

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF CHARLES VANEVERA HARDENBERGH

VSB DOCKET NO. 06-000-0155

ORDER OF ADMONITION

THIS MATTER came on to be heard on Friday, August 26, 2005, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, Courtroom B, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, 23219. The Board was comprised of Robert L. Freed, Chair, Stephen A. Wannall, Lay Member, Russell W. Updike, Carl A. Eason, and Sandra L. Havrilak. Proceedings in this matter were transcribed by Jennifer L. Hairfield, a registered professional reporter, P.O. 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 matter proceeded. The Respondent, Charles VanEvera Hardenbergh, was represented by his counsel, Michael L. Rigsby, Esquire, and was present in person. The Virginia State Bar appeared by its counsel, Alfred L. Carr, Esquire.

This matter came before the Disciplinary Board as a result of the Respondent being suspended from practicing law in the Army effective September 2, 2004, by memorandum from the Department of the Army, U.S. Army Judiciary, dated November 5, 2005. A Rule to Show Cause and Order of Suspension and Hearing was entered on July 27, 2005. An Answer to the

Rule to Show Cause was filed by Respondent's counsel, Michael L. Rigsby, on August 10, 2005.

Respondent's counsel filed an Objection on July 26, 2005, to the initiation of a Show Cause proceeding and entry of an Order of Suspension. Respondent's counsel contended that the Army is not a "jurisdiction" as that term is used in Paragraph (13)(I)(7)(a) Respondent's Objection was overruled by the Chair by Order dated July 27, 2005.

I. FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence, to wit:

(1) During all times relevant hereto, the Respondent, Charles V. Hardenbergh, was an attorney licensed to practice law in the Commonwealth of Virginia (except for the period beginning July 27, 2005, to August 26, 2005, when his license to practice law was summarily suspended) and his address of record with the Virginia State Bar has been 100 Pecan Drive, Las Cruces, New Mexico, 88001; and 304 B North Main Street, Lexington, Virginia, 24450. The Respondent received proper notice of this proceeding as required by Part Six §IV, Paragraph (13)(E) of the Rules of the Virginia Supreme Court.

(2) On September 3, 2002, while Respondent was serving in the Department of the Army, Respondent submitted a urine sample during a routine unit urinalysis that tested positive for traces of marijuana.

(3) As a result of the positive drug test, the Department of the Army suspended Respondent from practicing before Army court-martial and the United States Army Court of Criminal Appeals. The Army further revoked Respondent's Article 27b, UCMJ, certification and his authority to practice law in the Army.

(4) On January 11, 2004, Respondent separated from the Army receiving a “general discharge under honorable circumstances.”

(5) Respondent contested the Army’s determination by letter which was received by the Department of Army on October 18, 2004.

(6) On July 22, 2005, Respondent filed an Application for Correction of Military Record Under the Provisions of Title 10, U.S. Code Section 1552.

(7) Respondent provided numerous urine samples during his career with only one documented case of a positive result.

(8) There is no evidence to indicate that Respondent’s drug use led others to do so; nor is there any evidence that his drug use affected or hindered him in the performance of his legal responsibilities as an attorney.

(9) Respondent has not posed any harm to the public or to the Army at any time during his professional career.

(10) Respondent has been the subject of significant adverse publicity in connection with the actions taken by the Army and his separation from the military.

(11) By Rule to Show Cause and Order of Suspension and Hearing dated July 27, 2005, Respondent’s license to practice law in Virginia was immediately suspended pursuant to Rules of Court, Part Six, §IV, Paragraph 13(I)(7).

(12) Respondent was Ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. on August 26, 2005, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended.

II. DISPOSITION

Paragraph 13(I)(7)(e), Part Six, §IV of the Rules of the Supreme Court of Virginia entitled “Disbarment or Suspension in Another Jurisdiction” provides in relevant part:

- (c) The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard, and the burden of producing the Record upon which the Respondent relies to support the Respondent’s contentions, and shall be limited at the hearing to proof of the specific contentions raised in any written response. Except to the extent the allegations of the written response are established, the findings in the other jurisdiction shall be conclusive of all matters for purposes of the Proceeding before the Board.

The Board finds that the Respondent has met his burden of proof by clear and convincing evidentiary standard establishing that the Virginia State Bar Disciplinary Board should not impose the same discipline imposed by the Department of Army.

It is therefore ORDERED that the suspension effected by the July 27, 2005, Order is hereby terminated effective August 26, 2005.

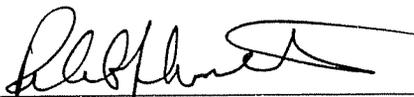
It is further ORDERED, pursuant to Paragraph 13(I)(2)(f)(2)(a), that the Respondent receive an admonition without terms.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Charles VanEvera Hardenburgh, at his address of record with the Virginia State Bar, 304 B North Main Street, Lexington, Virginia, 24450, by certified mail, return receipt requested, and to his counsel, Michael L. Rigsby, Esquire, Carrol, Rice & Rigsby, 7275 Glen Forest Drive, Forest Plaza II, Suite 310, Richmond, Virginia, 23226, by first-class mail, and a copy to Alfred L. Carr, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219, hand-

delivered.

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 the Respondent.

ENTERED this 17th day of September, 2005



Robert L. Freed, Chair
VIRGINIA STATE BAR DISCIPLINARY BOARD