

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL  
THIRD DISTRICT COMMITTEE

Complainant

v.

STEPHEN THOMAS PERKINS

Respondent

Case No. CL11-2720  
VSB Docket No. 09-033-076160

DEC 27 2011

MEMORANDUM ORDER

This matter came to be heard by telephone conference on November 28, 2011, before a Three-Judge Circuit Court duly empanelled pursuant to Section 54.1-3935 of the Code of Virginia (1950), as amended, consisting of the Honorable Joanne F. Alper, Judge of the Seventeenth Judicial Circuit, designated Chief Judge, the Honorable Frederick H. Creekmore, Sr., Retired Judge, First Judicial Circuit, and the Honorable Westbrook J. Parker, Retired Judge, Fifth Judicial Circuit.

The Respondent appeared with his counsel, John Franklin, III, Esquire, and Brian N. Casey, Esquire. The Virginia State Bar appeared through its Bar Counsel, Edward L. Davis.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented the same to the Court.

The Chief Judge swore the Court Reporter and polled the members of the Court to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each of the three Judges verified they had no such interests.

The Court heard argument from counsel and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Court accepted the agreement.

#### I. FINDINGS OF FACT

The Court finds the following facts by clear and convincing evidence:

1. At all relevant times, the Respondent, Stephen Thomas Perkins (Mr. Perkins) was licensed to practice law in the Commonwealth of Virginia.
2. Mr. Perkins served as general counsel for Cavalier Telephone, LLC ("Cavalier") from March 1, 1999 to May 22, 2008.
3. Troy Savenko, Esquire, served as counsel for Cavalier from July 16, 2007 to June 28, 2008.
4. George Kostel, Esquire, was a counsel of record for Step-9 Software Corporation (Step-9), a software services provider.
5. On January 17, 2005, Cavalier and Step-9 entered into a Software License and Maintenance Agreement whereby Step-9 agreed to license certain software to be utilized by the parties to create a new service order management system for Cavalier. Cavalier and Step-9 entered into a Master Software License and Maintenance Agreement Software Attachment No. 1, setting forth the software to be licensed, the integration services to be provided, the payment terms for the licensed software, and license maintenance fees. On March 15, 2005, Cavalier and Step-9 entered into the Master Services Agreement, Statement of Work No. 1, Phase I, which included server set-up, the licensed software configuration of the core SDX platform, educational services and administration support. On May 6, 2005, Cavalier and Step-9 entered into the Master Services Agreement, Statement of Work No. 1, Phase II, which included Cavalier's current sales order management system integration, work flow-based ancillary services, TN number management, IP number management and port management. On August 15, 2005, Cavalier and Step-9 entered into the Master Services Agreement, Statement of Work No.

2, which included data migration and parallel ticketing. On August 15, 2005, Cavalier and Step-9 entered into the Master Services Agreement, Statement of Work No. 3, which included services related to the acceleration and reprioritization of the Step-9 work flow engine SDX 5.0D. On October 11, 2005, Cavalier and Step-9 entered into the Master Services Agreement, Statement of Work No. 4, which included services related to post-user acceptance testing support. On May 3, 2005, Cavalier and Step-9 entered into the Aptis Integration Agreement relating to the integration of Step-9 service management delivery solution with Cavalier's current billing system.

