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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

OCT 2

**VIRGINIA STATE BAR EX REL
EIGHTH DISTRICT COMMITTEE,**

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VSB CLERK'S OFFICE

Complainant,

v.

**Case No. CL06-1003
VSB Nos. 05-080-1947
05-080-3697**

**HARRY WAYNE BROWN,
Respondent.**

**MEMORANDUM ORDER
(20 DAY SUSPENSION WITH TERMS)**

On September 11, 2006, a telephonic hearing was held before a three-judge panel designated by the Chief Justice of the Supreme Court of Virginia pursuant to Virginia Code §54.1-3935 consisting of The Honorable Margaret Poles Spencer, Judge of the Thirteenth Judicial Circuit and Chief Judge Designate, The Honorable Carl Edward Eason, Jr., Judge of the Fifth Judicial Circuit, and The Honorable Nicholas E. Persin, Retired Judge of the Twenty-ninth Judicial Circuit. Respondent Harry Wayne Brown ("Respondent"), was present and represented by his counsel Frank N. Perkinson, Jr., Esquire. Assistant Bar Counsel Kathryn R. Montgomery, Esquire appeared for the Virginia State Bar ("Complainant"). The parties jointly presented an Agreed Disposition and sought the Court's approval pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia.

The parties have entered into certain stipulations relative to the facts and charges which are made a part of this order as follows :

I. VSB No. 05-080-1947

A. STIPULATIONS OF FACT

1. At all times material to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Samara Maloney worked in Respondent's office prior to her death in 2001. In June 2001, David Dodson, ex-husband of decedent, and Stephanie Ruffino (formerly Stephanie DiPasquale), adult daughter of decedent, qualified as co-administrators of her estate. Around that time or soon thereafter, they retained Respondent as counsel. Samara Maloney was also survived by at least one minor child who lived with David Dobson.

3. During her last illness and hospitalization, Samara Maloney incurred substantial medical bills that were not paid. After her death, co-administrator Stephanie Ruffino received numerous medical bills addressed to her mother.

4. In May 2002, Respondent received Court approval and arranged for Samara Maloney's residence to be sold. The sale netted approximately \$30,000. Soon after the sale, Respondent advised the co-administrators to disburse the proceeds of the sale to the heirs, which they did. Respondent was also paid an attorney's fee. The Respondent advised the co-administrators that the homestead exemption and family allowances would be paid in priority over creditors of the estate, if properly claimed, and would consume the funds of the estate. Following Respondent's advice, the co-administrators did not pay the medical bills of the estate.

5. Following the Respondent's advice, on June 28, 2004, the co-administrator, David Dodson filed an exemption on behalf of decedent's minor daughter. On July 15, 2004, the Commissioner of Accounts wrote Respondent a letter advising him that in his opinion, the exemption had been filed too late, and that Respondent should notify his malpractice carrier of the situation.

6. For the period of May 16, 2003 to May 16, 2004, Respondent was insured for legal malpractice by The Lawyer's Protector Plan, which is underwritten by Clarendon National Insurance Company ("hereinafter carrier"). The policy provided a 60-day extended reporting period. During the extended reporting period, Respondent advised his local agent of the claim. On July 16, 2004, Respondent notified his carrier of the claim related to his representation of the Estate of Samara Maloney.

7. On August 11, 2004, Respondent's carrier sent him a letter by certified mail, return receipt requested, denying coverage because in the carrier's estimation, Respondent had reported only a potential claim, not an actual claim. The carrier suggested he report the matter to his present carrier. Respondent disagreed with the carrier's interpretation of the policy and wrote the carrier to dispute the denial.

8. On September 9, 2004, Respondent, the Commissioner of Accounts Furman Whitescarver, Jr., Judge Robert P. Doherty, Jr., along with his law clerk, and Judge James R. Swanson met to discuss finalizing the estate. During the meeting, Judge Doherty addressed various concerns and issues he saw with Respondent's representation of the Estate. Judge Doherty suggested that Respondent should withdraw from his representation due to a potential conflict of interest. He also advised Respondent to write letters to provide written notice to his clients, his malpractice carrier, and the bonding

company that he may have erroneously advised his clients concerning the filing of exemptions and payment of decedent's medical bills, and to provide a copy of the letters to the Commissioner of Accounts and the Court . Respondent agreed to do so.

Respondent advised Judge Doherty that he had already notified the carrier. However, Respondent did not disclose the fact that the carrier had already denied the claim and that there was a dispute as to the carrier's denial.

9. On September 15, 2004, Respondent wrote letters to his clients, co-administrators David Dodson and Stephanie Ruffino, and to his carrier advising of his possible erroneous advice in connection with the Estate of Samara Maloney. Respondent copied his clients on the letter to his carrier and called Stephanie Ruffino to discuss the letters and his anticipated withdrawal. In addition Respondent discussed the carrier's denial of the claim and his dispute related to the carrier's denial. On September 15, 2004, Respondent sent copies of both letters to the Commissioner of Accounts and to Judge Doherty, along with a cover letter thanking the Court for its friendship and professional courtesy and stating that it made a "great difference in my outlook."

10. On September 28, 2004, Respondent's carrier sent him a letter by certified mail, return receipt requested advising that it had already denied coverage for potential claims arising out of his representation of the Estate of Samara Maloney.

