

VIRGINIA :

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF SALVAGE DeLACY STITH

VS. B DOCKET NO. 06-000-4273

**ORDER OF RECOMMENDATION**

This matter came on to be heard on January 26, 2007 before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, hearing room A. The Board was comprised of Joseph R. Lassiter, Jr., Acting Chair, Thomas R. Scott, Jr., H. Taylor Williams, IV, Sandra Lea Havrilak, and Stephen A. Wannall, lay member. Petitioner Salvage DeLacy Stith (hereinafter "Stith") *pro se*, was present. The Virginia State Bar appeared by its counsel, Paul D. Georgiadis, Assistant Bar Counsel. Proceedings in this matter were transcribed by Donna T. Chandler, a registered professional reporter, Post Office Box 9349, Richmond, Virginia, 23227, (804) 730-1222. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether they had any personal or financial interest or bias which would interfere with or influence that member's determination of the matter. Each member, including the Chair, answered in the negative.

The Chair advised Stith and the Bar how the hearing would proceed and they were specifically advised that Stith had the burden of proving by clear and convincing evidence that he is a person of honest demeanor and good moral character and that he possesses the requisite fitness to practice law. Both sides were afforded an opportunity to

Chair. Stith requested information about the background and experience of each member of the panel, which was provided. Stith objected to evidence being offered by the Virginia State Bar which predated the June 29, 2001 order of the Board recommending reinstatement. The Chair overruled the objection, stating that while the Board might chose to give greater weight to Mr. Stith's activities since the prior hearing, the Board was not bound by the 2001 opinion and, in fact, the Virginia Supreme Court had not followed the recommendation. In any event, the Petitioner's entire record is before the Board.

Prior to the Board hearing, the Clerk of the Disciplinary System provided notice to all interested parties by mail and press releases as required in Part Six, SIV, Paragraph 13(I)(9)(e). In response to that notice, the Board received two (2) letters in support of Stith's reinstatement, two (2) letters of support recommending that conditions be imposed on reinstatement, and five (5) letters in opposition to reinstatement. Stith testified on his own behalf at the hearing. The Bar called Barry W. Spear, Esquire, trustee in bankruptcy, as a witness.

VSB Exhibits 1 through 9 were admitted into evidence without objection. Virginia State Bar Exhibit 10, a published opinion of the U.S. District Court in a case involving Stith, was admitted over objection. Stith initially objected to Exhibits 11 through 22, but subsequently withdrew his objections.

### **I. BACKGROUND**

Stith graduated from the University of Virginia School of Law in 1972 and was licensed to practice law in Virginia in 1973. From 1973 until June 24, 1994, Stith was engaged in the private practice of law, except during a three year suspension of

his license during the period 1987 - 1990. Discipline against him included a private reprimand in 1978 for failure to perfect an appeal, an agreed disposition in 1983 whereby Stith agreed not to make loans to clients and not to endorse client's names to settlement checks, a private reprimand in 1984 for commingling funds and failure to properly maintain his trust account, a private reprimand in 1986 for mishandling a case, a public reprimand in 1987 for neglect of a divorce matter, the three year suspension in 1987 for making loans to himself out of his trust account, a public reprimand in 1993 for failure to perfect an appeal, and a twelve month suspension in 1993 for continuing to represent a client after he had been discharged by the client. While serving his one year suspension, Stith's license was revoked by the Board in 1994 following hearings on four complaints involving trust account violations and failure to perfect appeals. See VSB Exhibit 22.

On May 19, 1999, the Virginia Supreme Court denied Stith's petition for reinstatement as insufficient to support a referral to the Disciplinary Board. Stith filed a second petition for reinstatement, which was referred to the Board for hearing. On June 28, 2001, the Board entered an order recommending reinstatement by a vote of 3 to 2, which included a dissenting opinion. On October 2, 2001, the Virginia Supreme Court denied the petition for reinstatement without opinion, and on October 30, 2001 the Virginia Supreme Court denied Stith's motion for reconsideration.

This Third Petition for Reinstatement was filed June 16, 2006. On June 23, 2006, the Clerk of the Virginia Supreme Court referred the petition to the Virginia State Bar Disciplinary Board for recommendation.

## II. FINDINGS

In accordance with Part Six, § IV, ¶13(I)(8)(b)(2), after revocation, the petitioner's license to practice law shall not be reinstated unless the petitioner proves by clear and convincing evidence as follows:

- Within five (5) years prior to filing the petition has attended sixty (60) hours of continuing legal education, of which at least ten (10) hours shall be in the area of legal ethics or professionalism;
- Has taken the Multi-State Professional Responsibility Examination and received a scaled score of 85 or higher;
- Has reimbursed the Bar's Client Protection Fund for any sums of money it may have paid as a result of petitioner's misconduct;
- Has paid the Bar all costs previously assessed against him, together with any interest thereon . . . and
- Is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law.

