

VIRGINIA:

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD
IN THE MATTER OF TIMOTHY MARTIN BARRETT
VSB DOCKET NO. 02-022-1069 and 02-022-1070**

ORDER OF SUSPENSION

THIS MATTER came upon to be heard on Friday, July 23, 2004, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, Court Room A, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, 23219. The Board was comprised of Robert L. Freed, Chair, V. Max Beard (Lay Member), Russell W. Updike, William C. Boyce, Jr., and David R. Schultz. Proceedings in this matter were transcribed by Valarie L. Schmit, a registered professional reporter, P.O. Box 9349, Richmond, Virginia, 23227, telephone number (804) 730-1222. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether any member had any personal or financial interest or bias which would interfere with or influence that member's determination of the matter. Each member, including the Chair, answered in the negative; the matter proceeded. The Respondent, Timothy Martin Barrett, was represented by his counsel, Michael L. Rigsby, Esquire, and was present in person. The Virginia State Bar appeared by its counsel, Richard E. Slaney, Esquire.

The matter came before the Disciplinary Board by way of a Direct Certification of the Second District, Section II Subcommittee of the Virginia State Bar, after the Respondent had been given notice of said Certification on the 22nd day of October, 2003. (VSB Exhibit 1).

I. FINDINGS OF FACT

VSB Exhibits 1-37 were admitted without objection. The Bar and Respondent agreed to accept the deposition transcript of Lanis Karnes taken on June 29, 2004, as VSB Exhibit 38.

Respondent's Exhibit 1 was admitted without objection. The Board made, *inter alia*, the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant to the charge in this matter Timothy M. Barrett, Esquire, hereinafter the "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia, and the Respondent's address of record with the Virginia State Bar has been 5701 Thurston Avenue, Suite 101, Virginia Beach, Virginia, 23455. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and (I)(a) of the Rules of the Supreme Court of Virginia.
2. In the Summer of 2001, Respondent and his wife, Valerie Jill Barrett ("Jill Barrett"), separated. Jill Barrett took the couple's six children and returned to her hometown of Independence, Virginia from Virginia Beach, Virginia.
3. On July 25, 2001, Respondent sent an e-mail to Jill Barrett offering legal advice despite the fact that his interests at that point had a reasonable possibility of being in conflict with Jill Barrett's interests. Specifically, Respondent offered advice concerning: (a) where venue for the divorce proceedings would be; (b) the doctrine of imputed income; (c) individual responsibility for marital debt; and, (d) child custody. Respondent further stated in the July 25, 2001, e-mail that "while

it will be heartbreaking to watch you violate God's Word and disrespect your husband before the pagans, I am prepared for the fight." (VSB Exhibit 2).

4. On or about July 30, 2001, Jill Barrett retained Karen L. Loftin, Esquire, to represent her in the divorce proceedings. (VSB Exhibit 3). Thereafter, with the knowledge that Jill Barrett was represented by counsel, but without such Counsel's knowledge, Respondent sent Jill Barrett an e-mail on September 12, 2001, in which he gave legal advice to his wife relative to their separation, child custody issues and divorce. Respondent outlined in detail what Jill Barrett would face if she "chose to violate God's Word" and "sue[d] her husband in pagan courts." He specifically threatened Jill Barrett, the kids, and Jill Barrett's attorney in Virginia Beach weekly. Respondent threatened to make the divorce as expensive as possible, to "contest every aspect of [her] claim," and to "appeal any and all negative rulings." The Respondent vowed that Jill Barrett's legal fees would exceed Thirty Thousand and 00/100 Dollars (\$30,000.00). (VSB Exhibit 4).
5. In the fall of 2001, it became clear that the divorce action would be heard in Virginia Beach, and Jill Barrett retained Lanis L. Karnes, Esquire, to represent her in that venue. For several months thereafter and in numerous letters, Respondent wrote Attorney Karnes but referred to her by her former husband's name of "Price." (VSB Exhibits 5-12, 14-15, 17-23). Respondent testified that he did not believe Attorney Karnes had the legal right to change her name based upon his religious beliefs. Despite the fact that Respondent is divorced from Jill Barrett

and remarried, Respondent maintained that there was “no such thing as divorce in my religion.” According to the Respondent, referring to Attorney Karnes by her former husband’s name was a way to honor Karnes’ former husband. Respondent indicated to the VSB’s investigator that it was a method for him to protest Karnes’ role as Jill Barrett’s counsel.

