

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

VIRGINIA STATE BAR EX REL
FIRST DISTRICT COMMITTEE,

Complainant,

v.

PATRICK EARL BAILEY,

Respondent.

Case No. L-226962

received

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ORDER OF SUSPENSION

THIS CAUSE came to be heard on the 19th day of April, 2005, by a three-judge court, designated by the Chief Justice of the Supreme Court of Virginia pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, consisting of James F. Almand, Judge of the Seventeenth Judicial Circuit, Frank A. Hoss, Jr., Retired Judge of the Thirty-first Judicial Circuit, and Clifford R. Weckstein, Judge of the Twenty-third Judicial Circuit, designated chief judge.

The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis. The Respondent attorney, Patrick Earl Bailey, having been given due notice, appeared in person and by his counsel, Stephen A. Armstrong. The parties agreed that venue for this proceeding was properly laid in Fairfax County.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Patrick Earl Bailey, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or otherwise sanctioned by reason of allegations of ethical

misconduct set forth in the Certification issued by a subcommittee of the First District Committee of the Virginia State Bar.

The Complainant and the Respondent presented evidence in open court. At the conclusion of the Complainant's evidence, and at the conclusion of all of the evidence, the Respondent moved the court to strike the evidence as to certain of the allegations against the Respondent, which motions were overruled, to which action the Respondent duly objected.

Following closing arguments by the parties, the three-judge court retired to deliberate, and thereafter returned and announced that it had found, unanimously and by clear and convincing evidence, that:

1. On September 14, 2001, the Respondent, Patrick Earl Bailey (hereinafter Respondent or Mr. Bailey) was admitted to the Virginia State Bar by motion, in accordance with Rule 1A:1 of the Rules of Court.
2. On November 22, 2000, in preparation for his admission by motion, Mr. Bailey submitted an Applicant's Character and Fitness Questionnaire to the Virginia Board of Bar Examiners.
3. Mr. Bailey answered "No" to the following questions on the questionnaire:

11. (a) State whether you have ever been, or presently are, a party to or otherwise involved (except as a witness) in:

(1) any civil or administrative action or legal proceeding;

(2) any criminal or quasi-criminal action or legal proceeding (whether involving a felony, misdemeanor, minor misdemeanor, or any traffic offense);

(b) Have you ever been summoned for a violation of any other statute, regulation, or ordinance?

The following text appeared at the end of question 11:

If your answer to any question above is "Yes," attach a separate sheet of paper, identified in accordance with the instructions of the first page hereof, on which you set forth the facts in detail, designating by letter the portion of the question to which you refer. If any court or agency proceedings were involved, state the names, case numbers, and dates of all court or agency proceedings, including an accurate description of the ORIGINAL CHARGE, regardless of a finding of guilt of a lesser offense or a complete dismissal; the dispositions made thereof; the names and addresses of the courts or agencies in which the record may be found; and the name and address of your legal counsel in each proceeding. Non-disclosure of a criminal charge is allowable only when the charge has been expunged in accordance with applicable state law.

4. Contrary to his negative answer on the questionnaire, in January 1997, while on leave in Jamaica, Mr. Bailey was arrested for the crime of murder, a felony. On July 8, 1997, he was officially charged with murder, and his trial ran from October 21 to October 30, 1997. The Circuit Court for the Parish of Kingston, Jamaica, found him guilty of the lesser offense of manslaughter, and sentenced him to two years imprisonment at hard labor. On June 4, 1998, Mr. Bailey's appeal of his conviction was denied, and his conviction and sentence were affirmed. He was released from prison in February 1999, having been confined for some 16 months, and then returned to the United States.

5. Contrary to his negative answer on the questionnaire, on June 3, 1999, the United States Marine Corps convened a Board of Inquiry, an administrative procedure, to determine whether Mr. Bailey should be separated for cause from the Marine Corps for misconduct. Mr. Bailey was directed to show cause for retention at the Board of Inquiry. He appeared in person with his counsel, and the proceedings were held on June 3-4, 1999.

6. The Board of Inquiry found, by a majority vote, that a preponderance of the evidence proved the allegations of misconduct made against Mr. (then Major) Bailey. The Board

of Inquiry found, by unanimous vote, that a preponderance of the evidence proved the allegations of substandard performance of duty made against Mr. (then Major) Bailey, and substantiated, *inter alia* the following basis for separation from the service:

c. Commission of a military or civilian offense that, if prosecuted under the UCMJ, could be punished by confinement for 6 months or more, or, if prosecuted under the UCMJ, would require specific intent for conviction.

