

**VIRGINIA:**

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

**In the Matter of Wilber Thurston Harville  
VSB Docket No. 05-021-0435**

**Complainant: Mr. Mrs. Gary G. and LaJane J. Boley**

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)**

On March 28, 2007, a duly convened Second District, Section I, Subcommittee of the Virginia State Bar consisting of Mary M. Kellam, Esquire, Michael S. Brewer, Lay Member, and Robert W. McFarland, Esquire, presiding, considered an Agreed Disposition in the above-referenced matter. Upon due deliberation, the Subcommittee chose to accept the Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13(G)(1)(c)(1) of the Rules of the Supreme Court of Virginia, the Second District Subcommittee hereby serves upon the Respondent the following Public Reprimand with Terms:

**I. FINDINGS OF FACT**

1. During all times relevant hereto, the Respondent, Wilber Thurston Harville, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Gary G. and LaJane J. Boley (the Boleys) were in the business of cleaning, sandblasting and painting fuel tanks, primarily at military bases, with gross receipts in the millions of dollars. From about August 2001 to April 2004, Mr. Harville provided legal services to the Boleys and their business entities.
3. Two of the Boleys' business entities were Mid-Atlantic Tank Inspection Services (MATIS), and InterSpec.
4. MATIS ceased doing business in 2001 because of financial trouble. This led to the Boleys' creation of a second entity, InterSpec.

### *The WrightHawk Matter*

5. During 2002, InterSpec served as a subcontractor for a project at Columbus Air Force Base, Mississippi. The Boleys and InterSpec worked as a subcontractor to WrightHawk, which was a subcontractor to Environmental Chemical Corporation. According to the Boleys, InterSpec completed the work in August 2002.
6. The Boleys allege that, although InterSpec completed the project and the general contractor paid WrightHawk for the work done by InterSpec, Wright Hawk in turn failed to pay the funds over to the Boleys or InterSpec, causing several subcontractors to sue the Boleys and/or InterSpec for unpaid invoices.
7. The Boleys claimed \$158,858 in unpaid invoices, and asked Mr. Harville to collect the money from the bonding company, Western Surety-CNA (CNA). Accordingly, on March 18, 2003, Mr. Harville sent a demand letter to CNA, and sent the copies of the invoices on March 26, 2003.
8. In May 2003, CNA refused the demand.
9. CNA having denied the claim, Mr. Harville contacted a Mississippi attorney, Randolph Lipscomb, about suing CNA on the bond in an appropriate Mississippi court.
10. The Boleys inquired about the status of the matter. By e-mail, dated July 26, 2003, Mr. Harville explained:

*Wrighthawk – This has taken a back seat to the IT matter in recent weeks, although I did attempt to make contact on Friday with the potential Mississippi counsel. My records show that even though we had discussed the Wrighthawk matter earlier, you did not turn the matter over to me until March, when I prepared a demand package and conducted a series of conversations with CNA which lasted until early May when CNA finally refused our demand.*
11. Mr. Harville never sent the file to the Mississippi attorney, and never followed-up on his contact.
12. In August 2003, the one-year statute of limitations set forth in the bonding contract expired.
13. Meanwhile, the Boleys continued to inquire of Mr. Harville by e-mail about the status of the matter:

- On December 19, 2003, they wrote:

*WE received a 'DEFAULT JUDGMENT" against InterSpec due to you not pursuing the Columbus case. Not only does it reflect badly on InterSpec's credit, but it has additional charges of about \$5,000 plus another \$5,500 in attorney's fees. This is plain inexcusable.*

- On March 8, 2004, they wrote:

*..LaJane and I are serious about the MS case. So much so that we will not be paying out any money until we see some action from the folks in MS...We haven't quit, but we are not sure if you ever started on the MS claim.*

- And finally on April 16, 2004, they wrote:

*What is the status of WrightHawk?*

14. Mr. Harville responded by e-mail on April 19, 2004:

*I'll try to have a conversation will (sic) the fellow in Mississippi tomorrow.*

15. Hearing nothing further about the matter, on May 4, 2004, Ms. Boley corresponded directly with Mr. Lipscomb by e-mail. She also telephoned Mr. Lipscomb and was advised he had no file and that he only vaguely remembered talking to Mr. Harville. She informed Mr. Harville of this by e-mail on May 11, 2004.

16. Ms. Boley contacted another Mississippi attorney on her own, Jason Weeks, and furnished him with the records on July 9, 2004.

