

RECEIVED

DEC 28 2009

FILED

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE CITY OF NORFOLK  
VSB CLERK'S OFFICE 2009 DEC 18 PM 2:12

VIRGINIA STATE BAR EX REL  
SECOND DISTRICT COMMITTEE

NORFOLK  
CIRCUIT COURT CLERK

BY: \_\_\_\_\_ D.C.

Case No. CL09-5166

v.

CURTIS TYRONE BROWN

VSB Docket No. 08-021-072452

**MEMORANDUM ORDER**

This cause came to be heard on November 9, 2009 before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of the Honorable William H. Shaw, III, retired Judge of the Ninth Judicial Circuit, the Honorable George F. Tidey, retired Judge of the Fourteenth Judicial Circuit, and the Honorable Lisa B. Kemler, Judge of the Eighteenth Judicial Circuit, Chief Judge presiding. The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared in person *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against Respondent, Curtis Tyrone Brown, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Charge of Misconduct issued by a subcommittee of the Second District Committee of the Virginia State Bar.

The Chief Judge of the Three-Judge Court inquired of the members of the Three-Judge Court whether any had any personal or financial interest that would preclude the member from being impartial. After each answered in the negative, the Chief Judge of

the Three-Judge Court provided a preliminary explanation of the proceedings, at the conclusion of which Respondent objected to the stated dispositions available to the Three-Judge Court following the hearing. After hearing argument of counsel, the Three-Judge Court overruled Respondent's objection.

The Virginia State Bar presented its evidence, at the conclusion of which Respondent moved to strike the Virginia State Bar's evidence. After hearing argument of counsel, the Three-Judge Court unanimously overruled Respondent's motion to strike. Respondent was then afforded the opportunity to present evidence, and elected not to present any evidence. The parties then presented arguments as to whether the evidence proved any of the charged violations of the Virginia Rules of Professional Conduct under the clear and convincing standard. Following deliberation, the Three-Judge Court unanimously found by clear and convincing evidence the following facts:

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On October 1, 2007, Respondent appeared in the Norfolk Circuit Court before The Honorable Charles D. Griffith, Jr. ("Judge Griffith") in a criminal jury trial scheduled for that day to which Judge Griffith had been assigned and in which Respondent represented the defendant. (*Commonwealth of Virginia v. Lyndon Deneil Porter*, Case No. CR07002110-00-03).
3. Prior to the commencement of the jury trial proceedings, Respondent moved for Judge Griffith to recuse himself as the presiding judge.
4. In furtherance of his efforts to have Judge Griffith recuse himself, Respondent made various statements to Judge Griffith as reflected in the transcript of the hearing conducted on October 1, 2007, including the following:
  - "I don't feel that you're appropriate to hear any cases that I might be . . . defending."
  - "It makes me feel comfortable for you not to ever hear any jury trial that I got against any of my clients."

- Respondent accused Judge Griffith of harboring animosity toward Respondent and implied that it would cause Judge Griffith to treat the defendant unfairly.

- Respondent suggested that Judge Griffith was biased for the Commonwealth in criminal cases.

5. Respondent's reason for making the recusal motion was that while Judge Griffith was the Commonwealth's Attorney for the City of Norfolk, two of his former assistants, Sherry Capotosto (now an Assistant United States Attorney in Norfolk) and Norman Thomas (now a judge of the Norfolk Circuit Court), had filed complaints against Respondent with the Virginia State Bar in 1999 and 2000, respectively. By the time of the October 1, 2007 hearing: i) Respondent had been sanctioned by the First District Committee of the Virginia State Bar for the conduct underlying the complaint filed by Sherry Capotosto; and ii) a disciplinary subcommittee had certified the complaint filed by Norman Thomas and the Virginia State Bar Disciplinary Board had determined that Respondent had violated multiple provisions of the Virginia Rules of Professional Conduct<sup>1</sup>.

6. When Judge Griffith advised Respondent that if he recused himself the case would need to be continued, Respondent accused Judge Griffith of delaying the trial in order to inconvenience Respondent's client.

7. Judge Griffith stated during the October 1, 2007 hearing that he did not have any animosity toward Respondent or believe that there was an actual conflict warranting his recusal, but would nonetheless recuse himself "because [Respondent] makes himself so obnoxious in the courtroom that given his dissatisfaction, I don't see how we could orderly present a case in this courtroom with him here."

8. Judge Griffith's recusal resulted in the trial of the case being continued for several months.

The Three-Judge Court unanimously found that the evidence established violations of the following provisions of the Virginia Rules of Professional Conduct:

**RULE 3.5 Impartiality And Decorum Of The Tribunal**

(f) A lawyer shall not engage in conduct intended to disrupt a tribunal.

**RULE 8.2 Judicial Officials**

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

---

<sup>1</sup> Although in 2005 the Supreme Court of Virginia reversed the determination of the Virginia State Bar Disciplinary Board on procedural grounds, Respondent ultimately stipulated to the facts and rule violations underlying the Norman Thomas complaint.

**THEREAFTER**, the Three-Judge Court received evidence and argument regarding the sanction to be imposed upon Respondent, and then retired to deliberate.

**AFTER DUE CONSIDERATION** of the evidence and the nature of the ethical misconduct committed by Respondent, the Three-Judge Court reached the unanimous decision that Respondent should receive a public reprimand with terms. Therefore, the Three-Judge Court hereby imposes on Respondent, Curtis Tyrone Brown, a **Public Reprimand With Terms**. The terms and conditions with which Respondent must comply are as follows:

Respondent is placed on probation for a period of six (6) months effective January 1, 2010. Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct during such probationary period. Any final determination made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia that Respondent engaged in professional misconduct during this probationary period shall conclusively be deemed to be a violation of this Term. If the terms and conditions are not met, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of one (1) year.

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

**ORDERED** that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Norfolk and mailed 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.

The court reporter who transcribed these proceedings is Ronald Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

ENTERED this 15<sup>th</sup> day of December, 2009.

  
The Honorable Lisa B. Kemler  
Chief Judge

SEEN:

  
M. Brent Saunders, Assistant Bar Counsel

COPY TESTE:  
GEORGE E. SCHAEFER, CLERK  
NORFOLK CIRCUIT COURT  
BY   
Jamie O'Hern, Deputy Clerk  
Authorized to sign on behalf  
of George E. Schaefer  
Date: 12-21-09

SEEN AND \_\_\_\_\_:

\_\_\_\_\_  
Curtis Tyrone Brown, Respondent  
*Pro se*