

VIRGINIA :

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF BRIAN GAY

VS **Docket No. 11-000-087465**

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board (hereinafter "Board") on June 24, 2011, pursuant to a Notice of Noncompliance and Request for Rule to Show Cause which Rule to Show Cause was issued in accordance with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-29 requiring Respondent Brian Gay (hereinafter "Respondent") to show cause why his license to practice law should not be suspended or revoked for failing to comply with the notice requirements and certification of notice requirements imposed by Paragraph 13-29 following the interim suspension of his license to practice law on September 24, 2010, which suspension continues to date. The hearing was held before a duly convened panel of the Board consisting of David R. Schultz, John S. Barr, Robert W. Carter, Lay Member, Randall G. Johnson, Jr. and Sandra L. Havrilak, Acting Chair (hereinafter "Chair").

All required notices were sent by the Clerk of the Disciplinary System (hereinafter "Clerk"). The Virginia State Bar was represented by Paul D. Georgiadis, Assistant Bar Counsel. Neither the Respondent, nor counsel appeared on his behalf. Teresa L. McLean, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, having been duly sworn, reported the hearing.

The Chair opened the hearing by calling the case in the hearing room and directing the Clerk to call the case in the adjacent hall three (3) times. The Respondent did not answer or appear. The panel was then polled as to whether any member had any conflict of interest or other reason why the

member should not participate in the hearing. Each member, including the Chair, answered in the negative.

Respondent's written request for a continuance and Emergency Motion to Stay Proceedings that was received in the Clerk's Office on June 23, 2011 at 2:02 p.m. was reviewed by the Board. After hearing argument by Bar Counsel, the motions were denied.

Virginia State Bar Exhibits A through G were received into evidence without objection.

Respondent also sent a notarized letter of "Retirement/Resignation from Virginia State Bar." In that letter, Respondent stated, "[f]or the good of my physical and mental health I have elected to retire/resign from the part-time practice of law in the commonwealth effective immediately. I reside in and make my domicile in another state and my current address with your organization is no longer valid." (VSB Exh. G).

Respondent never states where he is moving to nor does he provide his new address. The letter is on letterhead with his Virginia Beach address, 3500 Virginia Beach Boulevard, Second Floor, Suite 207, Virginia Beach, Virginia 23452.

The Prior Proceedings

This matter arises out of a Notice of Noncompliance and Request for Rule to Show Cause Pursuant to Paragraph 13-29 filed with the Board by Bar Counsel, based upon Respondent's failure to comply with several orders of the Board and the aforesaid provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, and, Rule to Show Cause issued on May 25, 2011. More particularly the Bar in its Notice of Noncompliance, alleged as follows:

- 1) Part Six, Section IV, Para. 13-29 of the Rules of the Supreme Court of Virginia requires that upon revocation or suspension by either a Summary or Memorandum Order, a Respondent

shall a) provide written notice of the revocation or suspension to clients, to opposing counsel, and to courts within 14 days of the effective date thereof; b) dispose of all matters in his care in conformity with the wishes of his clients within 45 days of the effective date thereof; and c) provide proof to the Virginia State Bar of such notices and disposition of matters within 60 days of the effective date thereof.

- 2) On September 24, 2010, the Board issued its order of Interim Suspension of Respondent Brian Gay for failure to comply with the bar's subpoena *duces tecum* in VSB Docket No. 10-022-084369. The Board entered the order of suspension following a hearing demanded by Respondent on September 17, 2010 with his Request for Hearing and Objection to Interim Suspension. Notwithstanding his demand for a hearing, Respondent had requested a continuance of the hearing, which the Board denied by order dated September 21, 2010. Therein, the Board directed Respondent to appear on September 24, 2010. Respondent failed to appear on September 24, 2010.
- 3) In its Summary Order of suspension of September 24, 2010, which was effective September 24, 2010, the Board directed Respondent to "give notice by certified mail, return receipt requested, of the Suspension" to clients, opposing counsel, and the courts.
- 4) In its Memorandum Order of Suspension dated October 1, 2010, effective September 24, 2010, the Board again directed Respondent to comply with the notice requirements of Para. 13-29.
- 5) As set forth in the Board Memorandum Order and Opinion dated November 29, 2010 in this same matter, Respondent noted his objection by letter dated October 8, 2010 opposing the interim suspension entered on September 24, 2010 and demanded that a hearing be set for October 22, 2010 by telephone. The Board granted Respondent a live hearing and set it for October 21, 2010. The hearing was noticed by Board Order dated October 14, 2010.
- 6) Notwithstanding his request for a further hearing, Respondent failed to appear at the October 21, 2010 hearing.
- 7) On October 21, 2010, the Board entered a Summary Order of Interim Suspension ordering that Respondent's license "continues to be suspended as it was originally suspended on

September 24, 2010,” and again directed Respondent to comply with the notice requirements of Para 13-29.

