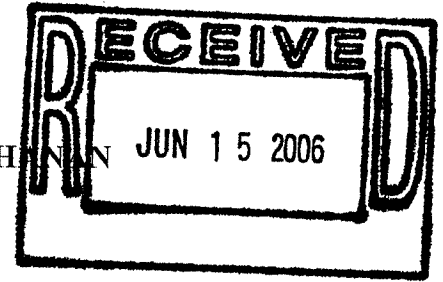


VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BUCHANAN

VIRGINIA STATE BAR EX REL  
TENTH DISTRICT COMMITTEE



v.

Case No. 77-06

WAYNE TRIVETTE HORNE

**Memorandum Order**

This cause came on for hearing on April 12, 2006, before a duly appointed Three-Judge Court consisting of the Honorable Charles M. Stone, the Honorable J. Robert Stump and the Honorable Larry B. Kirksey, Chief Judge Designate; upon the Rule to Show Cause of this Court; pursuant to Va. Code § § 54.1-3935 and 8.01-261(17) and Rules of Court, Part Six, § IV, Paragraph 13.

Respondent Wayne Trivette Horne appeared in person and with his attorney, Michael L. Rigsby. Scott Kulp appeared on behalf of the Virginia State Bar.

Upon the evidence presented and arguments of counsel, the court finds that the Virginia State Bar has proved by clear and convincing evidence the following facts:

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In November 2002, Complainant Bobby J. Baker (hereinafter the "Complainant") and a co-defendant were charged with maiming.
3. On or about July 18, 2003, Respondent was appointed by the Buchanan County Circuit Court to represent Complainant given Complainant's indigence.

4. Respondent's court-appointed representation of Complainant was memorialized in a form document entitled "Request for Appointment of a Lawyer," a copy of which Respondent received.
5. A consolidated trial occurred on June 16-17, 2004, and Complainant was convicted and sentenced to 5 years.
6. Subsequent to Complainant's conviction and on a date not clearly demonstrated by the evidence, Complainant's father, Rufus Baker, went to Respondent's office and asked Respondent to appeal Complainant's case.
7. Respondent informed Rufus Baker that it would cost \$2,500 in advance for Respondent to handle Complainant's appeal, even though, depending upon the date of such contact, Respondent continued to serve as court-appointed counsel or, alternatively, the time for such appeal had elapsed.
8. Rufus Baker was unable to come up with the \$2,500 to meet Respondent's demand.
9. Later, Rufus Baker came to see Respondent after hearing a rumor that the victim may have recanted his testimony and sought Respondent's representation and advice in pursuing relief from the sentence imposed.
10. Respondent informed Rufus Baker that for \$400 he would pursue relief of the sentence from the trial court.
11. On or about January 12, 2005, Rufus Baker paid Respondent \$400.
12. Respondent appeared before Judge Keary Williams and a representative of the Buchanan County Commonwealth's Attorney's office and made an

oral motion for consideration of sentence reduction. No written motion was filed with the trial court by Respondent. Respondent conducted no interviews and no legal research in the pursuit of the relief sought.

13. The motion to reduce sentence was denied because the time had long run to make such a motion.

Upon the evidence presented and arguments of counsel, the Court finds that the Virginia State Bar has proved by clear and convincing evidence a violation of the following provisions of the Virginia Rules 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.

It is the finding of this Court that the Virginia State Bar failed to prove by the required evidentiary standard of clear and convincing evidence any of the remaining alleged violations of the Virginia Rules of Professional Conduct and said alleged violations are dismissed.

Evidence was presented and arguments by counsel were made on the issues of an appropriate sanction. The prior record of the respondent was presented by the bar. The Respondent's prior record consists of the following:

1. A public reprimand, effective May 18, 1995.
2. A 30-day suspension, effective July 19, 1995.

The bar also presented relevant provisions of the most recent ABA Standards for Imposing Lawyer Sanctions. The Respondent presented character witnesses.

Following due consideration of the nature and character of the ethical violation involved herein and the prior disciplinary record of Respondent, the Court was of the opinion to issue a public reprimand with terms.

