

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF ROCKINGHAM

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VIRGINIA STATE BAR EX REL.  
SEVENTH DISTRICT COMMITTEE

NOV 19 2009

v.

Case No. CL09-000032

WALTER FRANKLIN GREEN, IV

VSB CLERK'S OFFICE

VSB Docket No. 07-070-2248

**MEMORANDUM ORDER**

This cause came to be heard on April 23, 2009 and October 6, 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 Thomas H. Wood, Retired Judge of the Twenty-Fifth Judicial Circuit, the Honorable Birg E. Sergent, Retired Judge of the Thirtieth Judicial Circuit, and the Honorable Edward L. Hogshire, Judge of the Sixteenth Judicial Circuit, Chief Judge presiding. The Virginia State Bar ("Bar") appeared through Assistant Bar Counsel M. Brent Saunders and Assistant Bar Counsel Richard Slaney, and Respondent Walter Franklin Green, IV ("Respondent") appeared in person and through his counsel, Andrew C. Graves, Esquire.

This matter arises out of the Rule to Show Cause issued against Respondent, 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 Certification issued by a subcommittee of the Seventh District Committee of the Virginia State Bar ("Certification").

Respondent filed multiple pre-trial motions consisting of a Motion Not to Issue Rule and Dismiss, and Plea in Bar, Demurrer and Objection to Use of Disciplinary Record. Respondent withdrew his Motion Not to Issue Rule. Following the presentation of arguments during the

prehearing conference call conducted on April 2, 2009, the Three-Judge Court denied that portion of Respondent's Motion to Dismiss alleging non-compliance with §54.1-3935 of the Code of Virginia, 1950, as amended, and took under advisement that portion of Respondent's Motion to Dismiss alleging the Certification is void.

On April 23, 2009, the Three-Judge Court took all pending pre-trial motions under advisement and received evidence from the parties relative to the violations of the Virginia Rules of Professional Conduct alleged in the Certification. At the conclusion of the Bar's evidence, Respondent moved to strike the Bar's evidence as to the violation of Rule 5.5(a)(1) of the Virginia Rules of Professional Conduct alleged in the Certification. The Three-Judge Court took Respondent's motion to strike under advisement and Respondent presented his evidence. Upon conclusion of the presentation of all of the evidence, the Three-Judge Court continued this matter pending the issuance of a decision by the Supreme Court of Virginia in *Walter F. Green, IV v. Virginia State Bar* (Record No. 082530).

Following the issuance of a decision by the Supreme Court of Virginia in *Walter F. Green, IV v. Virginia State Bar* (Record No. 082530) on June 4, 2009, this matter was scheduled and duly noticed for a final hearing on October 6, 2009. On that date, the parties reconvened before the Three-Judge Court. After hearing the arguments of the parties, the Three-Judge Court denied: i) that portion of Respondent's Motion to Dismiss alleging the Certification is void; and ii) Respondent's Plea in Bar, Demurrer and Objection to Use of Disciplinary Record. The Three-Judge Court also overruled the Bar's Objections to Respondent's Exhibits. Respondent moved to strike the Bar's evidence as to the violation of Rule 5.5(a)(1) of the Virginia Rules of Professional Conduct alleged in the Certification. The Three-Judge Court overruled the motion to strike and then heard arguments

from the parties as to whether the evidence proved any violations of the Virginia Rules of Professional Conduct alleged in the Certification under the clear and convincing standard. Following deliberation, the Court unanimously found by clear and convincing evidence the following facts:

1. Respondent was suspended from the practice of law in the Commonwealth of Virginia for a period of six (6) months effective January 1, 2007 pursuant to a Summary Order entered on November 14, 2006 and a subsequent Memorandum Order entered on December 29, 2006 by a Three-Judge Court duly designated pursuant to Code § 54.1-3935 consisting of the Honorable Cleo Powell, Chief Judge Designate, the Honorable Thomas A. Fortkort, and the Honorable Diane McQ. Strickland. (*Virginia State Bar, ex rel. Seventh District Committee v. Walter F. Green, IV* (Rockingham County Circuit Court, Case No. CL06-00507)) (hereinafter “Disciplinary Proceeding”).

