VIRGINIA:

BEFORE THE STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DUANE TIMOTHY PHILLIPS

VSB DOCKET NO. 14-000-098945

MEMORANDUM ORDER

This matter came on to be heard on April 25, 2014 by the Disciplinary Board of the Virginia State Bar (the Board) upon a Rule to Show Cause and Order of Summary Suspension and Hearing entered March 28, 2014 pursuant to Part Six, Section IV, Paragraph 13-24(A) of the Rules of the Supreme Court of Virginia. A duly convened panel of the Board consisting of Tyler E. Williams, III, Chair, Rev. W. Ray Inscoe, Lay Member, J. Casey Forrester, Bretta Marie Zimmer Lewis, and William H. Atwill, Jr., (the Panel) heard the matter. Edward J. Dillon, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar (VSB). The Respondent, Duane Timothy Phillips, did not appear in person or by counsel. 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.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13 of the Rules of Court. The case was then called by the Clerk and the Respondent did not answer. The Chair directed the Assistant Clerk, Kathleen LaMotte, to go into the foyer area outside the court, to call the name of the Respondent three times, and to report back to the Chair. She did so, and after being sworn, reported that there was no response.

The Chair then found that, based upon the record, the requirements of Paragraph 13-18C as to notice and Paragraph 13-12C as to service were complied with.

The Chair then 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, verified he or she had no such interests.

The Chair accepted the letter dated March 31, 2014 from the Respondent as his Response under Paragraph 13-24B. No other evidence or argument was presented by Respondent or on his behalf.

The Board heard a brief opening statement from the VSB. The VSB then introduced and the Board received into evidence a copy of the Rule to Show Cause and Order of Summary Suspension and Hearing, together with the exhibits referenced in the Rule at page 2 (VSB Ex. 1); and the Affidavit of Gale M. Cartwright, Custodian, Membership Records, Virginia State Bar regarding Respondent's membership status as an inactive member not in good standing. (VSB Ex. 2). The Board received into evidence without objection a letter from Respondent dated March 31, 2014 (Respondent's Ex. 1). The VSB did not call any witnesses. Thereupon, the VSB adopted its opening statement as its closing argument.

After due deliberations the Board finds that Respondent failed to establish by clear and convincing evidence any of the grounds of defense found in Part 6, Section IV, Paragraph 13(B) of the Rules of Court, *viz.*, that (1) the record of the proceedings in the Supreme Court of the State of New Jersey clearly shows that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process; (2) the imposition by the Board of the same

discipline upon the same proof would result in a grave injustice; or (3) the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

Having made these findings, the Disciplinary Board **ORDERS** that pursuant to Part 6, Section IV, Paragraph 13-24(G) of the Rules of Court, the same discipline that was imposed in New Jersey be and hereby is imposed in Virginia, and the Respondent's license to practice law in Virginia be and hereby is suspended for a period of three months effective April 25, 2014; and

The Chair accepted Respondent's letter of March 31, 2014 as proof of compliance with Paragraph 13-29, and it is further **ORDERED** that Respondent comply with the ongoing duties imposed by said Paragraph during the period of suspension within the Commonwealth; and

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; and

It is further **ORDERED** that the Clerk shall mail an attested copy of this Order to Respondent, Duane Timothy Phillips, by certified mail at his address of record with the Virginia State Bar, at Parkshore Professional Building, Suite 2, 609 New Road, Linwood, NJ 08221-1250, and by hand-delivery to Edward J, Dillon, Jr., Assistant Bar Counsel, Virginia State Bar; 1111 East Main Street, Suite 700; Richmond, VA 23219-3565.

ENTERED THIS 6th DAY OF MAY, 2014

VIRGINIA STATE BAR DISCIPLINARY BOARD

Tyler E. Williams, III,
First Vice Chair