6. A dispute arose between Cavalier and Step-9 because, Cavalier alleged, Step-9 did not provide the services and product required under the agreements and for which Cavalier had paid Step-9. Nearly two million dollars was in controversy.
7. Cavalier filed suit against Step-9 in Richmond Circuit Court on August 2, 2006, alleging (1) breach of contract, (2) actual and constructive fraud, (3) detinue and (4) conversion. Mr. Perkins did not file suit for Cavalier against Step-9 as stated in the certification. Mr. Perkins did not sign the complaint and his name does not appear on it nor did he sign the cover letter transmitting the complaint for filing. Mr. Perkins did not draft the complaint, authorize the complaint, nor participate in the litigation. The suit was filed by former Cavalier Assistant General Counsel Donald F. Lynch, III.
8. In October 2006, the parties agreed to a dismissal of the breach of contract and fraud allegations without prejudice, and to dismissal of the detinue and conversion counts with prejudice. (The detinue and conversion counts were resolved by Step 9's return of some equipment to Cavalier.) Mr. Perkins would say he was not advised in October 2006 of the parties' agreements. A review of the court record indicates that an order was entered on October 4, 2006 dismissing the detinue and conversion counts with prejudice, an order was entered on October 5, 2006 non-suiting the entire case, and an order was entered on October 11, 2006 non-suiting the breach of contract and fraud counts. Mr. Perkins had no knowledge of or involvement with the drafting, presentation and entry of the orders, or the agreements resulting in the entry of the orders.
9. On October 24, 2006, Step-9 filed suit against Cavalier in Fairfax County Circuit Court. The damages claimed by Step-9 were for monies allegedly owed pursuant to the Master Services Agreement, costs incurred for an office lease, severance pay for employees, losses from the sale of assets below book value, business interruption damages and legal fees. Mr. Perkins would say that that these are not the same damages at issue in the complaint filed by Cavalier in Richmond Circuit Court which sought recovery of sums already paid by Cavalier to Step-9 because of Step-9's non-performance. The Richmond Circuit Court action also included claims for actual and/or constructive fraud, conversion and detinue which were not a subject of the Step-9 complaint in the Fairfax County Circuit Court.

10. Step-9 aggressively pursued discovery through motions to compel and motions for sanctions resulting in a series of show-cause hearings against Cavalier in the Fairfax County Circuit Court. Cavalier did not fully comply with the discovery orders and the Court scheduled another show-cause hearing for May 4, 2007. Mr. Perkins was not advised prior to May 3, 2007 of the proceedings in the Fairfax County Circuit Court as his only involvement prior to that time was to receive the complaint as registered agent for Cavalier and then to forward it to Donald F. Lynch as directed by Cavalier's CEO. Mr. Perkins would say further that he had no supervisory authority over Mr. Lynch who did not report to him. A review of the court file indicates that motions to compel and motions for sanctions were filed by Step-9 and a show cause hearing was scheduled by the court for May 4, 2007. Mr. Perkins would say that on May 3, 2007, he was called to a meeting with the chief executive officer of Cavalier who had apparently just become aware of the scheduled May 4, 2007 hearing on Step-9's motion for default judgment in the Fairfax County action. Mr. Perkins hired outside counsel for Cavalier in Fairfax, August W. Steinhilber, III, to appear on behalf of Cavalier at the May 4, 2007 hearing.
11. On May 4, 2007, the Court found that Cavalier had failed to provide discovery in accordance with the Court's previous orders and entered default judgment against Cavalier on the issue of liability only. The Court scheduled a hearing to determine the amount of damages for September 10, 2007. Mr. Perkins did not attend the May 4, 2007, hearing. A review of the transcript of the hearing and order entered by the court indicates that the court entered default judgment against Cavalier on the issue of liability as a penalty of Cavalier's failure to comply with court orders regarding discovery. Mr. Perkins had no involvement in Cavalier's failure to comply with court orders regarding discovery.
12. On July 13, 2007, while the damages hearing was pending, Cavalier, by Mr. Perkins, re-filed the non-suited lawsuit against Step-9 in the Circuit Court for the City of Richmond.
13. Mr. Perkins would say that prior to re-filing the non-suited action he did not know that the detinue and conversion counts had previously been dismissed with prejudice in the non-suited action. He was provided with a copy of the order of non-suit dated October 5, 2006 which stated that the case was hereby non-suited but did not refer to individual counts or claims. Further, Mr. Perkins would say further that Cavalier had not just lost to Step-9 on the same breach of contract issue as stated in the certification, as the contract claims alleged in the Richmond action and the Fairfax County action were not identical. Mr. Perkins would say that Cavalier had not lost in Fairfax on a contract issue, but suffered default judgment as a penalty for failing to comply with court discovery orders. The default judgment in Fairfax was not a bar to the filing of Richmond action as it was not a final judgment and therefore did not have preclusive effect as a matter of law. It did not decide any "claim for relief" by Cavalier under Rule 1:6 because no such claim was alleged nor was there a requirement to do so as Virginia does not have a compulsory counterclaim rule. Furthermore, in the Fairfax action, Cavalier pleaded Step 9's breach

