

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL.
SECOND DISTRICT COMMITTEE

Complainant

v.

CH05-1488

received

OCT 31

TIMOTHY MARTIN BARRETT

VSB CLERK'S OFFICE

Respondent

SUMMARY ORDER

On August 12, 2005, the referenced matter was heard by a three-judge panel in the Circuit Court of the City of Virginia Beach pursuant to Notice served upon the Respondent in the manner provided by the Code of Virginia, Section 54.1-3935. The three-judge panel met by telephone conference call on October 12, 2005, for the purpose of finalizing the order of Opinion and Findings of Facts and to determine the appropriate sanction to be imposed.

WHEREFORE, upon consideration of the testimony and documentary evidence, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia is Suspended for a period of thirty (30) months, effective November 1, 2005.

The court notes for the record in this matter that the respondent was not present in person when the sanction was announced. The Clerk of the Disciplinary System is directed to communicate promptly to the Respondent the actions of the court. The court's written opinion and findings of facts in this matter is attached hereto and incorporated herein by reference.

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, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of the Suspension of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom the Respondent 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 Respondent's care in conformity with the wishes of his client. The Respondent shall give such notice within fourteen (14) days of the effective date of the summary order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the summary order. The Respondent shall furnish proof to the bar within sixty (60) days of the effective date of the summary order that such notices have been timely given and such arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

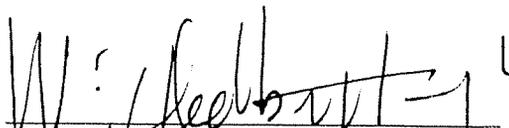
Pursuant to Part Six, §IV, ¶ 13.B.8.c. of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent at his last address of record with the Virginia State Bar and mailed by regular mail to bar counsel.

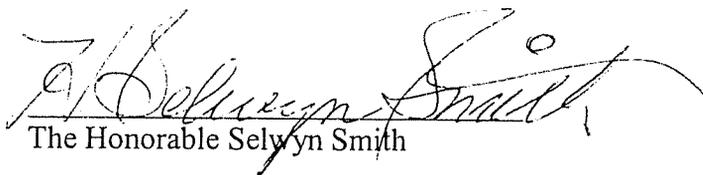
ENTERED: October 12, 2005



The Honorable William N. Alexander, II
Chief Judge Designate



The Honorable William H. Ledbetter



The Honorable Selywn Smith

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL.
SECOND DISTRICT COMMITTEE
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FINDINGS OF FACTS AND
OPINION
CH05-1488

v.

TIMOTHY M. BARRETT
Respondent

(In the Matters of Timothy M. Barrett
VSB Dockets No. 04-022-1309 (DuBay), 04-022-2179 (Jill Barrett),
04-022-3583 (Anon))

Having been certified for a Disciplinary Board hearing by a subcommittee of the Second District Committee-Section II, of the Virginia State Bar, and the Respondent, Timothy M. Barrett, by counsel, having requested a hearing before a three-judge court pursuant to Virginia Code Section 54.1-3935, this cause came to be heard on August 12, 2005, by a duly convened, three-judge court consisting of the Honorable William H. Ledbetter, Retired Judge, the Honorable H. Selwyn Smith, Retired Judge and the Honorable William N. Alexander, II, Chief Judge Presiding.

On August 12, 2005, the Court convened at 9:30 a.m. Present were the Virginia State Bar by assistant bar counsel Paul D. Georgiadis, and the respondent Timothy M. Barrett, pro se. Barrett noted his exception to the Court's previous rulings denying Barrett's demurrer and denying Barrett's motion for separate trials. Thereafter, Barrett moved to dismiss the three cases based upon alleged bias of attorney Bobby Davis who sat on the subcommittee of the Second District Committee—Section II that certified these matters for hearing. Upon consideration of the arguments of counsel, the Court

DENIED the motion, finding that the allegations were unsubstantiated and uncorroborated. The motion was untimely because the Subcommittee issued its certification on May 5, 2005, and Barrett first raised the objection at the hearing on August 12, 2005.

