

IN THE CIRCUIT COURT FOR THE COUNTY OF CAROLINE

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VIRGINIA STATE BAR EX REL
SIXTH DISTRICT COMMITTEE,

APR 9 2008

Complainant,

v.

Case No. 08020001

VSB CLERK'S OFFICE

JOSEPH TAYLOR BROWN, ESQUIRE,

Respondent.

FINAL ORDER (PUBLIC REPRIMAND WITH TERMS)

This matter came on the 19th day of February, 2008, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent. The Agreed Disposition was considered by a Three Judge Court, pursuant to § 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of The Honorable Ford C. Quillen, the Honorable Arthur B. Viereg, and The Honorable Cleo E. Powell, Chief Judge designate.

Marian L. Beckett, Esquire, Assistant Bar Counsel, represented the Bar. The Respondent, Joseph T. Brown, Esquire, was present, represented by counsel, Michael L. Rigsby, Esquire, and presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition:

Having considered the Agreed Disposition, it is the decision of the Three Judge Court that the Agreed Disposition be accepted, and the Three Judge Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Joseph Taylor Brown, Esquire (hereinafter the Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

As To Virginia State Bar Docket Number 05-060-2406
Thomas Mitchell Williams

2. At some time prior to June 11, 2003, the Respondent was appointed by the Circuit Court of Stafford County to represent Thomas Mitchell Williams at his sentencing hearing and for appeal of his criminal conviction. The sentencing hearing took place on June 11, 2003, and final judgment was entered on that date.

3. On or about July 10, 2003, the Respondent timely filed a Notice of Appeal and represented in that Notice that he had ordered the Circuit Court transcript.

4. The Respondent ordered the transcript, but failed to monitor the preparation and progression of the trial transcript to ensure that it was timely received by the Court of Appeals.

5. The Respondent also failed to file a Petition for Appeal. On December 9, 2003, the Virginia Court of Appeals dismissed the case on that ground.

6. The Respondent failed to communicate to his client in a timely fashion that the appeal had been dismissed. Mr. Williams learned of the dismissal via notice from the Circuit Court for Stafford County.

7. The Respondent subsequently prepared a Petition for Habeas Corpus, but did not present the Petition to his client until June 7, 2004, some six (6) months after the appeal was dismissed.

8. On August 6, 2004, the Respondent presented to the Circuit Court for Stafford County the petition for Habeas Corpus, a Motion for Appointment of Attorney, and a Motion for Substitution of Counsel with an accompanying Order. The Order for Substitution of Counsel was not entered by the Court and returned to the Respondent due to procedural defects in the Order.

9. In a letter to the Virginia State Bar dated February 24, 2005, the Respondent acknowledged his responsibility for failing to timely file Mr. Williams' Petition for Appeal.

The Three Judge Court finds by clear and convincing evidence that such conduct on the part of Joseph Taylor Brown, Esquire, as to **VSJ Docket No. 05-060-2406** constitutes a violation of the following provisions of Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

**As To Virginia State Bar Docket Number 05-060-2407
Jay Anthony Wells**

10. The Respondent was appointed by the Circuit Court of the City of Fredericksburg to represent Jay Anthony Wells in an appeal to the Court of Appeals. The Respondent timely filed a Notice of Appeal and sometime thereafter, Mr. Wells instructed the Respondent to withdraw the appeal.

11. On July 29, 2002, the Respondent filed a request to withdraw the appeal, but did not include the required affidavit from Mr. Wells acknowledging his desire to withdraw the appeal and his understanding of the consequences of doing so.

12. On three separate occasions, the Virginia Court of Appeals provided guidance to the

Respondent, via correspondence, regarding the proper procedure for the withdrawal of an appeal. The Court's third letter, dated September 12, 2002, informed the Respondent that the appeal would remain on the appellate docket unless the Court received the required affidavit within seven (7) days.

13. The Respondent failed to follow the instructions given by the Court of Appeals and did not file the affidavit.

14. The Respondent's law partners also provided guidance regarding the proper procedure to follow for the withdrawal of an appeal, including the filing of the affidavit and continuation of the appeal process until an order of withdrawal was entered by the court.

