

**VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
MARCUS NOAH PERDUE, III**

**VSB DOCKET NOS.: 12-080-089874  
12-080-090906  
12-080-089050**

**OPINION AND ORDER**

THESE MATTERS came to be heard on August 23, 2013, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board") on the Subcommittee Determination for Certification by a Subcommittee of the Fourth District Committee, Section II, pursuant to Part 6, § IV, ¶ 13-18 of the Rules of the Supreme Court of Virginia. The Virginia State Bar (the "Bar") bears the burden of proof by clear and convincing evidence. The Board impaneled for these matters consisted of Robert W. Carter, Lay Member, John A.C. Keith, William H. Monroe, Jr., Melissa W. Robinson, and Tyler E. Williams, III, First Vice Chair (Presiding). The Bar was represented by Paulo E. Franco, Jr., Assistant Bar Counsel ("Bar Counsel"). The Respondent, Marcus Noah Perdue, III (the "Respondent") was present and represented himself in connection with these matters.

The Chair polled the members of the Board as to whether any of them had any personal or financial interest or bias which would preclude any of them from fairly hearing these matters and serving on the panel, and each member responded that there were no such conflicts. Ruth A. Levy, a registered professional court reporter, Cook & Wiley, 3751 Westerre Parkway, Suite D-1, Richmond, Virginia 23233 (804) 359-1984, after duly being sworn, reported the hearing and transcribed the proceedings.

The Board first took up Respondent's Appeal filed herein by Respondent on August 22, 2013 and Addendum to Appeal filed by Respondent that same date of the Chair's Order entered August 19, 2013 overruling Respondent's Motion for Continuance. After hearing argument from Respondent and Bar Counsel, the Board found that Respondent had not met his burden to show grounds under Paragraph 13-18F of Part 6 of Section IV of the Rules of

the Supreme Court of Virginia (hereinafter, "the Rules") for such continuance, and the Board overruled Respondent's Appeal seeking a continuance.

The Board next took up Respondent's Appeal of the Chair's decision overruling Respondent's motion regarding exculpatory evidence, the second ground asserted in the above Appeal, and heard argument from the Respondent and Bar Counsel. Inasmuch as Respondent seeks for this Board to extend the requirements of Brady v. Maryland from the field of criminal procedure to this proceeding, without any apparent justification, the Board overruled this portion of Respondent's Appeal.

The Board then considered Respondent's Second Motion for Dismissal filed herein on August 16, 2013 and heard argument from Respondent and Bar Counsel. Respondent's Second Motion for Dismissal seems based upon an allegation by Respondent that Bar Counsel has withheld exculpatory evidence, again seeking to extend Brady v. Maryland to this proceeding. After receiving the assurance from Bar Counsel that all evidence required to be disclosed to the Respondent under Paragraph 13-11.B.3 of the Rules had, in fact, been disclosed to the Respondent, and declining, again, to extend Brady v. Maryland to this proceeding, Respondent's Second Motion for Dismissal was overruled.

Finally, Respondent sought to have the Board dismiss the charges against him for failure of the Bar to maintain probable cause to proceed on the Certification which motion was argued by Respondent and Bar Counsel. Finding no justification for such motion, the Board overruled it, but the Chair allowed Respondent to move to strike the Bar's evidence at the conclusion of the Bar's evidence for each charge, pursuant to Paragraph 13-18.J of the Rules.

**VSB Docket No. 12-080-089874**  
**Complainant: Virginia State Bar**

At the hearing of Docket No. 12-080-089874, in addition to the exhibits admitted at the Pre-Hearing Conference call, Virginia State Bar Exhibit A-27 was admitted without

objection. The Bar, in its case in chief also called witnesses Marcus Noah Perdue, III and Albert E. Rhodenizer, Jr. and thereafter Respondent moved to strike the evidence, which was overruled by the Board. Respondent subsequently testified on his own behalf.

