

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

**VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE**

v.

CARL HERMAN BUNDICK

VS Docket No. 09-021-075737

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NOV 3 2009

VS CLERK'S OFFICE
Case No. CL09-3488

MEMORANDUM ORDER

This cause came to be heard on September 24, 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 James E. Kulp, retired Judge of the Fourteenth Judicial Circuit, the Honorable Von L. Piersall, Jr., retired Judge of the Third Judicial Circuit, and the Honorable Pamela S. Baskervill, Judge of the Eleventh Judicial Circuit, Chief Judge presiding. The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared in person and through his counsel, Rhett M. Daniel, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Carl Herman Bundick, 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 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 Three-Judge Court, after hearing argument of counsel, overruled Respondent's Motion to

Strike Paragraph 3 of the Complaint.

The Three-Judge Court accepted the Stipulation of Facts entered into and filed by the parties, admitted the parties' respective exhibits, and received evidence and argument from the parties as to whether the evidence proved any 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. Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant hereto.
2. Pamela Baines (formerly Pamela Renee Scott-Wilson) ("Baines") hired Respondent in 2000 to represent her in obtaining a divorce from her husband William H. Wilson, Jr. ("Wilson").
3. In October 2000, the Respondent filed a Bill of Complaint against Wilson on behalf of Baines in the Accomack County Circuit Court (the "Court") requesting a no-fault divorce and equitable distribution of the marital property of the parties (Case No. 00CH209).
4. On January 31, 2001, the Court entered a Decree of Divorce *A Vinculo Matrimonii* that, among other things, continued the case on the Court's docket for determination of equitable distribution of the marital property of the parties.
5. On or about September 5, 2001, the Court conducted a hearing on equitable distribution issues. Wilson was precluded from presenting evidence on the basis that he was in default for having never filed a response to the Bill of Complaint.
6. In January 2002, counsel for Wilson moved for leave to file a late answer to the Bill of Complaint and to present evidence as to equitable distribution.
7. On June 11, 2002, the Court entered a Decree of Equitable Distribution based on the evidence taken on September 5, 2001, pursuant to which Baines was awarded a 44% share of Wilson's pension with the State Retirement and Pension System of Maryland ("SRPSM"), the only marital asset divided by the Court.
8. On July 1, 2002, the Court entered an Order vacating the Decree of Equitable Distribution to allow for the setting of a hearing on Wilson's request for leave to present evidence as to equitable distribution.

9. Following the entry of the July 1, 2002 Order, Respondent sent a letter to Wilson's counsel dated September 13, 2002. Respondent took no other action to obtain the division of Wilson's pension with SRPSM until 2007.

10. The case was removed from the Court's active docket in early 2006 as a result of no filings or proceedings in the case following the entry of the July 1, 2002 Order. The case was reinstated on the Court's docket in September 2006.

11. After learning that Wilson had retired in June 2007, Baines attempted to contact Respondent in August 2007 to ascertain why she had not begun receiving her share of Wilson's SRPSM pension benefits. After leaving multiple telephone messages for Respondent that were not returned, Baines visited Respondent's office in September 2007 without an appointment, when she was able to meet with Respondent and advise him Wilson had retired in June 2007 and she had not begun receiving her share of Wilson's SRPSM benefits.

12. Prior to being contacted by Baines in September 2007, Respondent did not notify Baines that the Court had vacated the Decree of Equitable Distribution or that her share of Wilson's SRPSM benefits had not otherwise been effectuated.

13. In order to effectuate the division of Wilson's pension in accordance with applicable regulations and the requirements of SRPSM, it was necessary for an Eligible Domestic Relations Order ("EDRO") to be approved by SRPSM and entered by the Court.

14. Following the entry of the July 1, 2002 Order, Respondent did not seek the assistance of the Court in obtaining the entry of orders necessary to effectuate the equitable distribution of the marital property and the division of Wilson's SRPSM benefits until he filed a Motion & Notice with the Court on July 31, 2008.

