

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF CLIVE ALLEN O'LEARY

VSB DOCKET NO. 13-000-093249

ORDER OF SUSPENSION

This matter came to be heard on November 16, 2012, pursuant to a Notice of Show Cause properly issued pursuant to Part 6, Section IV, Paragraph 13-18.0, of the Rules of the Supreme Court of Virginia, alleging a failure to comply with terms. The matter was heard before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Martha JP McQuade, Chair, presiding; John S. Barr; William C. Boyce, Jr.; Peter A. Dingman; and Lay Member Jody D. Katz. The Virginia State Bar was represented by Kathryn R. Montgomery, Deputy Bar Counsel. Mr. O'Leary was not present at the calling of the case; the Clerk, therefore, called his name three times in the hallway/lobby; however, Mr. O'Leary did not appear. Court Reporter, Valerie L. S. May, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the hearing by polling the members of the Board as to whether any of them was aware of any personal or financial interest which would preclude any of them from fairly hearing the matter, to which inquiry each member, including the Chair, responded in the negative.

PROCEDURAL BACKGROUND

On March 12, 2012, a three-judge panel of the Circuit Court of Stafford County entered an Order finding that Mr. O'Leary had engaged in misconduct; imposing a one year suspension dating from March 1, 2012; imposing the term that Mr. O'Leary pay a sum of \$2,000 to Preston Foshee and a sum of \$2,500 to Margo Brown within six months of entry of the order; and also

specifying an alternate sanction if that term were not complied with, of a further suspension of two years.

In accordance with Part 6, Section IV, Paragraph 13-18.0 of the Rules of the Supreme Court of Virginia, and pursuant to the Show Cause issued herein, the Respondent has the burden of proof to show, by clear and convincing evidence, that he has complied with the term. If it is found that he has not, the alternate sanction, in accordance with the Rules, "shall be imposed."

FINDINGS OF FACT

At the conclusion of the Bar's presentation of evidence and argument, the Board recessed to deliberate. After due deliberation, the Board reconvened and announced its finding that the Respondent had not complied with the term of the prior order in that he had not refunded any money to Preston Foshee or Margo Brown.

DISPOSITION

The Board then imposed the alternate sanction of a two year suspension effective November 16, 2012.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is SUSPENDED for two years, effective November 16, 2012.

It is FURTHER ORDERED that the Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice, by certified mail, 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 then in his care in conformity with the wishes of his client(s). 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 as of the effective date of this suspension, he shall forthwith submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. It is FURTHER ORDERED that all issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 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, Section IV, Paragraph 13-9.E, 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 because the Respondent's license has been suspended for more than one year, the Respondent's license shall not be reinstated unless and until the Respondent fully complies with the provisions of Part 6, Section IV, Paragraph 13-25.H of the Rules of the Supreme Court of Virginia

Finally, it is FURTHER ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Order and Opinion to the Respondent, Clive Allen O'Leary, at his address of record with the Virginia State Bar, being 1440 Central Park Boulevard, #208, Fredericksburg, Virginia 22401, by certified mail, return receipt, and by regular mail to Kathryn R. Montgomery, Deputy Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED December 31, 2012.

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in black ink, reading "Martha JP McQuade". The signature is written in a cursive style with a large initial "M".

Martha JP McQuade, Chair