11. Respondent subsequently withdrew from his representation of the co-administrators for the Estate of Samara Maloney.

B. STIPULATION RELATIVE TO CHARGES OF MISCONDUCT

Respondent maintains that it was not his intention to mislead the Court, however Respondent and Assistant Bar Counsel agree that the above facts and Respondent's

failure to communicate openly and to fully inform the Court about his carrier's denial and of his dispute as to the denial, if proven, would constitute a misrepresentation in violation of the following Rule of Professional Conduct:

C. FINDING OF MISCONDUCT

The Court finds that Complainant has by the stipulation, proven its case and Respondent's actions constitute a violation of the following Rule of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

II. VSB No. 04-080-3697

A. STIPULATIONS OF FACT

1. At all times material to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On May 28, 2003, Respondent filed a motion for declaratory judgment in the Roanoke Circuit Court on behalf of his client, Gladys Bevil, Administratrix of the Estate of Billie Ruth Keen, against The Rawlings Company. The suit asked the Court to determine the validity of the defendant's lien against proceeds of a wrongful death suit paid into court.

3. The suit papers were not served on the defendant and no responsive pleadings were filed.

4. On July 7, 2004, Respondent filed a praecipe, signed by him, which read, "I certify that the above-styled matter is matured for trial on its merits and request that the Clerk place it on the docket to be called August 3, 2004." However, at the time Respondent filed the praecipe, no process had been issued nor service on the defendant obtained.

5. At the August 3, 2004 docket call, Judge Jonathan M. Apgar, at Respondent's behest, scheduled a two-hour bench trial to be held on September 30, 2004. No one was present on behalf of the defendant.

6. On September 30, 2004, attorney Philip W. Parker appeared specially on behalf of the defendant to assure no order was entered to the detriment of his client. Counsel

met in chambers, and Respondent asked to non-suit the case. On February 2, 2005, the Court received a proposed non-suit order, which was entered.

7. On January 31, 2005, the Roanoke Circuit Court issued a Rule requiring Respondent to show cause why 1) the declaratory judgment action should not be discontinued and removed from the docket; and 2) why the Court should not impose sanctions upon him for violation of Virginia Code § 8.01-271.1.

8. On February 18, 2005, a hearing was held on the Rule to Show Cause. At the hearing Respondent contended that at the time the praecipe was filed, the case was in a settlement posture since Respondent had a written offer to settle the case. Respondent maintained that the offer was received from an agent for the defendant, and therefore the case should be considered “ready for trial on its merits.” The Court found that Respondent’s filing of the praecipe violated Virginia Code § 8.01-271.1. The Court ordered Respondent to pay counsel for defendant \$500 in attorney’s fees and within six months, satisfactorily complete the Virginia State Bar’s Mandatory Professionalism Course and certify completion and payment to the Court. The Court opened a new file styled *In the Matter of Harry W. Brown*, case no. CL05-377 to monitor Respondent’s compliance. The Court’s findings and order were stated in an Order entered April 6, 2005.

9. On March 22, 2006, the Court entered an order stating that Respondent had completed his obligations under the order imposing sanctions and struck from its docket *In the Matter of Harry W. Brown*, case no. CL05-377.

B. STIPULATION RELATIVE TO CHARGES OF MISCONDUCT

Respondent and Assistant Bar Counsel agree that the above facts, if proven, would constitute a violation of the following Rule of Professional Conduct:

C. FINDING OF MISCONDUCT

The Court finds that Complainant has by the stipulation, proven its case and Respondent's actions constitute a violation of the following Rule of Professional Conduct:

RULE 1.3. Diligence. —

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

III. DISPOSITION

The Court, having heard the arguments of counsel, having reviewed the Agreed Disposition and the stipulations of the parties, having made the foregoing finding, and having reviewed Respondent's disciplinary record as maintained by the Clerk of the Disciplinary System; it is

ORDERED that the proposed Agreed Disposition is approved and accepted and the Court does hereby impose the following terms upon Respondent:

1. Respondent's law license shall be suspended for 20 calendar days which shall become effective on October 2, 2006; in addition
2. Respondent shall also complete the following additional term:

By **March 31, 2008**, Respondent shall take and pass with a scaled score of 85 or better, the Multi-state Professional Responsibility Exam and submit the official results reflecting his score to Assistant Bar Counsel Kathryn R. Montgomery, or her designee. Respondent is responsible for all test fees.

If, however, Respondent fails to meet this term within the time specified, Respondent agrees that the Virginia State Bar Disciplinary Board shall impose upon him a one-year suspension as an alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Disciplinary Board will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the term within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

The Clerk of the Circuit Court For Roanoke City is directed to provide a copy of this order to counsel of record and further shall certify four copies of this order and mail them to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219 for further service upon the Respondent consistent with the rules and procedures governing the Virginia State Bar Disciplinary System; it is further

ORDERED that the Clerk of the Disciplinary System of the Virginia State Bar shall assess the appropriate administrative fees; and finding nothing further to be done in this matter, the case shall be stricken from the docket and placed among ended causes.

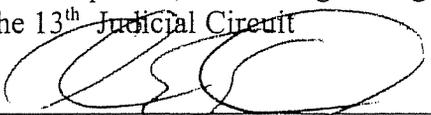
Upon agreement of counsel for the parties, the Court dispenses with the signatures of counsel pursuant to Rule 1:13 of the Rules of the Virginia Supreme Court.

THIS IS A FINAL ORDER

Date 9/13/2006

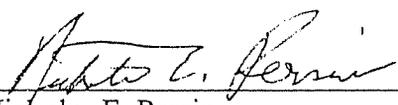

Margaret Poles Spencer, Chief Judge Designate
Judge of the 13th Judicial Circuit

Date 9/20/2006


Carl Edward Eason, Jr.
Judge of the 5th Judicial Circuit

06-1003

Date 9/25/2006



Nicholas E. Persin
Retired Judge of the 29th Judicial Circuit

A COPY TESTE BRENDA S. HAMILTON, CLERK
By  Deputy Clerk