In considering the final factors, the Board is guided by the factors set forth in *The Matter of Alfred Lee Hiss*, Docket No. 83-26, opinion dated May 24, 1984:

1. The severity of the petitioner's misconduct including, but not limited to, the nature and circumstances of the misconduct.

2. The petitioner's character, maturity and experience at the time of his disbarment.
3. The time elapsed since the petitioner's disbarment.
4. Restitution to clients and/or the Bar.
5. The petitioner's activities since disbarment including, but not limited to, his conduct and attitude during that period of time.
6. The petitioner's present reputation and standing in the community.
7. The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the petitioner.
9. The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.
10. The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.

Stith's Petition for Reinstatement states in paragraph 6, "Since his disbarment, Salvage DeLacy Stith, Sr. has kept abreast of the development in the field of law through legislative digests and the published opinions of the Court of Appeals and the Supreme Court of Virginia. Since his disbarment, Salvage DeLacy Stith, Sr. has received continuing education requirements as mandated." Stith testified that he has taken a Continuing Legal Education course at William and Mary Legal Institute. There was no documentary evidence from the MCLE Board or any other legal education provider evidencing that Stith had, in fact, attended sixty (60) hours of continuing legal education courses, of which ten (10) were in the area of legal ethics or professionalism. However,

the Bar did not contest the issue of whether Stith had taken the necessary MCLE courses, and this panel did consider this issue in determining its recommendation.

Stith is required to prove that he had taken the Professional Responsibility Examination and received a scaled score of 85 or higher. Stith attached to his application as Exhibit C a certificate which evidences that he took the Multi-State Professional Responsibility Examination on August 14, 1998 and had a scaled score of 92. This score satisfies the necessary requirement.

Bar Counsel stipulated that Stith does not owe the Client Protection Fund any money. The Bar further stipulated that Stith has paid all costs previously assessed against him by the Bar together with any interest thereon.

In considering whether or not Stith is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law, the Board considered the factors set forth in the *Hiss* case as follows:

1. The severity of the petitioner's misconduct including, but not limited to, the nature and circumstances of the misconduct.

Stith's disciplinary record is serious. As noted above, Stith's license to practice law was revoked for trust account violations and failure to perfect appeals after numerous prior discipline for similar violations. The panel that revoked Stith's license specifically noted that it had considered Stith's cumulative acts of misconduct and prior suspensions in reaching its decision to revoke his license. However, it should also be noted that Stith's trust violations did not result in large losses to clients of the kind often seen in these proceedings, and that all defalcations were apparently made good.

2. The petitioner's character, maturity and experience at the time of his disbarment.

Stith was a mature lawyer at the time of his disbarment, not afflicted with issues normally associated with young lawyers or aging practitioners.

3. The time elapsed since the petitioner's disbarment.

Mr. Stith was revoked on June 24, 1994; however, he has not practiced law since October 1, 1993 when he was suspended for twelve (12) months by order of a 3-judge panel. Therefore, significant time has lapsed since Stith's disbarment.

4. Restitution to clients and/or the Bar.

Stith has made restitution to the clients and has paid back the Client Protection Fund for money paid on behalf of one of his cases. At this time, he does not owe any restitution.

5. The petitioner's activities since disbarment including, but not limited to, his conduct and attitude during that period of time.

Stith testified that he enjoys a good reputation. He admitted to friends and colleagues the problems that he had experienced and took responsibility for the actions that lead to his revocation. At the reinstatement hearing held on April 27, 2001, two (2) witnesses testified positively about Stith, stating that he was held in high regard in the community. The witnesses testified that he is known to tell the truth, "whether it hurt or felt good".

Unfortunately, Stith did not present any witnesses in support of his petition in the instant case. The panel would have benefitted greatly from testimony from even one of Stith's current colleagues at Elizabeth City State University in North Carolina. His record there since 1994 would appear to be very successful. Stith is a

tenured associate professor. In 1994, he was employed at the University as a visiting professor. Subsequently, in 1998-1999, he was promoted to the rank of assistant professor and in the 2000-2001 school term he received tenure and was promoted to associate professor. In academic year 2005-2006, he was selected as the faculty senate president for a term of two (2) years. He also received a social science departmental teacher of the year award in 2005-2006.

