

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTERS OF THERESA BRUMBACK BERRY**

VSB Docket No. 05-022-3153 (VSB/Va. Sup.Ct./Pitt)

VSB Docket No. 05-022-3154 (VSB/Va. Sup.Ct./Edwards)

VSB Docket No. 05-022-2521 (VSB/Va. Ct. Appeals/Mitchell)

VSB Docket No. 05-022-3155 (VSB/Va. Sup. Ct./Wynn)

VSB Docket No. 05-022-4414 (VSB/Va. Sup.Ct./Trusty)

**ORDER OF SUSPENSION OF 15 DAYS**

These matters were certified to the Virginia State Bar Disciplinary Board ("Board") by the Second District Committee-- Section II, and were set for hearing for June 23, 2006. On June 8, 2006, these matters were presented for approval of an agreed disposition to a duly convened panel consisting of Peter A. Dingman, Esquire, Chair Presiding, Mr. Werner H. Quasebarth, Lay Member, Bruce T. Clark, Esquire, John A. Dezio, Esquire, and William E. Glover, Esquire.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶13B5c., the Virginia State Bar, by Assistant Bar Counsel Paul D. Georgiadis, and the Respondent, *pro se*, entered into a proposed agreed disposition and presented it to the convened panel.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

## I. FINDINGS OF FACT

### VSF Docket No. 05-022-3153 (VSF/Va. Sup.Ct./Pitt)

1. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Following a procedural default in *Ronald Anthony Pitt against Commonwealth of Virginia* in the Court of Appeals by the Public Defender's office, the Virginia Supreme Court granted leave to Pitt on August 16, 2000 to file an appeal from the Court of Appeals judgment of February 11, 2000. In said order, the Supreme Court re-set the running of deadlines from the appointment of Respondent as counsel when it ordered "all computations of time as required by the rules of this Court and applicable statutes to commence on the date of entry of this order, or, if the said Ronald Anthony Pitt be entitled to appointed counsel upon this appeal, from the date of entry of the order of the Circuit Court of the City of Virginia Beach appointing counsel, whichever date shall be later."
3. Respondent was appointed as appeals counsel on August 23, 2000.
4. Notwithstanding the Supreme Court's order computing the appeal deadlines from the date of Respondent's appointment as counsel, Respondent failed to file the Notice of Appeal and the Petition for Appeal until October 30, 2000.
5. On January 30, 2001, the Virginia Supreme Court dismissed the Petition for Appeal for failure to timely file the Notice of Appeal per Rule 5:14(a). 1
6. In response to Respondent's Motion for Reconsideration, the Supreme Court granted reconsideration on March 19, 2001 and that same day dismissed the appeal for failure to timely file the Petition for Appeal per Rule 5:17(a)(2). 2

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#### 1 RULE 5:14. Notice of Appeal; Certification. --

(a) No appeal from a judgment of the Court of Appeals which is subject to appeal to this Court shall be allowed unless, within 30 days after entry of final judgment or order denying a rehearing, counsel filed with the clerk of the Court of Appeals a notice of appeal.

#### 2 RULE 5:17. Petition for Appeal. --

(a) Time for Filing. - In every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court:

- (1) in the case of an appeal direct from a trial court, not more than three months after entry of the order

**VSB Docket No. 05-022-3154 (VSB/Va. Sup.Ct/Edwards)**

7. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
8. On or about December 20, 2000, Respondent was appointed to take over the *pro se* DUI appeal of Johnnie Lang Edwards.
9. On October 25, 2001, Respondent filed his Petition for Appeal with the Virginia Supreme Court. The Petition failed to contain any assignments of error and had pagination that failed to correspond with the table of contents.
10. On April 4, 2002, the Court dismissed the appeal for failure to contain assignments of error. 3

**VSB Docket No. 05-022-2521 (VSB/Va. Ct. Appeals/Mitchell)**

11. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
12. Respondent was appointed by the Virginia Beach Circuit Court to represent Chaheki Mitchell. On August 3, 2004, Respondent noted an appeal of the probation revocation order dated July 7, 2004. The Notice of Appeal certified that "a transcript of the proceedings...has been ordered from the Court reporter and will be filed in accordance with Rule 5A:8..." 4

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appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a petition for rehearing.

