

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ARNOLD REGINALD HENDERSON, V

VSB DOCKET NO. No. 06-032-0837

ORDER OF SUSPENSION

THIS MATTER came on to be heard on January 27, 2006, before a panel of the Disciplinary Board consisting of James L. Banks, Jr., 2nd Vice Chair, Bruce T. Clark, Esquire, William H. Monroe, Jr., Esquire, Dr. Theodore Smith, Lay member, and H. Taylor Williams, IV, Esquire. The Virginia State Bar was represented by Harry M. Hirsch, interim Bar Counsel. The Respondent, Arnold Reginald Henderson, V, was represented by Michael L. Rigsby, Esquire. The Chair polled the members of the Board Panel as to whether any of them was 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 responded in the negative. Donna T. Chandler, court reporter, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board following a Third District Committee Determination on a show cause hearing that the Respondent, Arnold Reginald Henderson, V, had failed to fulfill Term Three of a sub-committee determination (a Public Reprimand with Terms) issued March 18, 2005. The District Committee certified the matter to the Board for sanction determination. Because this matter comes before the Board on a Certification for Sanction Determination whereby the Third District Committee had ruled that the Respondent had failed to carry out his burden of proving compliance with the third term of the public reprimand and that an alternate disposition should be imposed, the Board's charge pursuant to Rules of Court, Part

Six, Section IV, ¶ 13.I.4.(c) and (d) was to hear evidence only of mitigation and aggravation with respect to compliance or certification and to determine the appropriate sanction.

I. FINDINGS OF FACT

VSB's Exhibits presented collectively as Exhibit 1 were admitted without objection. Respondent's prior disciplinary history was admitted as VSB's Exhibit 2. Respondent's letter dated May 19, 2005, from Arnold R. Henderson, V, to Mr. Reginald Hayspell, together with a final accounting, was admitted without objection as Respondent's Exhibit 1.

1. This matter originated as a complaint against Respondent initiated by Alvin Hayspell, VSB Docket No. 04-032-2883. Respondent and Bar Counsel reached an agreed disposition. The agreed disposition resulted in the Public Reprimand with Terms, including Term Three as set forth below. The public reprimand was issued on March 18, 2005, and served upon the Respondent.

2. Pursuant to the Public Reprimand with Terms in the matter of Arnold Reginald Henderson, V, formerly VSB Docket No. 04-032-2883, issued on March 18, 2005, and received by Respondent, Term Three of the Public Reprimand with Terms states as follows:

“3. By May 15, 2005, Respondent shall:

(a) Provide to Deputy Bar Counsel an accounting of the funds paid to Respondent by Alvin or Reginald Hayspell;

(b) after contacting Reginald Hayspell and determining to whom to pay any funds remaining, pay to said person any of said funds which the accounting reflect as being unearned fees and unexpended costs.”

The Public Reprimand with Terms further states as follows:

“Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as stated

herein, the Third District Committee, Section Two, shall impose a Certification for Sanction Determination.”

3. The Third District Committee, Section Two, determined that the Respondent, Arnold Reginald Henderson, V, failed to fulfill Term Three and therefore certified this matter to the Disciplinary Board for sanction determination on October 25, 2005.

4. Respondent offered evidence in mitigation that he had substantially complied with the requirements of Term Three of the public reprimand issued by the Third District Committee by offering the following narrative of actions: sometime prior to May 11, 2005, Respondent reviewed the case file and prepared information for a spread sheet to be prepared by an employee, Malik Hodari. Malik Hodari testified that he received the information from Respondent and prepared the accounting that he attached to Respondent’s Exhibit No. 1. The accounting was sent with a letter dated May 19, 2005, to Reginald Hayspell. Respondent testified that he instructed Mr. Hodari to send a copy of the accounting and the letter to Mr. Hirsch, assistant Bar Counsel. Mr. Hodari testified that Respondent instructed him to send a copy to Mr. Hirsch. Mr. Hodari further testified that it was his recollection he did send a copy to Mr. Hirsch. The letter does not show a copy to be sent to assistant Bar Counsel.

5. No copy of the letter or the accounting was received by the Bar or Bar Counsel until January 26, 2006, the day before the hearing scheduled before the Board.

6. Because Bar Counsel had not received a copy of the accounting as required by the Term, assistant Bar Counsel wrote to Respondent by letter dated June 21, 2005, requesting Respondent to advise counsel of the status of his compliance with these terms. (The Board would note that this letter was more than a month after the date for compliance and was nonthreatening and simply asked whether or not Respondent had complied with the term requiring the accounting, etc.)

7. Respondent's employee, Malik Hodari, testified that in July, 2005, before Respondent went on vacation, he and Respondent discussed this inquiry. Respondent asked whether or not Hodari had sent a copy of the accounting to Bar Counsel. Hodari responded in the affirmative to the question. Hodari recalled that Respondent checked that item off of a check list of things to be accomplished before he went on vacation. Nothing further was contemplated in response to the inquiry from Bar Counsel, and in fact, Respondent did not communicate at that time to Bar Counsel that he thought he had already complied with the term requiring him to submit the accounting.

8. By letter dated August 12, 2005, sent certified mail, return receipt requested, Deputy Bar Counsel again sent a letter to Respondent advising Respondent that nothing had been received by the Bar regarding compliance with the term to provide an accounting. It should be noted that the letter was addressed to Respondent but used an improper zip code. It should further be noted that the letter was returned to the office of the Virginia State Bar stamped "unclaimed" but shows that delivery was attempted on August 18, August 23, and September 2, 2005. The Bar contends that Respondent was refusing certified mail. Respondent replies that he was having difficulty with postal service employees at that particular time.

