

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF DONNA MARIE BRIGGS

VSB DOCKET NOS. 02-022-3082 and 02-022-3487

ORDER OF REVOCATION

This matter came on to be heard on August 26 and 27, 2004 before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, Second Vice-Chair (“Chair”) James L. Banks, Jr., Glenn M. Hodge, David R. Schultz and V. Max Beard, Lay Member. The Virginia State Bar (“VSB” or “Bar”) was represented by Richard E. Slaney, Assistant Bar Counsel. The Respondent, Donna Marie Briggs (“Briggs”) appeared in person and represented herself. The Chair polled all members of the panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative. Victoria V. Halasz, RPR, Chandler & Halasz, court reporter, P.O. Box 9349 Richmond, Virginia 23227, (804) 730 1222, after being sworn, reported the hearing and transcribed the proceedings.

The matters came before the Board on the District Subcommittee Determination for Certification by the Second District Subcommittee, Section II.

I. Finding of Facts

VSB Exhibits 1-42 were admitted without objection. The VSB and the Respondent were unable to enter a stipulation of facts. The VSB presented evidence through one witness, the Respondent, and its exhibits. The Respondent’s Exhibits 1 -10 were admitted over the objection

of the VSB. The Respondent testified on her behalf and called no other witnesses. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, the Respondent, Donna Marie Briggs, has been an attorney licensed to practice law in the Commonwealth of Virginia and her address with the VSB has been 531 Spotswood Avenue, Norfolk, Virginia, 23517-2007. The Respondent received proper notice of this proceeding as required by Part 6, Sec. IV, Paragraph 13(E) and (I)a) of the Rules of the Supreme Court of Virginia.

2. VSB Docket No. 02-022-3082 is an anonymous complaint and VSB Docket No. 02-022-3487 is a judicial complaint.

3. The complaints arise from the Respondent's conduct in lawsuits she filed *pro se* in the Circuit Court for the City of Norfolk (L97-3350) (the "State Court Case") and in the United States District Court for the Eastern District of Virginia, Norfolk Division (Case Nos. 98-CV-288; 99-CV-83 and 2:01cv903) (the "Federal Cases"). The Respondent filed these cases seeking damages and vindication from her two arrests by Norfolk police in 1996 and a subsequent complaint against the Respondent to the VSB by one of the arresting officers. Respondent's misconduct in these cases is delineated in the following paragraphs.

The State Court Case.

4. The Respondent filed the State Court Case against two witnesses of the events that led to her first arrest in March 1996. In this case she alleged that the defendants had made defamatory statements to the police officers in such a context as to result in her arrest. She also alleged that the defamatory statements were used and republished in a complaint that one of the police officers made to the VSB. In addition to the defamation claim, she also alleged a conspiracy to injure her in her trade or business. In this case, the first judge to which it was

assigned subsequently recused himself. The case was then assigned to two other judges and, in both instances, the Respondent moved for these judges to recuse themselves. While the judges did not act on the recusal motions, because of retirement or for other reasons, the case was subsequently assigned to the Honorable Paul Sheridan from the Circuit Court for the County of Arlington.

5. The Respondent stated that she had met with the two witnesses whom she ultimately sued in the State Court Case and that they denied making the statements attributed to them by the police. She stated that she filed the suit against them to obtain these denials under oath when the witnesses refused to give her such an affidavit. While the Respondent stated that she did not want to cause these witnesses any problems and that she sought to limit their expense, she offered no reason as to why she simply did not subpoena these witnesses and depose them in prior litigation she had filed against the arresting police officers in Circuit Court for the City of Norfolk.

6. In 2001, Judge Sheridan ruled on a number of motions, including motions sanctioning the Respondent \$4,750.00 as to one defendant and \$9,000.00 as to the other defendant. From the transcript of the hearing on the motion for sanctions and Judge Sheridan's ruling, it is clear that Judge Sheridan awarded these sanctions pursuant to Virginia Code Section 8.01-271.1. In light of Respondent's statement that she filed the State Court Case to obtain sworn statements from the defendants in that suit for use in other litigation, then, clearly, her action was sanctionable under Virginia Code Section 8.01-271.1.

7. In addition, in her motion for judgment, the Respondent stated that the incidents leading to the alleged defamatory statements occurred on March 13, 1997, when in fact they had occurred on March 13, 1996. This action was filed in December 1997, well past the

one-year statute of limitations for a defamation action. When this discrepancy was called to Respondent's attention she failed to take any action to correct the pleading for over two years.