7. On September 3, 1999, the Commander, Marine Corps Base Quantico, forwarded the Report of the Board of Inquiry recommending that Mr. Bailey be separated from the Marine Corps with an Other Than Honorable characterization of service.

8. However, on October 5, 1999, Mr. Bailey became eligible for voluntary retirement from the Marine Corps because he had achieved 20 years of service. A Marine Corps regulation provided that when an officer who was to be removed from active duty upon the recommendation of a Board of Inquiry became eligible for voluntary retirement, then, instead of being removed, the officer would be retired at the grade and with the retired pay for which he would otherwise be eligible. The same regulation provided that if the officer engaged in misconduct that would warrant his separation with an Other Than Honorable characterization of service, he would be retired in the next inferior grade.

9. Accordingly, by memorandum dated January 24, 2000, the Marine Corps Deputy Chief of Staff for Manpower and Reserve Affairs recommended that Mr. Bailey be retired from the Marine Corps as a captain, the grade next inferior to his rank of major. On February 25, 2000, this recommendation was approved, and Mr. Bailey was retired from the Marine Corps in the grade of captain.

10. Contrary to his negative answer on the questionnaire, Mr. Bailey's Maryland driving record shows that he was convicted on April 24, 1985 of driving at a speed not

reasonable or prudent, that he was convicted of the same offense again on March 21, 1986, convicted of failing to obey a traffic signal on March 22, 1990, and convicted of exceeding the maximum speed limit by ten miles per hour on October 9, 1990.

11. By letter dated November 18, 2003, and in testimony, Mr. Bailey attempted to explain to the bar his answers on the questionnaire. He said that in the spring of 1999, he contacted the Pennsylvania Bar/Pennsylvania Disciplinary Committee for advice about reporting the "incident in Jamaica." He said that he spoke with a lady, name unknown, who said "Neither the incident nor any result was reportable because it occurred outside the United States and especially in a place where the courts are known to be 'kangaroo courts' very corrupt, with bribery, without proper safeguards, such results cannot be trusted." He said he "was told" not to report it as it was not what the rules had intended.

12. Mr. Bailey said that he asked "the lady" for a written opinion on the matter, but that she said they did not give written opinions.

13. Mr. Bailey said that he relied upon and trusted this advice and direction when he completed his application for admission to the Virginia Bar.

14. Mr. Bailey did not assert that he had asked anyone at the Pennsylvania Bar about reporting the administrative procedure that the Marine Corps conducted against him in June 1999.

15. Mr. Bailey testified that he did not ask anyone at the Virginia State Bar or Board of Bar Examiners about reporting the criminal or the administrative matter.

16. In testimony before this court, Mr. Bailey denied that he was guilty of the crime that he was convicted of in Jamaica. He and other witnesses offered evidence intended to cast doubt on the integrity of the Jamaican proceedings and system of justice, and the verdict

of the Jamaican court. He did not contend that he was unaware of the conviction, or that he was unaware of the Marine Corps administrative proceeding against him. He testified that he did serve 16 months in penal confinement as a result of his conviction for manslaughter.

17. The third paragraph of the instructions to the Virginia Board of Bar Examiners questionnaire provided:

If you have any doubts about whether any matter should be reported on this questionnaire, report it. If you are not sure of dates, time, places, or other information requested, it is your responsibility to consult the court, governmental agency, or other entity or person involved to obtain the accurate and complete information.

18. Mr. Bailey closed the application by stating:

I understand and acknowledge that my application for the Bar of Virginia is a continuing process and that I have an obligation to inform the Board of Bar Examiners promptly and in writing, of any change in any of the information I have provided in this questionnaire and in any attachment hereto. I agree to cooperate fully by furnishing any supplemental information requested by the Board or the Character and Fitness Committee (and the agents thereof) so that the Board and the Committee will have all information relevant to my character and fitness to practice law when making a decision on my applications.

19. Mr. Bailey signed the application under oath.

20. The questions to which Mr. Bailey gave false answers, and the false answers that he gave, were material to the decision about whether he would be admitted by waiver to the Virginia Bar.

UPON CONSIDERATION WHEREOF, the three-judge court found unanimously, by clear and convincing evidence, that the Respondent violated the following provision of the Virginia Rules of Professional Conduct;

RULE 8.1 Bar Admission And Disciplinary Matters

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

- (a) knowingly make a false statement of material fact;

The three-judge court did not find that the allegations that the Respondent violated Rules 8.1 (b) and (c), or Rule 8.4 (b) and (c) had been proven by clear and convincing evidence, and accordingly dismissed those counts.