15. The Respondent failed to heed his partners' advice and did not file the affidavit.

16. The Court of Appeals dismissed the case on the grounds that no Petition for Appeal had been filed.

17. The Respondent failed to inform his client that the appeal had been dismissed.

The Three Judge Court finds by clear and convincing evidence that such conduct on the part of Joseph Taylor Brown, Esquire, as to **VSB Docket No. 05-060-2407** constitutes a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and

promptly comply with reasonable requests for information.

**As To Virginia State Bar Docket Number 05-060-2408
Daniel Fletcher**

18. The Respondent represented Daniel Fletcher in a Department of Social Services matter involving Mr. Fletcher's children. Mr. Fletcher requested that the Respondent appeal a decision of the Fredericksburg Juvenile and Domestic Relations District Court to transfer jurisdiction of the case to Spotsylvania County.

19. On February 26, 2003, the Respondent filed a Notice of Appeal in Mr. Fletcher's case, and on June 16, 2003, filed a Petition for Appeal. The Respondent failed thereafter to file either the required transcript or a statement of facts.

20. On August 13, 2003, the Virginia Court of Appeals issued an Order to Show Cause why the case should not be dismissed due to the Respondent's failure to file either a transcript or statement of facts. The Respondent took the position that neither a transcript nor statement of facts was necessary because the trial court ruling concerned only the procedural stance of the case and the procedural matter of jurisdiction.

21. The Court of Appeals disagreed, stating that without a transcript or statement of facts the Court was unable to determine what matters were argued to the trial court or the trial court's rationale for its ruling. On November 24, 2003, the Court of Appeals dismissed the case on the grounds that the statement of facts or a transcript was indispensable to a determination of the issue on appeal.

22. On April 17, 2005, the Respondent was interviewed by Virginia State Bar Investigator O. Michael Powell. At that time the Respondent advised Mr. Powell that this matter was his first

civil appeal, and acknowledged that he had not handled the case correctly.

The Three Judge Court finds by clear and convincing evidence that such conduct on the part of Joseph Taylor Brown, Esquire, as to **VS B Docket No. 05-060-2408** constitutes a violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

Upon consideration whereof, it is ORDERED that the Respondent shall receive, effective upon entry of this Order, a **PUBLIC REPRIMAND WITH TERMS** as to VS B Docket Nos. 05-060-2406, 05-060-2407, and 05-060-2408.

The terms and conditions which shall be met by June 30, 2008, are as follows:

1. Prior to June 30, 2008, the Respondent shall complete 6 hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the areas of Appellate Practice and/ or Law Office Practice Management. **His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law.** He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Marian L. Beckett, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

2. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that an alternative disposition should be imposed, a “show cause” proceeding pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.2.g. will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein. The parties have stipulated, and the Three Judge Court has ordered, that the “show cause” hearing, if any, shall be conducted before the Virginia State Bar Disciplinary Board, and that the Respondent has waived his right to have such hearing before a Three Judge Court.

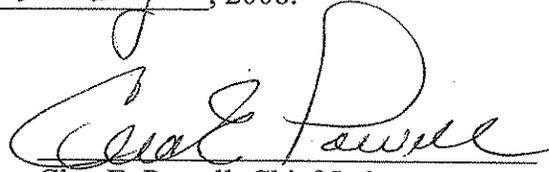
3. The parties further stipulate that should the Virginia State Bar Disciplinary Board find that the Respondent has not complied with the terms and conditions set forth above, a thirty (30) day suspension of his license to practice law in the Commonwealth of Virginia, shall be imposed as the alternative disposition of this matter; and

IT IS FURTHER ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c.1 of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs; and

IT IS FURTHER ORDERED that those matters bearing Virginia State Bar Docket Nos. 05-060-3276, 05-060-2409, 05-060-2410 and 07-060-0956 are hereby dismissed with prejudice.

IT IS FURTHER ORDERED that a copy of this order shall be mailed by Certified Mail, Return Receipt Requested, to the respondent, at his last address of record with the bar, 108 Charlotte Street, Fredericksburg, VA 22401 and by regular mail to Michael L. Rigsby, Carrell, Rice and Rigsby, 7275 Glen Forest Drive, Forest Plaza II, Suite 310, Richmond, VA 23226 and to Marian Beckett, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, VA 22314.

ENTERED THIS 19th day of February, 2008.



Cleo E. Powell, Chief Judge
On behalf of the Three Judge Court

A COPY TESTE:
RAY S. CAMPBELL, CLERK
BY Kay Whitman
DEPUTY CLERK