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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH ^{DEC} 3 2009

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

VSB CLERK'S OFFICE

v.

Case No. CL09-1509

WALTER WARE MORRISON

VSB No. 08-021-072848

MEMORANDUM ORDER

This cause came to be heard on September 18, 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 James E. Kulp, retired Judge of the Fourteenth Judicial Circuit, the Honorable Kenneth E. Trabue, retired Judge of the Twenty-Third Judicial Circuit, and the Honorable W. Allan Sharrett, Judge of the Sixth Judicial Circuit, Chief Judge presiding. The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared in person and through his counsel, Michael L. Rigsby, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Walter Ware Morrison, 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 Second District Committee of the Virginia State Bar. The Court accepted the Stipulation of Fact entered into and filed by the parties, admitted the parties' respective exhibits, and received evidence and argument from the parties as to whether the evidence

proved any violations of the Virginia Rules of Professional Conduct under the clear and convincing standard. Following deliberation, the Court unanimously found by clear and convincing evidence the following facts:

1. Respondent was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant hereto.
2. Respondent represented Ronald L. Wells (hereinafter "Mr. Wells") in a custody and visitation dispute involving Mr. Wells' three minor children, whose dates of birth are October 11, 1991, June 2, 1993 and February 3, 1999.
3. The dispute arose when Jennifer Spivey ("Ms. Spivey"), the maternal grandmother of the children, and Bruce Gould ("Mr. Gould"), the step-grandfather of the children, filed custody and visitation petitions in the Virginia Beach Juvenile and Domestic Relations District Court ("J&D Court") following the death of the mother of the children in 2005.
4. At all times relevant hereto, Mr. Wells retained sole custody of the children and neither Ms. Spivey nor Mr. Gould were allowed visitation with the children.
5. The J&D Court appointed attorney Simon J. Marle ("Mr. Marle") as guardian *ad litem* for the children and ordered the parties to be evaluated by Dr. Brian K. Wald pursuant to §16.1-278.15 of the Code of Virginia, 1950, as amended.
6. A hearing on the custody and visitation petitions was held in the J&D Court in November 2006 which resulted in the issuance of a bench ruling dismissing the custody and visitation petitions filed by Ms. Spivey and Mr. Gould.
7. In early January 2007, while the parties were awaiting entry of an order

memorializing the bench ruling, the oldest child ran away from home. Mr. Wells promptly notified the police, but did not advise the J&D Court, Mr. Marle, Ms. Spivey, Mr. Gould, or Respondent.

8. In May 2007, the J&D Court entered an order dismissing the custody and visitation petitions, and Ms. Spivey and Mr. Gould appealed to the Virginia Beach Circuit Court ("Circuit Court").

9. In July 2007, Mr. Wells reported to Respondent that his oldest child had run away in January and was still missing, and Respondent instructed Mr. Wells to report that information to the guardian *ad litem* for the children.

10. By Order entered by the Circuit Court on August 10, 2007, attorney Richard E. Garriott, Jr. ("Mr. Garriott") was appointed substitute guardian *ad litem* for the children.

11. On or about September 24, 2007, Mr. Garriott filed with the Circuit Court a Motion for Psychological Evaluation of Children based on information he obtained from Mr. Marle and Dr. Brian K. Wald which caused Mr. Garriott to believe that an evaluation of the children was needed and in the best interest of the children.

12. On October 19, 2007, a hearing on Mr. Garriott's motion was held in the Circuit Court before The Honorable Thomas S. Shadrick ("Judge Shadrick") at which appeared, among others, Mr. Garriott, James A. Evans, Esq. (counsel for Ms. Spivey and Mr. Gould), Mr. Wells and Respondent.

13. Between July 2007 and October 19, 2007, the Respondent did not ask Mr. Wells whether he had advised Mr. Garriott that the oldest child was a runaway.

14. At the time of the hearing, neither Judge Shadrick, Mr. Garriott or any other

parties having an interest in the custody and visitation dispute had been made aware of the status of the oldest child.

15. During the hearing, Respondent opposed Mr. Garriott's motion and argued that an evaluation of the children was premature because Mr. Garriott had not met with the children or presented evidence that an evaluation was needed. Respondent did not tell Judge Shadrick the oldest child had run away from home and had not returned. Respondent represented to Judge Shadrick that the children were "doing well" or "doing fine" and that an evaluation was thus unwarranted. Based on the Respondent's statements, Judge Shadrick declined to order the evaluations and instructed Mr. Garriott to meet with the parties and the children.

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 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal;

AND

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

The Court found that the evidence failed to show under the clear and convincing evidentiary standard that the Respondent violated Rules 3.3(a)(2), 4.1(a) or 8.4(b) of the Rules of Professional Conduct, and dismissed those charges accordingly.

THEREAFTER, the Virginia State Bar and the Respondent presented evidence and argument regarding the sanction to be imposed upon the Respondent, and the Three-Judge Court then retired to deliberate.

AFTER DUE CONSIDERATION of the evidence and the nature of the ethical misconduct committed by the Respondent, the Three-Judge Court reached the unanimous decision that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for ninety (90) days, effective October 15, 2009. Therefore, it is hereby **ORDERED** that the license of the Respondent, Walter Ware Morrison, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of ninety (90) days, effective October 15, 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 the 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. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The 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. The 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. 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

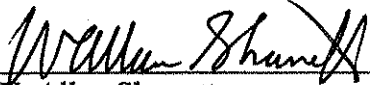
failure to comply with these requirements.

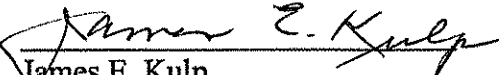
Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

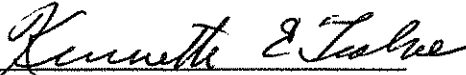
ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Virginia Beach and mailed to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.


The court reporter who transcribed these proceedings is Cynthia Noah, Ronald Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

ENTERED this 23 day of November, 2009.


W. Allan Sharrett
Chief Judge

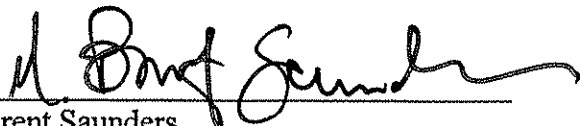

James E. Kulp
Judge


Kenneth E. Trabue
Judge


CERTIFIED TO BE A TRUE COPY
OF RECORD IN MY CUSTODY
TINA E. SINNEN, CLERK
CIRCUIT COURT, VIRGINIA BEACH, VA
BY 
DEPUTY CLERK

SEEN AND OBJECTED TO AS TO THE DISMISSAL OF 3.3(a)(2), 4.1(a) and 8.4(b):

VIRGINIA STATE BAR

By: 
M. Brent Saunders
Assistant Bar Counsel

SEEN AND Objected to with regard to the findings
of a violation of RPC 8.4(c) :


Michael L. Rigsby, Esquire
Counsel for Respondent