6. Respondent sent a letter dated September 25, 2001 to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], in which he assaulted her religious views by stating, “Words cannot express the disappointment I feel towards you, one who ostensibly claims Christ as her savior, in that you would represent one Christian in their suit against another, let alone a wife verses a husband, in violation of the Word of God (I Cor 6) causing that Word to be defamed (Titus 2:4-5). Shame on you.” (VSB Exhibit 5).
7. Respondent sent a letter dated September 26, 2001; to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he made disparaging and harassing comments, including the following, “Please pass on to your client the fact that it has not escaped my notice the irony that my wife, who just weeks ago was feigning contempt for the feminism of her friends, has retained one of the worst examples of ‘Christian’ feminism ever to pollute the campus of Regent University. You two will make a lovely pair.” (VSB Exhibit 6).
8. Respondent sent a letter dated October 3, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he accused her of unethical conduct and threatened to have her disbarred. (VSB Exhibit 9).

9. Respondent sent a letter dated October 3, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he suggested that she was not complying with Rule 1.1 and encouraged her to withdraw as counsel. Respondent also alleged that she had filed frivolous motions with the court and threatened to request sanctions pursuant to § 8.01-271.1 of the Code of Virginia. (VSB Exhibit 10).
10. Respondent sent a letter dated October 5, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he advised that he looked forward to seeing Attorney Price (*sic*) at an upcoming hearing which would be “the beginning of what will be a series of hearings that will not conclude until the Virginia Supreme Court has passed on the matter of *Barrett v. Barrett*.” (VSB Exhibit 11).
11. Respondent sent a letter dated October 18, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he acknowledged threatening her with a malpractice action in connection with her representation of his wife. Respondent further stated that he would report Attorney Price (*sic*) to the Virginia State Bar for her violation of Rule 1.1 of the Rules of Professional Conduct based upon her alleged failure to proofread her letters and pleadings to insure accuracy and “legal faithfulness.” (VSB Exhibit 17).
12. Respondent sent a letter dated October 22, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he questioned her as to how she could ethically justify charging her client for travel instead of advising her client to retain local counsel. Respondent specifically alleged that this conduct was a violation of Rule 1.5 of the Rules of Professional Conduct. (VSB Exhibit 18).

13. Respondent sent a letter dated November 8, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Karnes], wherein he accused opposing counsel of being “inept.” Respondent further stated, “I beg you to start zealously representing your client with competence and stop wasting her money and my time.” (VSB Exhibit 22).
14. On October 19, 2001, Respondent signed and filed a Motion to Strike the Pleadings in the divorce action based upon the fact that the Plaintiff was listed as Valerie Jill Rhudy Barrett, whereas his wife’s name was Valerie Jill Barrett. (VSB Exhibit 32). On information and belief, Rhudy was Jill’s maiden name. Rhudy was Jill Barrett’s maiden name, a fact of which Respondent was well aware. Respondent alleged that he did not know the Plaintiff, did not marry the Plaintiff and therefore could not be a Defendant in a divorce from the Plaintiff and asked that the pleading be stricken on that basis, further asking for an award of costs for the time and expense necessary in filing the motion. (VSB Exhibit 32).
15. In addition to the Motion to Strike the Pleadings, Respondent filed other motions with the court including, but not limited to, a Motion to Disqualify the Petitioner’s Attorney (VSB Exhibit 25) and a Motion to Rehear and to Have The Honorable Judge Shockley Recuse Herself (VSB Exhibit 30).
16. On April 2, 2002, Respondent sent via facsimile a lengthy letter to The Honorable H. Thomas Padrick, Jr., Circuit Court Judge for the Circuit Court of the City of Virginia Beach. Respondent did not provide a copy of that correspondence to opposing counsel. The six page letter dealt specifically with the Respondent’s request to have Judge Padrick transfer custody of the children from Jill Barrett to

the Respondent. The letter contained factual representations and legal arguments in support of the request. (VSB Exhibit 35). Jill Barrett's counsel was contacted by court personnel and advised that the letter had been filed.