Thereafter, the Court proceeded in this matter, which consisted of three cases, VSB Docket Nos. 04-022-1309, 04-022-2179, and 04-022-3583. In each case the Court received evidence, including the testimony of Barrett, and heard the arguments of counsel. At the conclusion of the bar's evidence in each case, Barrett moved to strike bar's evidence, which was denied in all three cases. At the conclusion of the three cases, the Court heard closing arguments from counsel.

VSB Docket Number 04-022-1309

Barrett is accused of violating Rule 4:4 and 8:4 (b) of the Rules of Professional Conduct.

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

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 as a lawyer.

Barrett admitted all facts stated in the certification. Over Barrett's objection, the Court heard evidence and finds the following facts:

The allegations of misconduct arose as a result of a lien dispute with Hayden DuBay, Barrett's former employer. Barrett continued representing Wade Bell, a former client of DuBay's law firm, after he had left DeBay's employ. DuBay notified Barrett of his claims of an attorney's lien in the Wade Bell case in the amount of \$590.74. Barrett secured a verdict for Bell in the amount of \$1204.00. Barrett advised DuBay that the judgment was insufficient to satisfy his lien and sent the insurance carrier's check to DuBay for his endorsement. Barrett refused to assure DuBay that he would honor the lien. DuBay held the check but offered to release the check and waive his lien if Barrett would waive his lien and allow the whole amount of the check be paid to Bell.

On March 4, 2003, Barrett, on behalf of his law firm, filed suit in the Virginia Beach District Court against DuBay's law firm for the full amount of the \$1204.47 check. At trial on August 25, 2003, the District Court rejected Barrett's claim for the check amount and granted judgment to DuBay's law firm on its counterclaim for costs and attorney's fees. Barrett appealed to the Circuit Court.

During the pendency of Barrett's appeal, he was litigating his own domestic relations matters in the Grayson County Circuit Court. Barrett claimed that his estranged wife, Jill, had worked for DuBay and he had knowledge of her earning capacity. In fact, the wife's employment with DuBay was minimal. On September 5, 2003, Barrett request the Grayson Court to issue a witness subpoena requiring DuBay to appear for trial in Grayson County on October 2, 2003. Also, on September 5, 2003, Barrett wrote DuBay's attorney, Carl Isbrandtsen:

Please inform him that this Court is about 335 miles away from Virginia Beach and will take him about seven hours to travel each way...hotels in the

area run from about \$75.00...Of course, there is no guarantee that I will call him on the first day of the trial, which may necessitate him coming back several weeks later...please inform him that should he turn over all records in his possession concerning her employment and return to me the judgment check in the Wade Bell matter with a letter waiving his lien, I will gladly release him from my subpoena.

When this letter was written, DuBay had already provided Jill's counsel all of her employment records. Barrett did not subpoena any of Jill's records.

Barrett repeated his demand by letter of September 24, 2003, to Isbrandtsen and advised he had appealed the lien case to the Circuit Court, that the Grayson matter had been continued but that DuBay would still be required to appear. He wrote "have your client inform me of his acceptance of my offer to avoid traveling to Grayson county by the close of business on Friday, October 2, 2003, at which time the offer will be withdrawn."

On May 7, 2004, the Virginia Beach Circuit Court dismissed Barrett's claim for the Bell check proceeds and on May 13, 2004, the Court awarded DuBay's law firm \$1,840.79 against Barrett's law firm.

Thereafter, DuBay's counsel initiated collection efforts, including debtor interrogatories, in an effort to get Barrett to endorse the check. On July 6, 2004, DuBay filed a motion to compel Barrett to endorse the check. On July 16, the Circuit Court ordered him to endorse the check. On July 19, Barrett filed a Motion to Reconsider. On July 23 the Court issued a show cause against Barrett for not endorsing the check. At or immediately before the show cause hearing, Barrett endorsed the check.

By this time the check was long stale and had to be reissued. The funds were not available until April 2005. On April 13 Barrett wrote Bell, advised him of the availability of the funds, disclosed that the judge had ordered that the money go to Bell, and requested that Bell allow him to keep the money. Bell refused and Barrett paid Bell on or after April 25, 2005, some two years and four months after the check was originally issued.