of contract and fraud as a defense of setoff under Virginia Code Sect. 8.01-422 and such a defense is not a claim for affirmative relief. *J. A. Peregoy Roofing & Construction Co. v. Reid*, 79 Va. Cir. 224 (Richmond Cir. Ct. Aug. 25, 2009)(Hughes, J.). Because Cavalier's defense of setoff was not an affirmative claim, Mr. Perkins would say that Cavalier asserted no claim for relief in the Fairfax action under Rule 1:6 of the Rules of the Supreme Court.

14. Troy Savenko began working as a counsel for Cavalier on July 16, 2007.
15. On July 26, 2007, at the request of Perkins, Cavalier tried to serve the new suit on what it thought was Step-9's registered agent, Clayton Dean, at the address of record provided by Step-9 to the State Corporation Commission (SCC). Step-9's license to do business in Virginia, however, had been revoked, and it was no longer at the address of record. Step-9's address of record at the State Corporation Commission was the last address provided by Step-9 to the SCC, which was the address used by Cavalier to attempt service.
16. Step-9's SCC address was not accurate because the SCC had not received a correct current address from Step-9.
17. Cavalier attempted service at the address of record at the SCC as authorized by statute. In the Fairfax County suit, Cavalier had been serving its pleadings on Step-9's counsel pursuant to Rule 1:12 of the Rules of the Supreme Court of Virginia. Had Cavalier served the Richmond complaint in such a manner, service would not have been valid or effective because Rule 1:12 specifically governs service of papers after the initial service.
18. The process was returned, "Not Found, vacant, moved," however, the address where service was attempted was the last address provided by Step-9 to the State Corporation Commission at the time. Mr. Perkins would say that, therefore, the address was not out of date.
19. Step 9's authority to transact business in Virginia was revoked by the SCC on February 28, 2007. On August 21, 2007, at the request of Mr. Savenko, Cavalier effected service of the new lawsuit by serving the Clerk of the SCC based upon Step-9 not being authorized to do business in Virginia and not being found at the SCC address of record. After having failed to effect service on Step-9's registered agent at the address of record with the State Corporation Commission, Mr. Perkins would say that he researched the proper method to effect service on a foreign corporation whose license to transact business in Virginia had been revoked by the State Corporation Commission, such as was the case with Step-9. The law appoints the clerk of the State Corporation Commission as the agent of the corporation for service of process pursuant to Virginia Code Section 13.1-769(E). Cavalier effected service as required and authorized by law.