8. Finally, at a hearing on March 26, 2001, Judge Sheridan offered the Respondent the opportunity to sign an order which the Respondent refused to do after asking the Judge whether it was mandatory that she sign it and being told it was not mandatory. However, later in the hearing the Respondent claimed that Judge Sheridan had refused to allow her to sign the order. Thereafter, Judge Sheridan sanctioned her \$1,000.00 for what he termed a "flat out lie."

The Federal Cases.

9. In 1998, Briggs filed a complaint against the City of Norfolk, certain city officials and city police officers in the United States District Court for the Eastern District of Virginia, Norfolk Division, case number 98-CV-288. She later filed a related complaint, case number 99-CV-83, which was consolidated with case number 98-CV-288 (hereinafter the "Federal Case"). The Federal Case resulted from Briggs' 1996 arrests and, after various amendments, included 16 defendants and 138 counts. The Honorable Jerome B. Friedman heard the Federal Case. Judge Friedman granted defendants' Motions for Summary Judgment on most of the counts but a few went to trial in 2002. On July 14, 2002, Judge Friedman dismissed the remaining claims with prejudice because of the Respondent's extreme misconduct. Specifically, the Respondent, while testifying in her behalf, repeatedly testified as to matters that the District Court had ruled inadmissible and then commented critically to the jury regarding the District Court's rulings.

10. In pre-trial proceedings as well as in the trial itself, the Respondent's conduct failed to comply with the Rules of Professional Conduct. She spoke disparagingly of the

Court, indicating her belief that the Court would not provide her with a fair trial. She failed to comply with the court order to attend a pre-trial meeting with opposing counsel to prepare a pre-trial order. She appeared in court stating that she was unprepared and had not read the proposed pre-trial order submitted by defendants' counsel. She was sanctioned \$190.00 for filing objectionable discovery motions. She persisted in communicating to the court by letter rather than by motion after being admonished by the court on this form of communication. She filed untimely requests for witness subpoenas and then attempted to serve them herself, which is not permitted by a *pro se* plaintiff.

11. In the Federal Case she declared the conduct of the District Court to be a sham and a cover up and in the proceeding before the Virginia State Bar Disciplinary Board repeated that the District Court's conduct was criminal. In the course of the Federal Case, Respondent filed three interlocutory appeals with the United States Court of Appeals for the Fourth Circuit, including the denial of her Motion for Recusal, and in that appeal asserted that all the judges in the Eastern District should be disqualified from hearing her case.

12. All of Respondent's appeals, including the District Court's dismissal of Briggs' claims with prejudice, were denied.

13. After dismissal and the conclusion of the appeal, Judge Friedman ruled on defendants' motions for attorneys' fees and imposed a sanction of \$2,536.50 for the Respondent's failure to abide by court orders and \$28,196 for her abusive litigation practices. This sanction order was upheld on appeal.

14. During the discovery phase, the City of Norfolk produced numerous documents in response to the Respondent's discovery request. These documents were provided under a Protective Order that among other things required (a) that if any of the documents were

filed in the pending actions, that they would be filed under seal and (b) at the conclusion of the litigation that the documents would be returned to the City of Norfolk.

15. Following the conclusion of the litigation and all appeals, the City of Norfolk moved the District Court to require the Respondent to return to it all confidential information produced by the City. The Respondent opposed the motion and sought Court permission to disseminate some or all of the confidential material. The Honorable Henry C. Morgan was assigned to hear these post trial matters. On July 24, 2002, the Court ordered the Respondent to comply with the Protective Order and return to the City all confidential information produced by the City pursuant to the Protective Order and also to retrieve and return any confidential documents she may have disseminated to third parties.

16. On December 23, 2002, Judge Morgan ordered Briggs: (a) to respond to the City's discovery requests related to its attempt to collect the monetary sanctions imposed against her; (b) to pay the City's reasonable expenses (including attorneys' fees) for her unjustified failure to comply with those discovery requests; (c) to show cause why she should not be held in contempt for her acts in allegedly releasing confidential information to third parties in violation of the Court's July 24, 2002 order, and; (d) to show cause why she should not be held in contempt for failing to return confidential information to the City. Judge Morgan again ordered Briggs to return the confidential information to the City.

17. On May 5, 2003, the Court entered an order memorializing its rulings at an April 30, 2003 hearing. In that order Judge Morgan: (a) disposed of several non-meritorious motions made by Briggs; (b) found as a fabrication Briggs' claim she was unable to identify the confidential documents; (c) found Briggs deliberately withheld the confidential documents in

defiance of prior Court orders; (d) found Briggs in civil contempt, and; (e) imposed a \$50 per day coercive sanction on Briggs to continue until she purged herself of contempt.

