

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF KILLIS THURMAN HOWARD

VSB Docket No. 03-090-0468

ORDER OF SUSPENSION OF 90 DAYS

On October 14, 2003, a subcommittee of the Ninth District Committee certified this matter to the Virginia State Bar Disciplinary Board ("Board") for hearing which was set to be heard on April 23, 2004 before a duly convened panel. On March 26, 2004, this matter was presented for approval of an agreed disposition to a duly convened panel consisting of Peter A. Dingman, Esquire, Robert E. Eicher, Esquire, Ann N. Kathan, Attorney at Law, Mr. Chester J. Cahoon, Jr., (lay member), and Karen A. Gould, Attorney at Law, First Vice-Chair Presiding.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶13B5c., the Virginia State Bar, by Paul D. Georgiadis, Assistant Bar Counsel, and the Respondent, by counsel R. Paul Childress, Jr., entered into a proposed agreed disposition and presented it to the convened panel. Killis Thurman Howard, the Respondent, also appeared before the 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 or her ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

I. FINDINGS OF FACT

1. During all times relevant hereto, Killis Thurman Howard, ("Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or around October 28, 1999, Mrs. S retained Respondent to represent her as a defendant to her husband's divorce suit that alleged, *inter alia*, fault grounds of adultery committed by Mrs. S. with a Mr. C.
3. Thereafter, Respondent filed a motion for an extension citing the parties' interest in reconciliation and counseling.
4. By agreement of the parties, the Court dismissed the divorce suit on or about January 13, 2000.
5. At some point thereafter, Respondent engaged in an ongoing sexual relationship with Mrs. S. There is a conflict in the evidence as to when the sexual relationship commenced, with the parties agreeing that there is no direct evidence to corroborate the conflicting accounts of Mrs. S and Respondent.
6. Mrs. S contends that as Respondent negotiated with husband's counsel to withdraw the pending divorce suit, Respondent himself entered into adulterous relations with Mrs. S while in his law office and while in his residential quarters attached to his law office, and in other locations which continued through the Spring of 2002.
7. Respondent contends that he did not begin to engage in said relationship until after he terminated his attorney-client relationship with Mrs. S in April, 2000.
8. In March, 2000, husband confronted Mrs. S with allegations of her engaging in an on-going adulterous relationship with Respondent and demanded that the affair end for further reconciliation to occur. As part of the reconciliation, husband required Mrs. S. to enter into a post-nuptial agreement to include a contingent custody clause by which Mrs. S would waive her claim to spousal support, and stated that should Mrs. S. commit further adultery or file for separation, husband would have sole legal custody of their infant child.
9. A post-nuptial agreement was drafted by Respondent. In paragraph 3 of said agreement, Respondent included the contingent custody clause. At the same time, Respondent had received a separate document, entitled Separation Agreement, from husband's attorney which had been drafted on March 27, 2000, in which husband demanded sole custody of their infant child, without any contingency for such provision.
10. On April 12, 2000, Mrs. S executed the agreement at Respondent's office. Respondent billed Mrs. S. for his time in preparing such agreement.

11. On or about June 11, 2001, Husband re-filed the divorce Bill of Complaint alleging fault grounds of adultery based upon repeated instances of Mrs. S's adultery with Respondent, whom he named in the bill of complaint.
12. On or about February 26, 2002, the Circuit Court entered a *pendente lite* order requiring Mrs. S to have no contact with Respondent while Mrs. S had her infant child in her care.
13. On July 26, 2002, the Court entered the final decree, finding Mrs. S guilty of adultery with Respondent. Taking into consideration the adultery found, the Court awarded sole custody of their child to husband. The Court further affirmed, ratified, and incorporated the validity of the post-nuptial agreement dated April 3, 2000, except for paragraph 3 of the agreement.

II. NATURE OF MISCONDUCT

The Board finds that such conduct on the part of the Respondent violates

RULE 1.7 Conflict of Interest: General Rule

- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 - (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

**IMPOSITION OF SANCTION OF SUSPENSION OF
NINETY (90) DAYS**

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions, 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, Killis Thurman Howard, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for ninety (90) days, effective April 21, 2004.

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 April 21, 2004, 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 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, Killis Thurman Howard, P.O. Box 99, Lynchburg, VA 24505-0099, his last address of record with the Virginia State Bar; by first class mail, postage prepaid, to his counsel of record, R. Paul Childress, Jr., Esquire, Thompson, Smithers, Newman, Wade & Childress, LLP, P.O. Box 6357, Richmond, VA 23230; 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.

Tracy J. Stroh, 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 _____ day of March, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____

Karen A. Gould, First Vice-Chair