

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

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VIRGINIA STATE BAR EX REL.
SECOND DISTRICT COMMITTEE

MAY - 9 2007

Complainant

VIRGINIA STATE BAR

CH 05-1488

v.

TIMOTHY M. BARRETT

received

Respondent

MAY 9 2007

(In the Matters of Timothy M. Barrett
VSB Docket No. 04-022-1309 (DuBay)
VSB Docket No. 04-022-2179 (Jill Barrett))

VSB CLERK'S OFFICE

MEMORANDUM ORDER

Having been remanded to this Court by order of the Virginia Supreme Court dated October 4, 2006 for consideration of an appropriate sanction for violations of Rules of Professional Conduct 4.4, 8.4(b), 3.1, and 3.4 (j), this cause came to be heard on March 28, 2007 by a duly convened, three-judge court consisting of the Honorable William H. Ledbetter, Retired Judge, the Honorable Randolph T. West, Retired Judge, and the Honorable William N. Alexander, Chief Judge Presiding. The Virginia State Bar appeared by its Assistant Bar Counsel Paul D. Georgiadis. The Respondent, Timothy M. Barrett, was present and appeared *pro se*. Upon the request of the Respondent and agreement of the bar and the Court, this matter was heard in the Circuit Court of York County. On March 28, 2007, the Court convened at 10:00 a.m.

Having previously filed a motion to dismiss, the Respondent argued his motion to dismiss based upon equal protection grounds. The bar opposed the motion. After considering the arguments of the parties, the Court

DENIED the motion, finding that the Respondent waived his argument by failing to raise it on appeal. The Court further found that its mandate is limited to considering the issue of the sanction as ordered by the Supreme Court. The Court further found that the Supreme Court already ruled on the issue when it held that "it would be manifest absurdity and a distortion of these rules if a lawyer representing himself commits an act that violates the rules but is able to escape accountability for such violation solely because the lawyer is representing himself and that the three rules at issue address acts Respondent took while functioning as an attorney." The Court also found that Respondent was representing himself and that the application of the Rules to him did not violate the Fourteenth Amendment of the United States.

Having previously filed a motion to in *limine* as to any new evidence, the Respondent argued said motion, which was opposed by the bar. The bar proffered that it wished to move into evidence Respondent's complete disciplinary record to include a sanction on May 23, 2006 for misconduct pre-dating the misconduct in the instant case. Having received and considered the arguments of the parties, the Court

DENIED Respondent's motion, finding that Pt. 6, Section IV, Paragraph 13(e) of the Rules of Court provided for the admission of material evidence in aggravation or mitigation. The Court found that under Paragraph 13(e) it would consider the evidence of the prior discipline, but would not allow further evidence by the bar.

Thereupon the Court received evidence of the Respondent's prior sanction imposed on May 23, 2006 of a suspension of twenty-six months and twenty-six days.

Thereupon the Respondent moved to limit the bar's sanction argument to no more than the six month suspension previously argued by the bar based upon judicial estoppel. The bar opposed the motion. Upon consideration of the arguments, the Court

OVERRULED Respondent's motion finding that judicial estoppel did not apply.

Thereupon the Respondent renewed his motion to strike the testimony of Hayden DuBay appearing on page 298-300 the transcript of the proceedings of August 12, 2005 as non-responsive. The bar opposed the motion. Having considered the arguments of counsel, the Court

OVERRULED the objection.

SANCTION

Having considered the arguments and evidence before it, the Court imposed a sanction of 12 months for the violations of Rules of Professional Conduct 4.4 and 8.4(d) previously found in VSB Docket No. 04-022-1309. For the violations of Rules of Professional Conduct 3.1 and 3.4(j) previously found in VSB Docket No. 04-022-2179, the Court imposed a second sanction of 12 months. The total sanction of a suspension of 24 months, effective March 28, 2007, shall run consecutive to —and not concurrent with any prior suspension imposed against the Respondent.

The court reporter who transcribed these proceedings is Stefania Smith of Ron Graham & Associates, 5344 Hickory Ridge, Va Beach, VA 23455-6680.

ENTERED

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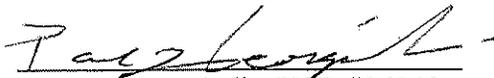

William N. Alexander, II
Chief Judge Designate

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VIRGINIA BEACH, VA.

BY:

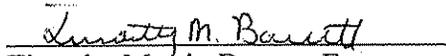

DEPUTY CLERK

I ASK FOR THIS:



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SEEN AND OBJECTED TO:



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