

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

JAMES PEARCE BRICE, JR.

VSB DOCKET NO. 15-022-101055

AGREED DISPOSITION MEMORANDUM ORDER

On March 10, 2016, this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by the Rules of the Supreme Court of Virginia. The panel consisted of Esther J. Windmueller, 2nd Vice Chair, John A. Dezio, Thomas O. Bondurant, Jr., Jeffrey L. Marks, and Sandra W. Montgomery, Lay Member. The Virginia State Bar was represented by Edward L. Davis, Bar Counsel. James Pearce Brice, Jr., was present and not represented by counsel. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Tracy Stroh, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Disciplinary Record and any responsive pleadings of counsel,

It is **ORDERED** that the Board accepts the Agreed Disposition and the Respondent shall receive a Suspension with terms of his license to practice law in the Commonwealth of Virginia for a period of three (3) months, effective March 25, 2016, as set forth in the Agreed Disposition, which is attached to this Memorandum Order.

It is further **ORDERED** that the sanction is effective March 25, 2016.

It is further **ORDERED** that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail 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 client. Respondent shall give such notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Suspension, he shall submit an affidavit to that effect within 60 days of the effective date of the Suspension to the Clerk of the Disciplinary System at the Virginia State Bar.

All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9 E. of the Rules.

A copy teste of this Order shall be mailed by Certified Mail, return receipt requested to James Pearce Brice, Jr., at his last address of record, Law Office of James P. Brice, Jr., 3500 Virginia Beach Blvd, Suite 617, Virginia Beach, Virginia 23452, with the Virginia State Bar and hand-delivered to Edward L. Davis, Bar Counsel, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026.

ENTERED THIS 10 DAY OF March, 2016

VIRGINIA STATE BAR DISCIPLINARY BOARD



Esther J. Windmueller, 2nd Vice Chair

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BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES PEARCE BRICE, JR.

VSB Docket No. 15-022-101055

AGREED DISPOSITION
(Suspension with Terms)

Pursuant to the Rules of the Virginia Supreme Court Rules of Court Part 6, Section IV, Paragraph 13-6.II., the Virginia State Bar, by Edward L. Davis, Bar Counsel and James Pearce Brice, Jr., Respondent, *pro se*, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia. On or about July 27, 2013, Carlton Sherrod ("Sherrod") retained Respondent to represent him in a claim against the Virginia Department of Corrections. At all times relevant hereto, Sherrod has been an inmate of the Department of Corrections.
2. On or about June 27, 2014, the Virginia State Bar Disciplinary Board ("Board") suspended Respondent's license to practice law for a period of one year and one day effective June 27, 2014. At that time, Respondent was still representing Sherrod.
3. After being informed that some institutions do not sign for registered mail, Respondent asked bar counsel to dispense with the requirement of certified letter to clients in jails and penitentiaries. The letter to Sherrod was mailed without the designation "legal mail." It was not recorded as delivered to Sherrod at any of his prior places of incarceration. Pursuant to current DOC postal regulations, only mail designated "legal mail" is recorded. Sherrod was mentioned in a follow up letter from Respondent to the Clerk of the Disciplinary System relating to his efforts to comply. In subsequent months, Respondent sent several letters to Sherrod related to the statute of limitations and alternate counsel.

4. Sherrod did not receive notice of Respondent's license suspension until Respondent's letter, dated August 29, 2014, notifying him of the suspension.
5. Following his June 27, 2014, license suspension, without Sherrod's consent or knowledge, Respondent forwarded Sherrod's client file to attorney Richard Conrod for his handling.
6. On or about October 30, 2014, Sherrod filed an inquiry with the Virginia State Bar alleging, inter alia, that Respondent had failed to forward his entire file to him. When Respondent inquired of Mr. Conrod about the file, he was told it was sent to Sherrod in the DOC. He provided the cover letter he sent with the file, the disclosure of which is the basis for the complaint. Therein, Mr. Conrod misspelled Sherrod's name. Respondent responded to the Bar Inquiry by letter to the warden where he indicated the file had not been received by Mr. Sherrod. The offending cover letter, while referencing a suit, did not disclose the name of the defendant or any information about the suit. Respondent would assert that prison regulations require that all inmate mail is opened in the inmate's presence.
7. On or about November 17, 2014, instead of limiting his inquiry to the warden by requesting a search to be made for the file under the misspelled name, Respondent faxed both Conrod's complete cover letter, a confidential communication, with his own request for a file search to the warden's office at Greensville Correctional Center with no consent from Sherrod. Respondent received no response as to where the file is located. Sherrod did not receive the transmissions until over one week later.
8. Respondent's cover letter to the aforesaid facsimile transmission, dated November 17, 2014 incorrectly advised Sherrod that he had no medical records in the file.
9. Respondent would assert that after receiving the original complaint in the Sherrod matter in February, Respondent performed a search of his electronic files for all material related to Sherrod and discovered a letter addressed to Sherrod informing him of his suspension and an associated envelope with a prison address. He also found medical records that had been scanned to his computer hard drive before his suspension. Respondent would assert he mailed the stored computer records in February 2015 in order to ensure Sherrod received them despite his prior letter, as Respondent was never informed to whether Sherrod ever received his file, where

Respondent assumed the original medical records were stored but possibly still missing. Notwithstanding his duty to forward to Sherrod his medical records following one or more requests made to Respondent, Respondent failed to forward said records until February 18, 2015.

