

The matter came before the Disciplinary Board pursuant to The Rule to Show Cause and Order of Suspension and Hearing (“The Show Cause Order”) entered January 4, 2007, by Peter Dingman, Chair, Virginia State Bar Disciplinary Board. The Show Cause Order issued after the Clerk of the Disciplinary System received written notification that the Respondent had been convicted of a “Crime” as defined by the Rules of Court, Part 6, Sec. IV, Par. 13.I.5. The Show Cause Order summarily suspended the Respondent’s license to practice law pursuant to Rule 6, Sec. IV, Par. 13.I.5.b.

The Show Cause Order was modified by an Order entered January 21, 2007, continuing the hearing until February 23, 2007. By Order entered February 16th, 2007, the Disciplinary Board continued the hearing on the Rule to Show Cause until March 23, 2007.

At the commencement of the March 23, 2007, hearing, the Chair identified and reiterated the rulings of the Board contained in its prehearing order of February 16, 2007. In that Order the Board found that the Respondent’s plea was a position of law, not of fact, and that the Respondent would not be prevented, by the doctrine of judicial estoppel or otherwise, at the Show Cause hearing from denying the allegations contained in the Show Cause and presenting evidence in support of her position that she was, in fact, innocent of the Crime for which she made her Alford plea. In that same Order, the Board denied the motion of the Respondent that the Board require the Bar to prove the allegations that are the basis for the criminal conviction, and which formed the basis for a subcommittee Certification of Misconduct. In pertinent part, the Order of February 16, 2007, states:

“The Board concludes that, pursuant to provisions of Subpart (c) of Part 6, Section IV, Para. 13(I)(5), the Board, at the hearing on the Show Cause Matter, is mandated to issue an order continuing the suspension of the license of Respondent or revoking the license of Respondent upon a finding that Respondent has been found guilty or convicted of a Crime by a Judge. Respondent may offer such relevant evidence as she deems pertinent to show

why the suspension of her license (imposed upon issuance of the Show Cause Order) should not be continued or her license revoked. The Bar shall respond as it deems appropriate, and Respondent may offer rebuttal to the Bar's case. The Board denies Respondent's request numbered (2) leaving the burden upon Respondent to show cause, if any she can, why the Board should not "continue the Suspension or issue an order of Suspension against Respondent for a stated period not in excess of five years; or issue an order of Revocation against Respondent."

The Chair explained the process to be the following in the hearing. The Chair stated to the Respondent that the Show Cause filed by the Bar and served upon the Respondent required the Respondent to show cause, if she could, as to why the Summary Suspension of her license should not be continued or her license revoked as the result of her conviction of a felony in the Henrico Circuit Court on or about November 1, 2006. The Respondent, therefore, had the burden of proof by clear and convincing evidence that the Summary Suspension of her license should not be continued or, alternatively, that she should not have her license to practice law in Virginia revoked. The Chair also informed the Bar that it would have an opportunity to present evidence in rebuttal.

Before the Respondent called her first witness, the Chair inquired as to whether any stipulations of fact had been made by and between the parties. The Counsel for the Bar and Counsel for the Respondent agreed that the Bar's Exhibits 1 through 35 had been offered for admission and should be admitted without objection. The Board received each of those exhibits into evidence collectively as Bar Exhibit No. 1. Those exhibits are referred hereinafter as Bar Exhibit 1 with an additional designation for the tab number for the document referred to within the Bar's exhibit. The Bar's additional Exhibits 36, 37 and 38 were then admitted by agreement collectively as Bar Exhibit 2. Counsel for the Respondent and Counsel for the Bar agreed to stipulate that Catherine Ann Lee, in the courtroom with her counsel, Mr. Parks, was the same person charged in the indictment and convicted in the

Conviction Order of the Circuit Court of Henrico County, each of those documents being an exhibit of the Bar and already admitted in evidence.

Following the discussion of exhibits, the Chairman inquired whether Counsel for the Respondent or Counsel for the Bar had any questions. Neither Counsel had questions. A Rule to Exclude Witnesses was made and granted. The witnesses in the courtroom were sworn. All were admonished not to discuss the case and then were sent out of the courtroom until the time of their testimony.

Elliott Parks, on behalf of Catherine Lee, made an opening statement which was followed by an opening from the Bar. Following the opening statements, Counsel agreed to a stipulation that the Bar had met its burden of showing that Catherine Ann Lee is the same person shown on the Record of Conviction of November 6, 2006, reflecting a conviction date of November 1, 2006 and contained in the record as Virginia State Bar Exhibit 4. Counsel for Lee further stipulated that the Bar had met its burden of proving that the Respondent, Catherine Ann Lee has been convicted of a felony.

