

VIRGINIA: BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF JAMES PEARCE BRICE, JR.
VSB DOCKET NO. 14-000-099439

ORDER OF SUSPENSION

This matter came to be heard on June 27, 2014 before a duly convened panel of the Virginia State Bar Disciplinary Board on a certified Notice of Show Cause Hearing for Failure to Comply with Paragraph 13-29, dated June 4, 2014, enclosing the Rule to Show Cause Order, dated June 4, 2014, with the Petition for a Rule to Show Cause for Violation of Board Order entered in VSB Docket No. 13-022-093126. The panel consisted of Whitney G. Saunders, 2nd Vice Chair (presiding Chair); R. Lucas Hobbs, Melissa W. Robinson, John A.C. Keith, and Stephen A. Wannall, lay member. Sandra Montgomery, an incoming member of the Board, was also present but took no part in the panel's deliberations.

The Virginia State Bar was represented by Paul Georgiadis, Assistant Bar Counsel. Respondent James Pearce Brice, Jr. was present and was represented by John Monaghan. Tracy J. Stroh, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding. The Chair polled members of the Panel regarding any personal or financial interest or conflict they might have which would preclude them from fairly hearing the matter before them. Each member, including the presiding Chair, responded in the negative.

The panel heard opening statements from the parties. The Bar elicited sworn testimony from Paul Powers, an Assistant Commonwealth's Attorney for the City of Virginia Beach, and Respondent. Powers' testimony, together with the Bar's Exhibit B, noted below, established that Respondent had several cases pending with the Commonwealth Attorney's Office for the City of Virginia Beach at the time his suspension was imposed and that Respondent did not provide the required notice to that Office. Powers also testified that Respondent discussed one of those cases with Powers during the time of Respondent's suspension, but did not disclose the fact of his suspension at that time.

Respondent did not dispute those facts during his testimony. Respondent testified that he was handling between 30 and 35 cases at the time of his suspension. He testified that the majority of those cases were criminal cases, and the majority of such criminal cases were in Virginia Beach. Respondent admitted that he had not notified all of his clients in a timely fashion. Respondent admitted that although the letters to his clients indicated that opposing counsel and any presiding judge were sent a carbon copy of the letter to the client, that no such carbon copies were sent. Instead, Respondent testified that he sent letters to each opposing counsel - other than the Commonwealth Attorney's Office for the City of Virginia Beach - a letter regarding his suspension, listing the cases with such counsel, and sent letters to the chief judge for each court in which he represented a client in a case, listing such cases in the court. However, Respondent produced no copies of any such letters to opposing counsel or judges. Respondent testified that he had not kept copies of all the letters he sent. He also testified that in at least one case, he did not send a

notice of his suspension to an individual who was a client of his on the effective date of his suspension, because that individual was represented by another lawyer by the time Respondent began sending out notices of his suspension to clients.

The Bar offered exhibits identified as Bar's Exhibits 1, A, B, C, D, and E, each of which was admitted without objection. Respondent offered an exhibit identified as Respondent's Exhibit A, consisting of several unopened letters Respondent had mailed to certain of his clients which had been returned to him. The letters were opened during the hearing in the presence of the Board and the parties. Without objection, Respondent's Exhibit A was admitted, both in their unopened and opened form. Respondent's Exhibit B, consisting of original mailing receipts to certain clients, counsel and judges, was also admitted without objection. Respondent's Exhibit C was also admitted into evidence. After deliberating and determining that Respondent had not met his burden of proof, the Board received Bar's Exhibit 2, consisting of Respondent's prior disciplinary record. Respondent also testified during the sanctions phase of the hearing.

FINDINGS OF FACT

The Board found the following facts:

Pursuant to an agreed disposition, on February 19, 2014, the Board suspended Respondent's license to practice law for 30 days. At the request of Respondent, that sanction was effective February 28, 2014. The Agreed Disposition Memorandum Order entered that day required the Respondent to comply with the notice requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Court. On February 24, 2014,

the clerk sent a copy of this Agreed Disposition Memorandum Order along with a letter to Respondent via certified mail at his address of record. The letter from the clerk transmitting the Order was delivered to Respondent's address of record on February 25, 2014.