On these facts, the Court finds by clear and convincing evidence that Barrett has violated Rule 4.4 and Rule 8.4 (b) of the Rules of Professional Conduct.

VS B Docket Number 04-022-2179

Barrett is accused of violating Rule 3.1 and Rule 3.4(j) of the 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:

- (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.

The Court finds the following facts:

On October 17, 2003, Barrett, appearing *pro se* in the Grayson County Circuit Court at a hearing involving his own domestic matters, attempted to call Martin L. Davis, his opposing counsel, as an adverse witness. Davis objected; Barrett advised the Court: "I have reason to believe that Mr. Davis and Ms. Barrett have a romantic relationship. If that is not the case, if he will put it on the record, I have no reason to talk to him." Davis denied the allegation and ultimately Barrett withdrew his request.

During the course of a two-day trial, Davis did have dinner with his client after court in a restaurant near the courthouse. Jill Barrett had asked her attorney to dinner to meet a friend of hers who was the chef at the restaurant and to discuss the proceedings of the day as well as the next. On this knowledge and upon "observation" of Jill Barrett and Davis in Court, Barrett concluded they were having a romantic relationship.

Barrett's present wife, Kathy, testified that she concluded that Davis was having a romantic relationship with Jill based upon her observations. Kathy is also Barrett's legal assistant. She has testified for Barrett on at least two prior instances, and has assisted him in formulating legal strategy in his on-going domestic relations issues with Jill Barrett. Kathy Barrett testified that at the time in question, she knew Barrett wanted his children to live with him, and that she shared this desire. She testified that she believed that a finding of Davis having a relationship with Jill Barrett would help Barrett gain physical custody of this children.

On these facts, the Court finds by clear and convincing evidence that Barrett had no reasonable or objective grounds for calling Davis as a witness and that by his conduct, he has violated Rule 3.1 and Rule 3.4(j) of the Rules of Professional Conduct.

VSF Docket Number 04-022-3583

Barrett is accused of violating Rule 3.1 and Rule 1.1 of the 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 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.

The Court finds the following facts:

On March 1, 2001, Barrett agreed to represent Debra Eller in a claim for personal injuries suffered in a motor vehicle accident occurring on February 27, 2001. Barrett failed to settle the matter or file a lawsuit within the two year statute of limitations. Barrett admitted to this Court that he did commit malpractice in representing Ms. Eller.

Eller filed a motion for judgment alleging Barrett's malpractice. Barrett filed a special plea of immunity alleging that since he practiced as a PLC, he was personally immune from liability under §13.1-1019 and §13.1-1020 of the Code of Virginia. He also alleged he was personally immune under the doctrine of *respondent superior*. Barrett contends he did extensive research and when he incorporated his practice, he understood that the limited liability status gave him the advantage of pass-through tax benefits while shielding him from personal liability. He also recalled from law school that he was personally immune. Barrett admits that he filed his special plea based on a misunderstanding of the law.

On February 18, 2004, Eller's attorney, David Pearline, filed a Motion to Strike along with a Memorandum of Points and Authorities. In the memo Pearline presented relevant portions of the Professional Limited Liability Company Act including those that affirm the personal liability of members and employees of professional limited liability companies for their own actions. Barrett did not review Pearline's motion or memorandum until the day of the hearing, March 19, 2004. Furthermore, Barrett had a practice of only scanning his mail when he received it because he believed it to be a waste of time to read it before the day of trial because he would forget it between the time he read it and the time he prepared for trial.

Pearline spoke with Barrett about scheduling a hearing on the motion. Pearline and Barrett discussed the merits of the motion, but Barrett refused to withdraw his plea telling him to "take it to court".

On the day of the hearing, Barrett advised Pearlina he was not going to contest the motion and that he would withdraw his special plea and did so when the Court convened. By the time Pearlina was advised of the withdrawal, he had waited most of the day for the hearing and the Court had shifted its docket to accommodate this motion. In addition Pearlina had spent several hours of unnecessary preparation preparing for the hearing.