20. Cavalier, Perkins and Savenko never attempted to serve the suit on Step-9's representatives at any of the hearings pending in the Fairfax County Circuit Court or at the depositions in that matter. Mr. Perkins acknowledged to the Virginia State Bar that he did not tell Step-9's counsel about the new suit, saying that he was not required by law to give them informal notice of service, that informing them would not advance the interests of his client, and that as a defunct business whose permit had been revoked, he was afraid that Step-9 would evade being served. Cavalier, Mr. Perkins and Mr. Savenko were not obligated by law to attempt to serve the suit on Step-9's representatives at any of the hearings pending in the Fairfax County Circuit Court or at the depositions in the matter. Mr. Perkins would say further that, in fact, such service would not have been effective on Step-9 as a matter of law. Mr. Perkins would say that he did not tell Step-9's counsel of the re-filed Richmond suit because he was not required by law to do so. He would say that he correctly concluded that informing them would not advance the interests of Cavalier. He would say that because Step-9 was a defunct business whose license to transact business in Virginia had been revoked, he was properly concerned that Step-9 would evade being served and dissipate any remaining assets that might be available to satisfy a judgment .
21. As a result of Cavalier's filing suit in Richmond and Step-9's filing suit in Fairfax County, there were two matters in litigation between Step-9 and Cavalier.
22. Mr. Perkins would say that he has no personal knowledge of the averments of paragraph 22 of the Certification that Step-9 had no actual knowledge of Cavalier's refiled suit in Richmond, however, states that Step-9 was properly served in accordance with the requirements of the Virginia Code and therefore had legal notice of the action filed in Richmond.
23. Mr. Perkins states that the filing of the Richmond action was disclosed to Step-9 through proper service in accordance with the law, and the filing was a matter of public record. He would say further that he had no duty to otherwise inform of the filing of the Richmond action.
24. On September 10 and 11, 2007, the Fairfax County Circuit Court conducted a damages hearing. By order of September 14, 2007, the Court entered judgment in favor of Step-9 in the amount of \$1,411,325.37 which did not include the full amount of damages claimed by Step-9.
25. William Schmidt, Esquire, represented Cavalier at the hearing in Fairfax County Circuit Court on September 10 and 11, 2007. Mr. Perkins and Noah Bason attended. Mr. Savenko did not appear at the hearing.
26. On December 14, 2007, Mr. Perkins filed a petition for appeal of the decision to the Supreme Court of Virginia, which refused the appeal on April 10, 2008.

27. On October 2, 2007, Cavalier filed a motion for default judgment against Step-9 in the Richmond Circuit Court. Mr. Perkins would say that he was not advised as to whether Step-9 had knowledge of the Richmond action but Step-9 had been served in accordance with the law and therefore had legal notice of the action. Step-9 had not filed an answer and was in default. A defendant in default is not entitled to notice of any further proceedings in the case except that the written notice of any further proceedings shall be given to counsel of record pursuant to *Rule 3:19 of the Rules of the Supreme Court*. Mr. Perkins would say that having been in default and with no counsel of record in the action, Step-9 was not entitled to notice of any further proceedings in the Richmond court action.
28. On October 5, 2007, Cavalier filed a memorandum supporting its motion for default judgment in the Richmond Circuit Court. The same day, Cavalier filed a motion to reconsider the Fairfax judgment with the Fairfax County Circuit Court. Cavalier's motion for reconsideration filed in Fairfax County was limited to reconsideration of the manner in which the Court calculated the late fees awarded to Step-9. The motion for reconsideration was filed by Mr. Schmidt.
29. Cavalier did not mention the filing of the Richmond case to the Fairfax County Circuit Court in the motion for reconsideration or the pending Fairfax action in the memorandum in support of the motion for default judgment. Mr. Perkins would say that the motion for reconsideration filed by Mr. Schmidt does not refer to the Richmond case as it was not a subject of the motion. The motion for reconsideration addressed the issue of the Court's calculation of interest. Mr. Perkins would say further that the memorandum in support of Cavalier's motion for default judgment does not refer to the Fairfax County case as it was not a subject of the motion.
30. Cavalier's memorandum (filed by Savenko, endorsed by Perkins) provided a detailed history of Cavalier, Step-9 and the disputed contract, but made no mention of the existing Fairfax County judgment against Cavalier or the damages award. Mr. Perkins would say that Cavalier's memorandum in support of its motion for default judgment did not refer to the Fairfax County action as it was not a subject of the motion.
31. On October 9, 2007, Cavalier's motion for default judgment was heard in the Circuit Court for the City of Richmond, the Honorable Melvin Hughes presiding. Messrs. Perkins and Savenko appeared and argued the matter for Cavalier. Mr. Perkins would say that he is not advised as to Step-9's actual knowledge of the matter. Step-9 had been properly and lawfully served and therefore had legal notice, but did not appear.
32. No one disclosed to the Richmond Circuit Court Step-9's existing Fairfax County judgment against Cavalier or the damages award. Mr. Perkins acknowledged to the Virginia State Bar that he did not inform the Richmond Court about the Fairfax County case because he did not think it was required or in the best interests of his client. He

believed that the Fairfax case was a discovery matter not decided on the merits, and that the Richmond case was a breach of contract and fraud action. Mr. Perkins said that in Fairfax, Step-9 sought payment for services it claimed to have rendered while in Richmond Cavalier sued for breach of contract and fraud for the return of payments it had already made to Step-9.

