

VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
MICHAEL RAYMOND THAMES
VSB Docket No. 09-041-079745**

AMENDED ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on December 10, 2010, upon a Certification and Determination from the Fourth District Disciplinary Committee, Section I. A duly convened panel of the Board consisting of Thomas R. Scott, Jr., First Vice-Chair, presiding, Paul M. Black, Raighne C. Delaney, Michael S. Mulkey, and Jody D. Katz, lay member, heard the matter. Kathleen M. Uston, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("VSB"). Michael Raymond Thames ("Respondent") did not appear. 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.

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. The Respondent's name was called in the lobby three times by the Clerk prior to the hearing, and neither the Respondent nor anyone on his behalf appeared in response. The Chair opened the hearing by polling the Board members to ascertain whether any member had any personal or financial interest or bias which would interfere with or influence each such member's determination, and each member responded that there were no such conflicts.

The Board heard opening statements from the VSB. The VSB's Exhibits 1-11 were admitted as part of the record, as was the testimony of the Bar's investigator, David G. Fennessey.¹ Upon consideration of the Exhibits filed by the VSB, the testimony of the Investigator, and the arguments of counsel for the Bar, and after recess and due deliberation, the Board makes the following findings:

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about November 8, 2008, the Respondent was charged with a felony following an automobile accident in which he was involved during which the Respondent's vehicle crashed into another, causing injury to the driver therein. The accident at issue occurred at approximately 11:00 p.m. on November 7, 2008, in Arlington County, Virginia.

3. The Respondent's criminal case was set for trial on February 4, 2009, at which time the Respondent, who was represented by counsel, pled guilty to a reduced misdemeanor charge. The prosecutor in the case advised that she was willing to amend the charge to a misdemeanor since, prior to leaving the scene of the accident, the Respondent checked on the condition of the other driver. Following his guilty plea, the respondent was sentenced to twelve (12) months in jail, with eleven (11) months suspended. The Respondent served a total of fifteen (15) days in jail.

4. On or about May 29, 2009, the Virginia State Bar was informed of the Respondent's criminal conviction and therefore, on about June 18, 2009, wrote to the Respondent, demanding that he provide a written response to the Virginia State Bar explaining the circumstances of his criminal charge within twenty one (21) days of the date of the letter. The Respondent failed to respond to this demand for lawful information.

5. Due to the Respondent's failure to respond to the June 18, 2009 lawful demand for information from the Virginia State Bar, the matter was referred for investigation on or around July 29, 2009. Thereafter, Virginia State Bar Investigator David G. Fennessey attempted to contact the Respondent on numerous occasions, leaving multiple voice mail messages for him on home and cellular telephones. The Respondent failed to return any of these telephone calls, and failed to make any attempt to contact Investigator Fennessey.

6. On December 7, 2009, after sending written correspondence to the Respondent which went unanswered, Investigator Fennessey went to the Respondent's apartment complex and, receiving no response at the door of the apartment, left the Respondent a note requesting that he contact Investigator Fennessey immediately. Although the desk clerk verified that the

¹ Original exhibit 1 was replaced with substitute exhibit 1 at the hearing.

Respondent resided in the building, the Respondent failed to respond to Investigator Fennessey's note.

7. On January 15, 2010, counsel for the Virginia State Bar issued a summons and Subpoena *Duces Tecum* to the Respondent requiring that he appear on January 28, 2010 for an interview, and to produce on that date all documents in his possession pertaining to his criminal charge and conviction. The Respondent failed to appear and failed to make any response whatsoever to either the Summons or Subpoena.

8. On April 15, 2010, counsel for the Virginia State Bar wrote to the Respondent demanding a response to the Subpoena *Duces Tecum* on or before May 1, 2010. The Respondent failed to respond to the letter in any form, and failed to produce the documents required by the Subpoena.

9. On June 3, 2010, a Notice of Noncompliance was issued against the Respondent due to his failure to respond to the duly issued Subpoena *Duces Tecum*.

After recess and deliberation, the Board unanimously found that the following charges of misconduct are established by clear and convincing evidence:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or to do so through the acts of another.

After recess and deliberation, the Board unanimously found that the following charge of misconduct, as drafted by the Fourth District Committee, Section I, was not established by clear and convincing evidence:

RULE 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.²

Subsequent to finding the above charge of misconduct, the Board heard evidence of aggravation and mitigation, including the fact that the Respondent had no prior disciplinary record since his admission to the Bar, and after recess and due deliberation, it is hereby ORDERED that, pursuant to Part 6, §IV, ¶13-18(M) of the Rules of the Supreme Court of Virginia, the Respondent is issued a PUBLIC REPRIMAND, with the following Terms: (1) The Respondent shall complete twelve (12) hours of continuing legal education in ethics within six (6) months from December 10, 2010, which CLE hours shall not count towards his MCLE requirements, and (2) within thirty (30) calendar days from December 10, 2010, the Respondent shall meet and submit to an interview with Bar Counsel as to the nature and extent of his law practice, and to explain his conduct in failing to comply with these proceedings.

Pursuant to Part 6, §IV, ¶13-18(O) of the Rules of the Supreme Court of Virginia, the Respondent shall provide written certification of compliance with the CLE requirement in the Terms to Bar Counsel within ten (10) days of full compliance, or the expiration of the six (6) month compliance period, whichever first occurs, and in the event that the Respondent fails to comply with either of the Terms, the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of one (1) year and one (1) day.

It is ordered that Part Six, § IV, ¶13-9(E) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against Respondent.

It is further ordered that the Clerk shall send an attested copy of this Order and Opinion to Respondent, Michael Raymond Thames, Esquire, by certified mail, at his address of record,

² The Fourth District Committee omitted the phrase "or a lawyer already admitted to the bar" contained in Rule 8.1 in its entirety from its Certification and Determination that was noticed for hearing on December 10, 2010.

Apartment 835, 1320 North Veitch Street, Arlington, VA 22201, and to Kathleen M. Uston,
Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803.

SO ORDERED, this 30th day of January, 2011.

By Thomas R. Scott, Jr.
Thomas R. Scott, Jr., First Vice-Chair,
Presiding