

VIRGINIA:

BEFORE THE EIGHTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MARCUS NOAH PERDUE, III

VS. Docket No. 08-080-072976

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On April 17, 2008, a duly convened Eighth District Subcommittee consisting of Tracy A. Giles, Esquire, Chair presiding, Daniel C. Summerlin, III, Esquire, and Sidney S. Evans, lay member, held a meeting on this matter. At the meeting, the Subcommittee voted to set this case for hearing before the Eighth District Committee. The Subcommittee also authorized Assistant Bar Counsel Kathryn R. Montgomery to enter into an agreed disposition for a Public Reprimand Without Terms with the respondent, Marcus Noah Perdue, III ("Respondent"). Ms. Montgomery and Respondent have since entered into the agreed disposition, which is approved by the Subcommittee pursuant to Part Six, Section IV, Paragraph 13.G.1.d.(3) of the Rules of the Supreme Court of Virginia.

Pursuant to Part Six, Section IV, Paragraph 13.G.4. of the Rules of Court, the Eighth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. At all times relevant, Respondent was licensed to practice law in the Commonwealth of Virginia.
2. Respondent is a sole practitioner.

3. In 2007, Respondent ran for Commonwealth's Attorney of Alleghany County. Because of the demands of the race and his ongoing responsibilities to his clients, during the fall of 2007, he was often out of the office campaigning or in court.
4. During this time, Respondent represented Billie Sue Reed in a divorce.
5. On Friday afternoon, September 21, 2007, Ms. Reed appeared at Respondent's office with a witness for scheduled depositions related to her divorce case. The depositions had previously been cancelled due to Respondent's unavailability.
6. Respondent had been held up in court and was not in the office when Ms. Reed arrived. Respondent's secretary explained to Ms. Reed that the depositions would have to be rescheduled again. This news upset Ms. Reed.
7. Respondent's secretary, who was also a notary public, then proceeded to take the depositions herself without Respondent's knowledge. At the time, the secretary understood that her actions were improper, but believed that Respondent could later remedy the situation by calling Ms. Reed and the other witness and affirming their answers.
8. Later that afternoon after Ms. Reed had left, Respondent returned to the office and saw his secretary as she was leaving for the day. At that time, the secretary confessed to Respondent that she had taken the depositions herself. He immediately informed her that her actions were improper. He also instructed her not to file the depositions with the court.
9. That evening, Respondent left Ms. Reed a voice message that the depositions had been improperly taken and that she and the other witness would have to be deposed again.

10. The next week, Ms. Reed terminated Respondent's services. Respondent later refunded to her a portion of his attorney's fees.
11. Also the next week, despite Respondent's instructions to the contrary, his secretary filed the improperly taken depositions with the court. The deposition transcripts indicated that Respondent had been present and had taken the testimony himself.
12. After Respondent learned that his secretary had filed the depositions, he spoke with another attorney about whether to notify the court. That attorney opined that Respondent could not take any further action because he had been fired by the client.
13. Shortly before the election, a local newspaper published a letter to the editor from Ms. Reed, in which she described what had happened with the depositions and stated that Respondent was not fit for office. Because of the publication of Ms. Reed's letter, Respondent knew that the court was now aware of the improperly taken depositions and that they had had been filed with the court. Respondent then talked with a local judge about the matter, but took no further action.
14. Respondent lost the election.
15. In December 2007, Respondent's secretary surrendered her notary license. In March 2008, she left Respondent's employ for another job.
16. Respondent cooperated fully with the bar's investigation.

III. FINDINGS OF MISCONDUCT

The Subcommittee finds that Respondent has violated the following Rule of Professional Conduct:

RULE 3.3 Candor Toward The Tribunal

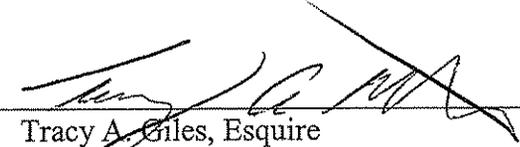
- (d) A lawyer who receives information clearly establishing that a person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

III. PUBLIC REPRIMAND

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

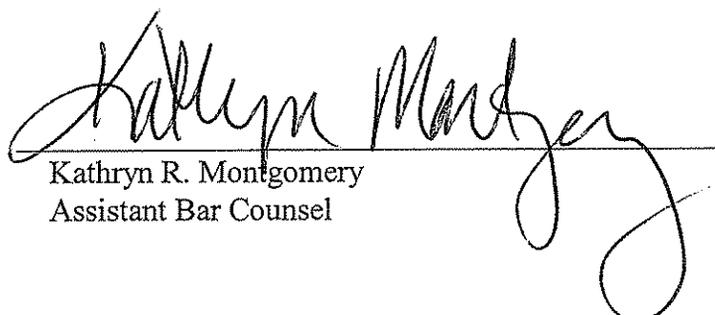
Pursuant to Paragraph 13.B.8.c., the Clerk of the Disciplinary System shall assess costs.

EIGHTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
Tracy A. Giles, Esquire
Chair

CERTIFICATE OF SERVICE

I certify that on May 28, 2008 I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination Public Reprimand Without Terms to Marcus Noah Perdue, III, Esquire, Respondent, at, 223 West Locust Street, Covington, VA 24426, his/her last address of record with the Virginia State Bar.


Kathryn R. Montgomery
Assistant Bar Counsel