

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF BERNADETTE WILBON O'NEAL  
VSB Docket No. 05-042-2627

ORDER OF SUSPENSION

This matter came on the 21<sup>st</sup> day of March, 2008, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent. The Agreed Disposition was considered by a Panel of the Disciplinary Board consisting of William H. Monroe Jr., 2<sup>nd</sup> Vice Chair, V. Max Beard, Lay Member, William E. Glover, Rhysa Griffith South and Carl A. Eason. Each member affirmed that he or she had no business or personal interest that would impair, or reasonably could be perceived to impair, his or her ability to be impartial

Kathleen M. Uston, Assistant Bar Counsel, represented the Bar. The Respondent, Bernadette Wilbon O'Neal, was present and presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition imposing a Public Reprimand.

The court report who recorded these proceedings is Theresa S. Griffith of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, VA 23227, (804) 730-1222, who was duly sworn by the 2<sup>nd</sup> Vice Chair.

Upon consideration of the Agreed Disposition, the Panel finds by clear and convincing evidence as follows:

1. At all times relevant hereto, the Respondent, Bernadette Wilbon O'Neal, (hereinafter Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or around June 2, 2004, the Complainant, Linda Wilson, hired the Respondent to represent her son, Tyris Wilson, on criminal charges of rape, abduction, and animate object sexual penetration in the Fairfax County Juvenile and Domestic Relations Court (hereinafter the "JDR Court,") Ms. Wilson paid the Respondent \$2,000.00 in advanced fees.

3. Respondent entered her appearance as counsel in the JDR Court on August 12, 2004.

4. Mr. Wilson's Preliminary Hearing was held on August 27, 2004, at which time the Court certified the matter to the Grand Jury. The Assistant Commonwealth's Attorney subsequently direct indicted Mr. Wilson on all of the underlying charges and the case was set for trial on September 28, 2004 in the Fairfax County Circuit Court.

5. On September 23, 2004, the Assistant Commonwealth's Attorney prosecuting the case, Adriana L. Eberle, wrote to the Respondent confirming their earlier telephone conversation wherein Ms. Eberle informed the Respondent of her intention to seek a continuance of the trial date from the Calendar Control Judge. Ms. Eberle appeared before Calendar Control on September 24, 2004. The Respondent did not appear, and the case was continued to October 19, 2004.

6. Thereafter, on October 18, 2004, the Respondent and Ms. Eberle appeared again before Calendar Control, this time on the Respondent's Motion to continue the trial date due to her own illness. The case was continued to November 29, 2004. The Respondent failed to inform her client or Ms. Wilson of the new trial date.

7. On November 19, 2004, Mr. Wilson filed a *pro se* Motion for a Continuance and for New Attorney (sic), alleging that the Respondent had not been in contact with him, had

informed his mother that she did not wish to represent him any further, and had done nothing to prepare him for his upcoming trial. Mr. Wilson's mother, Ms. Wilson, also attempted to reach the Respondent, but had difficulty. When Ms. Wilson finally spoke with the Respondent, the Respondent informed her that she no longer wished to represent her son and would be filing a motion to withdraw. Mr. Wilson noticed his Motion for hearing on November 24, 2004.

8. On November 24, 2004, Mr. Wilson and Ms. Eberle appeared for the hearing. The Respondent did not appear and the Court issued a Rule to Show Cause against her returnable to the trial date in the case, November 29, 2004.

9. On November 29, 2004, Mr. Wilson, Ms. Eberle and the Respondent appeared before the Honorable Jonathan C. Thacher, at which time Judge Thacher questioned the Respondent extensively about her status as counsel in the case, her efforts to prepare for trial, and her readiness to try the case that day.

10. Upon direct questioning from Judge Thacher, the Respondent stated that she was and always had been counsel of record in the Circuit Court, that she was prepared for trial that day, had been prepared for trial "all along," and was "surprised and, in fact, hurt" by claims that her client made in his motion for new counsel. The Respondent insisted that she had always been easily accessible to her client and his mother, Ms. Wilson, and that she had missed the message from Ms. Wilson regarding the hearing on November 24, 2004 because it was left on her cell phone after hours as she was preparing to travel for the Thanksgiving holidays. The Respondent informed Judge Thacher that, despite Ms. Wilson's inability to pay her legal fees, she purposely "did not withdraw from the case and assured [the Wilsons] that I would continue representation until I received notice from another attorney that that attorney was hired" to ensure

that Mr. Wilson had representation until she was replaced. The Respondent said to the Court, “I want to represent [Mr. Wilson] in this case,” and stated that she had informed the Wilsons that she was willing to go to trial that day and was prepared to do so.

