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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

MAR 11 2005

Virginia State Bar, ex rel
Third District, Section III, Subcommittee

VSB CLERK'S OFFICE

v.

Case No. LS-2513-3

Randolph Lawrence Carl
(Respondent)

MEMORANDUM ORDER

This cause came on for hearing on December 7, 2004, upon the Rule to Show Cause of this Court; pursuant to Va. Code §§54.1-3935 and 8.01-261(17) and Rules of Court, Part Six, § IV, Paragraph 13. This cause was heard by a duly appointed Three-Judge Court consisting of the Honorable George F. Tidey, the Honorable Barnard F. Jennings and the Honorable Rodham T. Delk, Jr., Chief Judge Designate; Respondent Randolph Lawrence Carl appeared by counsel, Michael L. Rigsby. Linda Mallory Berry appeared on behalf of the Virginia State Bar.

Upon the stipulated facts presented by the Virginia State Bar and Respondent, by counsel, the Court found that the Virginia State Bar proved by clear and convincing evidence the following facts:

1. On April 12, 1993, Randolph Lawrence Carl (hereinafter "Mr. Carl" or "Respondent") was licensed to practice law in the Commonwealth of Virginia. At all times relevant hereto, Mr. Carl has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Mr. Carl has maintained an active practice in the Juvenile and Domestic Relations District Court ("J&DRDC") of the City of Richmond for approximately seven (7) years. Mr. Carl developed his practice performing services as court appointed counsel and guardian *ad litem*, to the point that the court- appointed work in the J&DRDC of Richmond has generated greater than ninety percent (90%) of Mr. Carl's legal fees.

3. Mr. Carl was appointed as a guardian *ad litem* for an incarcerated person in a support matter in the Richmond J&DRDC heard on June 17, 2003. According to the judge's in-court clerk, Mr. Carl came into court when the case was called, stated that he did not know that he was appointed on the matter, and spent about five (5) minutes talking with the client before the case was heard. The hearing lasted approximately five (5) minutes. Mr. Carl, however, submitted an invoice indicating he spent two (2) hours out-of-court on the case and one (1) hour in court. Mr. Carl claimed a total reimbursement in the amount of \$185.00. The invoice form requires the attorney to certify the accuracy of the bill, and Mr. Carl did so certify on the invoice for this matter. Mr. Carl believed that he was allowed to bill for time he spent in the courthouse waiting for his case to be called.

According to Mr. Carl, two months prior to the hearing, he sent the client a paternity package, including a letter of representation, a child support form and an affidavit for his client to describe the length of his incarceration, among other things. The client did not respond to Mr. Carl's letter, so Mr. Carl tried to interview his client on the hearing date in "lockup" before the case was called. After some delay, Mr. Carl was allowed to interview his client, and the case was subsequently tried.

4. Mr. Carl was asked by the sitting judge in whose court the matter had been heard by a substitute judge to submit a detailed written itemization of the time spent on the matter. Mr. Carl met with the Chief Judge of the J&DRDC of Richmond to explain how he spent three (3) hours on the case, but he did not have detailed billing records to verify his work. The court denied all compensation claimed by Mr. Carl for this representation.

5. In light of the discrepancy between the clerk's observation and the documents submitted, on July 9, 2003, Mr. Carl was informed that he would need to submit itemized billings with all invoices.

6. On September 10, 2003, a hearing was held in a child custody matter for which Mr. Carl had been appointed guardian *ad litem*. Mr. Carl was not present when the matter was called nor did he appear during the next twenty (20) or more minutes. Therefore, the judge ruled on the matter without the input of the guardian *ad litem*. Mr. Carl was in the courthouse but in another courtroom that was running late with its docket. Later that afternoon, Mr. Carl submitted an invoice with an itemized time sheet. The invoice included a claim for in-court time with compensation for a 20-minute hearing on 9/30/03. The invoice form requires the attorney to certify the accuracy of the bill, and Mr. Carl did so certify on the invoice for this matter. Mr. Carl's fee request for in-court and out-of-court compensation was denied.

7. On October 9, 2003, Mr. Carl asked the judge on whose docket he had several matters to hold those matters until Mr. Carl appeared briefly in Henrico County and returned to the courtroom at 11:00 am. At 11:45 a.m., seven (7) support matters for which Mr. Carl was appointed were heard, ending at 12:20 p.m. Copies of Mr. Carl's invoices for October 9, 2003 indicated he was in court for a total of one hour and fifty-five minutes. The invoice form requires the attorney to certify the accuracy of the bill,

and Mr. Carl did so certify on the invoice for this matter. The court did not approve Mr. Carl's fee request in any of the seven (7) matters.