18. On June 5, 2003, the Court entered an order memorializing its rulings at a June 4, 2003 hearing. In that order Judge Morgan: (a) found Briggs purged herself of contempt by delivering original confidential documents to the City at the hearing and describing her efforts to obtain duplicate copies she previously gave to third parties; (b) confirmed the coercive sanction against Briggs in the amount of \$1,750, and; (c) imposed a pre-filing review on Briggs for any matter related to the Federal Case. At least in part, Judge Morgan expressly relied upon Briggs' statement, made under oath, that she herself retained no copies of the confidential documents she returned to the City.

19. On June 6, 2003, Briggs lodged with the Court a document entitled "Supplementary Affidavit" in which she averred she retained two copies of the confidential documents, that her inability to locate the copies prevented their return to the City and that she would in any event not return one copy (if found). This, in turn, generated a motion by the City for the Court to reconsider its June 5 order, and caused the Court to enter an order dated July 3, 2003, scheduling the matter for a hearing on July 28, 2003.

20. On July 31, 2003, the Court entered an order memorializing its rulings at a July 28, 2003 hearing. In that order Judge Morgan: (a) noted Briggs again claimed she could not identify the confidential documents, even though she returned the originals of those documents to the City at the previous hearing; (b) noted Briggs refused to confirm she returned all copies of the confidential documents to the City; (c) again found Briggs in civil contempt; (d) re-imposed the \$50 per day coercive sanction beginning July 28, and; (d) reaffirmed the application of pre-filing review for Briggs. The Court also set a new hearing date of August 28, 2003.

21. On August 28, 2003, following a hearing that same day, Judge Morgan entered an order: (a) noting Briggs would not directly respond to the Court's questions regarding whether she still possessed copies of the confidential documents; (b) finding she did in fact possess copies of those documents; (c) noting she refused to deliver or promise to deliver to the City any copies she still possessed; (d) finding Briggs remained in civil contempt; (e) as an added coercive sanction, incarcerated Briggs for two hours, and; (f) again ordered Briggs to produce any copies of the confidential documents to the City. The Court also set a new hearing date of September 3, 2003.

22. On September 15, 2003, the Court entered an order memorializing its rulings at a September 3, 2003 hearing. In that order Judge Morgan: (a) reaffirmed the Court's prior finding that Briggs' claim she could not identify the documents was a fabrication and an attempt to delay and confuse the proceeding; (b) noted that Briggs' claim that she needed to retain copies of the documents as evidence of some type of conspiracy was addressed by the fact that the Court had directed that the City retain the documents so that they would be available if found relevant in any other proceeding; (c) noted that Briggs admitted she took no steps since the last hearing to return the documents to the City; (d) found her refusal to make a responsive answer to questions about whether she retains copies of the documents to be an admission she did retain copies of the documents; (e) noted her refusal to identify any persons or entities to whom she sent such documents after being ordered not to do so; (f) incarcerated Briggs for approximately four hours fifty minutes, and; (g) again ordered her to comply with prior orders surrounding the confidential documents. Finally, the Court set a new hearing date of September 17, later changed to September 25, 2003.

23. On September 30, 2003, the Court entered an order memorializing its rulings at a September 25, 2003 hearing. In that order, Judge Morgan: (a) ruled Briggs had again failed to purge herself of contempt; (b) noted Briggs filed an affidavit that day listing numerous persons and entities to whom she sent copies of the confidential documents; (c) found that her dissemination of the documents was in violation of the Court's orders; (d) noted that during the hearing, when advised of her opportunity to cure her contempt, Briggs stated, "I'm not going to comply. That's it."; (e) noted that when warned by the Court her actions bordered on criminal contempt, Briggs stated "I think the court's conduct is criminal."; (f) noted Briggs shouted and yelled at the Court, continuing to make various accusations; (g) directed that a transcript of the proceedings be made available to the U.S. Attorney's Office for consideration of criminal contempt charges against Briggs, and; (h) incarcerated Briggs for approximately twenty-six hours. The Court also set a new hearing date of October 30, 2003.

24. At the hearing October 30, 2003, Briggs failed to appear at the appointed time. The Court reset the hearing for November 24, 2003, and ordered Briggs to show cause why she didn't appear at the hearing time and why she had not complied with the Court's prior orders.

25. At the hearing November 24, 2003, Briggs satisfactorily explained to the Court the reasons for her non-appearance on October 30. Briggs again expressed uncertainty as to the documents she was required to return to the City, and expressed surprise she was required to remove documents marked confidential from her pleadings and return those to the City. Briggs did return some documents to the City at the hearing. The Court set a further hearing date of December 18, 2003.

