

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

VIRGINIA STATE BAR EX REL
NINTH DISTRICT COMMITTEE,

Complainant

Case No. CL04-102

v.

JOSEPH LEATH ANTHONY

Respondent

MEMORANDUM OPINION

On the 30th day of November, 2004, this matter came before the three-judge court empanelled on the 13th day of April, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended, consisting of the Honorable Herman A. Whisenant, Jr. and the Honorable Marc Jacobson, Retired Judges of the 31st and 4th Judicial Circuits, respectively, and the Honorable Robert M. D. Turk, Judge of the 27th Judicial Circuit and Chief Judge of the three-judge court.

Kathryn A. Ramey, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar and William B. Poff, Esq. and Frank K. Friedman, Esq. appeared on behalf of the respondent, Joseph Leath Anthony, who was also present during the proceedings.

WHEREUPON, a hearing was conduct upon the Rule to Show Cause issued against the respondent, Joseph Leath Anthony, which Rule directed him to appear and show cause why his license to practice law in the Commonwealth of Virginia should not be revoked or suspended by reason of allegations of ethical misconduct as set forth in the certification issued by the 9th District Sub-Committee of the Virginia State Bar.

Following the presentation of the Virginia State Bar's testimonial and documentary evidence in open court, the respondent, by counsel, moved to strike such evidence. The Court took this motion under advisement and the respondent presented his evidence.

At the conclusion of the presentation of all the evidence related to respondent's alleged misconduct, the three-judge court retired to deliberate and thereafter returned and announced that it had denied the respondent's motion to strike the evidence and unanimously, by clear and convincing evidence, found the following:

1) At all times to the matters set forth herein, Joseph Leath Anthony, Esq. (hereinafter referred to as respondent), was an attorney licensed to practice law in the Commonwealth of Virginia.

2) In the fall of 1994 and the spring of 1995, an appeal of a legal malpractice case was pending before the Virginia Supreme Court styled Snider-Faulkingham v. Stockburger.

3) On November 7, 1994, respondent wrote a letter to David Beech, Clerk of the Virginia Supreme Court, advising the Clerk that he represented Georgia Ann Snider-Faulkingham in business litigation matters, but he was not counsel of record in the case currently pending before the Supreme Court. He stated he had been contacted by an anonymous caller who told him that there had been *ex-parte* communications in the Stockburger case. Between May 1 and May 30, 1995, respondent wrote Mr. Beech five additional letters in which he claimed he had twice been contacted telephonically by an anonymous person who told him that the Virginia Supreme Court had received an anonymous letter allegedly from the wife of an attorney associated with the Stockburger case, thanking the justices for denying Snider-Faulkingham's appeal.

4) From June 12, 1995 through August 15, 1995, the respondent wrote Chief Justice Carrico four letters concerning this anonymous letter. The last letter of August 15, 1995 made several allegations that the Virginia Supreme Court was improperly influenced by the anonymous letter and that the Virginia Supreme Court was corrupt.

5) On January 25, 1996, the respondent filed a complaint in the United States District Court for the Western District of Virginia on behalf of Snider-Faulkingham v. Bruce Stockburger and other Virginia attorneys for alleged violations of 42 USC, §1983, claiming *ex-parte* communications with the Virginia Supreme Court in the Stockburger case.

6) On August 2, 1996, the United States District Judge, Samuel G. Wilson, found that the complaint was legally groundless and ordered the respondent, Snider-Faulkingham and respondent's co-counsel be sanctioned under Rule 11 of the Federal Rules of Civil procedure.

7) On August 22, 1996, Judge Wilson recused himself from hearing the sanctions matters and transferred the case and all related proceedings to Judge William L. Osteen, Sr., United States District Judge for the Middle District of North Carolina, due to some allegations regarding Judge Wilson' competency made by the respondent.

8) On June 7, 2002, Judge Osteen issued an order sanctioning respondent in the amount of \$14,000.00 under Rule 11 for filing the complaint.

9) Respondent appealed Judge Osteen's order to the Fourth Circuit and wrote Chief Judge, William W. Wilkins of the Fourth Circuit regarding the denial of his appeal. In that letter, the respondent attacked the integrity of Judges Wilson and Osteen and the Fourth Circuit. The respondent accused the Judges of "placing false and defamatory information into public records".

10) On August 25, 2003 the respondent filed a petition for *writ of certiorari* with the United States Supreme Court attacking the integrity of the Virginia Supreme Court and Judges Wilson and Osteen, based solely on two anonymous phone calls and the anonymous letter. The United States Supreme Court denied respondent's petition for *writ of certiorari*.

11) On July 21, 2003 respondent filed a petition for rehearing with the United States Supreme Court. Again, in that petition, he included several statements challenging the integrity of the Virginia State Supreme Court and Judges Wilson and Osteen. The petition for rehearing was denied.

THE THREE-JUDGE COURT thereupon stated its unanimous finding that the Virginia State Bar had proven by clear and convincing evidence that the respondent had violated the following provisions of the revised Code of Professional Responsibility:

Rule 8.2, Judicial Officials - "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer".

The Three-Judge Court further ruled, unanimously, that the Virginia State Bar had failed to prove, by clear and convincing evidence, that the respondent had violated all other provisions as set forth in their certification.

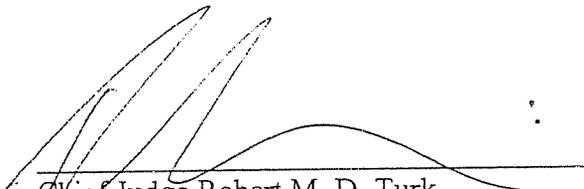
Thereafter, the Virginia State Bar and the respondent presented argument regarding the sanction to be imposed upon the respondent for the ethical misconduct found by the Three-Judge Court. Evidence was presented on behalf of the Virginia State Bar and the respondent, thereafter the members of the Three-Judge Court retired to deliberate and thereafter returned and announced the decision that the respondent should receive a Public Reprimand with further conditions that:

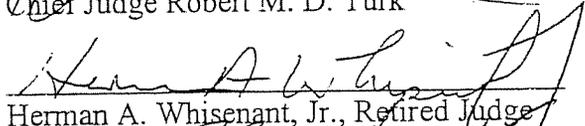
A) The respondent shall not file any action in any court, state or federal, without first associating co-counsel experienced in litigation, and

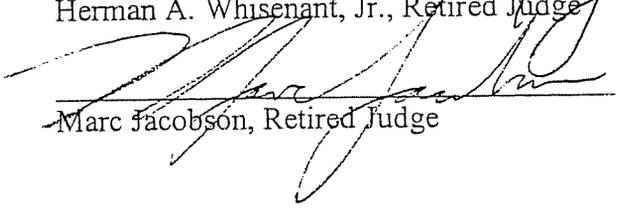
B) Respondent shall abstain from contacting any judge by letter in any proceeding in which he is involved as counsel.

It is hereby **ORDERED** that the respondent shall receive Public Reprimand with the conditions as stated above.

ENTER THIS ORDER this 31 day of JAN, 2005


Chief Judge Robert M. D. Turk


Herman A. Whisenant, Jr., Retired Judge


Marc Jacobson, Retired Judge

A COPY TESTE BRENDA S. HAMILTON, CLERK
By  Deputy Clerk