

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
ANTHONY GEORGE SPENCER**

VSB DOCKET NO. 11-060-087966

**MEMORANDUM ORDER
(PUBLIC REPRIMAND WITHOUT TERMS)**

This matter came to be heard on February 28, 2013, by telephone conference call, upon a proposed Agreed Disposition between the parties, which was presented to a panel of the Virginia State Bar Disciplinary Board consisting of Robert W. Carter, Lay Member, John Casey Forrester, R. Lucas Hobbs, Samuel R. Walker and Martha JP McQuade, Chair presiding (hereinafter, the "Panel" or the "Board").

The Bar was represented in this matter by Deputy Bar Counsel Kathryn R. Montgomery; Respondent, Anthony George Spencer, and his Counsel, Craig S. Cooley, participated in the call; and Complainant, John LaFratta, was also on the call. Angela N. Sidener of Chandler & Halasz, P.O. Box 9349, Richmond, Va 23227, was the court reporter for the hearing and transcribed the proceedings.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any of them had a personal or financial interest that might affect, or could reasonably be perceived to affect, his or her ability to be impartial in this matter. Each member, including the Chair, verified that there were no such interests.

The Panel then heard argument from the call participants as to why the Agreed Disposition entered into by the parties pursuant to the Rules of the Supreme Court of Virginia,

Part 6, Section IV, Paragraph 13-6.H ought to be accepted by the Board. The Respondent's prior disciplinary record with the Bar was also presented. The Board then retired to deliberate on the Agreed Disposition.

Upon reconvening and having considered all the evidence before it, the Panel unanimously accepted the Agreed Disposition, including the following stipulated findings of fact and admissions of misconduct:

I. FACTS

1. At all times relevant to this matter, Respondent was licensed to practice law in the Commonwealth of Virginia.
2. At all times relevant to this matter, Respondent was the Commonwealth's Attorney for Caroline County.
3. At all times relevant to this matter, the complainant, John LaFratta ("Complainant") was licensed to practice law in the Commonwealth of Virginia.
4. Complainant was appointed to represent Clyde Davenport on various criminal charges in Caroline County. Respondent was the prosecuting attorney.
5. Mr. Davenport was tried in September 2010 and convicted. During closing arguments, Complainant made the following statements:

I looked over here and I would see all the resources that went into investigating this case, the state police, the fellow from Pamunkey Regional Jail that taped the hours of telephone calls that Mr. Davenport made, Mr. Younger, and other attorneys have been in and out, the clerical staff, you've got the victim witness person that's helping him out.

They had a dentist coming and testify. Two counselors were brought down here. The one lady says she was flown down here from Oregon. Look at all the resources that have been at the disposal of this Commonwealth's Attorney's Office that have been investigating this case since Mr. McCauley made that complaint in May of '08.

And then I look at my table and I see what's been afforded Mr. Davenport, just me, a couple of law books, a couple of brown binders jam packed full of papers. And I thought that seems a little unfair but I will tell you why I have second thoughts about that analysis. (Trial transcript in *Commonwealth v. Davenport*, Caroline County Circuit Court, Case Nos. CR09-732, 733, 734 at pages 19-20) (hereinafter "Trial transcript").

...
Mr. Davenport subpoenaed those people in here. And I told you that I was a little bit wrong when I was first thinking that maybe the scales of justice were a little tipped in the Commonwealth's favor given they had all the resources, state police, telephone guy talking telephone calls, flying people in, paying for experts. They-- This is not fair, me and my two books and some scrap paper. This is not fair. I'm tumbling around with this last night, and I said, you know, I missed it. I missed it. (Trial transcript at page 46).

6. During rebuttal closing arguments, Respondent made the following statements:

Mr. LaFratta starts out about talking about the Commonwealth has all the resources. We have clerical staff. Mr. LaFratta would have you believe that he has no one working in his office. He doesn't have a secretary, a paralegal, and a partner that he works with. He would have you believe that somehow he's working out of his bedroom and he has these two books that he brings with him. I assure you that is not the case. (Trial transcript at page 48).

7. Following Mr. Davenport's trial, Complainant filed a bar complaint against Respondent accusing Respondent of misrepresenting to the jury Complainant's level of administrative support.¹
8. Respondent told the bar that before he responded to the bar complaint, he felt that he needed to investigate whether Complainant made a false statement about his level of administrative support. Respondent gave the following three reasons for his need to investigate: 1) to determine whether Respondent had an obligation to file a bar complaint against Complainant, 2) to determine "the truth" before responding to the bar complaint, and 3) to simplify Respondent's response to the bar complaint.

¹ Respondent publicly acknowledged the existence of this complaint in court filings and in various public hearings in *Commonwealth v. Davenport*, Caroline County Circuit Court, Case Nos. CR09-732, 733, 734. Respondent's conduct during the investigation of that complaint is the subject of misconduct charges in the instant case.

