

VIRGINIA:

**BEFORE THE SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
JAMES PEARCE BRICE, JR.
VSB Docket No. 05-021-1980
05-021-3317
05-021-4683**

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)**

On May 11, 2006, a hearing in these matters was held before a duly convened Second District Committee panel consisting of Croxton Gordon, Esquire, James C. Lange, Esquire, Robert W. McFarland, Esquire, Emmanuel W. Michaels, Lay Member, Michael S. Brewer, Lay Member, David McDonald, Lay Member, and Paul K. Campsen, Esquire, Vice-Chair, presiding.

The Respondent, James Pearce Brice, Jr., Esquire appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis, Esquire.

The matter proceeded upon the Notices of Hearing, dated March 29, 2006. The Notices of Hearing set forth allegations that the Respondent's conduct violated Rules of Professional Conduct 1.1, *Competence*, 1.3 (a), *Diligence*, 1.4 (a) and (b), *Communication*, 1.16 (a) and (d), *Declining or Terminating Representation*, and 8.1 (c), *Bar Admission and Disciplinary Matters*.

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair

affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The panel received Virginia State Bar Exhibits 1-63 without objection, and the parties made opening statements. By agreement of the parties, the panel held separate evidentiary hearings in all three cases, and then held one hearing to determine a sanction for all three cases. The panel received the testimony of Virginia State Bar Investigator Ronald Pohrivchak, Cynthia Estes, and the Respondent, who testified as an adverse witness and in his own behalf.

Upon the conclusion of the bar's evidence, the Respondent moved to strike the bar's case, which motion was overruled. Thereafter, the parties presented closing arguments.

Pursuant to Part 6, Section IV, Paragraph 13.H.2 (m) of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition with Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, James Pearce Brice, Jr., was an attorney licensed to practice law in the Commonwealth of Virginia.

05-021-1980

Complainant: Daryl R. Ricks

2. On or about March 25, 2003, the complainant, Daryl R. Ricks, hired Mr. Brice to pursue a personal injury case on a contingent fee basis.

3. Mr. Ricks alleged that he was a passenger on a Greyhound bus that was involved in a traffic accident on October 23, 2002. He said that he had just been released from jail, and that the accident occurred on Interstate 95 in Newport News, Virginia (although there is no I-95 in Newport News, Virginia.) By the time that he hired Mr. Brice, he had been arrested and incarcerated on other criminal charges.

4. Mr. Brice's records indicate that he promptly requested Mr. Rick's medical treatment records from Sentara Norfolk General Hospital, where Mr. Ricks was treated for neck and back pain the day after the accident. On April 9, 2003, Sentara furnished its records to Mr. Brice. Mr. Brice, however, did not pay Sentara's invoice, and Sentara continued to send invoices for several months.
5. Mr. Brice did not seek the treatment records from the prison facilities where his client was subsequently treated.
6. Mr. Brice's records indicate that Mike McDonald of Greyhound Risk Management returned his telephone call on September 1, 2003, but provide no further information about the contact.
7. Mr. Brice's records reflect that the next activity was a letter, dated September 23, 2003, in which he asked Mr. Ricks to execute some new medical release forms, saying that he was "awaiting updates from various sources regarding your case."
8. Mr. Brice's records also indicate that on September 23, 2003, he contacted the Hampton Police Department, who said that they had no information on any persons injured, and referred him to the State Police. (His client, however, said that the accident occurred in Newport News, Virginia, not Hampton.)
9. On March 11, 2004, Mr. Brice sent his client some new medical release forms, and the two exchanged letters over the course of the next several months.
10. By letter, dated April 23, 2004, Mr. Brice asked his client for more details about the accident, such as whether he was on the bus or in the car, where he was traveling, what road or intersection he was on, and what other treatment he received besides Norfolk Sentara General Hospital.
11. By letter, dated April 25, 2004, the client complained that he was concerned about the progress of the case, and that he had not received an answer.
12. By letter, dated April 29, 2004, the client responded to Mr. Brice's letter of April 23, 2004, providing numerous details about the accident and his medical treatment history, including subsequent treatment at the Hampton Roads Regional Jail for which he said there were records.
13. Mr. Brice responded by letter, dated May 3, 2004, asking the client to provide more details about the accident, such as the exact location.
14. On May 14, 2004, the client responded to the letter, naming the intersection in Newport News, Virginia, where he thought that the accident had occurred, and saying that the State Police had responded to the accident.