After consideration of the testimony presented and exhibits, and at the conclusion of the evidence regarding misconduct, the Board recessed to consider the disposition of the case. After deliberation, the Board reconvened and stated that it had not found by clear and convincing evidence that the Respondent was in violation of Rules 1.3(c), 1.6(a), 3.5(a)(1), 3.5(f), 8.4(a) or 8.4(b). Accordingly, this Complaint shall be and hereby is DISMISSED with prejudice.

**VSB Docket No. 12-080-090906**  
**Complainant: Maressa K. Butler**

At the hearing of Docket No. 12-080-090906, in addition to the exhibits admitted at the Pre-Hearing Conference call, Virginia State Bar Exhibit A-28 was also admitted without objection. The Bar, in its case in chief also called witness Maressa Butler and thereafter Respondent moved to strike the evidence, which was overruled by the Board. Respondent subsequently testified on his own behalf.

After consideration of the testimony presented and exhibits, and at the conclusion of the evidence regarding misconduct, the Board recessed to consider the disposition of the case. After deliberation, the Board reconvened and stated that it had not found by clear and convincing evidence that the Respondent was in violation of Rule 4.2 or 8.4(a). Accordingly, this Complaint shall be and hereby is DISMISSED with prejudice.

**VSB Docket No. 12-980-089050**  
**Complainant: Edward K. Stein**

### **I. NATURE OF THE MISCONDUCT**

At the hearing of Docket No. 12-980-089050, in addition to reliance on Exhibits A1-3, 9-19, and 24-26 the Bar, in its case in chief, also called witnesses the Honorable Edward K. Stein and Albert E. Rhodenizer, Jr. Thereafter Respondent moved to strike the evidence, which was overruled by the Board. Respondent subsequently testified on his own behalf.

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant, Respondent was licensed to practice law in The Commonwealth of Virginia and active and in good standing.
2. Respondent was admitted to the practice of law on April 16, 1998.
3. Dayton Taylor retained the Respondent to represent his interests in restoring his driving privileges in the Commonwealth of Virginia.
4. During the time that Mr. Taylor was seeking restoration of his driving privileges, he was facing a felony charge of driving on a suspended or revoked license ("Felony Charge).
5. Respondent filed a Petition for Restoration of Driving Privileges with the Virginia Department of Motor Vehicles ("Restoration Petition").
6. The hearing on the Restoration Petition was scheduled for the morning of August 2, 2011 in the Allegheny County Circuit Court.
7. The preliminary hearing on the Felony Charge was scheduled for the afternoon of August 2, 2011 in the Allegheny County General District Court.
8. The hearing on the Restoration Petition was held before the Honorable Malfourd Trumbo.
9. No one was present from the office of the Commonwealth's Attorney due to Respondent not providing a notice of hearing.
10. During that hearing, Judge Trumbo reviewed Mr. Taylor's file and determined that he was eligible for restoration.
11. As the hearing neared completion, Judge Trumbo asked Respondent if there was anything else he needed to know in the matter.

12. Respondent stated there was nothing else Judge Trumbo needed to know.
13. Respondent failed to disclose to Judge Trumbo that Mr. Taylor had a preliminary hearing that afternoon on the Felony Charge.
14. Judge Trumbo entered an order restoring Mr. Taylor's driving privileges at the conclusion of the hearing ("Restoration Order").
15. In the afternoon of August 2, 2011, Respondent and Mr. Taylor appeared in the Allegheny County General District Court.
16. The two regular Assistant Commonwealth Attorneys for Allegheny County were away attending a seminar on August 2, 2011.
17. Consequently, the Commonwealth was represented at the preliminary hearing on the Felony Charge by Ralph Jackson, a part time Assistant Commonwealth's Attorney that normally handles the juvenile and domestic relations docket.
18. At the preliminary hearing, Respondent presented the Restoration Order.
19. Respondent argued that the Restoration Order in addition to other factors warranted disposing of the Felony Charge by a plea agreement to a misdemeanor.
20. Based on the Restoration Order, Mr. Jackson agreed to reduce the felony charge to a misdemeanor by plea agreement, and the plea agreement was accepted by the General District Court Judge.
21. After the conclusion of the preliminary hearing, the Commonwealth's Attorney for Allegheny County, Edward Stein, asked Mr. Jackson if the Felony Charge had been certified at the preliminary hearing.
22. Mr. Jackson then advised Mr. Stein of the Restoration Order and that it had been used in consideration of the reduced charge.
23. Mr. Stein advised Mr. Jackson that the Commonwealth's Attorney's office never received notice of the Restoration Petition.
24. Mr. Stein went to Judge Trumbo's chambers, where Mr. Taylor's file was located and reviewed the file.
25. Mr. Stein thereafter filed a Motion to Vacate the Restoration Order.
26. Sometime thereafter, Judge Trumbo's secretary called Mr. Stein and advised him that Judge Trumbo wanted an order vacating the Restoration Order ("Vacation Order") and that no hearing would be necessary.

