

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

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MAY - 5 2009
VIRGINIA STATE BAR

Complainant

v.

MAY 6 2009

Case No. CL 08-6672

(VSB DOCKET NO. 08-022-073014)

GEORGE ANTHONY YANCEY

VSB CLERK'S OFFICE

Respondent

MEMORANDUM ORDER
(Public Reprimand without Terms)

THIS CAUSE came to be heard on the 20th day of March, 2009 by a duly convened, three-judge court consisting of the Honorable Donald H. Kent, Retired Judge, the Honorable Von L. Piersall, Jr., Retired Judge, and the Honorable Edward W. Hanson, Jr., Chief Judge Designate. The Virginia State Bar appeared by its Assistant Bar Counsel Paul D. Georgiadis. The Respondent, George Anthony Yancey, was present and was represented by counsel Curtis T. Brown.

This matter came before the Court after a subcommittee of the Virginia State Bar Second District Committee—Section II issued its Charge of Misconduct on September 8, 2008. On September 22, 2008, Respondent filed his Answer to the Charge of Misconduct, demanded that the bar terminate said proceedings, and demanded that the matter be heard by a three judge circuit court panel pursuant to §54.1-3935 of the Code of Virginia (1950) as Amended. On November 3, 2008, the Norfolk Circuit Court issued its Show Cause and set this matter for hearing on January 15, 2009. On November 3, 2008, the Norfolk Circuit Court also entered a Pre-Hearing Order offered by the Virginia State Bar.

By order entered on December 1, 2008, the Supreme Court of Virginia appointed the

members of this three judge panel, the Honorable Donald H. Kent, Retired Judge, the Honorable Von L. Piersall, Jr., Retired Judge, and the Honorable Edward W. Hanson, Jr., Chief Judge Presiding, and set this matter and another matter against George Anthony Yancey, CL 08-3670 for hearing by this panel on January 15, 2009.

On January 8, 2009, the parties, by counsel, appeared via telephone before Chief Judge Hanson on the following pre-hearing motions.

The Respondent objected to the setting of both matters before the same panel. The bar opposed Respondent's motion. Upon consideration of the arguments of counsel, the Court over-ruled Respondent's objection.

The Respondent objected to the November 3, 2008 entry of the Pre-Hearing Order by the Chief Judge of the Circuit Court of Norfolk, having first noted his objection on December 19, 2008. Upon consideration of the arguments of counsel, the Court over-ruled said objection.

The Virginia State Bar moved that the Court order the Clerk of the Court to forward to the three-judge panel the parties' exhibits and witness lists which the Pre-Hearing Order had required the parties to pre-file with the Circuit Court on or before December 9, 2008. The Respondent opposed the motion. Having considered the arguments of counsel, the Court granted the bar's motion and further ordered Respondent to file his exhibits and witness list by January 9, 2009.

On January 14, 2009, the Respondent moved to continue the January 15, 2009 hearing of this matter as he was unexpectedly unavailable due to an on-going jury trial. With no objection from the bar, the Court continued the hearing of this matter to March 20, 2009.

WHEREUPON, a hearing was conducted on March 20, 2009 upon the Rule to Show Cause issued against the Respondent, George Anthony Yancey, 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, revoked, or otherwise sanctioned by reason of allegations of ethical

misconduct set forth in the Charge of Misconduct issued by a subcommittee of the Virginia State Bar Second District—Section II Committee.

The bar presented evidence in open court. After it rested, the Respondent moved to strike the bar's, which the bar opposed. Upon consideration of the arguments of counsel, the Court DENIED the motion to strike.

The Respondent presented evidence in open court.

Following closing arguments by the parties, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found unanimously, and by clear and convincing evidence, the misconduct as charged. The Court found:

1. At all times relevant hereto, George Anthony Yancey ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On February 20, 2007, Respondent was appointed as appeals counsel for John Earl McFadden, Jr. Respondent successfully noted the appeal to the Virginia Court of Appeals. On August 1, 2007, the Court issued a certificate of appeal awarding an appeal on two narrow points.

3. Under Rule 5A:19 of the Rules of Court, Respondent was required to file an opening brief within 40 days after the granting of the certificate of appeal.

4. Notwithstanding the requirements of Rule 5A:19, Respondent thereafter failed to file the opening brief. On October 9, 2007, the Court dismissed the appeal.

