

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JOHN FREDERICK McGARVEY

VSB DOCKET NO. 08-000-074826

**ORDER OF SUSPENSION**

**THIS MATTER** came on to be heard on September 26, 2008, before a panel of the Virginia State Bar Disciplinary Board convening in Courtroom A at the State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219. The panel was comprised of Robert E. Eicher, Chair, Timothy A. Coyle, Sandra Lea Havrilak, Werner H. Quasebath, Lay Member, and David R. Schultz. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest which would preclude any of them from fairly hearing this matter and serving on the panel. Each member, including the Chair, responded in the negative. Terry S. Griffith, a certified court reporter, Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The hearing was originally scheduled to be heard at the Lewis F. Powell, U.S. Courthouse, Tweed Courtroom, Fourth Floor, corner of Tenth and Main Streets, Richmond, Virginia. The Order entered on behalf of the Disciplinary Board on September 17, 2008, changing the location of the hearing to Courtroom A of the State Corporation Commission was sent to the Respondent at his Virginia State Bar address of record by certified mail on September 17, 2008.

The matter came before the Board Panel pursuant to a Rule to Show Cause and Order of Suspension and Hearing pursuant to Part 6, §IV, ¶ 13.I.5.b of the Rules of the Supreme Court of Virginia, as amended, requiring John Frederick McGarvey to appear and show cause

why his law license should not be further suspended or revoked based on his conviction of a felony. Craig S. Cooley, Esq., represented the Respondent at the hearing.

The Chair explained that, pursuant to Part 6, §IV, ¶ 13.I.5.b of the Rules, if the Board Panel were to find that the Respondent has been found guilty or convicted of a Crime by a judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by the court would justify a finding of guilt, an Order would be entered either continuing the Respondent's suspension for a stated period not in excess of five (5) years or revoking Respondent's license to practice law in the Commonwealth of Virginia.

### **I. STIPULATION**

The Respondent, by and through his counsel, stipulated that he has been convicted of a felony (DUI – 3<sup>rd</sup> Offense in violation of §18.2-266 of the Virginia Code), that the interim Order of Suspension dated April 24, 2008 was validly entered, that he was amenable to a finding by the Board Panel that he has been convicted of a Crime within the meaning of Part 6, §IV, ¶ 13.I.5.c. of the Rules of the Supreme Court of Virginia, as amended, and that the only matter to be determined by the Board Panel at the hearing was whether Respondent's license to practice law in the Commonwealth of Virginia should be further suspended or revoked.

The foregoing facts to which Respondent stipulated were accepted by the Board Panel and the Chair advised the parties that the Board Panel would hear evidence regarding aggravation and mitigation before determining an appropriate sanction.

### **II. EXHIBITS AND TESTIMONY**

Virginia State Bar Exhibits 1 through 5 were entered into evidence, without objection, and the Board Panel proceeded to hearing testimony regarding mitigation and aggravation.

The following witnesses testified to the good character, excellent legal ability and integrity of the Respondent, his passion and conscientiousness in the defense of his clients and his substance abuse problems, none of which adversely affected Respondent's representation of

his clients: Matthew Patrick Geary, Chief Deputy Commonwealth Attorney for the City of Richmond, Virginia, who has known the Respondent for more than 20 years; William Edward Riley, IV, an attorney in private practice who has known the Respondent for more than 18 years; William Theodore Linka, an attorney with a criminal defense practice who attended law school with the Respondent and has known him for more than 30 years; Mark James, Senior Special Agent with the United States Drug Enforcement Agency who has known the Respondent for 20 years; Robert Patrick Geary, an attorney in private practice who has known the Respondent for 30 years; Michael Weise, an attorney in private practice who has served as the Respondent's mentor in the Lawyers Helping Lawyers program administered by the Virginia Bar Association; David L. Carson, an attorney in private practice who has known the Respondent for 30 years; Cary Breckenridge Bowen, an attorney and Respondent's uncle who has known him his entire life; and James E. Leffler, Executive Director for the Lawyers Helping Lawyers program. Aubrey "Russell" Bowles and Jeffrey Everhart, both attorneys, were present but did not testify based on Mr. Cooley's representation, accepted by Bar Counsel, that they would have testified as had the other attorneys to the good character, legal ability and integrity of the Respondent.

The Respondent testified that he has practiced law for 27 years and that for the past 20 years his practice has been exclusively criminal defense; that he has handled 12 capital murder cases; that he has been diagnosed and is receiving treatment for bipolar disorder; that he is addicted to pain killers and alcohol; that he has not driven an automobile since June 16, 2006; that he has entered into a contract with Lawyers Helping Lawyers; that he attends meetings of Alcoholics Anonymous (AA) three times a week; that he has been sober since March 14, 2008; that he currently is on the fourth step of the 12-step AA program and that he wants to practice law again.

Bar Counsel called Nelson Fisher, the attorney who prosecuted the Respondent in the felony DUI – 3<sup>rd</sup> offense case which resulted in the conviction that is the reason for today's hearing. Mr. Fisher testified about the case history and his rationale for prosecuting the matter as a felony.

The Respondent's prior disciplinary record (Public Reprimand with Terms effective March 17, 2005) was introduced, without objection, as Virginia State Bar Exhibit 6.

### **III. DISPOSITION**

After considering VSB Exhibits 1 through 6, the testimony of the Respondent and the other witnesses and the argument of counsel, the Board Panel recessed to deliberate. After due deliberation, the Board Panel reconvened and the Chair announced the sanction: Respondent's license to practice law in the Commonwealth of Virginia would be suspended for a period of 18 months effective April 24, 2008, the date of the entry of the Board's Rule to Show Cause and Order of Suspension and Hearing.

Accordingly, it is ORDERED, pursuant to Part 6, §IV, ¶ 13.I.5.(c) of the Rules of the Supreme Court of Virginia, as amended, that the license of the Respondent, John Frederick McGarvey, to practice law in the Commonwealth of Virginia, be and is hereby suspended for a period of 18 months, effective April 24, 2008.

The Respondent has complied with the requirements of Part 6, §IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia, as amended, by submitting a notarized Affidavit stating that, as of May 22, 2008, he did not have any clients for whom he was currently handling matters. This Affidavit was received by the Clerk of the Disciplinary System on June 25, 2008.

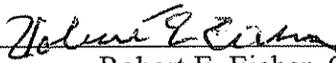
It is further ORDERED that pursuant to Part 6, §IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, as amended, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

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 320 West Broad Street, Richmond, Virginia 23220-4257, by certified mail, return receipt requested,

and by regular mail to Harry M. Hirsch, Deputy Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 28<sup>th</sup> day of October, 2008

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
Robert E. Eicher, Chair