3 (c) Form and Content. - Under a separate heading entitled "Assignments of Error," the petition shall list the specific errors in the rulings below upon which the appellant intends to rely. Only errors assigned in the petition for appeal will be noticed by this Court. Where appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to questions presented in, or to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court. An assignment of error which merely states that the judgment or award is contrary to the law and the evidence is not sufficient. If the petition for appeal does not contain assignments of error, the appeal will be dismissed.

*Petition for Appeal.*, RULE 5:17 (2000)

4 RULE 5A:8. Record on Appeal: Transcript or Written Statement. —

13. Notwithstanding Respondent's certification in the Notice of Appeal, Respondent did not file the transcript.
14. On November 15, 2004, the Virginia Court of Appeals dismissed the appeal for failure to file a transcript or a statement of facts.

**VSB Docket No. 05-022-3155 (VSB/Va. Sup. Ct./Wynn)**

15. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
16. Respondent was appointed to represent Ernest Anthony Wynn in his sentencing and subsequent appeals of a 5 year sentence for grand larceny.
17. On October 23, 2004, Respondent filed a Petition for Appeal with the Supreme Court setting forth the following Assignment of Error: "The Court of Appeals ruled in a manner inconsistent with case law in denying the appellant's petition for appeal."
18. On January 27, 2005, the Supreme Court dismissed the appeal "...because the petition for appeal does not contain sufficient assignments of error that comply with the requirements of Rule 5:17(c)..."

**VSB Docket No. 05-022-4414 (VSB/Va. Sup.Ct./Trusty)**

19. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
20. In December, 2004, Respondent was appointed to represent Aurther Dawntaye Trusty for his sentencing and continued as appeals counsel.
21. After filing a Notice of Appeal on January 11, 2005, Respondent failed to file a Petition for Appeal with the Court of Appeals. The record had been filed on March 15, 2005, and therefore the Petition was due 40 days later per Rule 5:A:12 (a)5

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(a) Transcript. — The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court within 60 days after entry of the final judgment. Upon a written motion filed within 60 days after entry of the final judgment, a judge of the Court of Appeals may extend this time for good cause shown.

5 (a) When Required. - When an appeal to the Court of Appeals does not lie as a matter of right, a petition for appeal must be filed with the clerk of the Court of Appeals not more than 40 days after the filing of the

22. On May 6, 2005, the Court of Appeals dismissed the appeal for failure to file a Petition for Appeal.
23. On June 7, 2005, Respondent filed a Notice of Appeal to the Supreme Court.
24. On July 27, 2005, the Supreme Court dismissed the appeal for the failure of the Petition for Appeal to "contain assignments of error relating to the action taken by the Court of Appeals." Respondent's Petition alleged only that the "trial court erred."

## **II. NATURE OF MISCONDUCT**

The Board finds that the Respondent's conduct in each of the foregoing violates Rules 1.1(a), Competence, and 1.3(a), Diligence.

### **IMPOSITION OF SANCTION OF SUSPENSION OF FIFTEEN (15) DAYS**

The Board, having considered all evidence before it, having considered the nature of the Respondent's actions, and having considered the Respondent's disciplinary record, ORDERS pursuant to Part 6, Sec. IV, Para. 13I 2f.(2)( C ) of the Rules of the Virginia Supreme Court that the license of the Respondent, Theresa Brumback Berry, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for fifteen (15) days, effective June 30, 2006.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M., of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from June 30, 2006, the effective date of this Order. All issues concerning the adequacy of the notice and arrangements required by the Order shall be determined by the Board, unless Respondent timely demands the matter be adjudicated by a three judge circuit court

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record with the Court of Appeals.

panel.

Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy *teste* of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, Theresa Brumback Berry, Esq., P.O. Box 9782, Virginia Beach, VA 23450, her last address of record with the Virginia State Bar; and hand delivered to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219- 2800.

Donna Chandler, Chandler and Halasz, Inc., Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, 804/730-1222, was the reporter for the hearing and transcribed the proceedings.

ENTERED this 14<sup>th</sup> day of June, 2006.

VIRGINIA STATE BAR DISCIPLINARY  
BOARD

By: 

Peter A. Dingman, Chair Presiding