By rule and Order, Respondent was required to (1) give written notice of his suspension to all clients, opposing counsel and presiding judges in pending litigation within fourteen days of the effective date of the suspension; (2) make appropriate arrangements for the disposition of the matters then in his care in conformity with his clients' wishes within forty-five days of the effective date of the suspension; and (3) furnish proof to the Bar that he timely notified his clients, opposing counsel, and presiding judges in writing and that he timely made appropriate arrangements for the disposition of his cases within sixty days of the effective date of the suspension.

With her February 24, 2014 mailing, the clerk included forms for Respondent to use to provide the required notice to his clients, opposing counsel and any presiding judge, as well as to the Bar.

After the sixty day period for notice to the Bar had elapsed, the clerk sent Respondent a notice reminding him of his duties under Paragraph 13-29 on April 30, 2014.

At no time did Respondent complete and submit the form affidavit to the Bar, indicating that he had provided the required notice. Prior to the hearing, but after the April 30 reminder notice, Respondent provided the Bar with copies of some mailing receipts, and later, some original cards acknowledging receipt of some document by certain persons, but failed - prior to the hearing - to provide the Bar

with the copy of any letter sent to his clients, opposing counsel or any presiding judge.

DISPOSITION

The Board takes compliance with Part Six, Section IV, Paragraph 13-29 seriously. A suspended lawyer has certain duties under that rule, and has the burden of proving his compliance.

In this case, Respondent concedes he did not fully comply with the requirements of the rule. He is also unable to meet his burden of proving that he otherwise substantially complied with the rule. He offered no letters, or copies thereof, which were delivered to any opposing counsel or judge. What notices he did send contained errors, asserting his period of suspension was for a shorter period of time than the 30 days agreed upon and imposed by this Board.

Upon hearing the testimony offered in this matter and reviewing the Exhibits entered herein, the Board finds that Respondent failed to comply with the requirements of Paragraph 13-29 as imposed upon him in the Order and that he failed to certify to the Bar his compliance within the sixty day period provided to him to do so. Accordingly, the Board finds that Respondent has not met his burden to show by clear and convincing evidence why his license to practice law should not be further suspended or revoked for failing to comply with the Summary and Memorandum Orders and Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. Upon such findings and following due deliberation of both the facts of the

case at hand and evidence presented as to the appropriate sanction to be imposed, it is therefore

ORDERED that Respondent's license to practice law within the Commonwealth of Virginia be and hereby is **SUSPENDED** for one year and one day, effective June 27, 2014; and it is further

ORDERED that, as directed in the Board's June 27, 2014 Summary Order in this matter, 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, return receipt requested, of the suspension of James Pearce Brice, Jr.'s license to practice law in the Commonwealth of Virginia, to all clients for whom James Pearce Brice, Jr. 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 clients. 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 June 27, 2014, he shall submit an affidavit to that effect 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

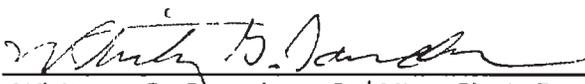
determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for a hearing before a three-judge court.

It is further **ORDERED** that, pursuant to Part Six, Section IV, Paragraph 13-29 (E) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against Respondent; and it is further

ORDERED that an attested copy of this Order be: mailed by certified mail to Respondent, James Pearce Brice, Jr., at his Virginia State Bar address of record, 3500 Virginia Beach Blvd., Ste. 217, Virginia Beach, VA 23452; and to John A. Monaghan, Counsel for Respondent, 1716 Baez Ct., Virginia Beach, VA 23464; and hand-delivered to Paul Georgiadis, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-3565.

ENTERED THIS 18 DAY OF ^{August}~~JULY~~, 2014 ^{11/12}.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Whitney-G. Saunders, 2nd Vice Chair Presiding