

IN THE SUPREME COURT OF FLORIDA

VIRGIL D. HAWKINS
Petitioner

v.

THE FLORIDA BAR,
Respondent

CASE NO. 66-429
(CRS8500)
CONFIDENTIAL

FILED

SID J. WHITE

FEB 25 1985

CLERK, SUPREME COURT

By

Chief Deputy Clerk

RESPONSE TO PETITIONER'S PETITION FOR LEAVE TO RESIGN

COMES NOW, THE FLORIDA BAR, Respondent, and files this response to petitioner's petition for leave to resign pursuant to Florida Bar Integration Rule, Article XI, Rule 11.08 and says:

1. Petitioner was admitted to The Bar by this court in November, 1976. See In Re Florida Board of Bar Examiners, 339 So.2d 637 (Fla.1976). Attachment "A".

2. Petitioner correctly listed the three public cases, two of which have been completed and one of which is still pending before this court.

A. In The Florida Bar v. Virgil D. Hawkins, 444 So.2d 961 (Fla 1984) petitioner received a public reprimand and was placed on two (2) years probation for incompetently handling a criminal case and engaging in conduct involving misrepresentation. Attachment "B".

B. In The Florida Bar v. Virgil D. Hawkins, 450 So.2d 483 (Fla 1984) petitioner received a public reprimand and was

suspended for ten (10) days for practicing law while suspended for nonpayment of dues and engaging in conduct involving misrepresentation. See Attachment "C".

C. In The Florida Bar v. Virgil D. Hawkins, Case No. 65,410 (05B85C11) the Referee recommends a sixty day suspension for incompetently handling a legal matter, neglect and engaging in conduct involving misrepresentation. Attachment "D".

3. Petitioner omitted one case which is still confidential. In The Florida Bar v. Virgil D. Hawkins, Case No. 05B85C16, the Fifth Judicial Circuit Grievance Committee "B" found probable cause on December 6, 1984 for petitioner's incompetent handling of a Veteran's Administration (V.A.) guardianship matter, misappropriation of an estimated \$15,000.00 and refusal and failure to account for funds entrusted to him. This situation arose in August 1983 when petitioner was contacted by the V.A. concerning the preparation of a guardianship for his nephew, Clarence O. Hawkins, who had become incompetent because of acute alcoholism. Petitioner agreed to prepare the guardianship appointing his niece guardian and to handle the retroactive benefits due from the V.A. through his trust account until such time as the guardian was appointed. Petitioner failed to establish the guardianship. In fact, the paperwork he submitted was returned by a clerk since it was improperly and incompetently prepared. Attachment "E". He has never provided a full accounting of the some \$16,534.90 paid by the V.A. as benefits beginning in December, 1983, with a large payment of \$9,945 and monthly payments thereafter of \$735. He quickly took \$3,500 for

fees for past and unrelated services for the nephew without any V.A. or court authorization. When later confronted by the V.A. representative and told he would have to replace it, petitioner stated he did not have the money. Finally, upon demand by the V.A., the case was turned over to another attorney in July, 1984. However, only \$7,118.00 was turned over to the succeeding attorney. Petitioner has failed to account for much of the difference between the total amount received and the amount transferred although much of the monthly payments during the time petitioner was involved were used for the nephew's benefit. Attachment "F". To date, the V.A. has received back what petitioner believes is due to them; however, no accounting has been provided to the V.A.

In late May or June 1984, when pressure from the V.A. to account for the benefits became intense, petitioner contacted Shirley Sharpe and offered to sell to her property on behalf of an out-of-state seller. Petitioner quoted a price of \$16,000.00 and Ms. Sharpe gave him \$200.00 to research the title. A few weeks later, petitioner contacted Ms. Sharpe and told her the selling price had been reduced to \$11,500.00. On June 29, 1984, she paid petitioner the balance of \$11,300.00. Petitioner promptly negotiated the check and used a large portion of these funds as the source of the funds turned over to the succeeding attorney in the V.A. matter and misused the remainder for his own benefit. Ms. Sharpe has never received a deed to the property or title insurance. Upon later checking the court records, Ms. Sharpe discovered no deed had been filed. She has not received a refund of any of the money she paid to petitioner. In her civil

case against petitioner, he took the position he had unsuccessfully demanded return of the funds from the seller. Attachments "G" and "H".

Petitioner does not maintain a trust account. Although he agreed to handle the V.A. funds by way of a trust account, petitioner placed the funds received for a period of time in his office account. Petitioner opened a custodial account on behalf of Clarence Hawkins in January, 1984. His records were totally inadequate to provide any meaningful accounting. A review of subpoenaed bank records reveal that petitioner misused some \$6,000.00 of about \$9,945.00 of the V.A. benefits received in December 1983 for his own personal obligations. The subsequent monthly payments by the V.A. mainly were used for the benefit of the incompetent. By the end of January, 1984, the office account in which he placed these funds suffered a negative balance. There were insufficient funds in this account to cover the V.A. funds not expended on behalf of Clarence, until July 2, 1984 when petitioner deposited the \$11,300.00 paid by Ms. Sharpe. On July 2, 1984 petitioner drew a check on his office account for \$8,350.00 and deposited it to the custodial account, creating a balance of about \$10,135.00. Thereupon, petitioner paid \$7,118.00 to the successor attorney for the V.A. guardianship matter, paid \$640.00 for Clarence, took \$1,100.00 in fees without any apparent authorization and then paid himself the remaining balance of \$1,301.96 by check dated July 30, 1984 again without apparent authorization. As for his office account, the remainder from the Sharpe deposit was quickly consumed for petitioner's own

purposes and the account was once again in arrears by mid-July, 1984.

4. The Executive Committee of The Board of Governors has voted to recommend acceptance of the petition for a nonpermanent resignation given petitioner age's and other matters only on the conditions that petitioner acknowledge the existence of the misappropriation case either by amended petition or in a reply as is required by Fla. Bar. Integr. Rule, Art. XI, Rule 11.08 and the general facts of this latest case be included in any public order accepting the petition as required in Rule 11.12(2). Any amended petition or reply should be required to be submitted in a reasonable time not to exceed thirty days.

5. Accepting the petition on the conditions stated will not adversely effect the public interest. It also will not undermine the purity of the Courts, hinder the administration of justice or the confidence of the public in the legal profession. On the contrary, the Bar submits the public welfare, as well as that of the courts and legal profession will be better served by acceptance of the resignation so long as the conditions stated are included.

WHEREFORE, THE FLORIDA BAR prays that this Honorable Court will grant petitioner's petition to resign only by the conditions he acknowledge the existence of the misappropriation case by amended petition or reply within thirty days and that the general facts on this case in paragraph three above be included as part of the public order accepting the petition.

Attachments A-H

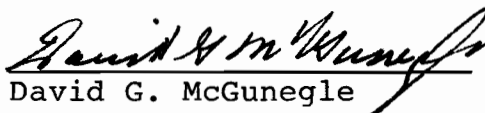
Respectfully submitted,

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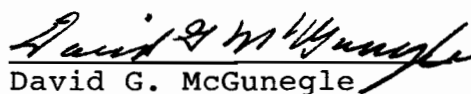
and

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Response has been sent to the Clerk of the Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32301; a copy of the foregoing Response has been furnished by mail to Virgil D. Hawkins, Petitioner, Post Office Box 1195, Leesburg, Florida 32748; a copy of the foregoing Response has been furnished by mail to Staff Counsel, The Florida Bar, Tallahassee, Florida, 32301 on this 22nd day of February, 1985.


David G. McGunegle
Bar Counsel