At the hearing, the Court granted Pearlina an award of \$350.00 in attorney's fees against Barrett, ordered his demurrer withdrawn, and found that his Special Plea of immunity "was not warranted by existing law or the good faith argument for the extension, modification, or reversal of existing law.."

On this evidence, the Court finds by clear and convincing evidence that Barrett has violated Rule 1.1 and Rule 3.1 of the Rules of Professional Conduct.

SANCTION

Having deliberated and having made the aforementioned findings of misconduct and violations of the Rules of Professional Conduct, the Court reconvened and heard evidence and argument concerning and appropriate sanction.

Barrett stated to the Court that "you've told me I was wrong. I accept it, your ruling. I apologize to you and to Mr. DuBay. I humbly accept the Court's findings and I ask for forgiveness." He also extended and amplified his statement to include and cover not only the misconduct in 04-022-1309, but as well the other two cases and the parties involved to include Martin Davis, and David Pearlina.

The bar stated that Barrett contested every charge and had admitted to no culpability until the court returned its findings or misconduct.

Throughout the hearing, Barrett argued that his conduct was justified. In 04-022-1309, Barrett had argued that his linking of waiver of the attorney's lien to the release of the subpoena was an effort to save DuBay money. He further argued that after the Court extinguished his claim to the Bell judgment proceeds, he nonetheless did not have to endorse over the check until the Court ordered him to do so. In 04-022-2179, Barrett had argued that on the basis of a dinner held in a restaurant near the courthouse after court and between consecutive days of court hearings and on the basis of observations of interaction in and around the courthouse, he was justified in alleging a romantic relationship between his former wife and opposing counsel and therefore had grounds to call counsel to the stand as a witness. In 04-022-35832, Barrett argued that he had a good faith basis for asserting his special plea of immunity based upon his recollection of law school instruction, and a basis for not withdrawing it since he did not read counsel's memorandum of law until the day of the hearing.

DuBay testified that in 25 years of practice he had never filed a complaint against a fellow member of the bar. DuBay filed this complaint because Barrett's letter on its face was improper, and trying to talk to him about his conduct was "like talking to a wall."

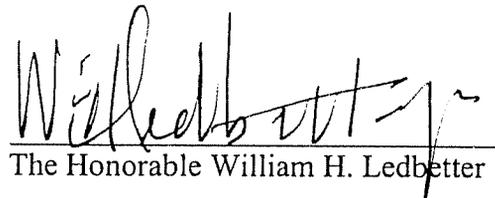
DuBay stated that Barrett had lessons to learn in how to treat people in litigation since “people are being gored” by Barrett.

The bar presented evidence of prior abuses of and interference with the legal process affecting counsel, parties, and the Court as set forth in *Barrett v. Virginia State Bar*, 269 Va. 583, 611 S.E. 2d 375 (2005). This included a prior violation of Rule 3.1 when Barrett filed a frivolous motion to strike asserting that he did not know and was not married to the plaintiff, his wife. This included a violation of Rule 3.4(i), threatening to present disciplinary charges solely to gain an advantage in a civil matter harassment when Barrett threatened his wife’s counsel on four occasions with a disciplinary complaint or sanctions in an effort to force her to withdraw from representing his wife. This included a violation of rule 3.4(j) in making harassing statements to his wife’s counsel. This included a violation of Rule 3.5(e) of an *ex parte* communication on the merits with the presiding judge in a pending adversarial matter.

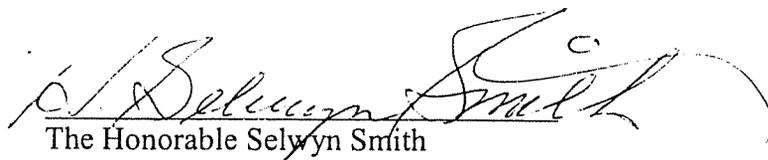
At the conclusion of the hearing, this matter was continued to allow each side to present a proposed statement of facts for consideration by the Court. Thereafter, the Court will enter its final order setting forth its findings and the Sanction(s) imposed.



The Honorable William N. Alexander, II
Chief Judge Designate



The Honorable William H. Ledbetter



The Honorable Selwyn Smith