27. The secretary advised Mr. Stein that Judge Trumbo wanted Mr. Stein to bring the Vacation Order to his chambers.
28. Judge Trumbo then entered the Vacation Order without signature from Respondent.
29. Judge Trumbo thereafter set a hearing on the Restoration Petition for October 2, 2011.
30. On August 10, 2011, Respondent filed a Motion with the Circuit Court accusing the Commonwealth's Attorney and Judge Trumbo of acting in concert and with duplicitous intentions in regards to Mr. Taylor's case. (VSB exhibit A-15)
31. Respondent's Motion contained both false statements of fact and false statements of law regarding Judge Trumbo and the Commonwealth's attorney.
32. As a direct result of Respondent's unfounded and reckless charges, Judge Trumbo recused himself from hearing any matters in which Respondent was scheduled to appear before him.
33. As a result of Judge Trumbo's recusal, the office of the Executive Secretary was required to find judges from outside the 25<sup>th</sup> Judicial Circuit to hear cases involving Respondent.

## **II. MISCONDUCT**

The Certification charges violations of the following provisions of the Rules of

Professional Conduct:

### **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;

### **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

### **RULE 8.2 Judicial Officials**

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

**Rule 8.4      Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

The charge of violation of Rule 3.4(j) was withdrawn by the Bar.

**III. DISPOSITION**

Upon the admission of the Respondent that he authored the Motion of August 10, 2011, upon review of the foregoing findings of fact, upon review of the Exhibits presented by Bar Counsel and after consideration of all testimony presented, at the conclusion of the evidence regarding misconduct, the Board recessed to consider the disposition of this case.

After deliberation, the Board reconvened and stated that it had found by clear and convincing evidence that the Respondent was in violation of Rules 3.3(a)(1), 4.1(a), 8.2, 8.4(a), 8.4(b), and 8.4(c).

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including Respondent's prior disciplinary record. The Respondent presented and the Board also considered testimony from the Respondent on these issues. The Board recessed to deliberate what sanction to impose upon the Respondent. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction as Suspension for a period of one (1) year.

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is suspended effective August 23, 2013.

It is further ORDERED that Respondent must comply with requirements of Part 6, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. 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. Respondent shall give such notice within fourteen (14) day of the effective date of this suspension. The Respondent shall also furnish proof to the Bar within 60 (sixty) days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

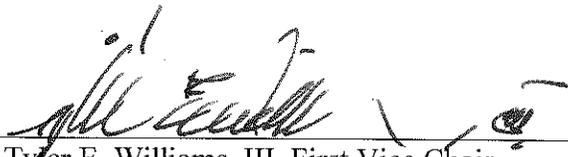
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of August 23, 2013, the Respondent shall submit an Affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar.

It is further ORDERED, pursuant to Part 6, § IV, ¶ 13-9(E) of the Rules of the Supreme Court of Virginia, that the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall send an attested copy of this Opinion and Order by certified mail to the Respondent, Marcus Noah Perdue, III, 416 West Locust Street; Covington, Virginia 24426 and a copy hand-delivered to Paulo E. Franco, Jr, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 5th day of September, 2013.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
Tyler E. Williams, III, First Vice Chair