15. On August 14, 2008, at the request of Respondent, the Court entered: i) a Decree of Equitable Distribution substantively identical to the Decree of Equitable Distribution entered on June 11, 2002 pursuant to which Baines was again awarded a 44% share of Wilson's SRPSM benefits; and ii) a Qualified Domestic Relations Order purporting to divide Wilson's SRPSM benefits. Respondent subsequently submitted the Qualified Domestic Relations Order to the SRPSM for approval, and it was rejected by letter dated September 30, 2008 for numerous reasons, including that it did not constitute an EDRO as required by applicable regulations. Respondent subsequently submitted an EDRO to the SRPSM for approval that was rejected by letter dated November 21, 2008. The Respondent prepared a revised EDRO that was approved by the SRPSM and entered by the Court on May 1, 2009.

16. Effective August 2009, the SRPSM commenced issuance of payments to Baines of her share of Wilson's pension payments. The SRPSM has notified Baines that her payments will not be retroactive to the date of Wilson's retirement, June 1, 2007.

The Three-Judge Court unanimously sustained Respondent's motion to strike the evidence as to Rule 1.1 of the Rules of Professional Conduct, and dismissed that charge accordingly.

The Three-Judge Court unanimously overruled Respondent's motion to strike as to the remaining allegations of misconduct, and unanimously found that the evidence established violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

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

AND

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;

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

THEREAFTER, the Virginia State Bar and Respondent presented evidence and argument regarding the sanction to be imposed upon Respondent, and the Three-Judge Court 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, Carl Herman Bundick, a **Public Reprimand With Terms**. The terms and conditions with which Respondent must comply are as follows:

1. Respondent shall complete eight (8) hours of continuing legal education sponsored by Virginia CLE in the area of domestic relations, the hours for which shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. Respondent shall, on or before October 1, 2010, certify in writing completion of this requirement to M. Brent Saunders, the Assistant Bar Counsel assigned to this case; and

2. Respondent shall complete eight (8) hours of continuing legal education sponsored by Virginia CLE in the area of civil litigation, the hours for which shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. Respondent shall, on or before October 1, 2010, certify in writing completion of this requirement to M. Brent Saunders, the Assistant Bar Counsel assigned to this case; and

3. Respondent shall, on or before October 26, 2009, certify in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, the creation and implementation of a docket control system within Respondent's law office which will insure Respondent periodically reviews the status of all pending matters as an advance reminder of key deadlines and other obligations; and

4. Respondent shall, on or before October 26, 2009, certify in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, the creation and implementation of an office policy mandating regular and informative communications to clients of information affecting their cases, including but not limited to: (a) mailing to clients of copies of all pleadings and court orders; and (b) meeting with clients in person or by telephone to discuss progress on the matter being handled for the client and to respond to status inquiries.

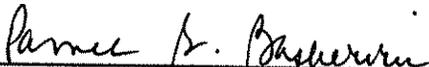
Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by the specified dates, the alternative disposition shall be a Certification for Sanction Determination pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-20.

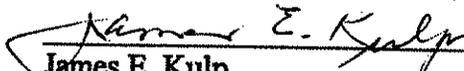
Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Virginia Beach 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.

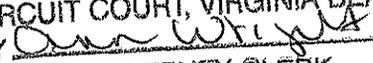
The court reporter who transcribed these proceedings is Cynthia Noah, Ronald Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

ENTERED this 23 day of October, 2009.


Pamela S. Baskerville
Chief Judge

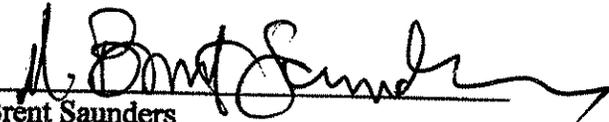

James E. Kulp
Judge


Von L. Piersall, Jr.
Judge

CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SINNEN, CLERK
CIRCUIT COURT, VIRGINIA BEACH, VA
BY 
DEPUTY CLERK

SEEN AND OBJECTED TO AS TO THE SUSTAINING OF RESPONDENT'S MOTION TO
STRIKE THE EVIDENCE AS TO RULE 1.1 AND THE DISMISSAL OF RULE 1:1:

VIRGINIA STATE BAR

By: 
M. Brent Saunders
Assistant Bar Counsel

SEEN AND _____:


Rhetta M. Daniel, Esquire
Counsel for Respondent