2. Respondent was personally present at the Disciplinary Proceeding and was advised by the Three-Judge Court on November 14, 2006 of the suspension of his license to practice law in the Commonwealth of Virginia for a period of six (6) months effective January 1, 2007. The Three-Judge Court entered a Summary Order on November 14, 2006 imposing the six-month suspension of Respondent’s license to practice law in the Commonwealth of Virginia. Respondent endorsed the Summary Order on that same date, and on November 20, 2006, an attested copy thereof was mailed by Certified Mail, Return Receipt Requested, to Respondent at his last address of record with the Virginia State Bar.

3. On November 15, 2006, Respondent filed with the Supreme Court of Virginia (hereinafter “the Court”) a Petition To Stay A Summary Order of Suspension Entered By A Three-Judge Panel Convened In The Rockingham County Circuit Court in which he requested

the Court to stay the six month suspension of his law license pending his appeal of that determination. By order entered on December 5, 2006, the Court denied the stay request and declined to stay the six month suspension of Respondent's law license.

4. On December 7, 2006, Respondent filed with the Court a Motion To Reconsider A Petition To Stay The Effect Of A Three-Judge Panel Summary Order Dated November 14, 2006. By order entered December 11, 2006, the Court denied the motion to reconsider and again declined to stay the six month suspension of Respondent's law license.

5. On December 29, 2006: 1) the Three-Judge Court issued the Memorandum Order in the Disciplinary Proceeding; 2) Respondent was personally served with a copy thereof; and 3) Respondent filed with the Rockingham County Circuit Court: i) a Notice of Appeal of the suspension of his law license; ii) a Bond for Costs and Suspension; iii) Execution and Acknowledgment of Appeal Bond; and iv) Security for Appeal Pursuant to Va. Code §8.01-676.1.

6. On January 3, 2007, Respondent filed with the Court an Emergency Petition To Stay The Effect Of A Memorandum Order Or, In The Alternative, For A Supersedeas Bond To Suspend The Execution Of The Memorandum Order, Or To Recognize The Bond Set By A Three-Judge Panel. By order entered on January 4, 2007, the Court denied the emergency stay request and once again declined to stay the six month suspension of Respondent's law license.

7. On January 4, 2007, notwithstanding the Court's denial of Respondent's three (3) separate requests for the stay of the suspension of his law license, Respondent filed the following pleadings on behalf of Joan M. Michael (hereinafter "Ms. Michael"), whom Respondent had represented in a spousal support termination matter in the Rockingham County Circuit Court and

the Court of Appeals of Virginia:

- A Notice of Appeal to Supreme Court with the Court of Appeals of Virginia of its final order entered on December 5, 2006 dismissing the appeal of *Joan M. Michael v. Robert A. Blackburn* (Record No. 1641-06-3). Respondent executed the Notice of Appeal to Supreme Court and the Certificate attached thereto as counsel for the appellant and certified that a copy thereof was mailed to opposing counsel on January 4, 2007; and

- A Petition for Appeal with the Court (*Joan M. Michael v. Robert A. Blackburn*, Record No. 070004). Respondent executed the Petition for Appeal and the Certificate attached thereto as counsel for the appellant and certified that a copy thereof was mailed to opposing counsel on January 4, 2007. The Court dismissed the appeal by order entered on January 25, 2007 on the basis that Respondent was not eligible to file the Petition for Appeal due to the suspension of his law license. In its dismissal order, the Court stated:

On November 14, 2006, in a summary order, a three-judge court sitting in the Circuit Court of Rockingham County suspended the law license of Walter F. Green, IV for six months, effective January 1, 2007. This Court declined to stay the suspension on three separate occasions. Therefore, the appeal in this case must be dismissed because appellant's counsel was not eligible to file pleadings when he filed the petition for appeal on January 4, 2007.

Accordingly, the appeal in this case is dismissed.

8. Respondent did not notify Ms. Michael of the dismissal of her appeal by the Court of Appeals of Virginia on December 5, 2006 (*Joan M. Michael v. Robert A. Blackburn*, Record No. 1641-06-3).

9. Respondent did not notify Ms. Michael of the suspension of his law license until sending her written notification dated January 10, 2007, several days after the expiration of the

deadline for the filing of an appeal of the final order entered by the Court of Appeals of Virginia on December 5, 2006 (*Joan M. Michael v. Robert A. Blackburn*, Record No. 1641-06-3).

