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VIRGINIA :

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX **VSB CLERK'S OFFICE**

VIRGINIA STATE BAR *EX REL*
FIFTH DISTRICT COMMITTEE SECTION I,

Complainant,

v.

Case No. CL2006-10927

MICHAEL JACKSON BEATTIE, ESQUIRE,

Respondent.

ORDER OF SUSPENSION, WITH TERMS

This matter came before the Three-Judge Court empaneled on October 23, 2006, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended. A written Agreed Disposition, dated February 2, 2007, was tendered by the parties to the Three-Judge Court, consisting of the Honorable Alfred D. Swersky and Frank A. Hoss, Jr., retired Judges of the Eighteenth and Thirty-first Judicial Circuits, respectively, and the Honorable Cleo E. Powell, Judge of the Twelfth Judicial Circuit and Chief Judge of the Three-Judge Court.

The Judges of the Three-Judge Court deliberated on February 6, 2007, and determined that the terms and provisions of the parties' Agreed Disposition should be accepted by the Court. Accordingly, the Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Michael Jackson Beattie, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On August 13, 2003, the Honorable Rebecca Beach Smith, presiding in the United

States District Court for the Eastern District of Virginia, at Norfolk, entered an Order indefinitely suspending the Respondent "from practice before this court¹ for all future cases, absent further order of the court." The suspension was included in the relief granted on a motion for sanctions filed in a civil action on behalf of a party adverse to the Respondent's client. By Order of the Disciplinary Board of the Virginia State Bar, dated August 26, 2005, the Respondent's license to practice law in Virginia was suspended for sixty (60) days for Respondent's ethical misconduct which gave rise to the aforesaid indefinite suspension.

VSB Docket Number 05-051-4499

3. In July of 2003, the Complainant, Kimberly L. Jeffers, hired the Respondent to represent her in a sexual discrimination case against her former employer, Mount Vernon Hospital. She signed a fee agreement with the Respondent and paid him a total of \$7,000.00 in advance fees. When the Respondent was suspended in August of 2003 by Judge Smith, he did not inform Ms. Jeffers of his decision not to appear in any federal court in the Eastern District of Virginia.

4. Ms. Jeffers rarely heard from the Respondent regarding her case. During the course of representation, Respondent informed her that her file had been stolen by a former member of his support staff. This news upset Ms. Jeffers because the file contained personal information such as her address and social security number.

5. In July of 2004, Respondent's law firm filed an action in the United States District Court for the Eastern District of Virginia on Ms. Jeffers's behalf. The Respondent persuaded a

¹ Respondent has consistently maintained in filings before the Eastern District and Fourth Circuit that the Order of August 13, 2003, was not entered pursuant to the Eastern District Local Rule governing attorney discipline; and, therefore, the Order was limited in application to cases before Judge Smith. In an abundance of caution, Respondent did not thereafter enter an appearance in any future case filed within any Division of the Eastern District.

part-time contract attorney to draft and sign the pleadings. The pleading listed Beattie & Associates as the firm of record. That part-time attorney thought her involvement in the case ended when she provided the Respondent with the pleading. The Respondent and attorneys associated with his firm failed to confer with opposing counsel regarding discovery, produced Fed. R. Civ. P. 26(a) discovery disclosures nominally out of time, failed to comply with the Court's Scheduling Order of December 15, 2004, failed to appear at the initial pre-trial conference in January of 2005, and failed to appear for a final pre-trial conference on April 21, 2005. Although the presiding federal judge permitted some relief to Ms. Jeffers by way of discovery, and an opportunity to challenge the adverse party's motion for summary judgment on the merits, the case was ultimately dismissed on summary judgment.

VSB Docket Number 06-051-0125

6. In the spring of 2005, the Respondent contacted the Complainant, James C. Brincefield, Esquire, to request his assistance in the Jeffers case. The Respondent informed Mr. Brincefield that an associate in his law firm had just left the firm unexpectedly, leaving the firm short-staffed. The Respondent went on to explain that one of his clients was scheduled to give a deposition but no attorney in his firm was available to defend the client that particular day. The Respondent has stated to the Bar that he told Mr. Brincefield that he was "not licensed" in the federal courts of the Eastern District of Virginia. He asked Mr. Brincefield if his firm might be willing to help him out at the deposition. Mr. Brincefield agreed to help and assigned an attorney in his firm to meet with the Respondent's client and then attend the deposition with the client. During that and subsequent conversations, the Respondent agreed to send an advance against fees for the legal assistance to Mr. Brincefield's firm in the amount of \$1,000.00. During the

deposition, Mr. Brincefield's associate informed defense counsel that he and his firm had no intention of entering an appearance in the case, that they were just helping out the Respondent's firm at the deposition because the firm was suddenly short-staffed.

