

RECEIVED

SEP 24 2009

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF NORFOLK

VSB CLERK'S OFFICE

IN THE MATTER OF

Case: VSB No. CL08-7118

CURTIS TYRONE BROWN

**ORDER OF SUSPENSION**

THIS CAUSE came to be heard on the 26th day of May, 2009, by a Three-Judge Court impaneled by the Supreme Court of Virginia on May 18, 2009, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia (1950) as Amended, consisting of the Honorable James E. Kulp, Retired Judge of the Fourteenth Judicial Circuit, the Honorable Ann Hunter Simpson, Retired Judge of the Fifteenth Judicial Circuit, and the Honorable Richard D. Taylor, Jr., Judge of the Thirteenth Judicial Circuit, designated Chief Judge.

The Virginia State Bar appeared through its Bar Counsel, Edward L. Davis. The Respondent attorney, Curtis Tyrone Brown, was duly noticed and appeared in person and by his attorneys, Henry L. Marsh, III, Esquire and Frederick H. Marsh, Esquire.

The Chief Judge polled the members of the Court as to whether any knew of any personal or financial interest or bias that would preclude the member from fairly hearing the matter, to which inquiry each member of the panel responded in the negative.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the 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, revoked, or otherwise sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Second District

Committee of the Virginia State Bar, a copy of which is attached hereto and incorporated herein as Exhibit A.

The Complainant and the Respondent presented evidence in open court. At the close of the bar's evidence, the Respondent made a motion to strike, and the matter was argued by counsel. Upon deliberation, the Court granted the motion to strike as to Rule 3.1 of the Rules of Professional Conduct (Meritorious Claims and Contentions) including the allegations of disrespect to the trial judge as set forth in paragraphs 26 and 27 of the subcommittee certification. The Court overruled the remainder of the motion to strike. Thereafter the Respondent presented his evidence, and rested, after which the Complainant presented the testimony of one witness in rebuttal. Counsel then argued the matter.

Following closing arguments, the Three-Judge Court retired to deliberate, and thereafter returned and announced its findings.

**UPON CONSIDERATION WHEREOF** with regard to all of the evidence presented, the exhibits that were introduced into evidence, the testimony of the witnesses, including the Respondent, Mr. Brown, and the arguments of counsel, the Three-Judge Court found that the Virginia State Bar had, by clear and convincing evidence, established the following:

That Mr. Curtis Brown did, in fact, order a transcript, and that his responses with regard to whether he, in fact, ordered a transcript, were not truthful;

That he never requested a continuance of the deposition, his denial to the contrary notwithstanding;

That his statements regarding representations to the jury about what he did or did

not have, specifically, what was not sent to him, and the statements made to the jury with regard to the circumstances, were dishonest, that they were a misrepresentation, and that they were deceitful.

Because of this the Court found, by clear and convincing evidence, that the Respondent committed misconduct in violation of Rule 3.3 (a) (1) (Candor toward the Tribunal), Rule 3.5 (f) (Impartiality and Decorum of the Tribunal), Rule 8.4 (c) (Misconduct), but only as to those three areas: dishonesty, misrepresentation and deceitfulness, and that this extends to the statements made to the jury as well as to the trial judge.

The Court also found by clear and convincing evidence that the Respondent, Curtis Tyrone Brown, did not obey the final court order with regard to the judgment, and that this was a violation of Rule 3.4 (d) of the Rules of Professional Conduct (Fairness to opposing Party and Counsel).

The Court did not find a violation of Rule 3.4 (j) by clear and convincing evidence, and dismissed that and all other charges made by the bar for which the Court granted the Respondent's motion to strike.

**THEREAFTER**, the Complainant presented the Respondent's prior disciplinary record consisting of a Dismissal, *De Minimus* Steps Taken; a Private Reprimand with Terms; a Dismissal with Terms; and a Public Reprimand with Terms. The Respondent objected to the Court receiving the Private Reprimand with Terms and the Public Reprimand with Terms. The Court overruled the Respondent's objections and received the Respondent's prior disciplinary record in its entirety. The Complainant and the Respondent then presented argument regarding the sanction to be imposed upon the

Respondent for the misconduct, and the Three-Judge Court recessed to deliberate.

