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NORFOLK
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BY _____ D.C.

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

RECEIVED

v.

JAN 22 2010

Case No. CL09-5629

JOSEPH A. PENNINGTON
(VSB Docket No. 09-021-078133)

VSB CLERK'S OFFICE

MEMORANDUM ORDER

This cause came to be heard on December 7, 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 Von L. Piersall, Jr., Retired Judge of the Third Judicial Circuit, The Honorable Randolph T. West, Retired Judge of the Seventh Judicial Circuit, and The Honorable W. Allan Sharrett, Chief 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 *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against Respondent, Joseph A. Pennington, 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 or revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Charge of Misconduct issued by a subcommittee of the Second District Committee of the Virginia State Bar.

The Chief Judge of the Three-Judge Court inquired of the members of the Three-Judge Court whether any had any personal or financial interest that would preclude the member from being impartial, and each answered in the negative. Respondent waived a

reading of the charges of misconduct and the Virginia State Bar and Respondent waived an explanation of the proceedings.

The parties made opening statements. The Virginia State Bar presented its evidence at the conclusion of which Respondent presented his evidence. The Virginia State Bar then presented rebuttal evidence. The parties then presented arguments as to whether the evidence proved any of the charged violations of the Virginia Rules of Professional Conduct under the clear and convincing standard. Following deliberation, the Three-Judge Court unanimously found by clear and convincing evidence the following pertinent facts:

1. Respondent was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant hereto.
2. Freeman Godfrey (“Godfrey”) hired Respondent in February 2007 to represent him in a divorce proceeding initiated against Godfrey by his wife, who had filed a Complaint against Godfrey in the Virginia Beach Circuit Court requesting, among other things, temporary and permanent spousal support (Case No. CL07-383). Respondent filed a responsive pleading on behalf of Godfrey and remained Godfrey’s counsel of record in the divorce proceeding at all times relevant hereto.
3. Following a hearing conducted in September 2007, Godfrey was ordered to pay his wife temporary spousal support in the amount of \$951.00 per month commencing September 1, 2007.
4. Godfrey advised Respondent in late 2007 that he desired to pursue a reduction of his spousal support obligation based on a change in his wife’s living situation and the financial burdens he was experiencing. In April 2008, Respondent filed a motion to

reduce Godfrey's spousal support obligation that motion was denied in May 2008 due to the existence of an arrearage in Godfrey's spousal support obligation.

5. In June 2008, Godfrey notified Respondent's office that he had paid the arrearage and was ready to proceed with another request for a reduction of his spousal support obligation.

6. As of June 2008, Respondent was aware that Godfrey had paid the arrearage and was thus eligible to pursue a second request for a reduction of his spousal support obligation.

7. Respondent did not file a second motion for a reduction of Godfrey's spousal support obligation until October 23, 2008. Respondent set the matter for hearing on October 31, 2008 without first clearing the date with opposing counsel, resulting in the hearing being continued to December 19, 2008. On that date, the parties, opposing counsel and the presiding judge¹ were present and ready to proceed, but Respondent failed to appear on time. The matter was rescheduled for January 9, 2009. On that date, although the matter was not on the hearing docket, the parties, opposing counsel and the presiding judge convened and were ready to proceed. Although Respondent was in the courthouse, he did not appear in the courtroom where the parties, opposing counsel and the presiding judge had convened, and the hearing had to thus be rescheduled for the third time.

8. Following the January 9, 2009 hearing, Godfrey terminated Respondent as his counsel. By consent order entered on February 11, 2009, Respondent was granted leave to withdraw as counsel for Godfrey.

¹ The presiding judge present on December 19, 2008 did not enter the original spousal support order, and, according to Respondent, therefore did not wish to consider the reduction request.

9. Throughout the representation, Godfrey left telephone messages for Respondent that Respondent did not return.

The Three-Judge Court unanimously found that: i) the evidence failed to show violations of Rules 1.4(a) and (b), and dismissed those charges accordingly; and ii) the evidence established violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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

AFTER DUE CONSIDERATION, the Three-Judge Court reached the unanimous decision that Respondent should receive a public reprimand with terms. Therefore, the Three-Judge Court hereby imposes on Respondent, Joseph A. Pennington, a **Public Reprimand With Terms**. The terms and conditions with which Respondent must comply are as follows:

1. Respondent is placed on probation for a period of one (1) year effective December 7, 2009. Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct during such probationary period. Any final determination made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia that Respondent engaged in professional misconduct during this probationary period shall conclusively be deemed to be a violation of this Term;
2. Respondent shall create and implement a docket control system which will

insure Respondent periodically reviews the status of all pending matters as an advance reminder of key deadlines and other obligations so as to avoid missed deadlines and scheduling conflicts. Respondent shall provide proof of compliance with the foregoing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, by February 5, 2010; and

3. Respondent shall enroll and attend 12 hours of continuing legal education (CLE) in the substantive area of ethics and/or law office management, which hours shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. Respondent shall complete this requirement by December 7, 2010, and certify completion of this requirement in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, by December 15, 2010.

If the terms and conditions are not met, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of 90 days.

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.

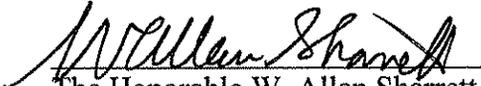
ORDERED that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Norfolk and mailed to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon Respondent and Bar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

The court reporter who transcribed these proceedings is Ronald Graham and

Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-

1100.

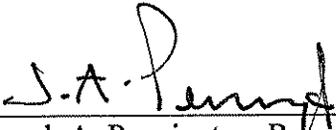
ENTERED this 13 day of January, 2010.

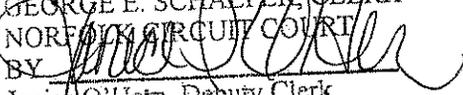

The Honorable W. Allan Sharrett
Chief Judge

SEEN AND OBJECTED TO AS TO THE DISMISSAL OF VIOLATIONS OF RULES
1.4(a) and (b):


M. Brent Saunders, Assistant Bar Counsel

SEEN AND _____:


Joseph A. Pennington, Respondent
Pro se

COPIED FILED
GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT
BY 
Janice O'Hara, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date: 1-19-10