Mr. Perkins offers the following supplementation: The Richmond action was for both breach of contract and fraud. Mr. Perkins did not believe that he had an obligation to inform the Richmond Circuit Court of the pending Fairfax County action because he believed the Fairfax County judgment was not a bar to the Richmond action and therefore was not material. He would say that he reconfirmed his conclusion that the Fairfax action and Richmond proceeding involved different claims. In the Fairfax action, Step-9 sought payment for services it claimed to have rendered in designing a customer order management system for Cavalier telephone. In the Richmond action, Cavalier sued in breach of contract and fraud for return of payments it had already made to Step-9. Mr. Perkins would say that he did not believe that the judgment in favor of Step-9 in Fairfax was a bar to Cavalier's Richmond proceeding because the claims and issues were not identical and there had been no final judgment on the merits in the Fairfax action. He would say that rather, judgment (which was not final) was entered against Cavalier solely as a sanction for failing to comply with discovery orders and not on an affirmative claim for relief by Cavalier, which had not made such a claim. He would say that deciding after research that the Fairfax County default judgment did not bar the Richmond action, Mr. Perkins concluded that the judgment was not material and therefore he was not required to inform the Richmond Circuit Court of the Fairfax County action.

33. On October 9, 2007, the Richmond Circuit Court granted Cavalier's motion for default judgment against Step-9 and ordered Step-9 to pay Cavalier \$1,955,120.31 (one million, nine hundred fifty-five thousand one hundred twenty dollars and thirty-one cents) and \$5,000 (five thousand dollars) in punitive damages. (On Cavalier's motion, the Court dismissed without prejudice Counts III and IV by order endorsed by Mr. Perkins, although the same counts previously had been dismissed with prejudice in the 2006 case. Mr. Perkins later explained that he did not know about the prior dismissals with prejudice of the two counts.) Mr. Perkins would say further that he did not know about the prior dismissals with prejudice of Counts III and IV but did not pursue those counts as he was informed by Cavalier's information technology director that the computer equipment that was the subject of those claims had been returned by Step 9 .
34. Meanwhile Step-9, attempted to collect its judgment against Cavalier, served Cavalier with multiple garnishment summonses. Cavalier filed motions to quash.
35. Mr. Savenko appeared in the Fairfax Circuit Court On October 26 and October 31, 2007, on behalf of Cavalier to argue two motions to quash that Cavalier filed in response to two

garnishments issued by Step-9. Noah Bason also appeared for Cavalier at the October 26, 2007 hearing.