**AFTER DUE CONSIDERATION** of the evidence as to mitigation and aggravation and other arguments of counsel, and having found that there was dishonesty, misrepresentation, and deceit specifically referring to representations made before a jury, representations made before a

judge, as well as representations made before this panel today, the Court reconvened to announce its sanction. The Court made two groupings based upon the evidence of violations, the second one being the disregard of a court order in violation of Rule 3.4 (c).

Having considered all of the same, the Court's sanction for the violation of those Rules as to those two areas is as follows:

As to (a) the violation regarding the dishonesty, misrepresentation, and deceit, the Three-Judge Court determined the appropriate sanction to be a suspension of the Respondent's license to practice law for a period of twelve (12) months; and

With respect to (b) the disregard of the court order, the Three-Judge Court determined the appropriate sanction also to be a suspension of the Respondent's license to practice law for a period of twelve (12) months, to be concurrent, not consecutive, but twelve months with regard to each of these groupings, effective as of the date of this hearing before the Three-Judge Court.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice, by certified mail, return receipt requested, 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 clients. The Respondent shall give such notice within 14 days of the effective date of the order, and make such arrangements as are required herein within 45 days of the effective date of this order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the order that such notices have been timely given and such arrangements for the disposition of matters

made. Issues concerning the adequacy of the notice and the arrangement required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

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

It is further **ORDERED** that a copy teste of this order shall be served by the Clerk of this Court upon the Respondent, Curtis Tyrone Brown, by certified mail, return receipt requested, at the JANAF Office Building, Suite 210, 5900 East Virginia Beach Boulevard, Norfolk, Virginia 23502, his address of record with the Virginia State Bar; and by regular mail to his counsel, Henry L. Marsh, III, at Hill, Tucker & Marsh, P.L.L.C., 422 East Franklin Street, Suite 301, Richmond, Virginia 23219, and to Edward L. Davis, Bar Counsel, at the Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

The court reporter who transcribed these proceedings is Ronetta Worrell of Ronald Graham & Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia

23455-6680, telephone number 757-490-1100.

ENTERED this 9th day of September, 2009.

RICHARD D. TAYLOR, JR.  
Chief Judge, Three-Judge Court

James E. Kulp  
JAMES E. KULP  
Retired Judge, Three-Judge Court

Ann Hunter Simpson  
ANN HUNTER SIMPSON  
Retired Judge, Three-Judge Court

I ASK FOR THIS:

Edward L. Davis  
Edward L. Davis  
Bar Counsel  
Virginia State Bar  
Eight and Main Building  
707 East Main Street, Suite 1500  
Richmond, Virginia 23219-2800  
(804) 775-0566

**COPY TESTE:**  
GEORGE E. SCHAEFER, CLERK,  
KOREAN CIRCUIT COURT  
BY Corinne Preziosi  
Corinne Preziosi, Deputy Clerk  
Authorized to sign on behalf  
of George E. Schaefer  
Date: 9-18-09

SEEN (AND OBJECTED TO):

Henry L. Marsh, III  
Henry L. Marsh, III, Esquire  
Counsel for the Respondent  
Hill, Tucker & Marsh, P.L.L.C.  
422 East Franklin Street, Suite 301  
Richmond, Virginia 23219  
(804) 648-9073

**VIRGINIA:**

**BEFORE THE SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
CURTIS TYRONE BROWN**

**VSB Docket No. 08-021-071424**

**SUBCOMMITTEE DETERMINATION  
(CERTIFICATION)**

On July 31, 2008, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Emanuel William Michaels (Lay Member), Michelle Jame Lee Atkins, Esquire, and Mary M. Kellam, Esquire, Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c. of the Rules of the Virginia Supreme Court, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

**I. FINDINGS OF FACT**

1. During all times relevant hereto, the Respondent, Curtis Tyrone Brown, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On August 31, 2007 in the Circuit Court for the City of Chesapeake, the Honorable John E. Clarkson, Retired Judge, found that the Respondent,  
  
