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VIRGINIA:

York County  
IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH ~~CE~~ OCT 2 2008

VIRGINIA STATE BAR EX REL.  
SECOND DISTRICT COMMITTEE

VSB CLERK'S OFFICE

Complainant

CL08-1511  
~~CH08-1151T~~  
v

v.

TIMOTHY M. BARRETT  
Respondent



(In the Matter of Timothy M. Barrett  
VSB Docket No. 07-022-070253)

MEMORANDUM ORDER

This cause came to be heard on July 31, 2008 and August 1, 2008 by a duly convened, three-judge court consisting of the Honorable Robert G. O'Hara, Jr., Retired Judge, the Honorable Arthur B. Vieregg, Retired Judge, and the Honorable Cleo E. Powell, Chief Judge Presiding. The Virginia State Bar appeared by its Assistant Bar Counsel Paul D. Georgiadis. The Respondent, Timothy M. Barrett, was present on July 31, 2008 and appeared *pro se*.

At the commencement of the hearing, Respondent Timothy Martin Barrett ("Respondent"), moved to dismiss the case based upon the court's lack of jurisdiction and upon Equal Protection grounds. The bar opposed the motions. After considering the arguments of the Respondent and of the bar, the Court denied the motion to dismiss for lack of jurisdiction. The Court finds that it has jurisdiction in this matter for reasons stated in open court and reflected in the transcript of the proceedings. Notwithstanding the suspension of his law license, Respondent remains a member of the Virginia State Bar, albeit not in good standing. Respondent's arguments relied heavily upon §54.1-3900 et seq. of the Code of Virginia. However, this section does not define the practice of law. Taking the Respondent's arguments to their logical conclusion, there would then be no need in Pt. 6, §IV, Para. 3 of the Rules of Court for an additional category of disbarred lawyer if the suspended lawyer, who in the Court's view remains a lawyer although unable to practice law because of the suspension, were considered to be a non-lawyer. The Court

Denied the motion to dismiss for violation of the Equal Protection Clause of the United States Constitution for reasons stated in open court and reflected in the transcript of the proceedings. The court finds that an attorney representing himself is not alike in all aspects to a *pro se* non-lawyer litigant by virtue of the fact that the lawyer is a lawyer and is so by choice.

Thereafter, the Court proceeded in this matter. The Court received evidence from testimony and exhibits from the bar. At the conclusion of the bar's evidence, the Respondent

rested without presenting his own case.<sup>1</sup> The court then heard closing arguments from the bar and from the Respondent.

After due deliberation, it was the unanimous decision of the Court that the bar had proven by clear and convincing evidence that Respondent had violated Rule of Professional Conduct 3.1. :

### **RULE 3.1 Meritorious Claims And Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

The court found that the bar failed to prove violations of Rule 3.4 (j), since there was insufficient evidence that the Respondent asserted his position on child support “merely” to harass or maliciously injure another. The bar’s evidence did not rule out other reasons for his taking the position.

Respondent’s misconduct arose in the midst of his *pro se* child support litigation in Grayson County Circuit Court, Timothy M. Barrett v. Commonwealth of Virginia, Department of Social Services, Division of Child Support Enforcement, Ex. Rel Valerie Jill Rhudy Barrett, Chancery No. 03-44. On March 9, 2006, the circuit court entered an order awarding Jill Barrett “sole legal and physical custody” of the Barrett children. The court awarded Respondent visitation. Thereafter, Respondent argued before the Grayson County Circuit Court and the Virginia Court of Appeals that as a non-custodial parent of five children, he had no duty to pay support for the children.

In his repeated arguments by brief and oral argument to the Grayson Circuit Court and to the Virginia Court of Appeals, Respondent equated the circuit court’s grant of sole custody to Jill Rhudy Barrett to the termination of his legal responsibility for the children.

While Respondent persisted with his arguments, Respondent paid no child support.<sup>2</sup> Jill Rhudy Barrett, the mother of Respondent’s children, received public assistance, Temporary Assistance to Needy Families, that amounted to less than one-third of the ultimate monthly child support the Grayson Circuit Court awarded.