11. Notwithstanding the above, in response to specific questions from Judge Thacher, the Respondent admitted that she had not filed a case status form because she had “neglected to file it,” admitted that she had not seen her client for one (1) month, that she had no witnesses present to testify on his behalf, that she had not reviewed the court file in at least one (1) month, that she had not prepared her jury instructions, that she had not subpoenaed any witnesses, that she did not know the identity of the witnesses who had been subpoenaed by the Commonwealth, and that she had never obtained a transcript of the Preliminary Hearing.

12. In response to Judge Thacher’s question as to why no discovery request had been filed, the Respondent represented to the Court that “discovery was given by [the Commonwealth] from the beginning. . . There was nothing else to be discovered . . . I’ve had it now for several months.” This representation was false.

13. Though the Respondent claimed to believe that another attorney chosen by Mr. Wilson would be taking over the case, she admitted to the Court that she was counsel of record and always had been, and that she understood that it was her responsibility to defend Mr. Wilson until she was given leave of Court to withdraw. She also admitted that it was her first criminal trial and her first jury trial.

14. At the conclusion of the colloquy described above, Judge Thacher removed the Respondent from the case and appointed Michael F. Devine, Esquire as Mr. Wilson’s counsel.

15. On June 21, 2005, Virginia State Bar Investigator James W. Henderson interviewed the Respondent. The Respondent stated during the interview that she had agreed to represent Mr. Wilson at his Preliminary Hearing in the JDR Court for a fee of \$2,000.00, and that she had informed Ms. Wilson that she would require \$7,000.00 to handle a trial. Ms. Wilson, however, never had the funds to pay this additional fee. The Respondent also stated that she had never entered her appearance as counsel of record for Mr. Wilson in Circuit Court, that her name did not appear anywhere in the Circuit Court file, that she had to respond “no” to Judge Thatcher’s questions regarding her preparedness for trial because she had never been retained and therefore was, in fact, unprepared for trial. She also claimed that the Court’s removal of her from the case really did not make sense since he was removing her from a case she was never really in.

16. In mitigation of the above misconduct, the Respondent has accepted full responsibility for her conduct, has made restitution to her client, and was cooperative in the bar’s investigation of this case.

The aforementioned conduct on the part of the Respondent constitutes a violation 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.

- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

**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.

**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

Upon consideration whereof, the 2<sup>nd</sup> Vice Chair announced following private deliberations that the Board rejected the Agreed Disposition as presented, but would approve an Agreed Disposition that imposed a suspension of the Respondent's license to practice law in the Commonwealth of Virginia for thirty (30) days with the deletion of Rule 8.4, if accepted by the Respondent not later than March 28, 2008. On March 24, 2008, the Respondent filed with the Clerk's Office her acceptance of the Agreed Disposition to a suspension of the Respondent's license to practice law in the Commonwealth of Virginia for thirty (30) days with the deletion of Rule 8.4.

Upon consideration whereof, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia shall be SUSPENDED for thirty (30) days effective May 1, 2008.

It is further ORDERED pursuant to the provisions of Part Six, §IV: ¶13.M. 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 her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her client. The Respondent shall give such notice within fourteen (14) days of the effective date of the suspension order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the order. The Respondent shall furnish proof to the bar within sixty (60) days of the effective date of the order that such notices have been timely given and such arrangement for the disposition of matters made.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the suspension, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

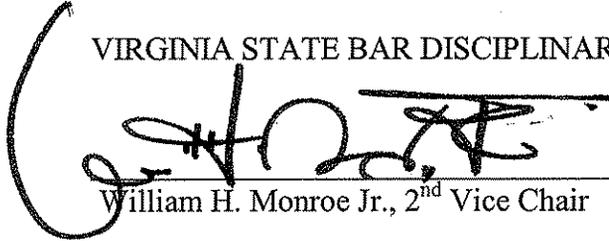
IT IS FURTHER ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c.1 of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs; and

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order be mailed to the Respondent, Bernadette Wilbon O'Neal, by certified mail, return receipt requested, to her Virginia State Bar address of record, at 500 North

Washington Street, Alexandria, VA 22314, and a copy by regular mail to Kathleen Maureen Uston, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street suite 310 Alexandria, VA 22314-3133.

ENTERED THIS 24<sup>th</sup> day of MARCH, 2008.

VIRGINIA STATE BAR DISCIPLINARY BOARD



William H. Monroe Jr., 2<sup>nd</sup> Vice Chair