17. Despite an order by Judge Padrick that counsel were not to file any motions without first discussing the substance of the motion with each other and then the court via conference call (VSB Exhibit 34), Respondent attempted to file numerous motions in a hearing before Judge Shockley of the Circuit Court of the City of Virginia Beach without any prior conference call with the court.
18. On August 14, 2002, The Honorable H. Thomas Padrick, Jr. found Respondent to be in contempt of court for failure to timely pay child support and spousal support and sentenced him to one hundred and twenty (120) days in the Virginia Beach Correction Center, with confinement suspended, conditional upon Respondent making payments on the arrearage in specific amounts. (VSB Exhibit 36).
19. On March 24, 2003, The Honorable J.L. Tompkins of the Grayson County Juvenile and Domestic Relations District Court found Respondent guilty of failure to pay child support and sentenced Respondent to twelve (12) months in jail with the jail sentence suspended, conditional upon the Respondent paying the support as ordered, plus payments of the arrearage within six months. (VSB Exhibit 37).
As of March 16, 2003, the child support arrearage exceeded Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00). Respondent failed to comply with the court ordered support payments, despite the fact that he reported to the Grayson County Juvenile and Domestic Relations Court on September 6, 2001, that he

would lose approximately One Thousand Four Hundred and 00/100 Dollars (\$1,400.00) per day if he were obligated to travel from Virginia Beach to Grayson County for court proceedings. Moreover, Respondent defied the court order of child support despite the fact that he had the financial wherewithal to purchase a luxury sports car (Chevrolet Corvette) and make payments of Nine Hundred and 00/100 Dollars (\$900.00) per month until selling the car earlier this year.

20. Respondent acknowledged that he was subject to the Virginia Rules of Professional Conduct notwithstanding the fact that he believes the Virginia Beach Circuit Court is a pagan court, which he equates to a non-Christian court. Respondent further testified that the Disciplinary Board of the Virginia State Bar was a “pagan body.”

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

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. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (i) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.

- (j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 3.5 Impartiality And Decorum Of The Tribunal

- (e) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:
 - (1) in the course of official proceedings in the cause;
 - (2) in writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party who is not represented by a lawyer;
 - (3) orally upon adequate notice to opposing counsel or to the adverse party who is not represented by a lawyer; or
 - (4) as otherwise authorized by law.

RULE 4.2 Communication With Persons Represented By Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

RULE 4.3 Dealing With Unrepresented Persons

- (b) A lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interest of the client.

RULE 4.4 Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

The Virginia State Bar withdrew charged violations of Rule 4.2 and Rule 4.4.

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1-38, upon review of Exhibit 1 on behalf of the Respondent, upon evidence presented by Respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its findings that the Board had determined that the Bar did prove by clear and convincing evidence that the Respondent had violated Rules 3.1, 3.4(i), 3.4(j), 3.5(e), 4.3(b) and 8.4(b). Since the Bar had withdrawn charges of violations of Rules 4.2 and 4.4, those charges were dismissed.

Thereafter, the Board received evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's lack of a prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened, and the Chair announced that by a vote of three to two the sanction to be imposed was a three (3) year license suspension. The Chair announced that two members of the Panel had voted for revocation of the Respondent's license.

Accordingly, it is ORDERED that the license of Respondent, Timothy Martin Barrett, to practice law in the Commonwealth of Virginia, be, and the same hereby is, suspended, effective July 23, 2004, for a period of three (3) years.

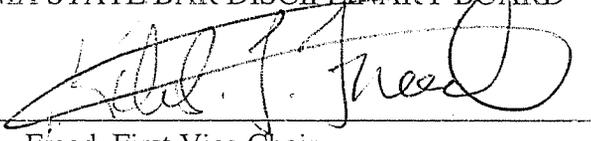
It is further ORDERED that, as directed in the Board's Summary Order dated July 23, 2004, in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the three (3) year loss of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before the three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent, Timothy Martin Barrett, at his address of record with the Virginia State Bar, 5701 Thurston Avenue, Suite 101, Virginia Beach, Virginia 23455, by certified mail, return receipt requested, and by regular mail to Richard E. Slaney, Esquire, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219 and Michael L. Rigsby, Esquire, Carrell, Rice & Rigsby, 7275 Glen Forest Drive, Suite 309, Richmond, Virginia 23226.

ENTERED this 5th day of August, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD



Robert L. Freed, First Vice Chair