Accordingly, **IT IS ORDERED** that the Respondent shall be publicly reprimanded and is herewith so publicly reprimanded with terms. The terms which the Respondent must fulfill by the dates indicated as a condition for the issuance of a public reprimand are the following:

1. The refund of the fee, in full, in the amount of \$400 to Rufus Baker, Sr., on or before May 12, 2006.
2. Prohibition of Respondent from engaging in the practice of criminal law for a period of eighteen (18) months, effective April 12, 2006 , and thereafter only upon completion of thirty (30) hours of continuing legal education in the area of criminal law in addition to the usual mandatory continuing legal education required.

Upon proof that the terms have been fulfilled as required, the case shall be closed. Upon the failure of the Respondent to fulfill all of the terms imposed as required, this Court shall impose revocation of his license to practice law.

**IT IS FURTHER ORDERED** that the Respondent shall forthwith give notice, by certified mail, of his prohibition from the practice of criminal law to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges and clerks in pending cases. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients.

The Respondent shall give notice within 14 days of the effective date of his prohibition from the practice of criminal law and make such arrangements as are required herein within 45 days of the effective date. The Respondent shall also furnish proof to the Virginia State Bar within 60 days of the effective date of the prohibition from the practice of criminal law that such notices have been timely given and such arrangements made for the disposition of matters and that the fee, in full, has been refunded.

**IT IS FURTHER ORDERED** that the costs shall be assessed by the Clerk of the Disciplinary System pursuant to rule of Court, part Six § IV, Paragraph 13.B.8.c.


**IT IS FURTHER ORDERED** that certified copies of this order shall be mailed by the Clerk of the Circuit Court to the counsel of record.

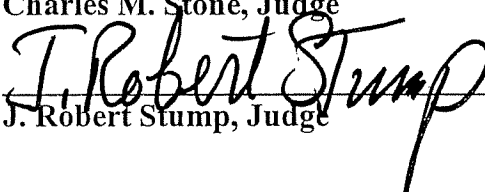
**IT IS FURTHER ORDERED** that the Clerk of the Circuit Court shall send a certified copy of this order to the Clerk of the Disciplinary System, at Suite 1500, 707 East Main St., Richmond, VA 23219.

**IT IS FURTHER ORDERED** that upon the end of all proceedings in this matter, the Clerk of the Disciplinary System shall maintain the complete file of this matter in accordance with the file retention policies and requirements of the bar.

ENTERED: May 16, 2006

  
\_\_\_\_\_  
Larry B. Kirksey, Chief Judge Designate

  
\_\_\_\_\_  
Charles M. Stone, Judge

  
\_\_\_\_\_  
J. Robert Stump, Judge

**CERTIFICATION OF OFFICIAL RECORD**

Case No: CL 77-06

Va. Code §§ 8.01-389 & 8.01-391;  
U.S. Const. Art. IV, Sec 1;  
28 U.S.C. § 1738

Circuit Court Clerk, Commonwealth of Virginia

**Clerk's Attestation**

I, the clerk of this Court, attest that the annexed

**DESCRIPTION OF ORIGINAL RECORD OR COPY**

OF A MEMORANDUM ORDER IN THE CASE OF VIRGINIA STATE BAR EX REL TENTH DISTRICT

COMMITTEE VS WAYNE TRIVETT HORNE DATED MAY 16, 2006

is an official record of this Court in my custody.

is a true, correct and complete copy of an official record of this Court in my custody and I am the custodian of that record. The annexed copy has been examined and compared with the original.

Given under my hand the seal of this Court on  
June 12, 2006

BY:

*Quincy S. Giles*

DEPUTY  
Clerk

James M. Bevins, Jr.

TYPED NAME OF CLERK

(Seal)

**Judge's Certification**

I, (a)(the) Judge of this Court, certify that the above attestation of the duly qualified Clerk of this Court, is in proper form, and that the signature thereto is genuine.

June 12, 2006

\_\_\_\_\_, Judge

\_\_\_\_\_  
TYPED NAME OF JUDGE

**Clerks of Virginia Courts:** When an original record or copy of a record is transmitted to another Virginia Court, only the clerk's attestation is required. When either an original record or copy is transmitted to a court outside Virginia, both the clerk's attestation and the judge's certification are required.

**Clerks of Other Courts:** The above attestation, the affixing of the court's seal, and the certificate meet the requirements of 28 U.S.C. § 1738, entitling the record so attested and certified to full faith and credit.