To assist Jill Barrett in collecting the unpaid support and to enforce the Commonwealth’s statutory lien against Respondent for the TANF payments made during the pendency of Respondent’s litigation against his child support obligation, the Division of Child Support Enforcement intervened in the litigation. Counsel Stephanie Cangin for the Division of Child

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<sup>1</sup> Respondent introduced several exhibits through cross-examination of the bar’s witness Stephanie Cangin.

<sup>2</sup> After the Grayson County Circuit Court found Respondent owed support and found an arrearage of \$13,030.75 on June 4, 2007, Respondent paid support to avoid a contempt finding and a twelve month jail sentence.

Support Enforcement testified that between June, 2006 and July, 2007, Respondent's support matter in the Grayson County Circuit Court took a total of nine hearings. More time was expended in preparing for and arguing the matter before the Virginia Court of Appeals. In her ten years as counsel for the Division in over one thousand circuit court support cases, Cangin has never had to spend more than one-half of a day in court.

In finding that Respondent violated Rule 3.1, the Court finds that Respondent's arguments made in the Grayson County Circuit Court and the Virginia Court of Appeals were without merit and were frivolous. In support of his arguments in these courts, Respondent cited no decisional or statutory law. Moreover, in the circuit court he failed to make any argument for an extension, modification, or reversal of the existing law and failed to clearly make such an argument to the Court of Appeals. The Court notes that such an argument—if made, should have first been made to the circuit court.

In common law, the parent/child relationship was defined, in part, in terms of the legal duty of the parent to support his or her infant child; in that common law, there was no mechanism by which a parent's duty to support his or her child could be terminated. Therefore, termination arises as a creature of statute.

There are limited statutory circumstances under which a parent's rights could be terminated and therefore, that obligation of support can be divested. One is a true termination of parental rights case. Another circumstance of termination of parental rights—and therefore the obligation of support, occurs by statute with an adoption. Respondent's proceedings in the Grayson County courts involved neither termination of parental rights nor adoption.

Having found that Respondent violated Rule 3.1, the Court recessed on July 31, 2008 after Respondent requested that he be released from attending further proceedings on the morning of August 1, 2008. Having advised the Respondent that he had the right not to attend the further proceedings, the Court noted that it would reconvene at 9:00 a.m. on August 1, 2008 for the sanctions phase of the proceedings.

The Court reconvened at 9:00 a.m. on August 1, 2008 with the Respondent not present. The bar moved the Court to revoke the law license of the Respondent, introduced evidence, and gave argument.

The Court received evidence of the Respondent's record of prior discipline of two suspensions of his license totaling 51 months. The court finds that Respondent's suspensions arose from similar improper conduct in litigation including prior violations of Rule 3.1.

Moreover, the Court finds that even after receiving a total of 51 months of suspension, Respondent engaged in yet more litigation misconduct not only in the support proceedings in Grayson Circuit Court and the Court of Appeals, but also in frivolous motions and positions in the course of these disciplinary proceedings before this Court. This included making accusations on April 4, 2008 to this Court that the bar engaged in deceit to him and *ex parte* communications with the Court. It included moving for sanctions against the bar when the bar sought to take a deposition by telephone per Rule 4:5(B)(7), and it included Respondent's objections to the bar's

introduction of attested copies of court records as not being "the best evidence." The Court finds that such misconduct suggests his failure and inability or unwillingness to grasp the nature and meaning of Rule 3.1.

The Court finds as most important Respondent's failure to afford any recognition that his conduct was unprofessional and his failure to state that he would modify his behavior. Indeed, Respondent stated to the Court that he would not modify his behavior. In failing to appear for the sanctions phase of this hearing, Respondent failed to offer the Court any alternative or reason to deny the bar's argument for revocation.