*...knowingly made false statements to the Court, in the presence of the jury, in support of his oral motion to exclude certain testimony at trial. The Court further finds that Mr. Brown's false statements to the Court were interposed for an improper purpose and have resulted in an unnecessary delay in the conclusion of this case and the needless increase in the cost of litigation to the defendant.*
3. The Order, entered September 19, 2007, derived from a motion for sanctions filed by opposing counsel Thomas C. Dawson, Jr., concerning Mr. Brown's conduct during a jury trial held on June 21, 2007 in the matter of *Pamela Martin v. Christopher Duncan*, a personal injury case in which Mr. Brown represented the plaintiff.
4. The Court ordered Mr. Brown to pay Mr. Dawson a total of \$5,025.74 in sanctions, representing \$2,739 in attorney's fees and \$2,286.74 in costs, and entered judgment in that amount against Mr. Brown in favor of the defendant, Christopher Duncan, Mr. Dawson's client.

**EXHIBIT A**

5. The events leading up to the sanctions hearing and the Court's order began with a deposition held on June 15, 2007.
6. By agreement of counsel, Mr. Dawson noticed Mr. Brown for the deposition to take place at Mr. Dawson's office on June 15, 2007 at 11:30 a.m. The notice indicated that it was for the deposition of "Daniel Thibodeau, P.A.," (physician's assistant).
7. Ten minutes before the deposition was scheduled to begin, Mr. Brown telephoned Mr. Dawson to say that he was delayed in court and would be sending Michael Hockaday, Esquire, to cover the deposition for him.
8. Mr. Dawson replied that he would wait for Mr. Hockaday, who arrived at about 11:50 a.m., and the deposition commenced.
9. Neither Mr. Brown nor Mr. Hockaday objected to the deposition of Mr. Thibodeau, which lasted about 30 minutes. Mr. Dawson ordered the original transcript from the court reporter, and Mr. Hockaday ordered a copy.
10. As the participants prepared to leave, Mr. Brown arrived at Mr. Dawson's office, where Mr. Dawson suggested that he inform the court reporter whether he wanted a copy of the deposition since Mr. Hockaday had ordered one. Accordingly, Mr. Brown told the court reporter that he would like a copy of the transcript, and gave her his business card.
11. When the transcript was ready for delivery, the court reporter left a telephone message for Mr. Brown informing him of this and asking for payment of \$88 to receive his copy.
12. The court reporter never heard back from Mr. Brown. Mr. Brown did not tender \$88 as requested, and the court reporter did not deliver him a copy of the deposition transcript accordingly.
13. The morning of trial on June 21, 2007, Mr. Brown and Mr. Dawson met to review the deposition transcript and agreed upon some edits to the objections.
14. Mr. Brown then asked Mr. Dawson for his original copy of the transcript so that he could ask a court clerk to make a copy for him.
15. Mr. Dawson declined to do so, informing Mr. Brown that the court reporter was present with the copy that Mr. Brown had ordered.
16. Mr. Brown then spoke to the court reporter, who asked for \$88. Mr. Brown refused to pay the \$88, and did not receive his copy.
17. Mr. Brown returned to the counsel table, took Mr. Dawson's original transcript, and asked the clerk to make a copy. Mr. Dawson said that it would be inappropriate to have the clerk copy the original when Mr. Brown was required to pay the court reporter for his copy.
18. Trial commenced and after the plaintiff rested, Mr. Dawson asked the court reporter to read the Thibodeau deposition to the jury. Before she finished reading it, Mr. Brown objected on

the ground's that a Physician's Assistant (Mr. Thibodeau) was not qualified to render the testimony offered.

19. Mr. Dawson responded that the proper time to object would have been at the deposition, not at trial.

20. It was at that time that Mr. Brown made several statements in front of the jury that the court later found to be false, specifically:

- That counsel would not wait for him to appear at the deposition and made sure that someone other than Mr. Brown would cover the deposition. (Tr., p. 122, ll. 3-6)
- That Mr. Dawson did not have the courtesy to send him a copy of the deposition. (Tr., p. 121, ll. 8-10).
- That he had never seen a copy of the deposition. (Tr., p. 121, l. 8).
- That he did not know what questions were asked of Daniel Thibodeau at the deposition: "Yeah, but I had no idea that was in there, Your Honor." (Tr., p. 120, ll. 17-18).

