

VIRGINIA:

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

**IN THE MATTER OF
BRIAN GAY**

VSB Docket No. 06-022-02717

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)**

On April 17, 2008, a hearing in this matter was held before a duly convened Second District Committee, Section II, panel consisting of Tanya Bullock, Esquire, Ms. Dianne B. Frantz, lay member, Bretta M. Zimmer Lewis, Esquire, Bobby W. Davis, Esquire, and Megan E. Furlich Burns, Esquire, Chair.

The bar appeared by its Assistant Bar Counsel, Paul D. Georgiadis. The Respondent Brian Gay appeared along with Counsel, Alan D. Zaleski.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.1(2) of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the respondent the following Public Admonition Without Terms:

I. FINDINGS OF FACT

1. At all relevant times hereto, Brian Gay ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On September 12, 2006, Respondent filed suit in the Virginia Beach Circuit Court against his former client Lynn St. Gelais ("Ms. St. Gelais"). The suit alleged defamation and sought compensatory damages of \$50,000 and punitive damages of \$150,000.
3. In the course of the defamation litigation, Respondent and counsel for St. Gelais appeared on March 23, 2007 before the Honorable William R.

O'Brien. At the conclusion of the hearing, Judge O'Brien directed Respondent and St. Gelais' counsel to set a date for the taking of Ms. St. Gelais' deposition.

4. After Respondent and St. Gelais' counsel exited the courtroom, they engaged in a discussion during which counsel for St. Gelais remarked that Respondent's statement that Ms. St. Gelais suffered from "Munchausen Syndrome" was defamatory. Respondent denied the statement and moved toward counsel for St. Gelais, turned red in the face, called St. Gelais' counsel "a f**king liar" and suggested they "take the matter outside." Counsel for St. Gelais began to take off his jacket.
5. The escalating dispute led St. Gelais' co-counsel to summon a bailiff from the courtroom. The bailiff found Respondent "angry" and suggested that Respondent leave the courthouse. Respondent was at first reluctant to leave, but due to urging by the bailiff and by Respondent's partner, Respondent ultimately did leave.
6. On April 24, 2007, Respondent appeared at the office of St. Gelais' counsel to take her deposition. At the time, there was a dispute as to the taking of the deposition. When Respondent arrived at the counsel's office, the firm's receptionist advised Respondent that St. Gelais' counsel had cancelled the deposition. On hearing this, Respondent slammed down a planner, papers or a file folder on the receptionist's desk and stated that he "did not have to take this bullsh*t."

II. NATURE OF MISCONDUCT

Such conduct by Brian Gay on March 23, 2007 and April 24, 2007 constitutes misconduct in violation of the following provision of the Rules of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyers' honesty, trustworthiness or fitness to practice law.

The Committee received evidence regarding other alleged charges of misconduct concerning: Respondent's March 9, 2004 engagement letter with St. Gelais, Respondent's promissory note, and Respondent's efforts to collect for unpaid legal fees. At the conclusion of the Bar's evidence, the Committee granted in part and denied in part the Motion to Strike made by Respondent.

As to Respondent's engagement letter, the Committee granted Respondent's Motion to Strike in part and denied it in part. The Committee dismissed allegations that the letter's provisions violated Rule 1.16. The Committee denied the motion to strike as to allegations that the engagement letter violated Rule 1.5. It further denied the motion to strike concerning allegations that provisions of the letter violated Rule 1.8(a).

The Committee granted Respondent's Motion to Strike as to the promissory note, but denied the Motion to Strike as to the collections issue. The Committee allowed allegations concerning the collections issue to proceed under Rule 3.4(j) and Rule 3.1.

The Committee granted Respondent's Motion to Strike in part as to the courthouse and law office altercations and denied it in part. The Committee struck the allegations that such conduct violated Rule 3.4(j), but allowed to proceed allegations that such conduct violated Rule 8.4(b).

At the conclusion of the Respondent's evidence, the Committee dismissed all remaining allegations, with the exception of the courthouse and law office altercations, on the grounds that the grounds that the evidence did not support an allegation of misconduct by a clear and convincing evidentiary standard.

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Second District Committee to impose a Public Admonition without terms and Respondent is hereby so admonished.

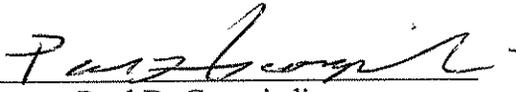
Pursuant to Paragraph 13.B.8.c. of the Rules of Court, the Clerk of the Disciplinary System shall assess the costs expended toward the above finding only.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By: 
Megan Elizabeth Furlich Burns
Committee Chair

CERTIFICATE OF MAILING

I certify that on the 19th day of May, 2008, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the District Committee Determination (Public Admonition Without Terms) to Brian Gay, Respondent, at Gay & Cipriano, P.C., Suite 308, 3500 Virginia Beach Boulevard, Virginia Beach, VA 23452, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Alan D. Zaleski, Respondent's Counsel, at Weisberg & Zaleski, P.C., 112 Cottage Place, P.O. Box 3428, Norfolk, VA 23514-3428.


Paul D. Georgiadis
Assistant Bar Counsel