17. By letter dated July 13, 2004, Mr. Weeks advised Ms. Boley that in his opinion InterSpec's claim against WrightHawk was time-barred by 40 U.S.C. 3133 which provides that an action on a payment bond on a federal project cannot be brought more than one year after the day on which the last of the labor was performed or material was supplied. The date of the last invoice having been September 6, 2002, the claim may have been time barred the year before.

18. Mr. Weeks also opined that InterSpec could bring a claim for breach of contract against WrightHawk, which had a three-year statute of limitations. By then, however, WrightHawk was out of business.

19. The Boleys allege that the letters from Mississippi counsel and CNA were the first notice to either of the Boleys that their \$158,858 putative claim against CNA was time-barred after one year.

20. In or about December 2003, the Boleys learned that CPI, a subcontractor hired by the Boleys, had obtained a default judgment in Mississippi against InterSpec for unpaid invoices.

### *Service as Registered Agent for MATIS*

21. Although MATIS ceased doing business in 2001, the Boleys did not dissolve the business because it had accounts receivable that they wanted to pursue. Mr. Harville was their counsel in complex litigation brought on behalf of MATIS.

22. Mr. Harville also served as registered agent for MATIS in 2001.

23. Mr. Harville, however, did not prepare or file the annual reports with the State Corporation Commission or attend to the annual fees due for calendar years 2002 and 2003. Mr. and Mrs. Boley did not ask Mr. Harville to continue serving as Registered Agent for MATIS for calendar years 2002 or 2003. Further, MATIS being non-operational, Mr. Harville's opinion was that no reason existed to file any documents with the State Corporation Commission.

24. Mr. Harville explained to the bar that filing the annual report was not a duty he agreed to as registered agent, that the next annual report did not get filed because by then the Boleys did not have the \$85 filing fee

25. According to the Boleys, however, Mr. Harville agreed to make the annual filings with the SCC. They also said that they would have paid the annual fees if Mr. Harville had advised them about them

## **II. NATURE OF MISCONDUCT**

The parties agree that the foregoing facts give rise to violations of the following 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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (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.

**III. PUBLIC REPRIMAND WITH TERMS**

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions are as follows:

- (1) that, on or before April 30, 2007, the Respondent shall obtain materials published by Virginia CLE regarding written fee agreements with clients and shall develop a form or forms to be used in his practice, clearly setting forth the terms of the engagement, including all objectives for his clients, submitting the same to the Bar Counsel for approval, on or before May 16, 2007;
- (2) that, on or before April 30, 2007, the Respondent shall obtain a printed receipt, to be used in his practice, reflecting all funds received from his clients, and the purpose of said funds, submitting the same to the Bar Counsel for approval, on or before May 16, 2007;
- (3) that, in addition to Continuing Legal Education (CLE) requirements imposed on all members of the Bar, the Respondent shall, on or before January 30, 2008, complete an additional six hours of CLE, not less than three hours of which shall be in courses eligible for ethics credits as determined by the Virginia State Bar Mandatory Continuing Legal Education Board (MCLE), and the Respondent shall certify to the Bar Counsel not later than February

15, 2008 that this term has been satisfied. The certification to the Bar Counsel may utilize MCLE Form #2, but shall be sent to the Bar Counsel and not to MCLE.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified above, this District Committee shall impose a **Certification to the Virginia State Bar Disciplinary Board for Sanction Determination**, as mandated by the Rules of Court, Part Six, Section IV, Subparagraph 13.G.4 (b).

In accordance with the Rules of the Virginia Supreme Court, Part 6: §IV, ¶13(B) (8) (c) (1), the Clerk of the Disciplinary System shall assess costs.

**SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

By Robert W. McFarland  
Robert W. McFarland, Esquire  
Subcommittee Chair

**CERTIFICATE OF SERVICE**

I certify that on the 3rd, day of April, 2007 I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Wilbur Thurston Harville, Respondent, at 1356 Little Neck Road, Virginia Beach, Virginia 23452, his address of record with the Virginia State Bar, and by regular mail to his counsel, Michael L. Rigsby, Esquire, at Carrell Rice & Rigsby, Forest Plaza II, Suite 310, 7275 Glen forest Drive, Richmond, Virginia 23226, his address of record with the Virginia State Bar.

Edward L. Davis  
Edward L. Davis  
Assistant Bar Counsel