The Court found that the foregoing stipulated facts supported findings that the Respondent engaged in misconduct that violated the following Rules of Professional Conduct:

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 presented Mr. Carl's lack of a prior disciplinary record.

The Virginia State Bar and the Respondent, by counsel, agreed that the Agreed Disposition of a Public Reprimand with Terms represented an appropriate sanction if this matter had been resolved via an evidentiary hearing before a Three Judge Court.

Accordingly, IT IS ORDERED that the Randolph Lawrence Carl shall be publicly reprimanded with terms and the Respondent is herewith so PUBLICLY REPRIMANDED WITH TERMS. The terms, which the Respondent must fulfill by the dates indicated as a condition for the issuance of a public reprimand with terms, are the following:

1. Mr. Carl shall arrange for the services of a consultant to conduct a risk management assessment of practice of law. The cost of such an assessment shall be borne completely by Mr. Carl. The credentials and the identity of the proposed risk management consultant(s) shall be presented for approval to the Office of Bar Counsel **prior to** the decision by Mr. Carl to engage a specific consultant. The consultant shall review and make recommendations concerning proposed changes in and improvements to the everyday operation of Mr. Carl's law practice. The report and recommendations made by the consultant shall be provided to the Office of Bar Counsel **on or before March 1,**

2005. The consultation shall include a follow-up and a final report of compliance to the Office of Bar Counsel **on or before May 1, 2005.**

2. **On or before December 31, 2004,** the Respondent shall complete four (4) hours of continuing legal education (CLE) credits by taking in-person courses that have been approved by the Virginia State Bar in the areas of ethics which may NOT be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdiction in which he may be licensed to practice law. The Respondent shall certify his compliance with this term by delivering a fully executed Virginia MCLE Board Certification of Attendance Forms to the Office of Bar Counsel, VSB, 707 East Main Street, Richmond, VA 23219.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. Mr. Carl's failure to comply with any one or more other agreed terms and conditions will result in the imposition by this Court of an *Alternative Sanction of a Six-Month Suspension of his license to practice law in the Commonwealth of Virginia.* The imposition of the alternative sanction shall not require any hearing on the underlying charges of Misconduct, if the Virginia State Bar discovers that Mr. Carl had failed to comply with any of the agreed terms or conditions. In that event, the Virginia State Bar shall issue and serve upon Mr. Carl, a Notice of Hearing to Show Cause why the alternatives sanction should not be imposed. The sole factual issue will be whether Mr. Carl has violated one or more of the terms of the Public Reprimand with Terms without legal justification or excuse.

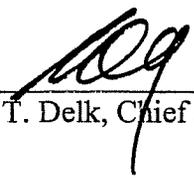
IT IS FURTHER ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to Rules of Court, Part Six, §IV, Paragraph 13.B.8.c.

IT IS FURTHER ORDERED that certified copies of this order shall be mailed by the Clerk of the Circuit Court of the City of Richmond to the counsel of record.

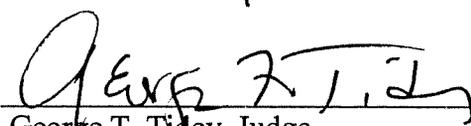
IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall send a certified copy of this order to the Clerk of the Disciplinary System, at Suite 1500, 707 East Main Street, Richmond, VA 23219.

IT IS FURTHER ORDERED that upon the end of all proceedings in this matter, the Clerk of the Disciplinary System shall maintain the complete file of this matter in accordance with file retention policies and requirements of the Virginia State Bar.

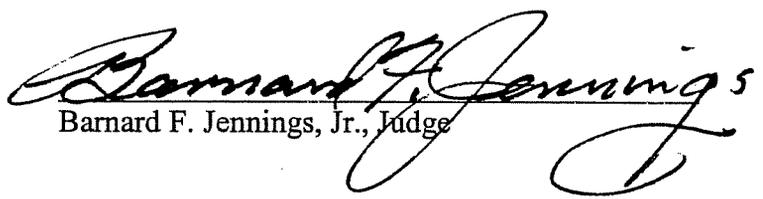
ENTERED THIS 23rd DAY OF December 2004.



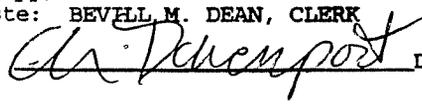
Rodham T. Delk, Chief Judge Designate



George T. Tiley, Judge



Barnard F. Jennings, Jr., Judge

A Copy,
Teste: BEVELL M. DEAN, CLERK
BY:  D.C.