VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JOHN F. KANE **VSB DOCKET No. 13-022-093947**

MEMORANDUM ORDER

This matter came on to be heard on March 28, 2014 before a duly convened panel of the Disciplinary Board (the Board) consisting of Tyler E. Williams, III, First Vice Chair, Robert W. Carter, Lay Member, J. Casey Forrester, John A.C. Keith and Lisa A. Wilson (the Panel). Paul D. Georgiadis, Assistant Bar Counsel appeared as counsel for the Virginia State Bar. The Respondent, John F. Kane (Respondent) appeared in person, *pro se.* The court reporter for the proceeding, Angela N. Sidener, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone 804-730-1222, was sworn by the Chair. The Chair polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair, responded in the negative.

The matter came before the Board on the District Committee Determination for Certification by the Second District Subcommittee.

Respondent renewed his motion for a continuance. Said motion was denied.

I. FINDINGS OF FACT

VSB Exhibits A1 – A19 and B-1 were admitted without objection. Respondent, John F. Kane offered no exhibits. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Respondent John F. Kane has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 8617 Chesapeake Boulevard, Norfolk, VA 23503. All legal notices of the date and place were timely sent to the Respondent by the Clerk of the Disciplinary System (Clerk) in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, § IV, Paragraph 13 of the Rules of Court.

2. On or about April 25, 2011, Respondent entered his appearance as counsel for defendant William M. Somerindyke, Jr. in Commonwealth of Virginia, ex rel. State Corporation Commission v. William Somerindyke, Jr., Case No. SEC-2011-00010 and for defendant Anita Tribble in Commonwealth of Virginia, ex rel. State Corporation Commission v. Anita Tribble, Case No. SEC-2011-00011. Respondent remained counsel in these related matters through their conclusion.

3. As an attorney representing clients before the State Corporation Commission, Respondent was required to be an attorney licensed and in good standing to practice law in Virginia.

4. From March 21, 2012 to July 25, 2012, Respondent's license to practice law in the Commonwealth was suspended for his failure to comply with the MCLE requirements. MCLE suspended his license only after sending a minimum of four (4) notices of MCLE noncompliance and impending suspension. In addition, MCLE sent a further post-suspension notice to Respondent on May 11, 2012.

5. Notwithstanding having knowledge of the suspension of his license to practice law, Respondent continued to represent clients Somerindyke and Tribble before the SCC, including by

filing a pleading in both cases entitled *Motion for an extension of time to file post hearing brief* that he filed on June 12, 2012.

6. On August 28, 2012, the Bar suspended Respondent's license to practice law for his failure to respond to a *subpoena duces tecum* in the Bar's investigation of a misconduct case. The Bar suspended his license only after sending Respondent a reminder of the outstanding and unanswered subpoena on June 28, 2012 and only after granting Respondent a further extension of time in response to Respondent's extension request. Respondent's suspension was not lifted until February 5, 2013.

7. Notwithstanding having knowledge of the August 28, 2012 suspension of his license to practice law, Respondent continued to represent defendants Somerindyke and Tribble before the SCC, including by filing a pleading in both cases entitled *Defendant's Reply – Post hearing Briefs* with the SCC on October 1, 2012.

8. Such filings constituted the unauthorized practice of law, a Class 1 misdemeanor.

9. In response to questioning from the Panel, Respondent stipulated under oath that he knew that his license to practice law was suspended on the two occasions alleged by the Bar and that while suspended he filed briefs and pleadings with the SCC on behalf of Somerindyke and Tribble.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

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:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of the exhibits presented by Bar Counsel on the behalf of the VSB as Exhibits A1-A19 and VSB Exhibit B-1, upon evidence from witnesses presented on behalf of both parties and upon evidence presented by Respondent in the form of his own testimony, including his stipulation to the misconduct alleged by Bar Counsel, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberations the Board reconvened and stated its findings as follows:

The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 5.5(c) and Rule 8.4(b) of the Virginia Rules of Professional Conduct.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent and after due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction as suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of one (1) year and one (1) day.

Accordingly, it is **ORDERED** that the Respondent, John F. Kane, be and is hereby

suspended from the practice of law in the Commonwealth of Virginia for a period of one (1) year and one (1) day effective March 28, 2014.

It is further **ORDERED** that, as directed in the Board's March 28, 2014 Summary Order in this matter, Respondent must comply with the requirements of Part 6, §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 which he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall give notice within fourteen (14) days of the effective date of this Order and make such arrangements as are required within forty-five (45) days of the effective date of this Order. The Respondent shall also furnish proof to the VSB within sixty (60) days that such notices have been timely given and such arrangements made for the disposition of such matters.

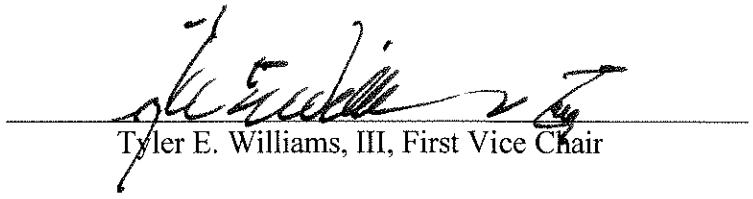
It is further **ORDERED** that if Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk. All issues concerning the adequacy of the notice and arrangements required by Part 6, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia shall be determined by the Board.

It is **ORDERED** that in accordance with Part 6, Section IV, Paragraph 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 Order to Respondent, John F. Kane, by certified mail at his address of record with the Virginia State Bar, 2428 Almeda Ave, Suite 162, Norfolk, VA 23513, and by hand delivery to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA

23219-3565.

ENTERED THE 22nd DAY OF APRIL, 2014
VIRGINIA STATE BAR DISCIPLINARY BOARD



Tyler E. Williams, III, First Vice Chair