

VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
HARRY WAYNE BROWN**

**VS. B Docket Nos.: 04-080-2244
04-080-3063**

**ORDER
(PUBLIC ADMONITIONS WITH TERMS)**

These matters were heard on February 10, 2006, upon the Agreed Disposition of the Virginia State Bar and the respondent, Harry Wayne Brown ("Respondent"), based upon the certification of the Eighth District Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Werner H. Quasebarth, Lay Member, Robert E. Eicher, Esquire, William H. Monroe, Esquire, William E. Glover, Esquire, and Peter A. Dingman, Esquire, First Vice-Chair and presiding officer.

The hearing was conducted telephonically. Respondent Harry Wayne Brown appeared with his counsel, John H. Kennett, Jr. Assistant Bar Counsel Kathryn R. Montgomery appeared for the Virginia State Bar. The hearing was transcribed by Theresa S. Griffith, Court Reporter, with Chandler & Halasz, P.O. Box 9349, Richmond, VA 23228, telephone number 804.730.1222.

Upon consideration of the Agreed Disposition, the prior record of Respondent, and the arguments of counsel, the Board deemed it appropriate to approve the Agreed Disposition and impose an Admonition with Terms in each of the pending cases. Accordingly, the Board finds by clear and convincing evidence the following:

I. VSB No. 04-080-2244
Complainant: Pippa M. Hairston

A. FINDINGS OF FACT

1. At all times material to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about April 28, 2003, Complainant Pippa M. Hairston (“Complainant”) retained Respondent to represent her with regard to a Chapter 13 bankruptcy.

3. On May 5, 2003, on behalf of Complainant, Respondent filed a Chapter 13 bankruptcy petition with the United States Bankruptcy Court in Harrisonburg, Virginia.

4. Thereafter, Complainant made numerous calls and sent numerous e-mails to Respondent’s office supplementing information and inquiring about the status of the case. Respondent himself did not return many of her calls; however, Complainant did communicate with Respondent’s paralegal via e-mail and telephone.

5. On August 27, 2003, Complainant and Respondent attended an initial confirmation hearing in Complainant’s bankruptcy case. The judge did not confirm the plan, but instead indicated that he would dismiss the case at the next hearing if Complainant did not become current with her plan payments. The next hearing was set for November 19, 2003.

6. After the hearing, Complainant told Respondent she did not understand how she could be delinquent because she was on automatic wage reduction. Through his paralegal, Respondent responded to Complainant’s concerns, but the explanation left Complainant confused.

7. On November 18, 2003, Respondent’s office faxed a request to attorney Roland S. Carlton, Jr., who was not affiliated with Respondent’s law practice, asking him to

appear on behalf of Complainant at the hearing. The fax indicated that an amended plan would be filed in Complainant's case and instructed Mr. Carlton to request a continuance. Mr. Carlton agreed to appear and did so.

8. At the November 19, 2003 hearing, Complainant's case was dismissed without prejudice for failure to keep plan payments current.

9. Thereafter, Complainant terminated Respondent's services and retained attorney Roland S. Carlton, Jr. to handle her bankruptcy.

B. NATURE MISCONDUCT

Based on the facts described above, the Board finds that Respondent violated the following Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

C. DISPOSITION

Accordingly, it is ORDERED that Respondent receive a Public Admonition with Terms, effective February 10, 2006. The Terms are as follows:

1. Retain and pay a law office management consultant approved by the Virginia State Bar to meet with Respondent and his staff, review office procedures for case management, provide recommendations, and prepare a report. Respondent must submit the report and proof of payment to Assistant Bar Counsel, Kathryn R. Montgomery, or her designee, by **September 1, 2006.**

2. By **April 3, 2006**, Respondent shall submit to Assistant Bar Counsel, Kathryn R. Montgomery, or her designee, a form fee agreement that complies with the Rules of Professional Conduct. Thereafter, Respondent shall use the fee agreement in his practice.

If, however, Respondent fails to meet these terms within the time specified, the Disciplinary Board shall impose upon him a ten (10) day suspension as an alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Disciplinary Board will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

The Clerk of the Disciplinary System shall assess the appropriate administrative fees.

