

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MICHAEL ANTHONY COLE

VS. DOCKET NO. 20-000-117811

MEMORANDUM ORDER OF SUSPENSION

THIS MATTER came to be heard on February 21, 2020, before a panel of the Disciplinary Board consisting of Yvonne Gibney, Chair; Stephen Wannall, lay member; Stephanie Cox; Kamala Lannetti; and Tony Pham. 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, including the Chair, responded in the negative.

The Virginia State Bar (the “Bar”) was represented by Edward James Dillon, Jr., Senior Assistant Bar Counsel. The Chair opened the hearing by calling the case in the hearing room and causing the Assistant Clerk to call Respondent’s name three times in the adjacent hall. The Respondent did not answer or appear and was not represented by counsel. The Board received into evidence as Board Exhibit 1 an email, dated February 21, 2020, from the Respondent to the Clerk of the Disciplinary System (“Clerk”), in which Respondent stated that he would not be attending the hearing due to the weather and his health.¹ Jennifer L. Hairfield, court reporter, P.O. Box 9349, Richmond, Virginia 23227, telephone number 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

All legal notices of the date and place were timely sent by the Clerk in the manner prescribed by the Rules of the Supreme Court of Virginia (the “Rules”), Part Six, Section IV, Paragraph 13-18.

The matter came before the Board on the Bar’s Notice of Show Cause Hearing for Failure to Comply with Part Six, § IV, ¶ 13-29 of the Rules, and the Petition for Rule to Show Cause and

¹ Respondent filed no motion for continuance, nor did he otherwise request that the hearing of this matter be rescheduled for any reason.

the Rule to Show Cause issued on January 21, 2020. The Board took judicial notice of the Notice of Hearing and the Petition for Rule of Show Cause and received those documents in evidence as Board Exhibits 2 and 3, respectively.

The Board heard testimony from one witness, Lisa Marshall, Bar Investigator, after she was sworn under oath. The Board considered the exhibits; heard argument of counsel; and met in private to consider its decision.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board made the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Bar has been 4122 Virgie Cole Road, South Boston, Virginia 24592. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶¶ 13-12 and 13-18. of the Rules.
2. The Bar issued a subpoena *duces tecum* to the Respondent on September 5, 2019 for Respondent's trust account and office account bank records as part of an investigation of possible misconduct under Docket No. 19-090-114614 (the "Robbins Complaint").
3. On October 31, 2019, the Board issued an interim suspension order suspending Respondent's license to practice law as a result of Respondent's non-compliance with the subpoena *duces tecum*. (Board Exhibit 3, page 9.)
4. Respondent is counsel of record for the plaintiffs in an active case in Halifax Circuit Court, Case No. CL1800044200. (Board Exhibit 3, page 40.)
5. Respondent is counsel of record for the plaintiff in an active civil suit in Danville Circuit Court, Case No. CL1900046100. (Board Exhibit 3, Page 44.)
6. Neither court in which Respondent is counsel of record in active cases had been notified of the suspension of Respondent's license to practice law when the Bar's investigator inquired, well past the date Respondent was required to provide such notification.
7. Respondent has not produced any evidence of his compliance with the requirements of

Paragraph 13-29 following his interim suspension, including any proof that he provided notice of his suspension by certified mail to his clients, opposing counsel and presiding judges within 14 days of the effective date of his suspension. Nor has he furnished proof thereof to the Bar within 60 days of his interim suspension, as required by Paragraph 13-29.

Following deliberation, the Board determined that the Respondent has not proved by clear and convincing evidence that he has complied with Part Six, § IV, ¶ 13-29 of the Rules and the terms of his interim suspension order entered October 31, 2019.

II. IMPOSITION OF SANCTION

Thereafter, the Board received further evidence and argument in aggravation and mitigation from the Bar, Respondent having failed to appear or submit evidence. The Bar's evidence included Respondent's prior disciplinary record, which reflected he had received no prior public or private discipline. The Board recessed to deliberate what sanction to impose upon its findings of noncompliance by Respondent.

The Board found the evidence in mitigation included Respondent's lack of a prior disciplinary record with the Bar and his having been licensed to practice law in Virginia for approximately 15 years. The evidence in aggravation included Respondent's intentional failure to comply with rules and orders of the Bar.

The Board finds that Respondent has failed to prove by clear and convincing evidence that his license to practice law in the Commonwealth of Virginia should not be further suspended or revoked and, accordingly, it is ORDERED that the Respondent, Michael Anthony Cole, is suspended from the practice of law for one year and one month, effective February 21, 2020.

It is further ORDERED that, as directed in the Board's February 21, 2020 Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 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 client. 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 date 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 within 60 days of the effective date of the suspension. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9.E. 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, at Michael A. Cole, PC, 4122 Virgie Cole Road, South Boston, Virginia 24592, by certified mail, return receipt requested, and by hand delivery to Edward James Dillon, Jr., Senior Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED this 6th day of March 2020.

VIRGINIA STATE BAR DISCIPLINARY BOARD

Yvonne S. Gibney Digitally signed by Yvonne S. Gibney
Date: 2020.03.06 11:47:06 -05'00'

Yvonne S. Gibney
Second Vice Chair