9. Since December 2009, a woman working as a paralegal (hereinafter "the Paralegal") has been a full-time employee of the Caroline County Commonwealth's Attorney's Office. Throughout the Paralegal's employment with the Caroline County Commonwealth's Attorney's Office, Respondent has been her supervisor.
10. In the winter of 2011, the Paralegal was taking classes in paralegal studies at J. Sergeant Reynolds Community College.
11. Following receipt of the bar complaint, in or about the winter of 2011, Respondent approached the Paralegal and asked her to find a student in the paralegal studies program to go to Complainant's office to conduct a "survey" on the number of attorneys in Complainant's office, the number of administrative support personnel in the office, and the duties each administrative support person performed for each attorney.
12. Pursuant to Respondent's request, the Paralegal asked two classmates to perform the "survey," but neither accepted. The Paralegal told Respondent she could not find a fellow student to perform the "survey."
13. Respondent then asked the Paralegal to conduct the "survey" herself, which the Paralegal agreed to do. Respondent advised the Paralegal that she would have to perform the "survey" on her own time, but agreed she could do it during work hours so long as she stayed caught up on all her work.
14. Respondent told the Paralegal the reason for the "survey" was that Complainant had not been honest in court about his level of administrative support. Respondent told the Paralegal he wanted to verify whether the statements made by Complainant in court were true.
15. Respondent instructed the Paralegal not to represent herself as an employee of the Caroline County Commonwealth's Attorney's Office, but to introduce herself as a student in the paralegal studies program conducting a survey of lawyer administrative support personnel.
16. In or about the winter of 2011, pursuant to Respondent's request, at approximately 9:00 a.m. on a workday, the Paralegal visited Complainant's office. She came unannounced and presented the receptionist (hereinafter "Receptionist") with her identification card from J. Sergeant Reynolds Community College. She did not identify herself as an employee of the Caroline County Commonwealth's Attorney's Office. She did not disclose that she was there at the behest of Respondent. Instead, the Paralegal introduced herself as a student from J. Sergeant Reynolds Community College paralegal studies program who was conducting a survey of lawyer administrative support personnel.

17. At Complainant's office, the Paralegal asked the Receptionist a series of questions regarding the number of attorneys in the office, what type of law they practiced, the number of administrative support personnel, and what each support person did for each attorney. The Receptionist answered all of the questions. At the time, the Receptionist believed that the Paralegal was conducting the "survey" for her paralegal studies program. The Receptionist did not know that the Paralegal was there at the behest of Respondent or that the Paralegal worked in Respondent's office under his supervision.
18. Respondent did not thereafter file a bar complaint against Complainant. The bar complaint Complainant filed against Respondent was dismissed.
19. Following the Davenport trial, Complainant filed various post-trial motions.
20. On or about April 15, 2011, Complainant filed a Motion to Compel Discovery of Exculpatory Evidence in the Davenport case. Complainant sought, among other things, "The name, address, occupation, and phone number of any person who came into defense counsel's [Complainant's] office at the request of Mr. Spencer or anyone in the Commonwealth's Office, to gather information about defense counsel's workplace."
21. On or about April 19, 2011, Respondent sent a letter dated April 19, 2011 to Judge Joseph J. Ellis of the Caroline County Circuit Court, with a copy to Complainant. Respondent's April 19, 2011 letter discussed the bar complaint at length, including Complainant's allegation that Respondent had made false statements during closing arguments about Complainant's level of administrative support. In the letter, Respondent described his actions following receipt of the bar complaint as follows:

I asked a student in the paralegal studies program at J. Sergeant Reynolds Community College to go to Main Street Law Offices [Complainant's office] and do a survey of the woman who worked there at the front desk. The student went to Main Street Law Offices and truthfully stated that she was a student in the paralegal studies program at J. Sergeant Reynolds and that she was there to do a survey of a legal assistant.

The student learned the following during her visit to the Richmond office of Main Street Law Offices....
22. Nowhere in his April 19, 2011 letter to Judge Ellis did Respondent disclose that the "student" was an employee of the Caroline County Commonwealth's Attorney's Office who worked under Respondent's supervision.
23. Complainant subsequently learned that the person who came to his office to conduct a "survey" was the Paralegal, who was an employee of the Caroline County

Commonwealth's Attorney's Office. Complainant advised the court of this information. In a hearing before Judge Ellis on September 7, 2011, Respondent acknowledged to the court that he had sent his paralegal to Complainant's office to gather information about Complainant's level of administrative support and that he had instructed his paralegal to introduce herself as a student in the paralegal studies program conducting a survey of lawyer administrative support personnel, but Respondent asked rhetorically, "What was the harm? Where is the harm in this?" (Transcript of motions and other incidents in *Commonwealth v. Davenport*, Caroline County Circuit Court, September 7, 2011, pages 55-56).

24. Respondent told the bar that he sent the Paralegal to Complainant's office to investigate whether he had "an obligation to report to the Bar that Mr. LaFratta had made a false statement."

II. MISCONDUCT

Such conduct by Anthony George Spencer constitutes misconduct in violation of the following provisions of the Rules of Professional Misconduct:

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter;

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;

(c) engage in conduct involving misrepresentation which reflects adversely on the lawyer's fitness to practice law²

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that a Public Reprimand without Terms be imposed effective February 28, 2013.

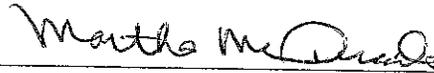
It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order by certified mail to Anthony George Spencer at his last address of record with the Virginia State Bar, 111 Ennis Street, Bowling Green, VA 22427, a copy by regular mail to his counsel, Craig S. Cooley, 3000 Idlewood Avenue, Richmond, VA 23221, and a copy hand-delivered to Kathryn R. Montgomery, Deputy Bar Counsel for the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

² Rule 8.4(c) states in full "engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law." In the Agreed Disposition, the parties stipulated only to the term "misrepresentation."

ENTERED this 11th day of March, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD



Martha JP McQuade, Chair