II. VSB No. 04-080-3063
Complainant: Linda C. Mahoney

A. FINDINGS OF FACT

1. At all times material to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent completed a Chapter 7 bankruptcy on behalf of Complainant Linda C. Mahoney (“Complainant”). Thereafter, Complainant’s husband, Will Smith Mahoney, retained Respondent for a Chapter 13 bankruptcy.
3. On or about June 27, 2003, Respondent filed a Chapter 13 bankruptcy petition on behalf of Mr. Mahoney.
4. On or about October 14, 2003, Respondent filed a Motion for Continuance to continue all matters currently pending, including the Trustee’s Objection and Show

Cause on Dismissal and the confirmation hearing, to November 20, 2003, when a pending Motion for Valuation was scheduled to be heard.

5. Pursuant to Respondent's motion, the case was continued to November 20, 2003 with conditions.

6. On or about October 29, 2003, Respondent filed a second Motion for Continuance, requesting that all matters be continued to December 11, 2003. The Motion included a proposed Order of continuance with conditions. However, the proposed order was never signed by the trustee, nor entered by the court.

7. Complainant and her husband received notices from the court regarding the continuance, and called Respondent's office regarding the court date. Respondent's paralegal said the case was continued and that there was no need for them to appear in court on November 20, 2003.

8. On or about November 19, 2003, Respondent's paralegal faxed two notes to attorney David Cox, who was not affiliated with Respondent's law practice, requesting that he cover the November 20, 2003 hearing. In one fax, the note cover sheet says that counsel for Bank One, "has no objection to the continuance of her Motion to Lift Stay and Objection to 12/11." The note went on to say "I will hear back from the Trustee today. For your information all the conditions are met in regard to the Trustee's report. Thank you." The second faxed note stated "Attached is a copy of the Order of Continuance that was forwarded to the Trustee on 10/28/03 and to the Court for filing. The original is with the Trustee and he has no objections to the continuance since the conditions stated in the Order have been met. If you have any questions, please do not hesitate to call me. Thank you for your assistance."

9. However, contrary to Respondent's understanding, due to a miscommunication, Bank One's objections to the plan were not resolved.

10. When attorney David Cox appeared at the November 20, 2003 hearing on behalf of Mr. Mahoney, the case was dismissed without prejudice for failure to comply with the terms of the continuance order. Pursuant to the instructions of Respondent's paralegal, Mr. Mahoney did not appear. Neither the Mahoneys nor Mr. Cox were prepared for or expected this result.

B. NATURE OF MISCONDUCT

Based on the facts described above, the Board finds that Respondent violated the following Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

C. DISPOSITION

Accordingly, it is ORDERED that Respondent receive a Public Admonition with Terms, effective February 10, 2006. The Terms are as follows:

1. Attend three (3) hours of a live MCLE-approved Continuing Legal Education program in the area of ethics, attend (3) hours of a live MCLE-approved Continuing Legal Education program in the area of bankruptcy law, and certify completion to Assistant Bar Counsel Kathryn R. Montgomery, or her designee, by **September 1, 2006**. These six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours for credit to the MCLE Department of the Virginia State Bar or any other Bar organization.

If, however, Respondent fails to meet these terms within the time specified, the Disciplinary Board shall impose upon him a ten (10) day suspension as an alternative sanction. If there is disagreement as to whether the terms were fully and timely

completed, the Disciplinary Board will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

Pursuant to Part Six, Section IV, Paragraph 13(B)(8)(c) 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 a copy teste of this Order shall be mailed, certified mail, return receipt requested, to Respondent at his last address of record at the Virginia State Bar, 335 West Church Avenue, Roanoke, Virginia 24016, and by first class mail to his counsel, John H. Kennett, Jr., Esquire, and a copy shall be furnished to Assistant Bar Counsel Kathryn R. Montgomery.

Entered this 15th day of February, 2006.

Virginia State Bar Disciplinary Board

By: 
Peter A. Dingman, Esquire
First Vice-Chair and Presiding Officer