leiser, Leiser & Hennessey, Suite 310, 8229 Boone Boulevard, Tyson's Corner, Virginia, 22182-2623, his last address of record with the Virginia State Bar.


Kathleen M. Uston
Assistant Bar Counsel