7. After the deposition, the Respondent contacted Mr. Brincefield again and requested that, since he was still short staffed, Mr. Brincefield or an associate "cover" a final pre-trial conference and a hearing on a motion for summary judgment. Mr. Brincefield declined, telling the Respondent he was not prepared to enter his appearance on Ms. Jeffers's behalf at such short notice and without meeting with her.

8. Subsequently, Mr. Brincefield learned that the case was dismissed on the motion for summary judgment, as well as the facts suggesting that Respondent had not been forthright concerning the status of his license. The Respondent did not pay Mr. Brincefield's firm the promised advance, or additional sums accrued for services rendered, until January 2007.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Michael Jackson Beattie, Esquire, constitutes a violation of the following provisions of the 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.

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) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law[.]

RULE 5.1 Responsibilities Of A Partner Or Supervisory Lawyer

- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
 - (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty. . . which reflects adversely on the lawyer's fitness to practice law[.]

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a **SUSPENSION, WITH TERMS**, subject to the terms and alternative disposition set forth below:

1. Subject to the provisions set forth below, the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of six (6) months, commencing on March 7, 2007, which suspension represents an appropriate sanction if this matter were to have been heard.

2. For a period of three (3) years following the date of entry of this Order, the Respondent shall engage in no conduct which violates any provisions of Virginia Rules of Professional Conduct 1.3, 1.4, 5.1, or 8.4, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this Paragraph 2 shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by any disciplinary tribunal which contains a finding that Respondent has violated one or more provisions of the disciplinary rules referred to above; *provided, however*, that the conduct upon which such finding was based occurred within the three-year period referred to above, and *provided, further*, that such ruling has become final.

3. Subject to the provisions appearing below, when the Respondent resumes the private practice of law as a Virginia-licensed attorney following the term of his suspension, he shall thereupon promptly engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to review and make written recommendations concerning Respondent's law practice policies, methods, systems, and procedures. Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by Ms. Johnston following her evaluation of the Respondent's law practice. Respondent shall grant Ms. Johnston access to his practice from time to time, at Ms. Johnston's request, for purposes of ensuring that Respondent has instituted and is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). Respondent will have discharged his obligations respecting the terms contained in this Paragraph if he has fulfilled and remained in compliance with all of the terms contained in this Paragraph 3 for a period of one (1) year following the date of his engagement of Ms. Johnston's services. The provisions of this Paragraph 3 shall *not* apply during any period while Respondent is engaged in the private practice of law as a *bona fide* employee of a law firm or other business entity in which Respondent has no interest whatsoever as owner, shareholder, director, officer, partner, member, or manager; *provided, however*, that if and when the Respondent ceases to be a *bona fide* employee under the conditions referred to above, he shall engage, or re-engage, Ms.

Johnston pursuant to the terms and conditions set forth above for the balance of the said one (1) year period, it being specifically intended that Respondent have the benefit and comply with Ms. Johnston's evaluation and recommendations for a period which, in the aggregate, covers a period of one (1) year.

4. Should the Respondent fail to comply with the terms set forth in the immediately preceding Paragraphs 2 and 3, he shall receive a three (3) year suspension of his license to practice law in the Commonwealth of Virginia, *in addition to* the six (6) month suspension referred to above, as an alternative disposition of this matter.

5. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a "show cause" proceeding pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.2.g. will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein.

6. The Respondent shall comply with the provisions of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia.

7. Pursuant to Part 6, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

8. The allegations contained in the Certification, with respect to Docket 05-051-4341, are hereby dismissed for lack of clear and convincing evidence.

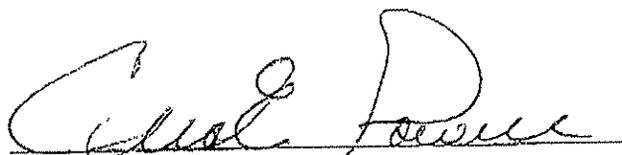
9. The provisions of this Order shall not be interpreted as precluding Respondent's right to provide any service for which a license to practice law is not required; and it is further

ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of Fairfax County, Virginia, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court dispenses with any requirement that this Order be endorsed by counsel of record for the parties.

ENTERED this 13th day of February, 2007.

FOR THE THREE-JUDGE COURT:



CLEO E. POWELL

Circuit Judge and Chief Judge of Three-Judge Court