

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES PEARCE BRICE, JR.

VSB Docket No. 09-022-076815

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On the 14th day of April, 2010, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Paula M. Bruns, Esquire, member, Ms. Elizabeth Martingayle, lay member, and Jeffrey L. Marks, Esquire, Chair presiding to consider an Agreed Disposition entered into between the bar and James Pearce Brice, Jr.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, James Pearce Brice, Jr. ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or before August 30, 2005, David Strohecker retained Respondent for personal injuries suffered on July 13, 2005 in the course of a motorcycle accident. Strohecker and Respondent agreed to a standard contingency fee agreement of 33 1/3 % of any recovery short of trial, with a 40% fee if the matter proceeded to trial.
3. Strohecker alleged that he was injured while riding his motorcycle when he collided in an intersection with a Virginia Beach ambulance. The ambulance was proceeding slowly with its lights on but without its siren.
4. On July 12, 2007, Respondent filed a personal injury suit for Strohecker. On February 25, 2008, defense counsel noticed the deposition of Strohecker for March 26, 2008.

5. On or before March 17, 2008, Strohecker wrote to Respondent terminating his services, citing a series of personal conflicts and Respondent's "incompetent handling" of the matter. Respondent received the termination letter on or about March 19, 2008.
6. Although terminated by his client, Respondent remained as counsel of record until June 27, 2008. Notwithstanding his status of being terminated yet still counsel of record, Respondent failed to either appear at the deposition of his client or continue the deposition until he could withdraw. The deposition proceeded, and Strohecker was examined without the presence of Respondent.
7. At the deposition, opposing counsel tendered an order of withdrawal of Respondent for execution by Strohecker and all counsel present. After obtaining signatures for the order, counsel forwarded the order of withdrawal to Respondent on March 28, 2008 for his execution and filing. Respondent failed to execute the order.
8. On April 25, 2008, counsel again forwarded the order of withdrawal to Respondent. Respondent failed to endorse and present the order until June 13, 2008 which the court entered on June 27, 2008.
9. At no time during Respondent's representation did Respondent receive a single offer of settlement. Following Respondent's formal withdrawal, Strohecker voluntarily non-suited the matter on January 5, 2009 without receiving either a settlement or winning a judgment.
10. On July 25, 2008, Respondent filed suit against Strohecker in the Virginia Beach General District Court seeking the maximum jurisdictional limit of \$15,000 based upon a *quantum meruit* fee claim, notwithstanding that Strohecker at no time received any recovery.
11. On January 30, 2009, Respondent non-suited the case. Strohecker filed suit against Respondent on the date of the non-suit, and Respondent cross-claimed for the original *quantum meruit* fee claim. On April 14, 2009, Strohecker failed to appear and therefore Respondent won a default judgment for \$15,000, costs, and interest from June 25, 2008.
12. Respondent would testify and present evidence that Strohecker discharged him without cause in order to avoid paying Respondent's legal fees and costs.

II. NATURE OF MISCONDUCT

Such conduct by James Pearce Brice, Jr. constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- ...
- (3) the lawyer is discharged.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a PUBLIC Reprimand with Terms of this complaint. The terms and conditions are:

1. On or before June 1, 2010, Respondent shall mark "satisfied" his \$15,000 judgment won against David Strohecker on or about April 14, 2009 in the Virginia Beach General District Court.

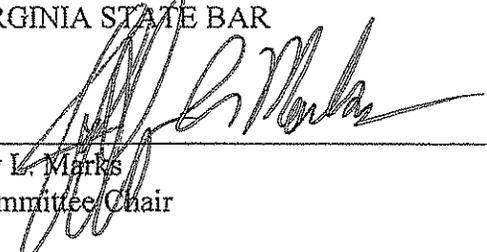
2. On or before June 1, 2010, Respondent shall provide written proof to Assistant Bar Counsel Georgiadis to include a copy of the judgment satisfaction.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by June 1, 2010, the specified date of terms compliance, this subcommittee shall impose a 15 day suspension of his license to practice law in the Commonwealth of Virginia, as agreed to in the parties' Agreed Disposition, subject to a Show Cause Hearing before the District Committee pursuant to Part Six, Section IV, Paragraph 13-15.F. of the Rules of Court. Respondent has waived his right to any show cause hearing before a three judge circuit court panel in the Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____


Jeffrey L. Marks
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on the 20th day of June, 2010, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (PUBLIC Reprimand with Terms) to James Pearce Brice, Jr., Esquire, Respondent, at Law Office of James P. Brice, Jr., Suite 217, 3500 Virginia Beach Boulevard, Virginia Beach, VA 23452, Respondent's last address of record with the Virginia State Bar.


Paul D. Georgiadis, Assistant Bar Counsel