10. Despite having notice as of November 14, 2006 of the suspension of his license to practice law in the Commonwealth of Virginia for a period of six (6) months effective January 1, 2007, Respondent did not withdraw from his representation of Ms. Michael or make arrangements to retain substitute counsel to assist in timely pursuing Ms. Michael's appeal.

The Court unanimously found that the evidence established violations of the following provisions of the Virginia Rules of Professional Conduct on the part of Respondent:

**RULE 1.3 Diligence**

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

**RULE 1.4 Communication**

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

**RULE 1.16 Declining Or Terminating Representation**

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law.

**RULE 5.5 Unauthorized Practice Of Law**

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

The Three-Judge Court found that the evidence failed to show under the clear and convincing evidentiary standard that Respondent violated Rules 1.3(c), 1.4(c), 1.16(d) or 3.4(d) of the Virginia Rules of Professional Conduct, and dismissed those charges accordingly.

**THEREAFTER**, the 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 ethical misconduct committed by Respondent and the evidence and arguments presented, the Three-Judge Court reached the decision by majority vote that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for seven (7) months, said suspension to run consecutively to the balance remaining of the 18-month suspension of Respondent's license to practice law in the Commonwealth of Virginia that was the subject of *Walter F. Green, IV v. Virginia State Bar* (Supreme Court of Virginia - Record No. 082530), with terms. Therefore, it is hereby **ORDERED** that the license of Respondent Walter Franklin Green, IV, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of seven (7) months, effective immediately upon the termination of the 18-month suspension of Respondent's license to practice law in the Commonwealth of Virginia that was the subject of *Walter F. Green, IV v. Virginia State Bar* (Supreme Court of Virginia - Record No. 082530). The terms and conditions with which Respondent must comply are as follows: Within 90 days of October 6, 2009, Respondent shall: i) issue a refund to Ms. Michael of \$3,000.00; and ii) certify in writing completion of this requirement to M. Brent Saunders, the Assistant Bar Counsel assigned to this case. If the terms and conditions are not met by the specified dates, the alternative disposition shall be a Certification for Sanction Determination. The effective dates and deadlines set forth above supercede any conflicting effective dates and deadlines set forth in the Summary Order entered in this case on October 6, 2009.

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 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the license suspension, and make such arrangements as are required herein within 45 days of this effective date of the license suspension. Respondent shall furnish proof to the Bar within 60 days of the effective date of the license suspension that such notices have been timely given and such arrangements for the disposition of matters made. If Respondent is not handling any client matters on the effective date of the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. Issues concerning the adequacy of the notice and the arrangements 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.

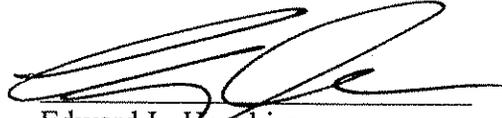
Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

**ORDERED** that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the County of Rockingham 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 Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

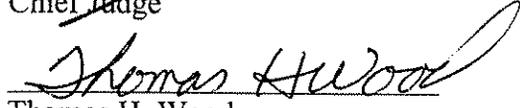
The court reporting firm that recorded these proceedings is Reporting Service, 57 South

Main Street, Suite 608, Harrisonburg, Virginia 22801.

ENTERED this 12<sup>th</sup> day of November, 2009.



Edward L. Hogshire  
Chief Judge



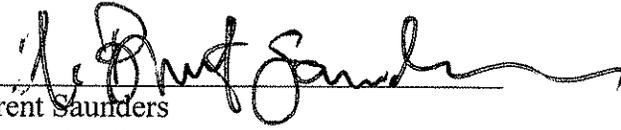
Thomas H. Wood  
Judge



Birg E. Sargent  
Judge

SEEN:

VIRGINIA STATE BAR

By: 

M. Brent Saunders  
Assistant Bar Counsel

SEEN AND Objected to by Respondent :



Andrew C. Graves, Esquire  
Counsel for Respondent

I CERTIFY THAT THE DOCUMENT TO WHICH THIS AUTHENTICATION IS AFFIXED IS A TRUE COPY OF A RECORD IN THE ROCKINGHAM COUNTY CIRCUIT COURT CLERK'S OFFICE AND THAT I AM THE CUSTODIAN OF THAT RECORD.

11/16/09  
DATE   
CLERK/DEPUTY CLERK