

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

received

VIRGINIA STATE BAR EX REL  
FIRST DISTRICT COMMITTEE,

SEP 28 2005

Complainant,

VSB CLERK'S OFFICE

v.

Case No. CL05-102

DWAYNE BERNARD STROTHERS,

Respondent.

**MEMORANDUM ORDER**

On August 4, 2005, a hearing in this matter was held before a duly convened three-judge court consisting of the Hon. James E. Kulp, Judge Designate, the Hon. Rosemarie P. Annunziata, Judge Designate, and the Hon. H. Thomas Padrick, Jr., Chief Judge Designate, presiding. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Dwayne Bernard Strothers, Esq. (Strothers), was present in person and represented by his counsel, Matthew P. Geary, Esq.

The parties presented evidence and argument on whether Strothers violated the Rules of Professional Conduct as alleged in the Complaint and Certification filed by the Bar, and the panel retired to deliberate. Following its deliberations, the panel found by clear and convincing evidence the following:

**I. FINDINGS OF FACT**

1. At all times material to this Certification, the Respondent, Dwayne Bernard Strothers

(Strothers) was an attorney licensed to practice law in the Commonwealth of Virginia.

The Thompson Complaint 04-010-1810

2. In October of 2002, one Dorothy Thompson (Dorothy) hired Strothers to pursue a divorce for her son, Edward Thompson (Edward). Edward was overseas in the military and had given Dorothy his power of attorney. Dorothy paid Strothers \$750, which Strothers acknowledged was not placed in a trust account.

3. In June of 2003 Edward returned from overseas briefly and he and Dorothy met with Strothers. Strothers told them he had previously sent a separation agreement to Edward's wife, but could not provide the Bar with any evidence showing such a previous mailing. Strothers asked Dorothy and Edward for more money, including money for anticipated court costs. They paid Strothers an additional \$800, none of which went into his trust account. Edward was shortly thereafter deployed to Iraq.

4. In November of 2003, Edward received from his now ex-wife a copy of a Florida divorce decree she obtained that month. Dorothy then wrote Strothers, asking for some response and indicating he had failed to respond to her previously, although Strothers denied receiving that letter. She thereafter filed her Bar complaint in December of 2003.

5. Strothers then filed a Bill of Complaint for divorce in Suffolk Circuit Court in January of 2004. He acknowledged to the Bar's Investigator he received a copy of the Florida decree with the Bar complaint in December of 2003. He remains counsel of record in the Suffolk case but has not pursued the matter further. Just before the start of the August 4, 2005 hearing, Strothers delivered a check to Dorothy representing a refund of the fees and costs paid to him.

[Rules applicable: 1.1; 1.3(a); 1.4(a); 1.15(a); and 8.4(c)]

The Warren Complaint 04-010-3530

6. In May of 2002, Strothers was appointed to represent one Elijah Warren (Elijah) in a direct criminal appeal to the Court of Appeals of Virginia (the Court of Appeals).

7. Strothers timely filed a Petition for Appeal; however, at some point in May or June of 2002, Strothers was advised by Elijah's aunt, Vivian Warren (Vivian), that the Warren family hired a new lawyer, Charles Malone (Malone), to handle Elijah's appeal. Malone filed a Motion for Extension to File Petition for Appeal, which was not acted on by the Court of Appeals due to the fact Strothers was counsel of record and had already filed a timely Petition for Appeal. Strothers' Petition for Appeal was denied first by a single judge, and then by a panel of three judges.

8. Strothers then filed in the Court of Appeals a Petition for Rehearing En Banc, which was denied due to the fact the Rules of Court do not provide for rehearing en banc following denials by a single judge and a three-judge panel.

9. Subsequently, Strothers filed a Petition for Appeal with the Supreme Court of Virginia, which dismissed the Petition in an order dated June 11, 2003, due to Strothers' failure to file a Notice of Appeal and his failure to timely file the Petition for Appeal.

10. Strothers told the Bar Investigator he did not inform Vivian, Elijah or anyone in the Warren family of the dismissal by the Supreme Court of Virginia. He testified at the hearing he did inform Vivian of the dismissal when he saw her at a local restaurant; however, he acknowledged he did not advise her of the reason for the dismissal. Vivian testified and denied

ever learning of the dismissal from Strothers.

[Rules applicable: 1.1 and 1.4(a)]

## II. NATURE OF MISCONDUCT

The above facts show violations of the following Rules of Professional Conduct of

Virginia:

### RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

### RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

### RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
  - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
  - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;....

**III. SANCTION**

Following the announcement of its decision on the Rule violations, the parties presented evidence and argument on the type of sanction to be imposed. The panel retired to deliberate, and thereafter announced its decision to suspend Strothers' law license for 90 days, effective September 30, 2005. Accordingly, it is hereby

**ORDERED** that the law license of Dwayne Bernard Strothers be **SUSPENDED** for a period of 90 days commencing September 30, 2005. It is further

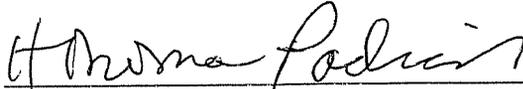
**ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(B)(8)(c). It is further

**ORDERED** that the Clerk of the Circuit Court shall send certified copies of this order to counsel of record and to the Clerk of the Disciplinary System. As stated in the Summary Order entered by the Court on August 4, 2005, it is further

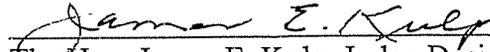
**ORDERED** that pursuant to the provisions of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, as amended, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth 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 client. The Respondent shall give such notice within fourteen (14) days of the date of this order, and shall make such arrangements as are required herein within forty-five (45) days of the date of this order. Respondent shall also furnish proof to the Clerk of the Virginia State Bar Disciplinary System within sixty (60) days of the date of this order that such notices have been timely given and such arrangements for the disposition of matters have been made. Issues concerning the adequacy of the notice and arrangements required shall be determined by the Disciplinary Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph.

Entered this the 21<sup>st</sup> day of September, 2005.

  
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The Hon. H. Thomas Padrick, Jr., Chief Judge Designate

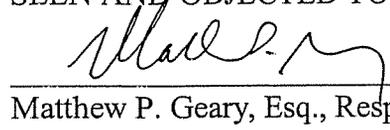
  
\_\_\_\_\_  
The Hon. Rosemarie P. Annunziata, Judge Designate

  
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The Hon. James E. Kulp, Judge Designate

SEEN:

  
Richard E. Slaney, Assistant Bar Counsel

SEEN AND OBJECTED TO:

  
Matthew P. Geary, Esq., Respondent's Counsel

**TRUE COPY**

I certify that the document to which this authentication is affixed is a true copy of a record in the Suffolk Circuit Court, that I have custody of the record, and that I am the custodian of that record.

TESTE: W. RANDOLPH CARTER, JR., CLERK

BY: Matthew P. Geary D.C.

DATE: 9/23/05