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VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROANOKE DEC 1 2008

VIRGINIA STATE BAR EX REL  
EIGHTH DISTRICT COMMITTEE,

VSB CLERK'S OFFICE

Complainant

v.

Case No: CL08-1001  
VSB Docket No.: 07-080-1397

JENNINGS T. BIRD

Respondent

ICC to:  
J. Bird  
J. Geiger  
K. Montgomery  
B. Lanier

ORDER  
(PUBLIC REPRIMAND)

SCAN  
11-26-08

This matter came before the Three-Judge Panel consisting of The Honorable Coline R. Gibb of the Twenty-seventh Judicial Circuit, designated as Chief Judge, The Honorable James E. Kulp, Retired Judge of the Fourteenth Judicial Circuit, and The Honorable Marc Jacobson, Retired Judge of the Fourth Judicial Circuit, which was empanelled by designation of the Chief Justice of the Supreme Court of Virginia pursuant to §54.1-3935 of the Code of Virginia. The parties, the Virginia State Bar, by Assistant Bar Counsel Kathryn R. Montgomery, and the respondent Jennings T. Bird ("Respondent"), by counsel Jeffrey H. Geiger, appeared telephonically and presented for approval an Agreed Disposition for Public Reprimand pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia. The proceedings were recorded by stenographic means by Chandler & Halaz, Inc., P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

The Court, having reviewed the Agreed Disposition and having considered the statements of counsel, hereby approves the Agreed Disposition of the parties and hereby finds by clear and convincing proof the following:

I. FINDINGS OF FACT

1. Respondent was admitted to practice law in the Commonwealth of Virginia in 1965 and was in good standing with the bar at all times relevant to this matter.

2. Complainants are David J. Damico, Kristen Konrad Johnstone, and Diana Perkinson. At all times relevant to this matter, all complainants were admitted to practice law in the Commonwealth of Virginia and were in good standing.

3. In 2006, Respondent represented the mother in a custody dispute pending in Roanoke City Juvenile & Domestic Relations Court. The mother had custody of the child, which the father sought to alter due to his concerns about the child's welfare while in the mother's care.

4. Complainant David J. Damico represented the father in the custody dispute. Complainant Diana Perkinson was guardian *ad litem* for the child.

5. Trial was set for September 1, 2006. Prior to trial, Respondent subpoenaed six witnesses to appear. Mr. Damico subpoenaed one witness to appear, Jennifer Ridgeway Wood. Respondent did not issue a subpoena for Ms. Wood's appearance.

6. The subpoena for Ms. Wood was issued on August 17, 2006, but not served until the morning of August 31, 2006. Ms. Wood was the child's teacher and was served by a private process server at her place of employment, an elementary school.

7. On August 31, 2006, after Ms. Wood had been served with the subpoena, Respondent arrived at the elementary school to interview her. At the time of the

interview with the Virginia State Bar investigator, Ms. Wood stated she did not know who had issued the subpoena for her appearance.

8. Ms. Wood's answers to Respondent's questions were not supportive of Respondent's client. Ms. Wood later told the Virginia State Bar investigator that she felt frazzled and intimidated by Respondent during the interview. The Respondent advised the Virginia State Bar investigator that Ms. Wood appeared composed and reserved, was openly and emphatically adverse to his client, but was not hostile.

9. At the conclusion of the interview, Ms. Wood asked the Respondent whether she would be required to appear in Court the next day. He responded that he would not call her as a witness. Ms. Wood then asked about the subpoena. The Respondent replied that she was released from any subpoena that he had served upon her and, at Ms. Wood's request, agreed to put that in writing.

10. Following the interview, Respondent went to his office. A short time later, he returned to the elementary school with a letter for Ms. Wood. The letter read:

Dear Mrs. Wood:

I appreciate the opportunity to talk with you this morning. Most of what you were able to tell me appears in the Custody Assessment report prepared by Alice Booker, and I see no need to interfere with your schedule any further.

Please accept this note as a release of the Subpoena served on you. If you have any questions, please call.

Very truly yours, THE BIRD LAW FIRM, P.C.  
Jennings T. Bird.

11. After Ms. Wood received this letter, she met with the school's principal to discuss the interview, the subpoena, and the letter. Ms. Wood later told the Virginia State

Bar investigator that at that time, she was confused about whether she would be required to testify in court the next day.