15. On June 7, 2004, Mr. Brice responded to his client's letters, enclosing new medical release authorizations for the client's endorsement. He closed the letter by saying, "We are in the process of obtaining the police report from the Virginia State Police."
16. Mr. Brice's records indicate that his next activity was a letter to the Virginia State Police, dated July 6, 2004, asking for a copy of the accident report. The date that he gave for the accident, however, was September 23, 2002, not the date provided by his client, October 23, 2002. Accordingly, the State Police replied that they had no information on the accident.
17. By letter, dated August 12, 2004, Mr. Brice notified CT Corporation System of his representation, and asked for information about the accident, citing the correct date of October 23, 2002, on I-95 in Newport News, Virginia. CT is the registered agent for Greyhound, according to Mr. Brice. At the time, Mr. Brice had been involved in the case for seventeen months.
18. During the next month, Mr. Ricks, concerned about the lack of progress on the case, sent several letters to Mr. Brice demanding action and offering suggestions.
19. Mr. Brice responded to all of the letters, declining his client's suggestions, and offering no hope for recovery, given his inability to gather information about the accident.
20. By letter, dated September 15, 2004, Mr. Brice informed his client that Greyhound had no information on the accident, that they needed the driver's name, bus number, schedule number, and itinerary.
21. At the time, eighteen months had passed since Mr. Brice accepted the case, and the limitations period would run in about five weeks.
22. Although his file log indicated that someone sent a request for medical records to the Hampton Roads Regional Jail on September 23, 2003, Cynthia Estes, medical records custodian for the jail, testified that she researched the records and determined that no one ever requested information pertaining to Mr. Ricks.
23. Mr. Brice took no further steps to investigate the accident, such as contacting the jail that released his client to the bus, or the jail where he was treated for his injuries.
24. By letter, dated September 20, 2004, Mr. Ricks criticized Mr. Brice for prolonging the case so close to the statute of limitations.
25. In response, Mr. Brice discharged his client and took no further action in the matter.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rule of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The Committee did not find violations of the Rules 1.3, 1.4, and 1.16 by clear and convincing evidence, and dismissed those charges accordingly.

I. FINDINGS OF FACT (Continued)

05-021-3317

Complainant: VSB/Court of Appeals

The Respondent and the Virginia State Bar stipulated to the following facts:

27. On September 15, 2004, the Circuit Court for the City of Virginia Beach sentenced Tony Alexander Wiggins to nine months in jail and a \$1000 fine on his convictions of possession of controlled substances. Mr. Brice was his court-appointed counsel.
28. Sometime after the sentencing hearing, Mr. Wiggins informed Mr. Brice that he wanted to appeal his case.
29. Mr. Brice explained to his client that he did not think that he could act because he had not been appointed for the appeal, that an appointment from the circuit court would be necessary.
30. Nonetheless, Mr. Brice prepared a notice of appeal, an order for the production of the trial transcripts, and a suitable cover letter, all for his client to file *pro se*, which the client did.
31. The court did not enter the order for the production of transcripts, however, until November 18, 2004, the day before they were due.
32. Mr. Brice explained to the Virginia State Bar Investigator that he sent a letter to the court asking for it to appoint him, but he does not have a copy, and there is none in the court's file.

34. On an unknown date, Mr. Wiggins forwarded a request for the appointment of counsel to the court. On November 20, 2004, the circuit court entered an order appointing Mr. Brice for the appeal. The front page of the order, however, contains the wrong address for Mr. Brice.

35. Brice informed the bar's investigator that he never received the order.

36. On December 27, 2004, the Court of Appeals received the record from the circuit court, without transcripts, and notified Mr. Wiggins about this by letter. A note on the letter says that it was "sent to Brice" on December 28, 2004. The letter set forth the deadline for filing a petition for appeal. The address for Mr. Brice on record at the Court of Appeals at the time was his previous address.

37. No transcript having been filed, on December 29, 2004, the Court of Appeals issued an order for the appellant to show cause why the appeal should not be dismissed for failure to file a transcript. The order indicates that a copy was sent to Mr. Brice. As mentioned above in (36), the address of record at the Court of Appeals at the time was Mr. Brice's previous address.

38. No one ever responded to the show-cause order, resulting in the dismissal of the appeal on January 25, 2005.

39. Mr. Brice said that he did not receive any of these materials.

40. By letter, dated February 28, 2005, Brice told his client:

Your appeal is still being worked on at this time. We are awaiting the court to appoint an attorney. I have your transcripts and am waiting for a duplicate copy to give you.

41. Mr. Brice told the bar's investigator that he cannot explain why he sent the letter, noting that he wrote it after the time for an appeal had passed.

42. Having received Mr. Brice's letter, Mr. Wiggins sent a letter, undated, to the circuit court asking it to appoint an attorney. On April 5, 2005, the circuit court received the letter and responded to Mr. Wiggins, informing him that his case had already been sent to the Court of Appeals, and enclosing a copy of the order appointing Mr. Brice as counsel.