36. The transcripts of the October 26 and 31, 2007 hearings do not reference the judgment against Step-9 in the Richmond Circuit Court. Mr. Perkins did not attend those hearings.
37. Meanwhile Cavalier served its own garnishment summons against Step-9 to enforce Cavalier's Richmond judgment. On this occasion, Cavalier served its motion on Step-9's registered agent, Clayton M. Dean, at the address Step 9 provided to the SCC after obtaining authority to transact business in Virginia. At the time of service of Cavalier's garnishment summons against Step-9, Step-9 had obtained authority to transact business in the Commonwealth of Virginia and provided the State Corporation Commission with the identity and correct address of its registered agent. Accordingly, Cavalier properly served the garnishment summons on the newly registered agent.
38. Step-9 demanded that Cavalier vacate its judgment, but Cavalier refused. Step-9 filed a motion to set aside the default judgment which Cavalier opposed.
39. Step-9, therefore, on December 28, 2007, filed a motion to set aside the Richmond default judgment, a motion to quash and a motion for sanctions in the Circuit Court for the City of Richmond. Cavalier, by Perkins and Savenko, submitted a response.
40. On January 14, 2008, the Richmond Circuit Court heard Step 9's motion to set aside Cavalier's default judgment. On January 29, 2008, issued a letter opinion in which it vacated the default judgment, quashed Cavalier's garnishment summons and allowed Step-9 leave to respond to Cavalier's complaint. On February 14, 2008, the Court entered an Order to this effect. The court concluded that the default judgment order was not a final order which was the issue that the court found dispositive. The court concluded that the language of the default judgment order rendered it not a final order. The court therefore had jurisdiction to vacate the order. The court made no finding that the default judgment had been procured by fraud or misconduct. The court reserved Step-9's motion for sanctions for a later determination.
41. On April 10, 2008, the Supreme Court refused Cavalier's petition for appeal of the Fairfax action filed on December 14, 2007. On May 22, 2008, Mr. Perkins ceased employment with Cavalier.
42. Step-9 filed a demurrer and plea in bar in response to Cavalier's complaint, to which Mr. Savenko responded for Cavalier, and the parties returned to court on June 5, 2008.
43. On June 5, 2008, the Richmond Circuit Court granted Step-9's plea in bar as to Count I (breach of contract) and Count II (fraud) on the grounds that those claims were barred by the operation of Rule 1:6 of the Rules of Court, *res judicata* (the Fairfax County

judgment.) Further, Cavalier conceded that Counts III and IV were previously dismissed with prejudice in the 2006 suit, and the Court dismissed those counts with prejudice accordingly.

44. The court also granted Step-9's motion for sanctions against Cavalier in part and sanctioned Cavalier \$10,000 for filing and pursuing the breach of contract case in Richmond in violation of Virginia Code section 8.01-271.1 (filing a suit not well grounded in fact or warranted by existing law), and the Court entered judgment in that amount against Cavalier in favor of Step-9.

The court granted Step-9's motion for sanctions in part and denied Step-9's motion for sanctions in part, imposing sanctions on Cavalier in the amount of \$10,000 for its filing and pursuit of Count I of the complaint for breach of contract in violation of Virginia Code Section 8.01-271.1. Mr. Perkins would say that as there was no final judgment in the Fairfax County case at the time of the filing of the Richmond action by Cavalier, the Fairfax action was not, as a matter of law, a bar to filing of the Richmond action, and the court's sanction for Cavalier's filing the action for breach of contract in Richmond was error. The court denied Step-9's motion for sanctions for filing and pursuing the fraud claim. The court did not sanction counsel. Mr. Perkins was not present at the hearing, having ceased employment with Cavalier on May 22, 2008.

45. Cavalier did not appeal any of the Richmond Circuit Court's rulings, which became final on July 17, 2008. Mr. Perkins had no involvement in any decision regarding appeal as his employment with Cavalier ceased on May 22, 2008.
46. Mr. Perkins makes the following additional averments:

Mr. Perkins had a good faith basis for filing and prosecuting the Richmond Circuit Court action, believing that it was not barred by the judgment in the Fairfax County Circuit Court case. He researched whether the Fairfax County judgment was a bar and decided it was not because the claims in the cases were different and the Fairfax judgment was not a judgment on the merits. At the time, the law of *res judicata* in Virginia was somewhat unsettled. The Supreme Court had recently decided *Davis v. Marshall Homes, Inc.*, 265 Va. 159, 576 S.E.2d 504 (2003), a four to three decision. Following *Davis*, Rule 1:6 was enacted governing *res judicata* claim preclusion effective July 1, 2006. Claim preclusion in accordance with the Rule is premised on a claim being "decided on the merits by a final judgment..." Cavalier did not assert an affirmative claim for relief in the Fairfax action nor was it required to do so as Virginia does not have a compulsory counterclaim rule. The Supreme Court had not ruled on the issue whether a default judgment entered as a sanction or penalty for failure to comply with discovery under Rule 4:12(b)(2)(c), such as was entered by the Fairfax County Circuit Court, is a decision on the merits by a final judgment. The Supreme Court, to this day, has not issued any decision interpreting or applying Rule 1:6. As Judge D. Arthur Kelsey recently noted, "some jurists and

