

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
DAVID GLENN HUBBARD

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VSB Docket No.: 10-051-084288

ORDER OF SUSPENSION

This matter came on to be heard on April 27, 2012, before a panel of the Virginia State Bar Disciplinary Board consisting of Pleasant S. Brodnax , III, Second Vice Chair, Timothy A. Coyle, Michael S. Mulkey, Whitney G. Saunders and Robert W. Carter, lay member [the "Board"].

The Virginia State Bar [the "Bar"] was represented by Kathleen M. Uston, Assistant Bar Counsel. David Glenn Hubbard [the "Respondent"] appeared in person and was not represented by counsel. Jennifer L. Hairfield, shorthand reporter with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the proceedings and polled the members of the Board as to whether any of them had any personal or financial interest, which would impair, or reasonably could be perceived to impair his ability to be impartial. Each member of the Board, including the Chair, responded in the negative.

This matter came before the Board on the Subcommittee Determination for Certification by the Fifth District Committee, Section I, of the Bar. The Certification was sent to Respondent on November 7, 2011.

During the course of the hearing, Bar Exhibits 1 through 14 and Board Exhibit 1 were admitted without objection. The parties also entered into the following Stipulations of Fact and Misconduct, which were admitted into evidence by agreement:

STIPULATED FINDINGS OF FACT

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.

2. On or around June 23, 2010, the Virginia State Bar received a complaint concerning Respondent, a copy of which was sent to Respondent under cover of a letter dated June 28, 2010. This June 28, 2010, letter advised Respondent that, "Pursuant to Rule of Professional Conduct 8.1(c), you have a duty to comply with the bar's lawful demands for information not protected from disclosure by Rule 1.6. As part of my preliminary investigation of the complaint, I demand that you submit a written answer to the complaint within 21 days of the date of this letter."

3. The Respondent's written response to the complaint referenced above was due on or before July 19, 2010. Respondent did not submit his written, or any other, response on or before that date.

4. Accordingly, on August 4, 2010, Assistant Bar Counsel Kathleen M. Uston contacted Respondent by telephone. On that date, Respondent stated that he had not received a copy of the complaint referenced above. Therefore, on August 4, 2010, a copy of this complaint, together with a copy of the June 28, 2010, cover letter demanding Respondent's written response to the complaint, were sent to Respondent by email attachment. Respondent acknowledged receipt of these documents, and represented that he would submit a written response to the complaint forthwith.

5. No written, or other, response to the complaint was received from Respondent.

6. On October 13, 2010, as a consequence of Respondent's failure to respond to the complaint referenced above, the matter was referred to the Fifth District Committee, Section I, for a more detailed investigation. Incident to that investigation, Respondent was telephonically interviewed by Virginia State Bar Investigator Albert E. Rhodenizer, Jr., on January 7, 2011. During this interview, Respondent advised Investigator Rhodenizer that he had adequately communicated with his client in the underlying case, and had completed the matter on his client's behalf, issues disputed by the Complainant.

7. This matter was reviewed by a subcommittee on March 22, 2011, which, at the recommendation of Assistant Bar Counsel Uston, referred the case back to Investigator Rhodenizer for further investigation, specifically requesting that he obtain documents which corroborated Respondent's claims as to his handling and successful conclusion of the underlying case.

8. On May 3, 2011, Investigator Rhodenizer submitted his Supplemental Report of Investigation wherein he detailed his efforts to secure the Respondent's cooperation with this supplemental investigation.

9. Specifically, Investigator Rhodenizer contacted Respondent by letter dated March 23, 2011, and detailed in this letter the corroborating documentation that the subcommittee had requested. Respondent did not respond to this letter.