9. A notice of show cause hearing dated September 15, 2005, was mailed to Respondent by certified mail, return receipt requested, advising Respondent that a show cause hearing before the Third District Committee would be held on October 14, 2005, at 9:30 a.m. The notice was evidently delivered because the receipt was returned, although the receipt was not signed and does not indicate the date it was received by Respondent or his employees.

10. A letter dated September 23, 2005, giving notice of a show cause hearing before the Third District Committee scheduled for October 14, 2005, at 9:30 a.m. was sent to Respondent by certified mail, return receipt requested. Evidently the letter was delivered because

the return receipt came back to the Virginia State Bar although it was not signed and does not state when it was received by Respondent or his employees.

11. The show cause hearing was held before the Third District Committee on October 14, 2005. Respondent did not appear at the show cause hearing to show cause why he should not be faced with the alternate sanction because he had failed to comply with the requirements of Term Three to provide Bar Counsel an accounting of the fees paid and earned by Respondent. The Third District Committee panel found that Respondent had failed to show cause why the alternate sanction should not be imposed and referred the matter of what sanction to impose to the Disciplinary Board..

12. On November 9, 2005, an amended notice of hearing on Certification for Sanction Determination before the Disciplinary Board scheduled for January 27, 2006, was sent to Respondent by certified mail, return receipt requested. According to the return receipt, the amended notice of hearing was received by Respondent on November 10, 2005.

13. On January 26, 2006, Respondent, by counsel, filed a copy of a letter dated May 19, 2005, from Respondent to Reginald Hayspell providing an accounting of the fees paid and earned by Respondent. The letter was accepted as evidence only in mitigation of the determination of what sanction to impose against Respondent.

II. DISPOSITION

Upon review of the foregoing findings of fact relating to Docket No. 06-032-0837, upon review of exhibits presented by Bar Counsel on behalf of the VSB, upon review of an Exhibit presented by Respondent, upon evidence offered in mitigation presented by Respondent in the form of his own testimony and the testimony of his employee, Malik Hodari, and upon the argument of counsel, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

It is the Board's unanimous decision that an alternate sanction be imposed upon Respondent that his license to practice law in the Commonwealth of Virginia be suspended for a period of two weeks. The Board finds that Respondent had ample opportunity to comply with the requirements of Term Three of the public reprimand. Compliance was set for May 15, 2005. That date for compliance was approximately 60 days after issuance of the Public Reprimand With Terms, but even more time had passed since the Respondent reached an agreed disposition with Bar Counsel regarding the Public Reprimand with Terms. The Board heard evidence offered in mitigation by Respondent that he sought an extension of time from a May 15th deadline for purposes of complying with Term One of the public reprimand. An extension of time was granted to Respondent to comply with Term One from May 15, 2005, to May 20, 2005. The Board knows that Respondent took steps to comply with Term Three by sending a refund together with a letter dated May 20, 2005, to Alvin Hayspell and preparing an accounting and sending a copy of the accounting to Reginald Hayspell by letter dated May 19, 2005. However, it was the responsibility of Respondent to insure that a copy of the accounting was delivered to Bar Counsel.

The Board cannot understand why Respondent didn't follow through on numerous contacts made by Bar Counsel to Respondent inquiring about the status of the completion of the terms required in Term Three. Respondent did not offer a credible explanation as to why he did not respond to the inquiries of Bar Counsel. It is apparent from the testimony of Respondent's employee that the issue of compliance with the requirements of Term Three was visited some time in July, 2005, before Respondent went on vacation and yet he took no action to show Bar Counsel that he had complied with the requirements of Term Three. A show cause hearing was scheduled before the Third District Committee to give Respondent an opportunity to show cause why the alternate sanctions should not be imposed. Respondent received notification of the date of the show cause hearing by two separate certified mailings from the Virginia State

Bar and yet Respondent failed to appear at the show cause hearing scheduled for October 14, 2005, and offer any explanation as to why the alternate sanction should not be imposed. The Board finds it incredible that Respondent failed to appear on October 14, 2005, and produce the letter now marked as Respondent's Exhibit No. 1 dated May 19, 2005, addressed to Reginald Hayspell enclosing an accounting as required by Term Three. Although the letter was received in the sanctions hearing on January 27, 2006, it could only be offered for mitigation purposes at that time and could not be accepted as evidence to show cause why he should not receive the alternate sanction. The Board also cannot understand why the letter dated May 19, 2005, addressed to Reginald Hayspell with the necessary accounting that would have shown compliance with Term Three was not received until the eleventh hour on January 26, 2006. It is for these reasons that the Board believes suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of two weeks is the appropriate sanction.

Accordingly, it is ORDERED that the license of Respondent, Arnold Reginald Henderson, V, to practice law in the Commonwealth of Virginia is hereby suspended for a period of two weeks effective upon entry of this order.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 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 also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof

to the Bar within 60 days of the effective day of the suspension 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 suspension, 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 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

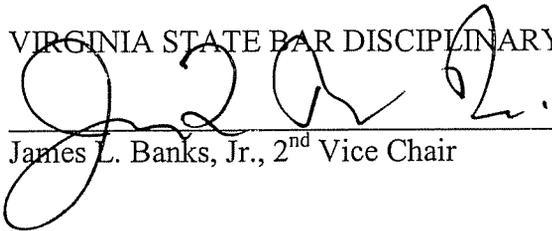
It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being 116 East Franklin Street, Suite 102, Richmond, Virginia 23219, by certified mail, return receipt requested, and to Michael L. Rigsby, Esquire, Carrell Rice & Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, Virginia 23226, and to Harry Hirsh, Interim Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, by regular mail.

ENTERED this 22^d day of February, 2006

2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD


James L. Banks, Jr., 2nd Vice Chair