Bar Counsel questioned Stith's lack of forthrightness in his response to the Bill of Particulars filed in this matter. Question 6 of the Bill of Particulars asked whether or not Stith had any civil judgments obtained against him or federal or state tax liens filed against him or any business in which he had an ownership interest. Stith failed to identify the case of *FDIC v. Stith*, 772 F.Supp. 279 (E.D. Va. 1991), (VSB Exhibit #10). Stith, while employed at a federally insured bank, was found to have obtained a loan for himself but failed to book the loan, thereby contributing to a scheme that was likely to mislead banking authorities. This case was not mentioned by Stith in his Answers to the Bill of Particulars. In his defense, Stith stated that he simply failed to recall it.

Bar Counsel also questioned Stith's bankruptcy filings since his disbarment. From September, 1993, through December, 1998, Stith filed five (5) Chapter 13 bankruptcy petitions, none of which were pursued to discharge. The fifth Chapter 13 petition was dismissed with prejudice and Stith was directed not to refile for 180 days. Shortly after the deadline expired, Stith filed a sixth Chapter 13 petition, which was also dismissed with prejudice. Stith acknowledged that the purpose of the

filings was to delay foreclosure proceedings by the Internal Revenue Service, a procedure he argues is a proper tactic<sup>1</sup>. (Exhibits 11-16).

Thereafter Stith filed a Chapter 7 bankruptcy in December 2001. He amended his petition on January 31, 2002. While Stith was in Chapter 7 bankruptcy proceedings as an individual, a corporation owned by Stith and his wife, Stith Investments, Inc., was also in bankruptcy. Considerable testimony was provided by the trustee in bankruptcy, Barry W. Spear ("Trustee"). Mr. Spear testified that it was his job to make sure that the debtor was complying with the rules and fully disclosed all of his assets and debts. According to Mr. Spear, several problems arose regarding an account receivable that Stith was in the process of collecting at the time he filed his Chapter 7 petition and amended Homestead Deeds that he filed in an attempt to retain the settlement funds. Stith filed a second amended homestead deed. VSB Ex. 4, wherein Stith attests to the fact that he had one (1) account receivable with George Leathers for \$3,000.00 on February 18, 2002. In fact, Stith received \$3,500.00, payment in full, on the Leathers account on February 13, 2002, five (5) days prior to filing his second amended Homestead Deed. Stith cashed the check and spent the money in violation of bankruptcy stay requiring him to turn all property over to the trustee. Furthermore, Stith, an experienced bankruptcy practitioner, settled the Leathers claim during a period of time when the trustee was supposed to be handling all assets and debts and should have been given an opportunity to settle the claim and determine if it could have been settled on better terms than those negotiated by Stith. (VSB Ex. 3). The Trustee further testified

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<sup>1</sup> It should be noted that since the 2001 hearing, Stith has apparently resolved all outstanding issues with the Internal Revenue Service.

that Stith was not forthcoming regarding tax refunds and had attempted to claim more money that he was entitled.

As a result of Stith's filings, the Trustee filed Objections to the Discharge of the Debtor. One of the objections filed by the trustee was that Stith, in disposing of the Leathers claim, engaged in conduct to hinder, delay and defraud an officer of the estate charged with the custody of property under the Bankruptcy Code. The same allegations were raised regarding the 1999 and 2000 North Carolina State tax refunds.

The trustee alleged that Stith did so with the intent to hinder, delay or defraud an officer of this estate charged with the custody of the property under the bankruptcy code. (VSB Ex. 7). As a result of the trustee filing objections to Stith's discharge, the Bankruptcy Court entered a consent order on August 16, 2002 wherein Stith agreed to pay \$500.00 per month to the Trustee for all amounts due as to the Leather's claim and the North Carolina state refund taxes. After this order was entered, Stith made the first \$500.00 payment with a check that was twice returned to the Trustee for insufficient funds. (VSB Ex. 9). This caused a default pursuant to the order and Stith was required to pay the total amount due and owing of \$2,322.00 in order to complete the discharge in bankruptcy. On February 4, 2003, Stith did pay the total amount due in cash to the trustee.

At the same time that Stith and his wife were pursuing their Chapter 7 bankruptcy, their corporation was in Chapter 11 bankruptcy. The Trustee did not pursue the real estate that was allegedly in the family corporation. However, Stith testified that the land was conveyed from the corporation to Stith individually in order to enable him to obtain financing. Stith testified that he could not get a loan for the land while it was

owned by a C-Corporation, so he transferred title to himself individually in order to borrow against the property. There is no disclosure in his Chapter 7 bankruptcy filing reflecting the ownership of this property, and the Trustee testified that he was not aware of it. Additionally, Stith acknowledged that he did not list it on his Chapter 7 bankruptcy filing, nor did he report any gain on his Schedule C income tax return. According to Stith, he did not consider the tax ramifications of the C-Corporation transferring the property to an individual. At the time of the hearing, he had not filed an amended tax return to correct this error. Stith's conduct in his bankruptcy proceedings causes the Board great concern regarding his conduct and attitude since the time of his disbarment and since his last reinstatement petition. In addition to the bad check given to the trustee in bankruptcy, Stith admitted that since 2003, he had other checks that were rejected for insufficient funds. These occurrences are of grave concern to the Board, since they reflect adversely on Stith's ability to manage a trust account appropriately. The aforesaid conduct, in the Board's opinion, reflects adversely on his demeanor and character and casts doubt on his fitness to practice law.