lawyers find *res judicata* confusing, others outright impenetrable – an unnerving observation given that the entire point of the doctrine is to provide predictability and finality to litigation.” *The Thing Decided: Rule 1:6’s Rediscovery of Res Judicata in Virginia*, VBA News Journal, VII. XXXIV, No. 2, June-July 2008. Furthermore, “a judgment is not final for the purposes of *res judicata* or collateral estoppel when it is being appealed or when the time limits fixed for perfecting the appeal have not expired.” *Faison v. Hudson, Administrator*, 243 Va. 413, 419, 417 S.E.2d 302 (1992). Thus, if the Fairfax action was a *res judicata* bar to the Richmond action, it did not become so until the Supreme Court denied the petition for appeal and the time for petitioning for a rehearing expired.

47. Mr. Perkins would say further that service of process of the Richmond action on the clerk of the State Corporation Commission was the proper and lawful method of service of process on a foreign corporation whose authority to transact business had been revoked. *Virginia Code Section 13.1-769(E)*.
48. Mr. Perkins would say further that he was under no obligation to advise Step-9’s counsel in the Fairfax County action of the filing of the action in Richmond.
49. Mr. Perkins would say that having concluded through legal research that the default judgment entered in the Fairfax County action as a penalty for failure to comply with discovery orders was not a bar to the Richmond action and that the Fairfax action did not tend to prove or disprove any element of the refiled Richmond action or the motion for default judgment, Mr. Perkins therefore believed that he did not have an obligation under Rule 3.3 to inform the Richmond Circuit Court of the pending Fairfax County action. Mr. Perkins believed that the Fairfax action did not preclude the filing of the Richmond action, that he did not have an obligation to inform the Richmond Court of the Fairfax action and that he had a duty to represent his client within the bounds of the law and the Rules of Professional Conduct.

## II. NATURE OF MISCONDUCT

In accordance with the stipulations of the parties, the Court finds that such conduct by Stephen Thomas Perkins could be found to be a violation of the following Rule of Professional Conduct:

### Candor Toward The Tribunal

- (c) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Court **ORDERS** that the Respondent receive an **Admonition**.

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 this Court shall send a copy *teste* of this order to Stephen Thomas Perkins by certified mail at Suite 400, 192 Ballard Court, Virginia Beach Virginia 23462, his address of record with the Virginia State Bar, and by regular mail to his counsel, John Franklin, III, and Brian N. Casey, at Suite 1300, 555 East Main Street, Norfolk, Virginia 23510-2200, to Edward L. Davis, Bar Counsel, and Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Valarie L.S. May, RPR, Post Office Box 9349, Richmond, Virginia 23227, tel. 804-730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED this 15<sup>th</sup> day of December, 2011

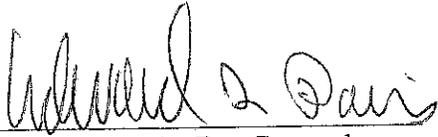
CIRCUIT COURT, CITY OF VIRGINIA BEACH

CERTIFIED TO BE A TRUE COPY  
OF RECORD IN MY CUSTODY  
TINA E. SINNEN, CLERK  
CIRCUIT COURT, VIRGINIA BEACH, VA  
BY Ann Wright  
DEPUTY CLERK

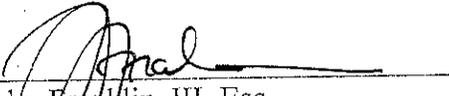
By: \_\_\_\_\_

Joanne F. Alper  
Joanne F. Alper  
Chief Judge Designate

WE ASK FOR THIS:

A handwritten signature in cursive script, appearing to read "Edward L. Davis", written over a horizontal line.

Edward L. Davis, Bar Counsel  
Virginia State Bar

A handwritten signature in cursive script, appearing to read "John Franklin, III", written over a horizontal line.

John Franklin, III, Esq.  
Brian N. Casey, Esq.  
Counsel for Stephen Thomas Perkins