10. Accordingly, on April 21, 2011, Investigator Rhodenizer telephoned Respondent and left him a detailed voicemail message. Respondent did not respond to this message. On April 25, 2011, Investigator Rhodenizer contacted Respondent again by telephone and spoke to Respondent's assistant, Drew Brennan. Mr. Brennan requested that Investigator Rhodenizer

send another copy of his March 23, 2011, letter to the Respondent, and advised him that either he or Respondent would get back in touch with him. In response to this request, Investigator Rhodenizer sent another copy of his March 23, 2011, letter to Respondent by facsimile transmission at 9:24 a.m. on April 25, 2011.

11. As of May 3, 2011, the date upon which Investigator Rhodenizer submitted his Supplemental Report of Investigation, neither Respondent nor Mr. Brennan had contacted Investigator Rhodenizer in response to this March 23, 2011, letter and two (2) telephone calls, nor had Respondent produced the requested documents.

12. As a result, on May 20, 2011, Assistant Bar Counsel Kathleen M. Uston served upon Respondent a subpoena *duces tecum* requiring production on or before June 24, 2011, of the corroborating documentation. Respondent failed to respond to this duly issued subpoena *duces tecum*.

13. On June 28, 2011, Assistant Bar Counsel Uston wrote to Respondent regarding his failure to respond to the subpoena *duces tecum* and extended the deadline for his response thereto to July 8, 2011. Respondent failed to respond to the subpoena *duces tecum* on or before this date.

14. As a result of Respondent's failure to respond to the duly issued subpoena *duces tecum*, a Notice of Noncompliance and Request for Interim Suspension were filed by the bar and served upon Respondent. Respondent failed to contest this Notice of Noncompliance and Request for Interim Suspension, or otherwise comply with the subpoena *duces tecum*, and so on August 31, 2011, the Disciplinary Board entered an Order suspending Respondent's license to practice law on an interim basis until such time as he fully complied with the outstanding subpoena *duces tecum*.

15. By Order dated September 9, 2011, the suspension of Respondent's license to practice law was lifted following his personal delivery to the Virginia State Bar offices in Richmond, Virginia of his file materials on the underlying case.

STIPULATED NATURE OF MISCONDUCT

It was stipulated that such conduct by David Glenn Hubbard constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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[.]

FINDING OF MISCONDUCT

Following the admission of the agreed exhibits and the Stipulations of Fact and Misconduct, the Board recessed to consider whether the charges had been proven by clear and convincing evidence. When the proceedings reconvened, the Chair announced the unanimous decision of the Board that the Bar has proven by clear and convincing evidence violation of Rule 8.1(c) of the Rules of Professional Conduct.

IMPOSITION OF SANCTION

After hearing argument from the Bar (including a recommendation that a Public Admonition would be an appropriate sanction) and argument from the Respondent, and considering factors in aggravation and mitigation, including Respondent's prior disciplinary record which includes three instances of prior discipline for violation of Rule 8.1(c) since

2010 (*See* Bar Exhibit No. 14 and Board Exhibit No. 1), the Board recessed to deliberate. After due deliberation, the Board reconvened and the Chair announced that upon consideration of the exhibits and the factors in aggravation and mitigation, including the Respondent's prior disciplinary record, the sanction to be imposed by the Board is suspension of Respondent's license to practice law for a period of thirty (30) days, effective April 27, 2012.

Accordingly, it is ORDERED that the Respondent, David Glenn Hubbard, be suspended from the practice of law for a period of thirty (30) days, effective April 27, 2012.

It is further ORDERED that, as directed in the Board's April 27, 2012 Summary Order in this matter, 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 Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent 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 Respondent's care in conformity with the wishes of Respondent's client. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day 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 this order, Respondent 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 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, ¶ 13-9E 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, David Glenn Hubbard, at his address of record with the Virginia State Bar, Leiser, Leiser & Hennessy, PLLC, Suite 310, 8229 Boone Blvd., Tyson's Corner, Virginia 22182-2623, by certified mail, return receipt requested. The Clerk of the Disciplinary System shall also mail an attested copy of this order, by regular mail to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 4th day of May, 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

by: Pleasant S. Brodnax III
Pleasant S. Brodnax, III, Second Vice Chair