The Respondent then testified. The Respondent, who is currently not practicing law and whose license is suspended pursuant to a disability suspension, testified that she has suffered from substance (specifically including alcohol) abuse, but that she has abstained from alcohol and drugs for some period of time (beginning after the events as to which she entered her Alford plea) and has received treatment and counseling. She also testified regarding difficulties with her marriage during the time period which resulted in the embezzlement charge against her in Henrico County. Respondent did not assert that her substance abuse and/or domestic difficulties were causal or mitigating factors regarding that theft crime, rather choosing to assert that she did not in fact steal from her law firm.

The Respondent explained that while she was working as an attorney at Coates & Davenport, she received payment for guardianship services which she deposited in her own account. Coates & Davenport later asserted to her that the fee had been earned while she was a partner and was required to be placed in the firm's account. Ultimately, the Respondent was charged with the felony of embezzlement under Va. Code § 18.2-111 and she entered an Alford Plea in the Circuit Court of Henrico County. The Respondent testified that the reason for the entry of her Alford Plea was to avoid any possibility of active incarceration in connection with the disposition of the charge. She stated that "I entered the plea because I could not be away from my children." The Respondent testified that she understood that if she entered the plea, she would be a convicted felon.

On cross-examination, the Respondent maintained that the money received from the guardianship work was her money and not the firm's money, but was the product of work she did on her own and not for the firm. She conceded on cross-examination that she had used a portion of the money received from the guardianship to purchase a personal residence. She further testified that she did not pay the money back from her marital account.

The Respondent called, as her witnesses, John C. Moore and Thomas F. Coates, III. Through them, the Respondent introduced the civil complaint for damages filed against her in Hanover County by Coates & Davenport under the style of Coates & Davenport v. Catherine A. Lee, and the "Amended and Re-stated Stockholder's Agreement" between the stockholders of Coates & Davenport dated January 26, 1995. She also called Cam Moffit for the purpose of introducing Ms. Moffit's report of June 2, 2005, which was admitted as Respondent's Exhibit 3.

The Respondent then called Milton K. Brown, who had recommended her to be hired at Coates & Davenport while he was an attorney there. He testified that he watched her work and found her to be a “super” lawyer and that he had asked her to do a Will for his mother. Mr. Brown further testified that he had left the firm of Coates & Davenport in August or September of 1999.

At the conclusion of the Respondent’s case, the Respondent rested. The Bar called no witnesses. Closing argument was then had on behalf of the Respondent. The Bar then made its argument and the matter was submitted to the Board for deliberation. The Board deliberated and returned a unanimous opinion that upon the Show Cause, the Respondent had failed to establish, by clear and convincing evidence, that the temporary suspension of her license should be terminated or to give a basis upon which her license should not be revoked pursuant to the Rules of the Virginia Supreme Court.

The Chair announced that the Board was bound by the Rule which defined the felony of embezzlement as a crime requiring the suspension and possible revocation of the Respondent’s license. The Board could not retry the criminal case, which resulted, regardless of the nature of the plea entered by the Respondent thereto, in a conviction of a felony involving the misappropriation of monies from the law firm where the Respondent was employed. The Board did not find from the evidence presented to it on behalf of the Respondent, or in the exhibits offered by the Bar and the Respondent, that the Respondent had shown cause for why she should not be Revoked. The Respondent stands convicted in a Court of competent jurisdiction of a crime that directly impacts on her honesty and integrity as a member of the Bar, and that conviction was not explained or justified by the Respondent. It was, therefore, the decision of the Board and it is hereby:

ORDERED that the license of Catherine A. Lee to practice law in Virginia should be, and is, revoked effective March 23, 2007.

It is further requested and ORDERED that, as directed in the Board's March 23, 2007, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) 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 her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her client. 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 Bar within 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 suspension, she 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 (M) 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.B.8.c. 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 her address of record with the Virginia State Bar, being 9113 Fox Hill Race Court, Mechanicsville, Virginia 23116, by certified mail, return receipt requested, and by regular mail to Elliott P. Park, Counsel for Respondent, Park and Company, P.C., Suite 300, 1011 East Main Street, Richmond, Virginia 23219-3537, and to Paul E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THE 24th DAY OF APRIL, 2007



Peter A. Dingman, Chair

ba/ccc

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