12. Complainant Kristen Konrad Johnstone was at the elementary school on personal business when Ms. Wood was meeting with the principal. The principal and Ms. Wood approached Ms. Johnstone and showed her the subpoena and Respondent's letter. Ms. Johnstone informed them that Respondent did not have the authority to release Ms. Wood from the subpoena because he did not issue it. Ms. Johnstone advised Ms. Wood that she was still under subpoena and should appear at trial the next day.

13. Ms. Johnstone then contacted the assigned social worker about the letter and learned that the guardian *ad litem* was Diana Perkinson. Complainant Diana Perkinson was then contacted and appeared at the elementary school that afternoon. Ms. Perkinson reviewed the subpoena and Respondent's letter and advised Ms. Wood that Respondent did not have authority to release her from the subpoena and that she should appear at court the following day.

14. That evening, complainant David J. Damico spoke with Ms. Wood by telephone and advised her that she was still under subpoena to testify at the trial the next day.

15. The following day, September 1, 2006, Ms. Wood appeared at the Roanoke City Juvenile & Domestic Relations Court and testified.

## II. RULES OF PROFESSIONAL CONDUCT

Based upon the factual findings above, the Court finds by clear and convincing evidence that Respondent violated the following Rule of Professional Conduct:

**RULE 3.4 Fairness To Opposing Party And Counsel**

A lawyer shall not:

- (a) Obstruct another party's access to evidence or alter, destroy or conceal a document or other material having potential evidentiary value for the purpose of obstructing a party's access to evidence. A lawyer shall not counsel or assist another person to do any such act.

### III. DISPOSITION

Having reviewed and approved the proposed Agreed Disposition for a Public Reprimand and having heard the statements of counsel and of Respondent, and finding that is just and proper to do so, it is hereby ORDERED that Respondent receive a Public Reprimand and he is so reprimanded.

It is further ORDERED that this case is hereby DISMISSED.

It is further ORDERED that the Clerk of the Disciplinary System shall assess the appropriate administrative fees, and the Clerk of the Circuit Court of Roanoke County shall mail a certified copy of this Order to:

Jennings T. Bird, Esquire  
The Bird Law Firm, P.C.  
P.O. Box 2795  
Roanoke, VA 24001-2795

Jeffrey H. Geiger, Esquire  
Sands Anderson Marks & Miller  
801 East Main Street  
P.O. Box 1998  
Richmond, VA 23218-1998

Kathryn R. Montgomery, Esquire  
Assistant Bar Counsel  
Virginia State Bar  
707 E. Main Street  
Ste. 1500  
Richmond, VA 23219

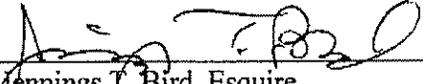
Barbara S. Lanier, Clerk of the Disciplinary System  
Virginia State Bar  
707 E. Main Street

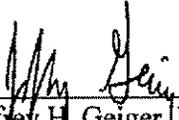
Ste. 1500  
Richmond, VA 23219

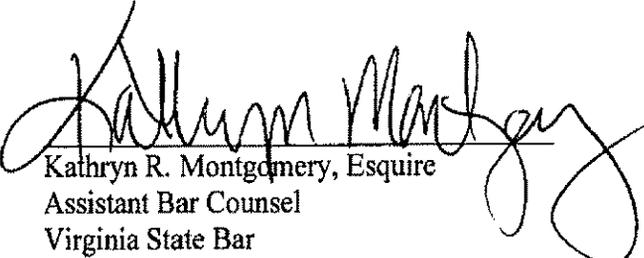
ENTERED THIS 21<sup>st</sup> DAY OF November, 2008.

  
\_\_\_\_\_  
Chief Judge

WE ASK FOR THIS:

  
\_\_\_\_\_  
Jennings T. Bird, Esquire  
Respondent

  
\_\_\_\_\_  
Jeffrey H. Geiger, Esquire  
Respondent's Counsel

  
\_\_\_\_\_  
Kathryn R. Montgomery, Esquire  
Assistant Bar Counsel  
Virginia State Bar

A COPY TESTE: STEVEN A. MCGRAW, CLERK  
CIRCUIT COURT, ROANOKE COUNTY, VA.

BY   
\_\_\_\_\_  
DEPUTY CLERK