Thereafter, the Virginia State Bar and the Respondent presented argument regarding the sanction to be imposed upon the Respondent for the misconduct, neither party desiring to present additional evidence, and the three-judge court recessed to deliberate.

AFTER DUE CONSIDERATION of the evidence and the nature of the ethical misconduct committed by the Respondent, and of the evidence in mitigation offered during the parties' cases-in-chief, and of the argument of counsel, the Three-Judge Court reached the unanimous decision that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for three (3) years, effective immediately.

It is hereby **ORDERED** that the license of the Respondent, Patrick Earl Bailey, to practice law in the Commonwealth of Virginia be, and the same hereby is, **SUSPENDED** for a period of three (3) years, effective the date of the hearing, April 19, 2005.

WHEREUPON the Respondent filed a Motion for Reconsideration that this Court considered on its merits and **OVERRULED**, as set forth in its Opinion and Order, entered August 1, 2005.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia, that 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 clients. The Respondent shall give such notice within 14 days of the effective date of the order, and make such arrangements as are required herein within 45 days of this effective date of the order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangement required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

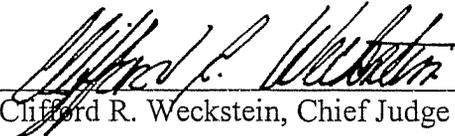
Pursuant to Part Six, Section IV, Paragraph 13.B.8.c of the Rule of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

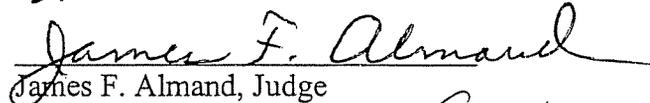
It is further **ORDERED** that a copy teste of this order shall be served by the Clerk of this Court upon the Respondent, Patrick Earl Bailey, by certified mail, return receipt

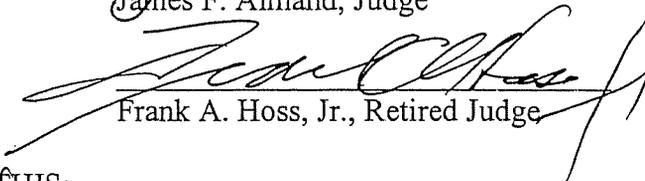
requested, at 8908 Bluffwood Lane, Fort Washington, Maryland 20744, his address of record with the Virginia State Bar; and by regular mail to his counsel, Stephen A. Armstrong, at Suite 307, 10521 Judicial Drive, Fairfax, Virginia 22030-5160, and to Edward L. Davis, Assistant Bar Counsel, at the Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219. Nothing further remaining to be done, the Clerk shall remove the case from the docket.

The court reporter who transcribed these proceedings is Carol D. Neeley, Rudiger & Green Reporting Service, 4116 Leonard Drive, Fairfax, Virginia 22030, (703) 591-3136.

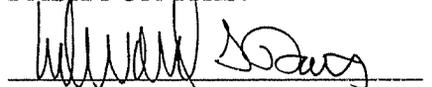
ENTER: This 14th day of October, 2005.


Clifford R. Weckstein, Chief Judge

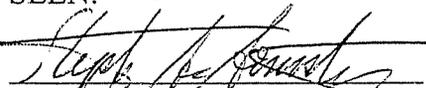

James F. Almand, Judge


Frank A. Hoss, Jr., Retired Judge

I ASK FOR THIS:


Edward L. Davis, Esquire
Assistant Bar Counsel
Virginia State Bar
Eight and Main Building
707 East Main Street, Suite 1500
Richmond, Virginia 23219-2800

SEEN: *and*


~~Stephen A. Armstrong, Esquire~~
Counsel for the Respondent
Suite 307, 10521 Judicial Drive
Fairfax, Virginia 22030-5160
(703) 385-4466

Respondent EXCEPTS as set out in this record, Respondent had no obligation to report a corrupt foreign conviction based on the Pennsylvania Bar's advice which was corroborated, but not rebutted. Both the President, in Executive Order 12473, and the Supreme Court, in *Small v. U. S.*, 544 U.S. ___, 125 S.Ct. 1752, 161 L. Ed. 651 (2005) proscribe using foreign convictions to prejudice Americans. Materiality was not proven on any charge and the magnitude of these sanctions ought not honor a Jamaica proceedings when the unrebutted evidence of its corruption was substantial. In this case, by refusing to bribe Jamaica officials to avoid an unjust conviction with attending risk to his life and limb, Respondent did demonstrated too high an ethical standard to warrant this injury to his reputation and profession.

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