

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JAMES SPAULDING POWELL

VSB DOCKET NO. 07-000-0273

ORDER OF SUSPENSION

THIS MATTER came to be heard on Friday, August 25, 2006, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the General Assembly Building, House Room C, First Floor, 910 Capitol Street, Richmond, VA 23219. The Board was composed of James L. Banks, Jr., First Vice-Chair (the "Chair"), Glenn M. Hodge, John W. Richardson, David R. Schultz, Stephen A. Wannall, Lay Member. The Bar was represented by Paul E. Franco, Assistant Bar Counsel. On August 22, 2006, Peter A. Dingman, Chair of the Disciplinary Board, granted the Respondent's request to participate in the hearing of this matter on August 25, 2006, telephonically. Therefore, a conference call was established with James Spaulding Powell at his office in Lakewood, Colorado. Present with Mr. Powell was Kelly Mackereth who stated that she was a notary public and court reporter for the State of Colorado. She advised that she inspected Mr. Powell's Colorado driver's license bearing number 00-230-0559, and he appeared to be the person to whom the license was issued.

The Chair polled members of the Board as to whether any one of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

The court reporter, Victoria V. Halasz of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

Kelly Mackereth, the Court reporter in Colorado, did then duly swear the respondent and then allegedly left the respondent's offices.

The matter came before the Board on the Board's Rule to Show Cause why the Respondent's license to practice law in the Commonwealth of Virginia should not be suspended by reason of the disciplinary suspension of his license to practice law in the District of Columbia.

Bar Counsel and Respondent made opening and closing statements as to their respective positions.

The Bar introduced into evidence of Mr. Powell's suspension from the practice of law in the District of Columbia in the form of an Order entered by the District Court of Columbia Court of Appeals, decided May 4, 2006, effective June 3, 2006. The Suspension Order reflected Respondent's failure to disclose his admission to practice before the District of Columbia or his interim suspension by the District of Columbia Court of Appeals when Respondent made a sworn application for admission to the Bar of the United States District Court for the District of Colorado. The exhibits offered by the Virginia State Bar were received by the Panel and entered as evidence in the matter.

Mr. Powell, once again, argued that he misread the application and should have in fact disclosed his previous suspension.

I. FINDINGS OF FACT

Upon considering the record, the Board unanimously finds, by clear and convincing evidence, to wit:

1. At all relevant times hereto, James Spaulding Powell, is an attorney licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been James Spaulding Powell, James Spaulding Powell, LLC, Suite 225, 1746 Cole Boulevard, Lakewood, Colorado 80401. The Respondent was properly served with notice of this proceeding as required by Part Six, § 4, ¶ 13 (E) of the Rules of the Supreme Court of Virginia.

2. It appearing that James Spaulding Powell has been suspended from the practice of law in the District of Columbia for a period of one (1) year, effective June 3, 2006, by Order entered by the District of Columbia Court of Appeals.

3. It further appearing such disciplinary action has become final.

4. By Rule to Show Cause, an Order of Suspension and Hearing entered July 31, 2006, Respondent's license to practice law was suspended pursuant to the Rules of Court, Part Six, § 4, ¶ 13.I.7.a and the Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. on Friday, August 25, 2006, to show cause why his license to practice law within the Commonwealth of Virginia should not be suspended.

II. DISPOSITION

After hearing the evidence and argument of Assistant Bar Counsel and the Respondent, the Board finds, by clear and convincing evidence, that the Respondent was suspended from the practice of law in the District of Columbia for a period of one year effective June 3, 2006.

It is therefore ORDERED that the license of the Respondent, James Spaulding Powell to practice law in the Commonwealth of Virginia, be, and the same hereby is, suspended for a period of one year effective July 31, 2006.

It is further ORDERED that, as directed in the Board's Summary Order dated July 31, 2006, Respondent must comply with the requirements of Part Six, § 4, ¶ 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 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 make appropriate arrangements for the disposition of matters then in his care in conformity of the wishes of his clients. The Respondent shall give such notice within fourteen (14) days of the effective date of the Suspension Order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the Suspension Order. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the Suspension Order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that a copy of the Order of Suspension with the District of Columbia Court of Appeals be attached to this Order of Suspension and made a part hereof and that prior to reinstatement the Respondent shall comply with all requirements set forth therein.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, James Spaulding Powell, at his address of record with the Virginia State Bar: James Spaulding Powell, LLC, Suite 225, 1746 Cole Boulevard, Lakewood, Colorado 80401, by certified mail, return receipt requested, and a copy hand delivered to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

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

ENTERED this 12th day of September, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD


James L. Banks, Jr., First Vice Chair

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Notice: This opinion is subject to formal revision before publication in the Atlantic and Maryland Reporters. Users are requested to notify the Clerk of the Court of any formal errors so that corrections may be made before the bound volumes go to press.