6. The petitioner's present reputation and standing in the community.

As a result of the publications to the community there were nine (9) letters received commenting on Stith's petition for reinstatement. Two (2) were in favor of Stith being reinstated. Two (2) were in favor of conditional reinstatement, suggesting that he should not be permitted to handle client funds or to represent clients on appeals. Five (5) letters were received in opposition to his reinstatement. This Board did review the transcript from the 2001 hearing and it appears that two (2) witnesses testified to his good standing in the community at that time. No other evidence was offered on this fact. It is

not possible for a law license to be reinstated with the conditions that restrict the licensee from handling criminal appeals on client funds.

7. The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.

Stith stated in Paragraph 6 of his petition that he “has received Continuing education requirements as mandated.” In Paragraph 13 of the Bill of Particulars filed by the Bar, Stith is asked to “Describe in detail” his efforts to remain current in the law, including dates, location and title of CLE seminars or law school courses attended or taught since 1994. Stith testified that he had taken Continuing Legal Education courses at the William and Mary Institute that dealt with recent developments in the law. No certificates of completion or course descriptions were introduced into evidence. Stith testified that he had read the Rules of Professional Conduct and believes that he is familiar with them. However, Stith's answers to questions from the panel concerning costs his understanding of which can properly be advanced on behalf of a client, and his comments regarding a separate trust account for costs, indicate that Stith still does not have a clear understanding of trust accounting and what is required of him. This is of particular concern, given that his past pattern of misconduct frequently involved trust account violations.

8. The sufficiency of the punishment undergone by the petitioner.

The Board is mindful of Lord Mansfield's observation over 200 years ago that disbarment is not punishment. *Ex parte Brounsall*, 89 Eng. Rep. 138 (1778). In fact, Virginia does not subscribe to permanent disbarment, disbarment is not discipline, and the applicant for readmission bears a heavy burden of proving by clear and convincing evidence that he is fit to practice law. *In re: Edmonds Order of Recommendation*, VSB

No. 95-000-1155 (1995). In this case, Stith has been revoked since June 1994 having last practiced law in October 1993. The Board considers the loss of Stith's license for thirteen (13) years to be sufficient punishment for his past misdeeds.

9. The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.

The petitioner appears to be sincere, frank and truthful in presenting and discussing factors related to his disbarment and petition for reinstatement. However, the Board does have concerns about petitioner's somewhat haphazard presentation of his petition for reinstatement, which is obviously of great importance to him. His hasty and incomplete responses to the Bill of Particulars, and in particular his failure to present evidence of objective criteria such as his CLE credits, as well as his failure to produce current testimony as to his standing in the community raise concerns as to whether Stith recognizes the gravity of these proceedings.

10. The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.

The public's confidence or lack of confidence in the administration of justice should Stith's license to practice law be reinstated does not appear to be a significant concern in this case.

### III. CONCLUSION

For the reasons stated above, the Board finds by unanimous vote that Stith has failed to prove by clear and convincing evidence that he possesses the requisite fitness to practice law. Therefore, the Board respectfully recommends to the Supreme Court of Virginia that the petition to reinstate the license of Salvage DeLacy Stith not be approved.

As required by Part Six, Section IV, paragraph 13.8.c.(5), the Board finds that the costs of this proceeding are as follows:

Copying invoices:	\$ 1,150.96
Witness Expense:	50.44
Court reporter fees:	1,161.00
Mailing fees:	142.43
Mailing notice:	368.95
Legal notices:	367.05
Administrative fee:	<u>750.00</u>
 Total Costs	 \$ 3,990.83

IT IS ORDERED that the Clerk of the Disciplinary System shall forward this Order of Recommendation and the record to the Virginia Supreme Court for its consideration and disposition.

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System shall forward and attest a copy of this Order of Recommendation by certified mail, return receipt requested to Salvage DeLacy Stith, at his address of record with the Virginia State Bar, 4525 Miarfield Arc, Chesapeake, Virginia 23321, and delivery by hand to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803.

Entered this 2 day of March, 2007.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: \_\_\_\_\_

Joseph R. Lassiter, Jr., Acting Chair