

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
DAVID NASH PAYNE, ESQUIRE**

VS B DOCKET NO. 05-000-2817

ORDER OF REVOCATION

THIS MATTER came before the Virginia State Bar Disciplinary Board on March 25, 2005, upon a *Motion and Notice of Show Cause Hearing to Revoke Respondent's License to Practice Law for Failure to Comply with the Rules of Court*. The Motion was filed by the Virginia State Bar on or about February 2, 2005, and was mailed to the Respondent, David Nash Payne, via certified mail, return receipt requested and by regular mail to the Respondent's last address of record with the Virginia State Bar. The Motion was heard by a duly convened panel of the Disciplinary Board consisting of Karen A. Gould, Chair, Russell W. Updike, David R. Schultz, V. Max Beard, Lay Member, and William H. Monroe, Jr. The Respondent did not appear before the Board. Kathryn A. Ramey, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar (the Bar). The proceedings were transcribed by Ms. Valerie L. Schmidt, a Registered Professional Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222.

All required notices were properly sent by the Clerk of the Disciplinary System.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, responded in the negative.

FINDINGS OF FACT

Having considered the exhibits entered into evidence and having heard argument of Bar Counsel, the Board unanimously found by clear and convincing evidence as follows:

1. On April 28 2004, the Disciplinary Board of the Virginia State Bar (the Board) entered an Order requiring Mr. Payne to do several things and provide the Bar with certain information (the First Order). The First Order stated that Mr. Payne's failure to timely comply with its terms would result in a Summary Suspension under Paragraph 13.I.6.i of the Rules of the Supreme Court of Virginia (the Rules). A copy of the First Order was received into evidence and marked as VSB Exhibit 2a.
2. Mr. Payne failed to fully comply with the First Order, and as a result the Board suspended his license to practice law in an Order dated October 1, 2004 (the Second Order). By letter dated October 1, 2004, the Clerk's Office wrote to Mr. Payne at his address of record, enclosing a copy of the Second Order and advising him of his duties under the Rules, Part Six, Section IV, Paragraph 13.M. A copy of the Second Order was received into evidence and marked as VSB Exhibit 2b.
3. The requirements of Rule 13.M are as follows:

M. Duties of Disbarred or Suspended Respondent

After a Suspension against a Respondent is imposed by either a Summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters. Unless the matter is being considered by a three-judge panel, a sanction of Revocation or additional Suspension may be imposed for the failure to comply with the requirements of this subparagraph.

4. The Clerk's office sent another letter to Mr. Payne on December 9, 2004, urging his compliance with Paragraph 13.M. A copy of the December 9, 2004 correspondence was received into evidence and marked as VSB Exhibit 2c.

5. Mr. Payne continues to ignore all attempts from the Bar seeking his attention to these issues and has failed to respond to either the Clerk's Office or to Bar Counsel. To date, he has yet to comply with the requirements of Rule 13.M.

DISPOSITION

Following closing argument at the conclusion of the evidence regarding the Motion to Show Cause, the Board recessed to deliberate. The Board reviewed the foregoing findings of fact and the exhibits presented by Bar Counsel on behalf of the VSB. After due deliberation the Board reconvened and stated its findings as follows:

The Board determined that the VSB had proven by clear and convincing evidence that the Respondent had failed to comply with the terms of Orders previously issued by the Disciplinary Board on April 28, 2004 and October 1, 2004. The Respondent had additionally failed to comply with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13.M. In light of the fact that the Respondent has continued to ignore the numerous attempts of the Bar to obtain his response and/or explanation of his actions, and given that there has been no presentation of evidence showing any disability on the part of the Respondent, the Board must consider the matter based upon the facts placed before it in this proceeding.

Accordingly, it is ORDERED that the license of the Respondent, David Nash Payne, to practice law in the Commonwealth of Virginia be, and the same hereby is, REVOKED, effective March 25, 2005.

It is further ORDERED that, 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 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 date 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 the 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.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 send via certified mail, return receipt requested, an attested copy of this order to respondent, David Nash Payne, at his address of record with the Virginia State Bar, being 1326 Chesapeake Avenue, Hampton, VA 23661, and via hand-delivery to Richard E. Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this 4th day of April, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

BY: 
Karen A. Gould, Chair