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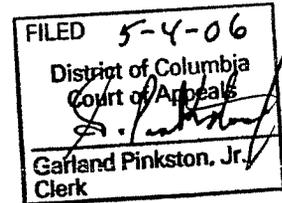
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 05-BG-785

IN RE JAMES S. POWELL, RESPONDENT.

A Member of the Bar
of the District of Columbia Court of Appeals
(Bar Registration No. 427084)

On Report and Recommendation
of the Board on Professional Responsibility
(BDN 420-02)



(Submitted December 14, 2005)

Decided May 4, 2006)

Before WASHINGTON, *Chief Judge*, SCHWELB, *Associate Judge*, and NEBEKER, *Senior Judge*.

PER CURIAM: This original matter involves a recommendation for a one-year suspension from the practice of law and that respondent be required to show fitness prior to reinstatement.

On May 18, 1999, respondent, James S. Powell, entered a guilty plea to a misdemeanor offense in Virginia. Respondent failed to report the criminal conviction to this court pursuant to D.C. Bar R. XI, § 10 (a). The Virginia State Bar subsequently reprimanded respondent for commission of the crime and the Virginia Bar notified Bar Counsel of this reprimand. We suspended respondent on an interim basis in an earlier appeal (No. 01-BG-485) and directed the Board on Professional Responsibility to institute a formal proceeding to determine final discipline.

While subject to the interim suspension by this court in appeal No. 01-BG-485, respondent filed a sworn application for admission to the Bar of the United States District Court for the District of Colorado wherein respondent failed to disclose his admission to practice before the District of Columbia or his interim suspension by this court. The interim suspension concluded when this court issued *In re Powell*, 836 A.2d 579 (D.C. 2003), in which this court imposed a 30-day suspension *nunc pro tunc* to October 16, 2002. Although respondent was admitted to practice before the

Colorado Court, that court's Committee on Conduct rescinded the admission following an investigation that revealed respondent was not a member in good standing in the District of Columbia. As a result, Bar Counsel filed formal proceedings against respondent on July 30, 2003, charging that respondent violated Rules 8.1 (a), 8.4 (c) and 8.4 (d) based upon his application to the Bar of the Colorado District Court.

In its report and recommendation submitted on July 27, 2005, in appeal No. 05-BG-785, the Board concluded that respondent violated Rule 8.1 (a) by knowingly making a false statement of material fact in connection with a bar admission application; Rule 8.4 (c) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; and Rule 8.4 (d) by engaging in conduct that seriously interfered with the on Professional Responsibility, and respondent to show cause why he should not be disbarred. Upon review of the responses to the show cause order, this court is satisfied with the recommendation of the Board. Bar Counsel does not take exception to the Board's Report and Recommendation.¹

Considering the heightened deference this court gives to the Board's recommendation in cases such as this where no exceptions are filed, *see* D.C. Bar R. XI, § 9 (g)(2); *In re Delaney*, 697 A.2d 1212, 1214 (D.C. 1997), we adopt the Board's recommendation. *See In re Starnes*, 829 A.2d 488 (D.C. 2003) (imposing six-month suspension with a fitness requirement for making an intentional misrepresentation in an application to the bar of this court); *In re Cater*, 887 A.2d 500 (D.C. 2005) (requiring "clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law" for imposition of a showing of fitness). Therefore, it is

ORDERED that James S. Powell is suspended from the practice of law in the District of

¹ "Our disciplinary system is adversarial – Bar Counsel prosecutes and Respondent's attorney defends – and although the court is not precluded from imposing a more severe sanction than that proposed by the prosecuting authority, that is and surely should be the exception, not the norm, in a jurisdiction, like ours, in which Bar Counsel conscientiously and vigorously enforces the Rules of Professional Conduct." *In re Cleaver-Bascombe*, 892 A.2d 396, 412 n.14 (D.C. 2006).

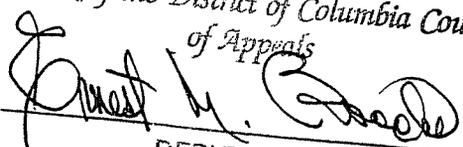
Columbia for the period of one year, beginning 30 days from the date of this opinion. Reinstatement in the District of Columbia is conditioned on demonstration of fitness to practice law in accordance with D.C. Bar R. XI, § 3 (a)(2). We direct respondent's attention to the requirements of D.C. Bar R. XI, § 14 including the timely filing of an affidavit and their effect on his eligibility for reinstatement. *See* D.C. Bar R. XI, § 16 (c).

So ordered.

*A true Copy
Test:*

*Garland Pinkston, Jr.
Clerk of the District of Columbia Court
of Appeals*

BY


DEPUTY CLERK