

VIRGINIA:

BEFORE THE SEVENTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF THOMAS K. PLOFCHAN, JR., ESQUIRE
VSB Docket No. 02-070-0225

COMMITTEE DETERMINATION
PUBLIC REPRIMAND

On March 10, 2004, a hearing in this matter was held before the duly convened Seventh District Committee, consisting of Douglas Baumgardner, Esquire, John Berry, Esquire, Peter Burnett, Esquire, Thomas Chasler, Esquire, Steven Gordon, Anne Hall, and Frederick W. Payne, Esquire, presiding.

Respondent appeared in person *pro se*. Claude V. Worrell, II, Esquire Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶ 13(H)(2)(n) of the *Rules of Virginia Supreme Court*, the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Thomas K. Plofchan, Jr., Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. The Complainant in this matter, Frederick D. Greco, Esquire, (hereinafter the Complainant), opposed the Respondent in a contract dispute. The dispute involved a lease purchase of a residence owned by the Complainant's clients, Joseph and Hope Goodwin. The Respondent's client, Norman Bradford, as sole member manager of Property Movers, LLC leased the residence in question under the name Property Movers, LLC (hereinafter Property Movers). The issues at the center of the dispute concerned unpaid rent and Mr. Bradford's attempt to enforce a contract for sale of the residence to Mr. Bradford.

3. At the expiration of the lease term between Property Movers and the Goodwins, Property Movers did not move out of the property, but remained on the property as hold-over tenants. On February 4, 2000, the Goodwins brought an unlawful detainer action against Property Movers, seeking unpaid rent and possession of the residence. On March 29, 2000, the Goodwins obtained a default judgment against and a writ of possession against Property Movers. Eviction was scheduled to take place on April 20, 2000.

4. On April 18, 2000, Property Movers filed a petition for bankruptcy under Chapter

7 which automatically stayed the eviction. The Goodwins filed a motion in the Bankruptcy Court for relief from the automatic stay. On May 17, 2000, the Honorable Robert G. Mayer, Judge of the United States Bankruptcy Court for the Eastern District of Virginia, granted relief from the stay. Property Movers filed a motion to reconsider and an order for injunctive relief. While the motions were pending, the Goodwins obtained a second eviction order and removed Property Movers from the residence in August of 2000.

5. On May 30, 2000, Property Movers, appealed the bankruptcy judge's order lifting the stay of eviction. On August 17, 2000, Property Movers withdrew the pending motions in the bankruptcy court.

6. On April 25, 2001, the Honorable Gerald Bruce Lee, Judge, of the United States District Court, for the Eastern District of Virginia, ruled that the appeal was moot and ordered sanctions against Property Movers and the Respondent. Judge Lee held as follows:

First the appeal is denied as moot because the requested relief in unavailable. Second, the appellee's motion for damages is granted because the appeal is without merit, based on irrelevant and illogical arguments, and based upon factual misrepresentations to the Court. Third, the appellant's motion to strike is not redundant, immaterial, or Scandalous.

A copy of Judge Lee's order is attached and incorporated herein by reference. Judge Lee goes on to say that the Respondent did not file an appeal that was supported by legal authority or factual proof.

7. According to Judge Lee, the Respondent made a "grossly unfounded accusation against the bankruptcy judge and the Goodwins' counsel." The Respondent stated that the judge was biased against Property Movers. The Respondent also stated the following on behalf of Property Movers:

The evidence was there for Judge Mayer but he never addressed it to save his friend Fred Greco. It is upon information and belief Appellee's counsel had ex parte communications with Judge Mayer as he has, or attempted to have with nearly every judge involved.

(Judge Lee's order p. 10.) The Respondent made these statements based upon his client's relating a conversation he had with an unknown and unnamed person thought by Mr. Bradford to be an attorney while waiting in line at the bankruptcy clerk's office. The Respondent's client told him that the unnamed person said that Judge Mayer and Mr. Greco had been friends for years and Mr. Greco receives unwarranted favorable rulings. The Respondent did not present any evidence of an ex parte communication in the Property Movers case or any other case with Mr. Greco. The Respondent, when asked, freely admitted that he had not questioned Mr. Bradford before making

the accusation against Judge Mayer and did he attempt to verify the substance of the allegation.

8. The Respondent also made inflammatory statements concerning Fred Greco, the Complainant. The Respondent, in his Motion to Disqualify Defendant's Counsel, said "Mr. Greco lied before every court he has testified before." There was no evidence presented that Mr. Greco lied before any court.

II. NATURE OF MISCONDUCT

The Committee finds that the following Disciplinary Rules have been violated:

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

- (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.
- (i) 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 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:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly

assist or induce another to do so, or do so through the acts of another;

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

The Committee does not find by clear and convincing evidence that the following Rules of Professional Conduct have been violated:

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 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;
- (d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand. There are no terms and conditions.

Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Frederick W. Payne, Esquire, Chair

CERTIFICATE OF SERVICE

I certify that I have this _____ day of _____, 2004, mailed a true and correct copy of the Committee Determination of a Public Reprimand by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Thomas K. Plofchan, Jr., Esquire, at , 46308 Cranston Street, Sterling, VA 20165-5772 his last address of record with the Virginia State Bar, and by first class mail, postage prepaid, to Claude V. Worrell, II, Assistant Bar Counsel, at Suite 310, 100 North Pitt Street, Alexandria, Virginia 22314.

Chair/Chair Designate