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VIRGINIA:

BEFORE THE EIGHTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

OCT 20 2010

VSB CLERK'S OFFICE

IN THE MATTER OF
RICHARD LAWRENCE JAMES MCGARRY

VSB Docket No. 09-080-075799

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On September 28, 2010, a hearing in this matter was held before a duly convened Eighth District Committee panel consisting of Joshua O. Elrod, Esquire, Chair, Daniel C. Summerlin, Esquire, Vice-Chair, Melissa M. Robinson, Esquire, Secretary, Ronnie L. Clay, Esquire, Stephen W. Lemon, Esquire, Anderson W. Douthat, IV, Lay Member, and Neil T. Treger, Lay Member.

Respondent appeared in person, *pro se*. Kathryn R. Montgomery, Assistant Bar Counsel, appeared for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13-16.Z. of the Rules of the Virginia Supreme Court, the Eighth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, Richard Lawrence James McGarry ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about May 16, 2006, the complainant, Andrew Duke ("Complainant") and his wife Kathleen Duke separated.
3. Respondent is Kathleen Duke's brother, and he represented her in the divorce from Complainant. Complainant was represented by attorney Stacey Strentz.
4. On or about May 23, 2007, the Commissioner in Chancery heard the matter. On or about June 11, 2007, the Commissioner filed her report with the Circuit Court of Spotsylvania County.

5. The Commissioner's report found that Kathleen Duke owed Complainant \$11,315.68 in child support arrearages.

6. On Kathleen Duke's behalf, Respondent filed twelve exceptions to the Commissioner's report.

7. On or about July 13, 2007, the parties appeared for an *ore tenus* hearing before Judge George Mason, III of the Circuit Court of Spotsylvania County.

8. On or about September 18, 2007, Judge Mason issued an opinion letter. Judge Mason sustained only one of the twelve exceptions noted, which concerned a credit card debt that was unrelated to the Commissioner's finding that Kathleen Duke owed Complainant \$11,315.68 in child support arrearages. Judge Mason ratified, confirmed, and approved the balance of the Commissioner's report and instructed Ms. Strentz to draft the appropriate decrees carrying out the Court's rulings in the letter.

9. Thereafter, Ms. Strentz drafted the Final Order. On page 3 of the Final Order, Ms. Strentz made a drafting error. Instead of indicating that Kathleen Duke—the defendant in the divorce action—owed Complainant \$11,315.68 in child support arrearages, the Final Order read that the plaintiff—Complainant—owed Kathleen Duke arrearages of \$11,315.68.

10. On October 15, 2007, Judge Mason entered the Final Order containing the error.

11. A short time after the Final Order was entered, Ms. Strentz discovered the error. Ms. Strentz advised Respondent of the error, and asked that he cooperate in presenting a corrected order to the Court for entry.

12. Respondent refused to sign a corrected order or cooperate with Ms. Strentz in remedying the error.

13. Instead, Respondent, knowing that the Final Order contained an error, then contacted the Division of Child Support Enforcement and demanded that the agency enforce the Final Order and take action to collect the \$11,315.68 from Complainant.

14. On or about October 25, 2007, Ms. Strentz issued and mailed to Respondent a Notice of Hearing for November 6, 2007 to correct a "typographical/clerk's error" in the Final Order.

15. Section 8.01-428.B of the Code of Virginia provides in pertinent part:

Clerical Mistakes.--- Clerical mistakes in all judgments or other parts of the record and errors therein arising from oversight or from an inadvertent omission may be corrected by the court at any time on its own initiative or upon the motion of any party and after such notice, as the court may order.

16. The matter was not heard on November 6, 2007 because Judge Mason was ill.

17. In the face of Ms. Strentz's efforts to correct the Final Order, on or about November 5, 2007, Respondent sent a letter to the Division of Child Support Enforcement, which said, "This Order is now final, beyond any modification or alteration, as commanded by Rule 1:1 of the Rules of the Supreme Court of Virginia, and so, even if Mrs. Strentz were to claim that she "merely made a mistake", or more likely, "my Secretary made a mistake," the Order is *FINAL*, beyond modification except by appeal to an appellate Court" [emphasis in the original]. Respondent's letter also said, "Accordingly, I expect you to act aggressively to garnish the \$11,315.68 from Mr. Duke's employer[.]"

18. On or about November 8, 2007, Respondent wrote Ms. Strentz a letter about the error in the Final Order. Respondent characterized the error as Ms. Strentz's "unilateral mistake" that could not be corrected because the error was not a "mutual mistake" of the parties. He further stated that under Rule 1:1 of the Rules of Court, the Court could not correct the error because twenty-one days had passed since entry of the order. Respondent cited various cases in support of his position.

19. The cases cited by Respondent did not support his position.

20. The Division of Child Support Enforcement did not act to enforce the Final Order.

21. On January 2, 2008, without a hearing, Judge Mason entered a corrected Final Order, which ordered Kathleen Duke to pay child support arrearages of \$11,315.68 to Complainant.

II. NATURE OF MISCONDUCT

Such conduct by Richard Lawrence James McGarry constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law; or
- (b) fail to disclose a fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

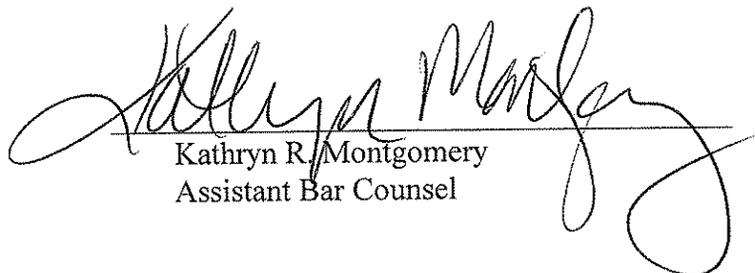
Pursuant to Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

EIGHTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 
Joshua O. Elrod
Chair

CERTIFICATE OF SERVICE

I certify that on Oct 20, 2010 I caused to be mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Reprimand) to Richard Lawrence James McGarry, Respondent, at Suite 201, 6405 Merriman Road, P.O. Box 21565, Roanoke, VA 24018, Respondent's last address of record with the Virginia State Bar.


Kathryn R. Montgomery
Assistant Bar Counsel