II. MITIGATION

1. Respondent would say that he sent the case file to attorney Richard Conrod in an attempt to protect his client's interests, that in doing so it was not his intent to breach the attorney-client privilege, but to comply with his duty to protect his client's interest pursuant to Rule 1.16.
2. Respondent would say that when he first mailed his client notice of the suspension of his law license on July 11, 2014, that he did not place the words "legal mail" on the envelope and that for this reason Respondent believes that the prison would not record the receipt of his letter. Respondent sent another notice of his law license suspension to his client on August 29, 2014, that the client received.
3. Respondent cooperated with the Virginia State Bar throughout the investigation of this matter.

III. NATURE OF MISCONDUCT

The parties agree that the foregoing conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are *impliedly* authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing

time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer-client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

IV. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of the Suspension of his license to practice law in the Commonwealth of Virginia for a period of three (3) months, effective March 25, 2016, the date that this matter is scheduled to be heard by the Virginia State Bar Disciplinary Board, as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. The terms with which the Respondent must comply are as follows:

1. No later than thirty (30) days from the date that this matter is scheduled for hearing, or by April 25, 2016, Respondent will hire Paul D. Georgiadis, Esquire, to review, restructure and monitor compliance of Respondent's law office practice and procedures in the areas of trust accounting, client communications policies, case management and docket control. (Respondent may reach Mr. Georgiadis by calling 804-648-7565 or by email at pdg@parkhaley.com.)
 - a. Respondent shall promptly inform Bar Counsel Edward L. Davis, Suite 700, 1111 East Main Street, Richmond, VA 23219-3565, in writing when he has hired Mr. Georgiadis.
 - b. Respondent will pay Mr. Georgiadis' fee of \$5,000 in three payment stages: (1) upon Mr. Georgiadis' commencement of work, (2) upon Mr. Georgiadis' release of an initial/preliminary report, and (3) upon Mr. Georgiadis' issuing a final report. Respondent will also pay Mr. Georgiadis' reasonable travel expenses as required by Mr. Georgiadis.
 - c. Respondent will ensure that Mr. Georgiadis reviews the order of suspension in the present case, that he conducts an on-site review of Respondent's critical practices and procedures, that he prepares a preliminary audit report with recommendations for restructuring the practice, that he conducts a review for compliance with the recommendations, and that he prepares a final audit report, all within six months of the date that Respondent hires him, or by October 25, 2016.
 - d. Respondent will comply with Mr. Georgiadis' requests for information and documents, and allow him access to Respondent's office upon request.
 - e. In the event Mr. Georgiadis determines that Respondent's law office practices and procedures require corrective measures, Respondent will ensure that Mr. Georgiadis makes such report to the Bar Counsel's office.
 - f. Following the date that Mr. Georgiadis issues his written statement of the measures Respondent must take to institute such changes, Respondent shall institute such measures.
 - g. Respondent shall grant Mr. Georgiadis access to the Respondent's office to determine whether the Respondent has instituted such measures. Respondent shall ensure that Mr. Georgiadis certifies in writing to the Bar Counsel's office and to the Respondent either that the Respondent has instituted the recommended measures by October 25, 2016, or that he has failed to do so.
 - h. The Respondent's failure to conform his law office management practices and procedures of the mentor's recommendations by the October 25, 2016 deadline shall be considered a violation of the Terms set forth herein.

2. Not later than October 25, 2016, Respondent shall fully participate in an evaluation conducted by Lawyers Helping Lawyers ("LHL") and shall implement all of LHL's recommendations. The Respondent shall enter into a written contract with LHL for a minimum period of one (1) year and shall comply with the terms of such contract, including, *inter alia*, personally meeting with LHL and its professionals, as directed. The Respondent authorizes LHL to provide periodic reports to the Office of Bar Counsel stating whether the Respondent is in compliance with LHL's contract with the Respondent. The Office of Bar Counsel shall be bound by LHL's contract with the Respondent with respect to confidentiality and disclosure of information.

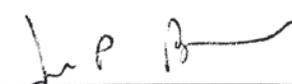
Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall Revoke Respondent's license to practice law in the Commonwealth of Virginia pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

THE VIRGINIA STATE BAR

By:


Edward L. Davis, Bar Counsel


James Pearce Brice, Jr., Respondent