

**VIRGINIA:**

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

**IN THE MATTER OF  
HENRY A. WHITEHURST**

**VS B Docket Nos. 15-000-101339**

**ORDER**

This matter came to be heard on February 20, 2015, pursuant to a Rule to Show Cause as to why the Respondent's license to practice law in the Commonwealth of Virginia should not be further suspended or revoked for failing to comply with the notice requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, as ordered by the Disciplinary Board on August 15, 2014.

The matter was heard before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of William H. Atwill, Jr., Chair, Thomas O. Bondurant, Jr., Melissa W. Robinson, Anderson W. Douthat, IV, (Lay Member), and Pleasant S. Brodnax, III. The Virginia State Bar (the "Bar") was represented by Edward J. Dillon, Jr. Respondent Henry A. Whitehurst (hereinafter "Respondent" or "Mr. Whitehurst") was not present and was not represented by counsel at the hearing. Tommy Joe Williams, guardian *ad litem* for Mr. Whitehurst, appeared at the hearing by telephone.

Court Reporter Tracy J. Stroh, Certified Court Reporter with Chandler & Halasz, P.O Box 9349, Richmond, Virginia, 23327, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

Assistant Clerk Kathleen LaMotte, pursuant to Board procedures, called Mr. Whitehurst's name three times at 9:01 a.m. in the corridor outside of the courtroom, but Mr. Whitehurst did not appear or respond. The Chair found that notice of the hearing had been sent

to the Respondent at his address of record and thus the notice requirements Rule 13-18.C. were met.

The Chair 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 the matter. Each member, including the Chair, responded in the negative. The guardian *ad litem* advised the Board that Mr. Whitehurst had not responded to the guardian's attempt to communicate with him. The matter then proceeded without an appearance by Mr. Whitehurst.

#### I. Show Cause Hearing

Following the Bar's opening statement, the Chair admitted Bar Exhibits 1 through 5 into evidence without objection. Following argument by the Bar, and after consideration of the admitted exhibits, the Board determined that the Respondent had not met his burden of establishing by clear and convincing evidence his compliance with the notice provisions of Rule 13-29 of the Rules of the Supreme Court of Virginia. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. By Consent Order of Impairment Suspension (the "Consent Order") entered August 15, 2014, the Disciplinary Board indefinitely suspended the license of Respondent Henry A. Whitehurst ("Respondent") to practice law in the Commonwealth of Virginia on the basis of Impairment. Both Respondent and his appointed guardian *ad litem*, Tommy J. Williams, Esq., endorsed the Consent Order. See August 15, 2014 Consent Order, VSB Exhibit 1(a).
2. The Consent Order directs that Respondent shall comply with the notice requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of

Virginia. Paragraph 13-29 requires that Respondent provide notice of the suspension of his license to practice law to his clients, to opposing counsel, and to the courts; that Respondent make appropriate arrangements for the handling of matters in his care in conformity with the wishes of his clients; and that Respondent provide proof to the Virginia State Bar of such notice and arrangements within 60 days of the effective date of the Consent Order.

3. The Consent Order was effective August 15, 2014. Accordingly, Respondent was required to provide proof to the Virginia State Bar of his compliance with Paragraph 13-29 on or before October 14, 2014.
4. In addition to having actual notice of the Consent Order and its Paragraph 13-29 requirements as evidenced by Respondent's endorsement of the Consent Order, the Clerk of the Disciplinary System (the "Clerk") sent the Consent Order to Respondent by certified letter dated August 15, 2014 to Respondent's address of record with the Virginia State Bar. In her transmittal letter, the Clerk further reminded Respondent of his duty under Paragraph 13-29 and demanded that Respondent file with the Clerk proof of his compliance with the requirements of Paragraph 13-29 on or before October 14, 2014. See Letter from the Clerk to Respondent dated August 15, 2014, VSB Exhibit 1(b).
5. Having received no response or proof of Respondent's compliance with the requirements of Paragraph 13-29, the Clerk sent a reminder letter dated October 17, 2014 to Respondent at his address of record with the Virginia State Bar. See Letter from Clerk to Respondent dated October 17, 2014, VSB Exhibit 1(c).