26. At the hearing December 18, 2003, Briggs returned additional documents to the City and swore under oath she possessed no further copies of any documents covered by

the Protective Order. The transcript makes it obvious that she had disseminated copies of such documents to third parties and, presumably, that third parties continued to possess such documents contrary to the terms and the spirit of the Protective Order. Briggs also expressed her intent to file new litigation possibly related to the Federal Case.

27. At the hearing before the Virginia State Bar Disciplinary Board Respondent admitted she had delivered copies of the confidential documents to a third party (the Judiciary Committee of the United States House of Representatives) in violation of the Districts Court's Order, maintaining her action was in keeping with the highest professional standards of the VSB and the legal profession.

28. Following dismissal of the Federal Case referenced above, on December 4, 2001, Briggs filed another federal complaint, captioned *Donna M. Briggs v. Kenneth Wills, Alan B. Rashkind and Furniss, Davis Rashkind and Saunders, P.C.*, in the United States district Court for the Eastern district of Virginia, Norfolk Division, Case No. 01-CV-903 (the Unlitigated Federal Case).

29. In the Unlitigated Federal Case the Respondent alleged that the defendants in the Federal Case, as well as their counsel Alan B. Rashkind, his law firm and another lawyer, Kenneth Wills (Wills), conspired to falsely identify Wills as an eyewitness to Briggs' March 1996 arrest, and alleged Wills testified falsely at his deposition when he said he witnessed the events surrounding the arrest.

30. Briggs never had the complaint in the Unlitigated Federal Case served on the named defendants, and there appear to be no admissible or competent proof of the alleged conspiracy of the named defendants or the alleged false testimony of Wills.

31. Throughout her testimony, Respondent asserted that her conduct was proper, that the court orders she violated were improper and she was justified in not complying with them. She claimed that trial transcripts introduced by the Bar were not accurate or had been altered (without offering anything to support such assertions) and that the District Court Judge was guilty of criminal conduct.

II. MISCONDUCT

Following argument for each side at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. The Board reviewed the foregoing findings of fact, the exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1-42 and the evidence presented by Respondent in the form of her own testimony and her Exhibits 1-10. After due deliberation (and after considering and denying various dismissal motions made by the Respondent) the Board reconvened and stated its findings as follows:

While some of the actions that resulted in the Determination for Certification occurred prior to 2000, the Bar has only asserted violations of the Professional Rules of Conduct which became effective on January 1, 2000. The Bar argued that the actions prior to 2000 should be considered as a part of a course of conduct continuing after January 1, 2000. The Board determined that findings of misconduct in these matters would be based on actions that occurred after January 1, 2000.

The Board determined that the Bar had proved by clear and convincing evidence that the Respondent violated each of the following 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 3.3 Candor Toward The Tribunal

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal;....

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.
- (f) In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused.
- (g) Intentionally or habitually violate any established rule of procedure or of evidence, where such conduct is disruptive of the proceedings.
- (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

- (f) A lawyer shall not engage in conduct intended to disrupt a tribunal.

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 8.2 Judicial Officials

A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge or other judicial officer.

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

III. DISPOSITION

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's 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 to announce the sanction imposed. The Chair announced the sanction as revocation of Respondent's license.

Accordingly, it is ORDERED that the Respondent, Donna Marie Briggs' license is REVOKED effective August 27, 2004.

It is further ORDERED that, the 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 revocation of her license to practice law in the Commonwealth of Virginia, to all clients for whom 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 her care in conformity with the wishes of the client. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to

the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

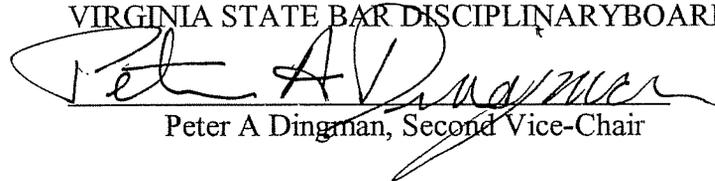
It is further ORDERED that if the Respondent is not handling any client matters on the effective date of revocation, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the VSB. All issues concerning the adequacy of the notice and arrangements required by Paragraph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

It is further ORDERED that pursuant to Part 6, § 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 at her address of record with the VSB, being 531 Spotswood Avenue, Norfolk, Virginia 23517-2007, by certified mail, return receipt requested, and by regular mail to Richard Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 7th day of September, 2004

VIRGINIA STATE BAR DISCIPLINARY BOARD



Peter A. Dingman, Second Vice-Chair

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