

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF FRANCIS ALLEN MINOR

VS B Docket No.: 13-000-094144

ORDER AND OPINION

This matter came on for hearing on Friday, January 25, 2013, before a duly convened Panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Martha JP McQuade, Chair, Presiding; R. Lucas Hobbs; Michael S. Mulkey; Whitney G. Saunders; and Robert W. Carter, Lay Member. The matter was before the Board pursuant to a Notice to Show Cause Hearing, by reason of Respondent Francis Allen Minor's apparent failure to comply with Terms imposed by Order of the Board entered December 5, 2011 in VSB Docket Nos. 09-053-078432 and 10-053-081956 (the "Prior Order"), and as to why Respondent's law license ought not be suspended for an additional one (1) year, that being the alternative sanction provided by the Prior Order in the event of noncompliance with the Terms. All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by law.

Prescott L. Prince, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("VSB"). The Respondent appeared *pro se*. The court reporter for the proceeding, Valarie L.S. May, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone 804-730-1222, was duly sworn by the Chair, and the Respondent was also sworn. The Chair then polled the members of the Board as to whether any of them had any personal or financial interest or bias which would preclude them from fairly hearing this matter, and each member, including the Chair, responded that there were no such conflicts.

Part Six, §IV, ¶13-18(O) of the Rules of the Supreme Court, *Enforcement of Terms*, provides, in relevant part, that: Whenever it appears that the Respondent has not complied with the Terms imposed in a prior disposition, Bar Counsel shall serve notice requiring the Respondent to appear and show cause why the alternative disposition should not be imposed; Such a show cause proceeding shall be set for hearing before the Board at its next available hearing date; The burden of proof shall be on the Respondent to show compliance by clear and convincing evidence; If the Respondent has failed to comply with the Terms of the prior disposition, within the stated time period, the alternative disposition shall be imposed.

Procedural Background

The Prior Order was entered by the Board in 2011 after the Respondent was found by clear and convincing evidence to have engaged in misconduct, specifically violating Rules of Professional Conduct 1.4 (Communication), 1.15 (Safekeeping Property), 5.5 (Unauthorized Practice of Law), 8.1 (Bar Admission and Disciplinary Matters), and 8.4 (Misconduct). The Prior Order issued a One-Year Suspension, with the following Terms: (1) The Respondent shall complete six (6) hours of continuing legal education in ethics within six (6) months prior to December 9, 2012, which CLE hours shall not count towards his MCLE requirements, and shall provide written certification of compliance with this CLE requirement by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Senior Assistant Bar Counsel Seth M. Guggenheim promptly following his attendance of such CLE courses, (2) The Respondent shall conform every written fee agreement which he uses in his practice of law to the requirements of Rules of Professional Conduct 1.5 and 1.15 and Legal

Ethics Opinion 1606, shall submit one sample copy of every such written fee agreement to Senior Assistant Bar Counsel Seth M. Guggenheim no later than December 9, 2012, and (3) The Respondent shall deliver a \$500.00 check made payable to Ada L. Smith and a \$200.00 check made payable to Donna Lynn Holshey to Senior Assistant Bar Counsel Seth M. Guggenheim no later than January 15, 2012. The Prior Order further provided that, in the event Respondent failed to comply with any Term, Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for an additional period of one year pursuant to Part Six, Section IV, ¶13-18(O).

Findings of Fact

Respondent admitted that he did not comply with the Terms imposed by the Prior Order, stating that he did not have the financial means do so, and asked the Board to use its "discretion" in not imposing the alternate disposition of an additional period of suspension. In accordance with such admission, the Board found that Respondent had failed to comply with the Term of the Prior Order. Specifically, he did not complete the additional CLE hours or provide timely written certification of same; He did not deliver the checks required by the Prior Order; and he did not submit any written fee agreement for approval.

Disposition

At the conclusion of the evidence and having heard all argument presented, the Board recessed to deliberate as to sanction. Upon reconvening, the Chair stated that the Board is of the opinion that the word "shall," as used in Part Six, §IV, ¶13-18(O) of the Rules of the Supreme

Court, is mandatory in nature, and gives the Board no discretion as whether to impose the alternative disposition specified by the Prior Order in the event of failure to comply with Terms. Thus, the Board felt “the alternative disposition [contained in the Prior Order must] be imposed.” Accordingly, the decision was to impose the alternative disposition specified in the Prior Order, which is an additional suspension for one year, effective December 10, 2012. Respondent was present in person and was advised of the imposition of the sanction.

Accordingly, It Is

ORDERED that the Respondent’s license to practice law in the Commonwealth of Virginia is SUSPENDED for one year, effective December 10, 2012. It is further

ORDERED that the Respondent must comply with the requirements of Part 6, Section 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 his license to practice law in the Commonwealth of Virginia to all clients for whom he 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 presently in his care in conformity with the wishes of his clients. The Respondent shall give such notice within fourteen (14) days of the effective date of the Suspension, and make such arrangements as are required within forty-five (45) days of the effective date of the Suspension. The Respondent shall also furnish proof to the VSB within sixty (60) days of the effective date 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 the additional suspension, he shall submit an Affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. It is further

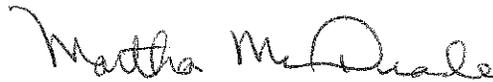
ORDERED that all issues concerning the adequacy of the notice and arrangements required by ¶13-29 shall be determined by the Board. It is further

ORDERED that pursuant to Part Six, §IV, ¶13-9 Of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent. Finally, it is further

ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent Francis Allen Minor at his address of record with the Virginia State Bar, being 7205 Halifax Place, Springfield, Virginia 22150, by certified mail, and by regular mail to Prescott L. Prince, Assistant Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, VA 23219.

SO ORDERED, this 20th day of March, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Martha JP McQuade, Chair