21. The court allowed the court reporter to finish reading the deposition, and noted that if there had been an objection, it should have been made at the time of the deposition, unless there was a stipulation. Mr. Brown acknowledged that there was no stipulation.

22. At that time Mr. Brown moved for a nonsuit that was granted.

23. Mr. Brown then, out of the presence of the jury, despite his previous order for a copy of the transcript, argued to the court that he never ordered a copy of the deposition, saying:

*...I can't order nothing from the court reporter. They will always call me – and she will tell you right there – she don't take no orders from me. She – I was – I have to give them their money. My reputation is, I have to give them their money, and then they'll send it to me. They don't send me nothing. I don't order nothing.*

*And listen, if I told her anything, I said, call me, and tell me what the cost is. She called me – and I got down here, she called me and told me that it was \$88. I talked to my client, and she not paying no \$88 for nothing to help them. I don't order nothing. (Tr., June 21, 2007, p. 151, ll. 12-25; p. 152, l. 1).*

24. The court assessed Mr. Brown the costs of the jury.

25. On July 19, 2007, Mr. Dawson filed a motion for sanctions that the court heard on August 31, 2007.

26. On August 31, 2007, the court overruled several objections by Mr. Brown of questions asked by Mr. Dawson of the court reporter. When the court finally sustained one of his

objections, Mr. Brown commented to the court, "That surprises me." (Tr., August 31, 2007, p. 68, ll. 20-22). The court responded that it had sustained his objection, to which Mr. Brown replied, "And I said I'm surprised that you did; but, okay, I take it." (Tr., p. 69, ll. 1-3).

27. Previously, during the June 21, 2007 trial, Mr. Brown engaged in other disrespectful conduct by asking the judge to recuse himself on the grounds that the judge had asked Mr. Dawson to file a complaint with the Virginia State Bar. The judge, however, had simply stated that it would be up to Mr. Dawson if he thought it would be appropriate to forward the matter to the Bar Association. (Tr., June 21, 2007, p. 156, ll. 9-14).

28. Mr. Dawson did complain to the Virginia State Bar on July 19, 2007.

29. Mr. Brown responded to the complaint by letter, dated August 23, 2007, stating that his relation with Mr. Dawson over the past 15 years had been very unpleasant, that he had repeatedly defeated Mr. Dawson in numerous personal injury cases, causing Mr. Dawson to have his "hates and dislikes" toward Mr. Brown.

30. According to Mr. Dawson, Mr. Brown had prevailed in only two personal injury cases defended by Mr. Dawson, while Mr. Dawson prevailed in two others. Three other cases between the two attorneys settled. There were twelve other cases between the two attorneys that were either dismissed or from which Mr. Brown withdrew. When asked about this discrepancy, Mr. Brown explained that he considered settlements greater than \$15,000 to mean that his client prevailed.

31. Mr. Brown appealed the sanctions order and the jury cost assessment to the Supreme Court of Virginia which, on April 9, 2008, refused to hear an appeal of the sanctions order, and denied Mr. Brown's request for a rehearing on June 13, 2008. Despite his failure to prevail on appeal, Mr. Brown has not paid the sanctions order, prompting Mr. Dawson to pursue collection action.

## **II. NATURE OF MISCONDUCT**

Such conduct by Curtis Tyrone Brown constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **RULE 3.1 Meritorious Claims And Contentions**

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

### **RULE 3.3 Candor Toward The Tribunal**

(a) A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal;

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

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

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

A lawyer shall not:

- (f) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

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

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

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

**III. CERTIFICATION**

Accordingly, it is the decision of the subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

**SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

By Mary M. Kellam  
Mary M. Kellam, Esquire  
Subcommittee Chair

**CERTIFICATE OF SERVICE**

I certify that on the 6<sup>th</sup> day of October, 2008, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Curtis Tyrone Brown, Esquire, Respondent, *pro se*, at Suite 210, 5900 East Virginia Beach Boulevard, Norfolk, VA 23502, the Respondent's last address of record with the Virginia State Bar.



---

Edward L. Davis, Bar Counsel