

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
CURTIS TYRONE BROWN

JAN 18 2012

VSB Docket No. 10-021-083956

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)

On January 10, 2012, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Mary M. Kellam, Esquire, Chair, Robert J. Krask, Esquire, Member, and Mark B. Shaw, Lay Member, who unanimously approved an agreed disposition of this matter.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.4. of the Rules of the Virginia Supreme Court, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition Without Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed in the Commonwealth of Virginia.
2. Respondent represented attorney George Anthony Yancey in a bar disciplinary case which resulted in the issuance of a District Committee Determination (Public Admonition With Terms) on March 25, 2008 (*In the Matter of George Anthony Yancey* (VSB No. 07-022-0217)).
3. Respondent appealed that determination and demanded that further proceedings be conducted before a three-judge panel.
4. A three-judge panel heard the matter on March 20, 2009, and, after considering the record and the briefs and oral arguments of the parties, affirmed the misconduct findings and sanction of the Second District Committee as set out in the Memorandum Order issued on April 3, 2009 (Norfolk Circuit Court (Case No. CL08-3670)).
5. Respondent agreed to appeal the matter to the Supreme Court of Virginia.

6. Respondent timely filed a Notice of Appeal and Assignments of Error, but failed to perfect the appeal by filing a petition for appeal as required by Rule 5:17(a)(1) of the Rules of Court. As a result, by letter dated September 23, 2009, the Supreme Court of Virginia returned the record in the case to the Norfolk Circuit Court.

7. Brown filed a motion for leave to file late petition for appeal on October 19, 2009. Rule 5:5(a) of the Rules of Court allows for a single filing deadline extension of up to 30 days from the original filing deadline upon a showing that “an extension for papers to be filed is warranted by the intervention of some extraordinary occurrence or catastrophic circumstance which was unpredictable and unavoidable.” Respondent filed the motion for leave to file late petition for appeal more than three months after the deadline for the filing of a petition for appeal had lapsed, and did not assert the existence of any “extraordinary occurrence or catastrophic circumstance.” The motion was denied by order entered on October 22, 2009.

8. Following the return of the record to the trial court on September 23, 2009, the bar filed a motion to have re-imposed the Public Admonition With Terms that had been automatically stayed upon the noting of an appeal of the April 3, 2009 Memorandum Order. By order entered on September 29, 2009, the three-judge panel re-imposed the Public Admonition With Terms. On October 29, 2009, Respondent filed a “Notice of Appeal and Assignment of Errors” in which he asserted that the three-judge panel did not have jurisdiction to enter the September 29, 2009 order. On February 2, 2010, the Supreme Court of Virginia dismissed the appeal on the basis that the September 29, 2009 order was not appealable.

II. NATURE OF MISCONDUCT

Such conduct by Curtis Tyrone Brown constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

III. PUBLIC ADMONITION WITHOUT TERMS

Accordingly, it is the decision of the subcommittee to impose a Public Admonition Without Terms and Curtis Tyrone Brown is hereby so admonished.

Pursuant to Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: Mary M. Kellam
Mary M. Kellam, Esquire,
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on the 17th day of JANUARY, 2012, I caused to be mailed by certified mail a true and complete copy of the Subcommittee Determination (Public Admonition Without Terms) to Curtis Tyrone Brown, Respondent, at 306 Bald Cypress Court, Chesapeake, VA 23320, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Respondent's Counsel, Chester Smith, Esquire, at 5441 Virginia Beach Blvd., Ste. 109, Virginia Beach, VA 23462-1749.

M. Brent Saunders
M. Brent Saunders
Assistant Bar Counsel