### SANCTION

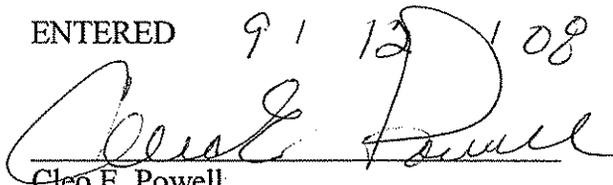
Having considered the arguments and evidence before it, the Court imposed a sanction of Revocation of Respondent's license to practice law in the Commonwealth of Virginia, effective immediately.

The Court orders counsel for the Virginia State Bar to draft a sketch order of the Court's findings. The bar shall file the sketch order with the Court and shall provide the Respondent with a copy thereof. The Respondent shall have ten days from the bar's mailing of the order in which to endorse the order, note any exceptions, and file it with the Court. If Respondent fails to do so within the ten day period, Respondent shall have waived his signature.

The court reporter who transcribed these proceedings is Teresa L. McLean, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, VA. 23227.

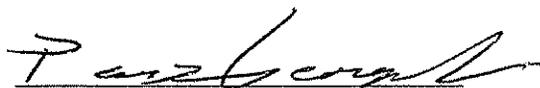
ENTERED

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Cleo E. Powell  
Chief Judge Designate

I ASK FOR THIS:



Paul D. Georgiadis, VSB #26340  
Assistant Bar Counsel  
Virginia State Bar  
707 East Main St., #1500  
Richmond, VA 23219  
Phone: 804-775-0520  
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SEEN AND OBJECTED TO: FOR THE REASONS SPECIFIED ON THE ATTACHED  
RESPONDANT'S OBJECTIONS TO THE PANEL'S ORDER

Timothy M. Barrett  
Timothy Martin Barrett, Esq.  
108 Galaxy Way  
Yorktown, VA 23693

A COPY TESTE:

Lynn S. Mendibur, Clerk

York Co. - Poquoson, VA Circuit Court

Lynn S. Mendibur, D.C.

VIRGINIA: IN THE CIRCUIT COURT FOR YORK COUNTY

VIRGINIA STATE BAR,

Petitioner,

v.

CASE NUMBER: 08-1511

TIMOTHY M. BARRETT,

Respondent.

RESPONDENT'S OBJECTIONS TO THE PANEL'S ORDER

COMES NOW the Respondent, Timothy M. Barrett, *pro se*, and for his objections to the Three Judge Panel of the Circuit Court of York County states as follows:

1. That the Panel erred in failing to rule that the matter be dismissed due to lack of jurisdiction since the Respondent was a non-lawyer within the meaning of Virginia law and therefore not subject to the Rules of Professional Conduct.
2. That the Panel erred in failing to rule that the matter be dismissed on the basis that applying the Rules of Professional conduct to a lawyer representing himself violates the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S Constitution.
3. That the Panel erred in finding that the Respondent violated Rule 3.1 of the Rules of Professional Conduct since the at-issue arguments made by the Respondent before the Circuit Court of Grayson County and then before the Court of Appeals were not frivolous as a matter of law.
4. That the sanction imposed by the Panel was too harsh in that it was based on a finding that the Respondent has misconducted himself in violation of Rule 3.1 during the hearing in violation of his right to due process, was based on findings that are contrary to and not supported by the record, and misallocated the burden of proof.

TIMOTHY M. BARRETT

By: Timothy M. Barrett  
Pro Se Respondent

Mr. Timothy M. Barrett  
108 Galaxy Way  
Yorktown, Virginia 23696  
(757) 342-1671

**CERTIFICATE OF SERVICE**

I, Timothy M. Barrett, do hereby certify that a true and accurate copy of the foregoing Respondent's Objections to the Panel's Order was served via U.S. Mail on Mr. Paul D. Geogiadis, Esquire, 707 East Main Street, Suite 1500, Richmond, Virginia 23129, on this, the 29<sup>th</sup> day of August, 2008.

*Timothy M. Barrett*

\_\_\_\_\_  
Timothy M. Barrett

**A COPY TESTE:**

Lynn S. Mendibur, Clerk

York Co. - Poquoson, VA Circuit Court

By: *Catherine Bender*, D.C.