- 8) By Memorandum Order dated November 29, 2010, the Board again directed Respondent to comply with the notice requirements of Para. 13-29.
- 9) By Order of October 29, 2010, the Board entered an Order of Administrative Suspension of Respondent’s license for failure to pay costs in VSB Docket No. 08-022-073165. In the transmittal letter of the Clerk of the Disciplinary System (“the Clerk”), the Clerk set forth Respondent’s duties of notice of the suspension to clients, opposing counsel, courts, and proof of such to the bar.
- 10) By letter to Respondent dated December 6, 2010, the Clerk forwarded to Respondent the Board Memorandum Order of Interim Suspension of November 29, 2010 in VSB Docket No. 10-022-084369, again advised Respondent of his duties of notice under Para. 13-29, and advised Respondent that he had until February 4, 2011 to furnish proof of compliance therewith.
- 11) By letter to Respondent dated February 9, 2011, the Clerk advised that notwithstanding her prior notice of December 6, 2010, Respondent had failed to provide proof of compliance with the notice requirements of Para. 13-29. The Clerk further advised that a show cause proceeding may be initiated before the Disciplinary Board if he fails to comply with the Rule.
- 12) From September 24, 2010 to the present, Respondent’s license to practice law has been suspended without interruption.
- 13) At no time since September 24, 2010 has Respondent provided proof to the Clerk of his compliance with the notice requirements of Para. 13-29.
- 14) Following his September 24, 2010 suspension, Respondent failed to provide any notice of his suspension to his client Pierre Ramone Dokes and failed to provide any notice of his suspension to opposing counsel in Cynthia Foster v. Pierre Ramone Dokes in the Circuit Court of Virginia Beach. At the time of his suspension, the matter had been set for trial for February 23, 2011.
- 15) Without explanation or notice to his client or opposing counsel, Respondent failed to appear at the February 23, 2011 trial. As a result, a default judgment was suffered by Respondent’s

client Dokes, although it was ultimately withdrawn upon the Court, the client, and opposing counsel learning of the circumstances.

Findings

The Board heard the testimony of C. Carter Wailes, Esquire. Mr. Wailes represented Cynthia Foster in the Circuit Court of the City of Virginia Beach, in the case of Cynthia Foster v. Pierre Ramone Dokes, Civil Action No: 09-006156. According to Mr. Wailes, at no time while the case was pending and Respondent was representing Pierre Ramone Dokes (hereinafter "Dokes"), did Respondent notify Mr. Wailes or the court that his license to practice law was suspended. In fact, the case was heard on February 23, 2011 and neither Respondent nor Dokes were present. The only way Dokes became aware of the judgment order was after the hearing it was served on Dokes' mother's residence on March 16, 2011. It was at that time that Dokes' mother contacted the Virginia State Bar and found out Respondent was suspended for the first time. Dokes was incarcerated at the time of trial. (VSB Ex. 6, 7, 8)

According to the Affidavit of Pierre R. Dokes, at no time after September 20, 2010 did Respondent advise him that his license to practice law was suspended. (VSB Ex. 7)

According to the Affidavit of Costella M. Beck, who is Dokes' mother, she tried to contact the Respondent by telephone prior to the February 23, 2011 trial date, but was unable to reach him. (VSB Ex. 8)

The Board recessed and after considering the testimony of the witness, receiving all of the exhibits introduced by the Virginia State Bar, and having heard argument, the Board unanimously found that the VSB had furnished uncontroverted, clear and convincing evidence substantiating the allegations set forth in the Rule to Show Cause and Notice of Noncompliance and the Board further finds that the Respondent has failed to show cause as to why his license to practice law should not be revoked.

Sanction

The Board subsequently received evidence regarding aggravation, reviewed the prior findings of misconduct as set forth in VSB Exhibit F and heard argument from Bar Counsel.

The Board recessed to deliberate what sanction to impose upon its finding of non-compliance. After due deliberation, the Board reconvened and announced that based upon the

Respondent's total disregard of the Board's prior orders and noncompliance with the Rules of the Supreme Court of Virginia over an extended period of time, the appropriate sanction to protect the public and the integrity of the Bar is the revocation of the Respondent's license; and it is so ORDERED that the license of Brian Gay to practice law in the Commonwealth of Virginia is hereby REVOKED, effective June 24, 2011.

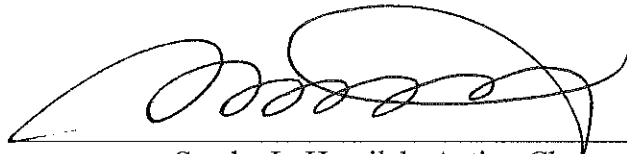
It is further ORDERED that, pursuant to Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, Respondent shall forthwith give notice, by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling any matters, to all judges and the Clerk of the Court before which Respondent may have any pending cases and to opposing counsel in all such cases. Respondent shall also make appropriate arrangements for the disposition of matters not in his care, in conformity with the wishes of his clients.

Pursuant to Part Six, Section IV, Paragraph 13-9(E.) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is further ORDERED that an attested copy of this Order shall be mailed by Certified Mail, to the Respondent, Brian Gay, at his address of record with the Virginia State Bar being Law Office of Brian Gay, Second Floor, Suite 207, 3500 Virginia Beach Boulevard, Virginia Beach, Virginia 23452 and a copy to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTER THIS ORDER THIS 13 DAY OF July, 2011.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Sandra L. Havrilak, Acting Chair