43. Mr. Wiggins responded with another undated letter that the court received on April 15, 2005, saying that he did not blame Mr. Brice for the lapse of his appeal because he did not believe that Mr. Brice ever received the order appointing him.

44. Mr. Brice advised the bar's investigator that now, having done his research, he understands that it is the obligation of court-appointed counsel to see their clients' appeals through the Supreme Court of Virginia. He provided a copy of a letter, dated

December 19, 2005, to Mr. Wiggins indicating that Mr. Brice had been mistaken about his obligations, and that Mr. Wiggins had the right to seek a delayed appeal through the habeas corpus process.

Thereafter the Committee received the testimony of Virginia State Bar Investigator Ronald Pohrivchak. Based upon the witness' testimony, the Committee made the following additional findings of fact:

45. On March 23, 2005, the Virginia State Bar sent a copy of the complaint to Mr. Brice at his correct address of record. Mr. Brice, however, did not submit a response to the bar complaint. He advised the bar's investigator that it was not like him not to respond to a bar complaint, and that he would attempt to locate a copy of his letter. Mr. Brice, however, never produced the letter.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rule of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

The Committee did not find violations of the Rules 1.3 and 1.4 by clear and convincing evidence, and dismissed those charges accordingly.

I. FINDINGS OF FACT (Continued)

05-021-4863

Complainant: Larry A. Oliver

For reasons unknown, the complaining witness failed to appear at the hearing. Accordingly, the bar withdrew the Rule 1.1, 1.3, and 1.4 violations.

The sole remaining issue was whether the Respondent failed to respond to two letters from the Virginia State Bar demanding information concerning the complaint. The Respondent testified that while he thought he had responded to the letters, he agreed that he had no copies of any responses to furnish to the Committee, and that there were none in his files when he met with the Virginia State Bar Investigator on November 30, 2005.

Accordingly, the Committee made the following findings of fact:

46. On June 21, 2005, the bar sent Brice a proactive letter, asking him to communicate with Mr. Oliver, and demanding that he furnish the bar with a copy of his letter or a written summary of any oral communication. Mr. Brice failed to respond to the letter.¹

47. Accordingly, on July 1, 2005, the bar opened a formal complaint against Mr. Brice, and sent him a letter demanding a response to the complaint. Mr. Brice did not respond to this letter either.

48. For this reason, the bar referred the matter for a detailed investigation, and notified Mr. Brice of this by letter, dated September 2, 2005.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rule of Professional Conduct:

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a

¹ Mr. Brice's records indicate that he sent a letter of explanation to Mr. Oliver on June 22, 2005, but do not show that he responded to the bar's proactive letter of inquiry.

condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Admonition with Terms of these complaints. The terms and conditions shall be:

- 1. In Case Number 05-021-1980, within twelve (12) months of the date that the Committee issues this disposition, the Respondent shall attend three (3) hours of Continuing Legal Education (CLE) on the subject of ethics for no annual CLE credit.**
- 2. In Case Number 05-021-3317, within twelve (12) months of the date that the Committee issues this disposition, the Respondent shall attend three (3) hours of Continuing Legal Education (CLE) on the subject of appellate practice for no annual CLE credit.**
- 3. In Case Number 05-021-4683, within six (6) months of the date that the Committee issues this disposition, the Respondent shall attend three (3) hours of Continuing Legal Education (CLE) on the subject of law office management for no annual CLE credit.**
- 4. The Respondent shall provide the Assistant Bar Counsel with written certification of his attendance at each CLE course by the deadlines noted.**

The Respondent may obtain information about suitable CLE courses by calling the Virginia State Bar's MCLE Department at (804) 775-0578.

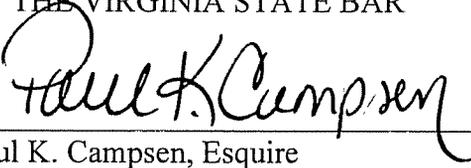
Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified, this District Committee shall certify the cases to the Virginia State Bar Disciplinary

Board for determination of an appropriate sanction based upon this Committee's findings and the Respondent's failure to comply with the terms imposed.

In reaching this decision, the Committee considered the Respondent's prior disciplinary record, which consisted of a Private Admonition involving similar misconduct just prior to the misconduct found in the present cases.

Pursuant to Paragraph 13.B.8 (c) (1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 
Paul K. Campsen, Esquire
Committee Vice-Chair

CERTIFICATE OF SERVICE

I certify that on the 19th day of May, 2006, I mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Admonition with Terms) to James Pearce Brice, Jr., at Suite 217, 3500 Virginia Beach Boulevard, Virginia Beach, Virginia 23452, his last address of record with the Virginia State Bar.


Edward L. Davis, Assistant Bar Counsel