

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

VIRGINIA STATE BAR, EX REL
THIRD DISTRICT COMMITTEE

Complainant

v.

Case No. CL12-335-7

HORACE FRAZIER HUNTER

Respondent

CONSENT ORDER

On June 5, 2012, this duly convened three-judge Circuit Court panel consisting of the Honorable Von L. Piersall, Jr., Retired Judge of the Third Judicial Circuit; the Honorable Alfred D. Swersky, Retired Judge of the Eighteenth Judicial Circuit; and the Honorable Kenneth R. Melvin, Judge of the Third Judicial Circuit, Chief Judge, (collectively the "Court") heard Respondent Horace Frazier Hunter's appeal of the November 8, 2011 Determination by the Third District Committee of the Virginia State Bar (Bar) finding that Respondent violated Virginia Rules of Professional Conduct 1.6(a), 7.1(a)(4), and 7.2(a)(3) and imposing a Public Admonition with Terms.

By Memorandum Order entered June 29, 2012, this Court unanimously affirmed the District Committee Determination as to Rules 7.1(a)(4) and 7.2(a)(3), but it dismissed the finding that Respondent violated Rule 1.6(a) finding that the application of Rule 1.6(a) to Respondent violated his First Amendment rights and was contrary to law. This Court found that a Public Admonition was an appropriate sanction, and it imposed as Terms that, on or before July 5, 2012, Respondent post the following disclaimer on his website: "Case results depend upon a variety of factors unique to each case. Case results

do not guarantee or predict a similar result in any future case.”

By appeal to the Supreme Court of Virginia, Respondent sought review of this Court’s Order finding that he violated Rules 7.1(a)(4) and 7.2(a)(3) and that he be required to post any disclaimer on his website. The Bar asserted as cross-error this Court’s finding that the application of Rule 1.6(a) to Respondent violated his First Amendment rights and was contrary to law. The Bar further asserted as cross-error this Court’s ruling that Respondent post a disclaimer on his website which did not fully comply with Rule 7.2(a)(3) and thus did not put his case results in a context that was not misleading.

By written opinion February 28, 2013 the Supreme Court of Virginia upheld this Court’s findings that Respondent violated Rules 7.1(a)(4) and 7.2(a)(3) as well as this Court’s dismissal of the Rule 1.6(a) charge.

The Supreme Court of Virginia held that this Court erred in imposing that Respondent post on his website only one disclaimer which did not fully comply with Rule 7.2(a)(3), and the Supreme Court of Virginia reversed and remanded the matter to this Court for imposition of disclaimers which fully comply with Rule 7.2(a)(3).

By Mandate certified March 20, 2013, the Supreme Court of Virginia remanded the above-referenced matter to this Court for further proceedings consistent with its written opinion.

Accordingly by this Consent Order, Respondent, represented by Rodney A. Smolla, Esq., and the Bar, by Assistant Bar Counsel Renu M. Brennan, hereby agree that on or before July 30, 2013, Respondent shall post disclaimers before all discussions of case results on his website, and further, those disclaimers shall fully comply with the

disclaimers required by Rule 7.2(a)(3) of the Virginia Rules of Professional Conduct, as now set forth at Rule 7.1(b) of the Virginia Rules of Professional Conduct, as follows:

Rule 7.1 Communications Concerning a Lawyer's Services

(b) A communication violates this rule if it advertises specific or cumulative case results, without a disclaimer that (i) puts the case results in a context that is not misleading; (ii) states that case results depend upon a variety of factors unique to each case; and (iii) further states that case results do not guarantee or predict a similar result in any future case undertaken by the lawyer. The disclaimer shall precede the communication of the case results. When the communication is in writing, the disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used to advertise the specific or cumulative case results and in the same color and against the same colored background as the text used to advertise the specific or cumulative case results.

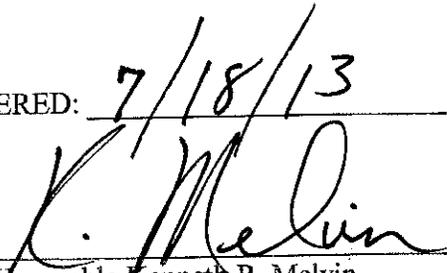
It is hereby ORDERED that the Respondent receive and the Court hereby imposes a PUBLIC ADMONITION WITH TERMS.

It is further ORDERED that upon satisfactory proof that Respondent has posted the disclaimers compliant with Rule 7.1(b) before all postings of case results on his website on or before July 30, 2013, this matter shall be closed. If, however, Respondent does not post the required disclaimers, which are compliant with Rule 7.1(b), before all case results on his website, on or before July 30, 2013, the alternative sanction shall be a PUBLIC REPRIMAND. If it appears that Respondent has not complied with the foregoing terms, Bar Counsel shall serve notice requiring Respondent to show cause why the alternative disposition of a PUBLIC REPRIMAND should not be imposed. The burden of proof shall be on Respondent to show compliance by clear and convincing evidence. Any show cause proceeding involving the question of compliance shall be deemed a new matter and not a continuation of the matter which resulted in the imposition of these terms.

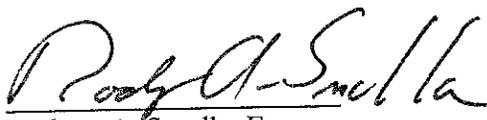
It is further ORDERED that pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-9(E)(1), the Clerk of the Disciplinary System shall assess costs against the Respondent and further that the Clerk of the Disciplinary System shall comply with the public notice requirements of the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-9(G).

It is further ORDERED that the Clerk of the Circuit Court shall mail a copy teste of this Order by certified mail to the Respondent, Horace Frazier Hunter, at 217 East Clay Street, Richmond, Virginia 23219-1325, his last address of record with the Virginia State Bar, and by regular mail to Rodney A. Smolla, Esq, Respondent's counsel, at Furman University, Office of the President, 3300 Poinsett Highway, Greenville, SC 29613 and to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219, and to Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

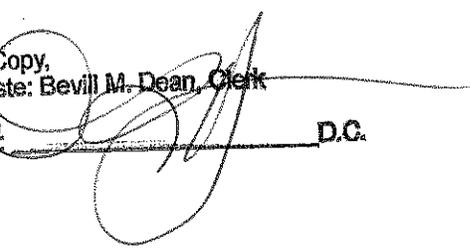
ENTERED: 7/18/13


The Honorable Kenneth R. Melvin
Chief Judge Designate

SEEN AND AGREED:
RESPONDENT HORACE FRAZIER HUNTER

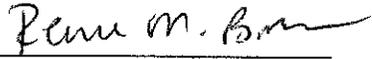

Rodney A. Smolla, Esq.,
Respondent's Counsel

A Copy,
Teste: Bevil M. Dean, Clerk

By: 

D.C.

VIRGINIA STATE BAR



Assistant Bar Counsel
Renu M. Brennan, Esq.