

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF WAYNE RICHARD HARTKE
VSB DOCKET NO. 17-000-107101

OPINION AND ORDER

This matter came to be heard on October 27, 2016 before a duly-convened panel of the Virginia State Bar Disciplinary Board (“Board”) at the General Assembly Building, House Room C. The Panel consisted of Esther J. Windmueller, 1st Vice Chair, Presiding; R. Lucas Hobbs; Michael A. Beverly; Lisa A. Wilson; and Nancy L. Bloom, lay member.

The Virginia State Bar (“Bar”) was represented by Kathleen M. Uston, Assistant Bar Counsel. Respondent Wayne Richard Hartke was not present. At the request of Ms. Windmueller, the Clerk called the Respondent’s name in the hallway outside House Room C three times, and thereafter reported to the Board that there was no response. Jennifer L. Hairfield, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding.

The Chair polled members of the Panel regarding any personal or financial interest or conflict they might have which would preclude them from fairly hearing the matter before them. Each member, including the Chair, responded in the negative.

The Bar proceeded to present its opening statement. Mr. James E. Leffler, MS, LPC was thereafter sworn as a witness, and presented testimony. During his testimony, a document identified as Bar Exhibit 1 was admitted into evidence.

FINDINGS OF FACT

1. By Order entered April 17, 2015 in VSB Docket No. 14-051-098765, the Board suspended Respondent's license to practice law in Virginia for six (6) months, effective March 27, 2015, with Respondent also required to enter into an agreement with Lawyers Helping Lawyers ("LHL"), and to comply with, and complete, any and all recommendations made by LHL for two (2) years.
2. In the aforesaid Order, the Board provided that should Respondent fail to enter into such an agreement, and comply with, and complete, all of LHL's recommendations, an alternative sanction of the suspension of his license to practice law in Virginia for three (3) years would be imposed.
3. Bar Exhibit 1 established the terms and conditions of Respondent's LHL agreement, including: he would attend 90 A.A. meetings in the first 90 days following completion of his in-patient treatment, as well as two LHL meetings per month, if available; he would attend the annual LHL retreat; and he would maintain an A.A. sponsor and provide monthly written reports to his monitor, with whom he will meet on a schedule established by the monitor and LHL.
4. On September 13, 2016, LHL's Clinical Director, Mr. Leffler notified the Bar that Respondent had not remained compliant with his agreement with LHL for a period of several months. In particular, Mr. Leffler notified the Bar that Respondent had missed several meetings with his monitor, had not provided required updates to LHL, and had failed to attend required LHL support group meetings. Mr. Leffler also notified the Bar that LHL had tried on several occasions to remind Respondent to his obligations under the agreement.

Finally, Mr. Leffler opined that he did not believe Respondent was serious about complying with his agreement with LHL.

5. Two days later, the Bar filed a Petition to Show Cause, requesting the Board issue a Rule to require Respondent to show cause why the alternative sanction stated above should not be imposed on him.

6. Later that day, the Board issued a Rule to Show Cause, as requested by the Bar, which Rule was mailed to Respondent at his address of record with the Bar.

7. The Rule to Show Cause required Respondent to appear before the Board on Thursday, October 27, 2016 at 9:00 a.m. in the General Assembly Building, House Room C, First Floor, 9100 Capitol Street (Corner of 9th and Broad), Richmond, Virginia 23219, to show cause why his license to practice law in Virginia should not be suspended for three (3) years.

8. The next day, the Clerk provided notice of a hearing in these matters to Respondent at his address of record.

9. The Rule to Show Cause was made part of the record of this proceeding.

10. Respondent never attended an LHL meeting, although the same have been available to him. He also failed to attend the required A.A. meetings, to have at all times an A.A. sponsor, to attend the LHL retreat in 2016, to make any written monthly reports to his monitor, or to maintain required contact with his monitor, who was available to him.

DISPOSITION

Pursuant to the Rules of Court, Part Six, Section IV, Paragraph 13-18(O), Respondent bears the burden of proving his compliance with the terms imposed by the Board, as set forth above, by clear and convincing evidence. The same rule requires the Board to impose the alternative sanction if Respondent does not meet his burden.

Upon due deliberation, the Board finds that Respondent has not met his burden, and it is hereby **ORDERED** that Respondent's license to practice law in Virginia is suspended for three (3) years, effective October 27, 2016, and it is further

ORDERED that an attested copy of this Order be mailed by certified mail, return receipt requested, to Respondent, Wayne Richard Hartke, at his Virginia State Bar address of record, Hartke Law Offices, 11890 Sunrise Valley Drive, Reston, Virginia 20191; and hand-delivered to Kathleen M. Uston, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 27th DAY OF OCTOBER, 2016

VIRGINIA STATE BAR DISCIPLINARY BOARD

A handwritten signature in black ink, appearing to read 'E. Windmueller', with a long horizontal line extending to the right.

By: _____
Esther J. Windmueller, 1st Vice Chair, Presiding