5. On October 31, 2007, Respondent advised his client of the defaulted appeal and blamed the appellate printing service he had retained:

"I had secured the assistance of a business that specializes in packaging criminal cases for appeal called the Lex Group. It appears that in communicating with them and using their input and guidance, a miscommunication resulted in them not notifying me of the deadline." (VSB Ex. 12)

6. Respondent again blamed the appellate printing service when he explained his error in his subsequent motion for delayed appeal filed on or about October 31, 2007 pursuant to §19.2-321.1 of the Code of Virginia. Therein, he stated that he had no experience in this phase of an appeal as he had never been awarded an appeal. In his Affidavit in Support of Motion for a Delayed Appeal, Respondent again stated that he relied upon the advice of the Lex Group, an appellate printing service, in determining what to file and when to file them and that it failed to do so:

"...counsel for the defendant began using the services of the Lex Group. This matter was discussed with [opposing counsel, Assistant Attorney General] Bryden as well. The Lex Group began advising me on what to do, how to do it at times, and more importantly,

when to have certain filings completed. This part of the process in this case, counsel for the defendant was not familiar with so he secured the assistance of the Lex Group for the remaining tasks to complete this appeal for the defendant...Following the appendix compilation on October 10, 2007, counsel for the defendant did not receive an update on the next deadline or any assistance in making the next filing from the Lex Group, as was discussed early on in our agreement. By the time counsel for the defendant checked for himself on the next deadline, the deadline had passed." (VSB Ex. 11)

7. Notwithstanding Respondent's allegations to his client and to the Virginia Court of Appeals, the Lex Group did advise Respondent of the September 10, 2007 deadline for filing his opening brief. It did so on at least three occasions—a facsimile dated August 7, 2007, a letter dated August 7, 2007, and an e-mail reminder sent approximately one week before the deadline. With the August 7, 2007 letter, the Lex Group also sent Respondent a Summary of the Rules of Court for the Court of Appeals of Virginia that contained a briefing schedule to include the 40 day deadlines for filing Opening Brief and Appendix under Rules 5A:19(b)(1) and 5A:25.

8. Respondent received further prompting by the Lex Group when it sent Respondent an advance copy of the Appendix several days prior to the deadline.

9. Respondent himself did not determine the deadline for filing the opening brief until after the September 10, 2007 deadline passed.

UPON CONSIDERATION WHEREOF, the Three-Judge Court found unanimously, by clear and convincing evidence, that the Respondent violated the following provisions of the Virginia 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.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

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

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

Thereafter, the Virginia State Bar and the Respondent presented evidence and argument regarding the sanction to be imposed upon the Respondent for the misconduct.

The bar presented evidence of Respondent's prior discipline record. This included a prior

private reprimand with terms for misconduct involving a lack of competence and diligence, and knowingly disobeying a standing rule of a court. This occurred in the course of a premises liability case in federal court. Respondent failed to comply with a court's scheduling order and failed altogether to have read a local rule of court despite being advised by the court to do so. Respondent had no prior experience in federal civil practice and no prior experience in premise liability cases.

The Respondent introduced evidence of steps Respondent has taken to avoid further missed deadlines including prominently posting in his office case deadlines with a case status for each pending case and only taking cases in matters in which he had familiarity.

AFTER DUE CONSIDERATION of the evidence and the nature of the ethical misconduct committed by Respondent, of his prior disciplinary record, and of mitigating evidence presented by the Respondent, the Three-Judge Court reached the unanimous decision to impose a Public Reprimand without Terms.

In announcing this sanction, the Court noted one of the prime responsibilities of an attorney is the acceptance of responsibility.

"When a client engages you for whatever purpose, whatever service you may perform, you are the attorney and he or she is a client; and they are entrusting you with some part of their life that is very important to them; and as an attorney, when you accept that responsibility, you accept it totally; and you, and you alone, are responsible for whatever is done in your name or what should have been done in your name. To blame the Lex Group for what was, in essence, your -- your responsibility as an attorney, is absolutely wrong; and to be perfectly candid with you, what has bothered all three of us is that letter you wrote to your client, which I believe is Exhibit 12...in which you attempted to shift responsibility to somebody else and it just was abundantly clear that that was not true."

Accordingly, IT IS ORDERED that the Respondent shall be publicly reprimanded and the Respondent is hereby so PUBLICLY REPRIMANDED.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c of the Rule of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

It is further **ORDERED** that a copy *teste* of this order shall be served by the Clerk of this Court upon the Respondent, George Anthony Yancey, by certified mail, return receipt requested, at George Anthony Yancey, Esquire, Suite 202, 801 Boush Street, Norfolk, VA 23510, his last address of record with the Virginia State Bar; and by regular mail to his counsel, Curtis Tyrone Brown, Esquire, Suite 210, 5900 East Virginia Beach Boulevard, Norfolk, VA 23502, and to

Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

The Court Reporter who transcribed these proceedings is Cynthia Noah, Ronald Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, VA 23455-6680.

Entered 4 / 24 / 09

Edward W. Hanson, Jr.
Edward W. Hanson, Jr.
Chief Judge Designate

I ASK FOR THIS:

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COPY TESTE:

GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT

BY: Janice O'Hern
Janice O'Hern, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer

Date: 5-1-09

SEEN: 2 Objected to for reasons stated on record
Curtis T. Brown

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