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VIRGINIA:

APR 15 2009

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL.
SECOND DISTRICT COMMITTEE

VSB CLERK'S OFFICE

Complainant

v.

Case No. CL 08-3670
(VSB DOCKET NO. 07-022-0217)

GEORGE ANTHONY YANCEY

Respondent

MEMORANDUM ORDER

This cause came to be heard on March 20, 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 on Respondent George Anthony Yancey's appeal of a Public Admonition with Terms issued on March 25, 2008, following hearings on November 15, 2007 and January 17, 2008 before the Virginia State Bar Second District Committee—Section II. On April 2, 2008, Respondent noted his appeal of the District Committee's Determination of a Public Admonition with Terms. Therein, Respondent demanded that further proceedings before the bar be terminated and that the appeal be conducted in a circuit court per §54.1-3935 of the Code of Virginia.

On June 10, 2008, the Norfolk Circuit Court issued its Rule to Show Cause setting the hearing of this appeal for October 16, 2008. On October 16, 2008, the parties appeared by counsel. Respondent moved to dismiss the matter alleging the Virginia State Bar had tainted the three judge panel by its forwarding on October 9, 2008 of its Appellee's Brief directly to each member of the panel after having filed its brief with the Clerk of the Court and with opposing counsel. The Virginia State Bar opposed the motion. The Court denied Respondent's Motion to Dismiss, finding there was no prejudice to the proceedings. Thereafter, the members of the panel, sua sponte, recused themselves and continued the matter generally.

CM
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 08-6672 for hearing on January 15, 2009.

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

The Virginia State Bar moved that the Court order the Clerk of the Court to forward to the three-judge panel the parties' briefs and the record of the hearing appealed from. The Respondent opposed the motion. Having considered the motion, Respondent's written opposition, and the parties' arguments, the Court granted the bar's motion and ordered the Clerk of the Court to forward to each of the members of the three judge panel a copy of the briefs and the record.

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.

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.

At the onset of the March 20, 2009 hearing, Respondent moved to continue the hearing of this matter. Upon consideration of Respondent's argument, the Court denied the motion.

Thereafter, the parties presented oral argument. Pursuant to Pt. 6, §IV, ¶13 I.3. of the Rules of Court, the Court considered the record in this matter, the briefs of the parties, and the oral argument of the parties. The Court

AFFIRMS the findings of the District Committee as the Court finds there is substantial evidence in the record upon which the District Committee could reasonably have found violations of Rules of Professional Conduct 1.3(a) and 1.16(d) and that said finding was not contrary to the law.

The Court denies Respondent's objections to District Committee panelist Tanya Bullock as being waived for failure to raise them at the hearing before the District Committee. The Court further denies said objections as the record contains no evidence as to Bullock's alleged bias. The sole evidence regarding Bullock was that she worked with the Respondent as an associate in the same law firm of Carl La Mondue. Mere familiarity with a party does not raise an inference of bias by a member of the Discipline Committee tribunal. See, e.g. Motley v. Virginia State Bar, 260 Va. 251, 262, 536 S.E.2d 101 (2000). (... a member of the Disciplinary Board is subject to the same rules regarding

recusal as are applicable to a trial judge...The fact that a trial judge is “familiar with a party and his legal difficulties through prior judicial hearings . . . does not automatically or inferentially raise the issue of bias.” *Deahl v. Winchester Dep't of Soc. Servs.*, 224 Va. 664, 672-73, 299 S.E.2d 863, 867 (1983) (quoting *Barry v. Sigler*, 373 F.2d 835, 836 (8th Cir. 1967)).)

The Court finds that the District Committee followed the requirements of Pt. 6, §IV, ¶13 .H.2.p.1 of the Rules of Court and the scheme of progressive sanctions set forth in the Rules in setting an alternate sanction in the event Respondent failed to fulfill the term of providing Travis Andrews a copy of his trial transcript within 60 days. As the Rule requires an alternate sanction and the District Committee set as an alternate sanction a sanction at the next progressive level of sanctions under Pt. 6, §IV, ¶13 .H.2.1.2. of the Rules of Court, the Court rejects Respondent’s contention that this was an arbitrary act.

The Court Affirms the sanction of Public Admonition with Terms imposed by the District Committee, being Terms that 1) within 60 days of entry of this Memorandum Order, Respondent shall obtain and provide to client Travis Andres his trial transcripts; and 2) within 60 days of the entry of this Memorandum Order, Respondent shall provide written certification to Assistant Bar Counsel Georgiadis proof of compliance of providing the trial transcripts to Travis Andrews. If either of the aforesaid terms are not performed by the above-mentioned date, the District Committee shall impose a Public Reprimand without Terms pursuant to Pt. 6, §IV, ¶13.H.2.P. of the Rules of Court.

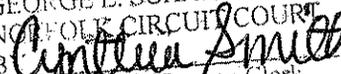
The Clerk of the Disciplinary System shall comply with all requirements of Part 6, §IV, ¶13 of the Rules of Court, as amended (the “Rules”), including but not limited to assessing costs pursuant to ¶13B.8.(c) of the Rules and complying with the public notice requirements of ¶13.B.8.(d) of the Rules.

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

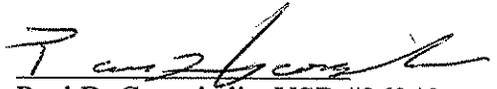
Let the Clerk of the Court send a copy *teste* to all counsel of record.

Entered 4 / 3 / 09


Edward W. Hanson, Jr.
Chief Judge Designate

COPY TESTE:
GEORGE E. SCHAEFER, CLERK
NOFOLK CIRCUIT COURT

Cynthia Smith, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date: 4-13-09

I ASK FOR THIS :



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