6. At no time has Respondent filed with the Virginia State Bar proof of compliance with the Disciplinary Board's Consent Order directing him to comply with Paragraph 13-29. See Affidavit of the Honorable Barbara S. Lanier, VSB Exhibit 1(d). Accordingly, Respondent has violated and continues to violate the Consent Order.
  
7. Respondent had numerous clients at the time of the suspension of his license to practice law. See Affidavit of Mary Beth Nash ("Nash Aff."), VSB Exhibit 1(e). Further, Respondent failed to return files and/or advanced legal fees to some of these clients since the August 15, 2014 suspension of his license to practice law. See Nash Aff., ¶¶ 8-12; see also Affidavit of Robert Adams, VSB Exhibit 1(f); see also Affidavit of Irene Poth, VSB Exhibit 1(g).

## II. Sanctions Hearing

Neither the Respondent nor the guardian *ad litem* offered any evidence concerning whether the Board should impose a further suspension or revocation of the Respondent's license to practice law. The Bar submitted a letter, dated February 16, 2015, addressed to Assistant Bar Counsel Dillon by the Respondent. Following a brief recess, the Chair converted the public hearing into a private hearing.

### A. Evidence

#### 1. Bar Witness No. 1

The Bar called Mary Beth Nash, an investigator for the Bar. Ms. Nash offered testimony concerning her attempts to contact the Respondent, as well as her personal observations of the Respondent during his pro se representation in connection with four separate court appearances.

The Bar marked for identification an affidavit, dated February 12, 2015, from Barry Vaught and moved its admission. The Board received the document into evidence as VSB Exhibit 6, without objection from Mr. Williams, the guardian *ad litem*.

The Bar marked for identification a receipt of payment, dated November 14, 2013, from Barry Vaught to the Respondent and moved its admission. The Board received the document into evidence as VSB Exhibit 7, without objection from Mr. Williams, the guardian *ad litem*.

## 2. Bar Witness 2

The Bar next called Frank G. Uvanni, Esquire. Mr. Uvanni referenced the Order appointing him Receiver of the Respondent's law practice entered by the Montgomery County Circuit Court on November 26, 2014. The Order is located at VSB Exhibit 3. Mr. Uvanni described the steps taken as Receiver and the efforts he has undertaken to retrieve all active case files and trust account information. Mr. Uvanni further provided information regarding his investigation of the Respondent's present location and circumstances.

## 3. Disciplinary Record

The Bar marked for identification a certified copy of the Respondent's lack of a disciplinary record with the Bar. The Board received the document into evidence as VSB Exhibit 8, without objection from Mr. Williams, the guardian *ad litem*.

## III. Decision

The Board takes seriously any violation of the terms of Rule 13.29 for failing to comply with the administrative requirements. The Board is mindful, however, that this matter originates from a consent impairment suspension, rather than from a misconduct suspension. The Respondent has maintained a practice for 40 years without sustaining a disciplinary record and his practice is currently under receivership, by Order of the Montgomery County Circuit Court.

Upon due deliberation, the unanimous panel of the Board imposes further discipline upon the Respondent. It is hereby

ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is suspended, effective February 20, 2015 for one year and one day.

It is further ORDERED that, as directed in the Board's September 27, 2013, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation 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. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation 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 on the effective date of his revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. 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.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 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 the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent, Henry A. Whitehurst, at his address of record with the Virginia State Bar, being 21 East Main Street, P.O. Box 6066, Christiansburg, VA 24068 by certified mail, return receipt requested, with a copy via regular mail to Tommy Joe Williams, Respondant's Guardian *ad litem*, at Tommy Joe Williams, P.C., Bramblewood Park, 2721 Brambleton Avenue, Roanoke, VA 24015-4307, and a copy hand-delivered to Edward James Dillon, Jr. Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

ENTERED this 7th day of April, 2015.

VIRGINIA STATE BAR DISCIPLINARY BOARD

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William H. Atwill, Jr., Second Vice Chair