

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

**VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE,**

Complainant,

v.

Case No. CL04-2184

WILLIAM P. ROBINSON, JR.,

Respondent.

MEMORANDUM ORDER

On April 19, 2005, a hearing in this matter was held before a duly convened three-judge panel consisting of the Hon. Alfred D. Swersky, Judge Designate, the Hon. Joseph E. Spruill, Jr., Judge Designate, and the Hon. Jonathan M. Apgar, Chief Judge Designate, presiding. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, William P. Robinson, Jr. (Robinson), was present in person and represented by his counsel, Michael L. Rigsby, Esq.

The parties presented evidence and argument on whether Robinson 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, Robinson, was an attorney

licensed to practice law in the Commonwealth of Virginia.

The Suffolk Circuit Court Matter

2. In the Circuit Court of the City of Suffolk (Suffolk Circuit Court), Robinson represented one Michael A. Foulks on criminal charges (the Foulks Case). Robinson asked for and received at least five continuances of the trial date in the Foulks Case, which was eventually set for trial on September 21, 2001. At the time the Foulks Case was continued to that date, the presiding judge expressed his concern about its age.

3. On September 13, 2001, Robinson appeared by telephone before the Hon Robert E. Payne (Judge Payne) in a completely different federal court matter concerning the sentencing of his client, Gwen Hardison (Hardison). At that point, Hardison was scheduled for a sentencing hearing on September 17, 2001. Robinson told Judge Payne he had a scheduling conflict with the September 17th date, that he could “change some other things” and could be available for the Hardison sentencing on September 21st. Judge Payne offered to schedule the sentencing on a different date, but Robinson declined. Robinson did not tell Judge Payne he had previously scheduled the Foulks Case for trial in Suffolk on September 21st.

4. On September 18, 2001, Robinson faxed the Clerk of the Suffolk Circuit Court stating: “Due to a Federal Trial which is scheduled in Richmond, I must respectfully request a continuance....” Robinson never sought or received any assurance from Suffolk Circuit Court that the Foulks Case was or would be continued.

5. On September 21st, Foulks appeared for trial but Robinson did not.

6. On September 24, 2001, Suffolk Circuit Court issued a Rule to Show Cause requiring

Robinson to appear and explain why he should not be held in contempt of court for failing to appear for trial of the Foulks Case on September 21st.

7. On October 3, 2001, Judge Payne wrote to Robinson (with a copy to Suffolk Circuit Court), indicating he was “quite distressed” by Robinson’s public statements, reported by news agencies, as “they paint a fundamentally different picture than what the record shows about the continuance of Ms. Hardison’s sentencing hearing from September 17 to September 21.” Judge Payne pointed out Robinson never raised any concern over Hardison’s safety, and that in fact that topic “never was raised as a reason” for rescheduling the sentencing hearing. Instead, Judge Payne said, the transcript of the telephone hearing shows Hardison (a convicted bank robber) wanted to remain out of confinement for as long as she possibly could. Judge Payne pointed out the Hardison case was not under seal and there was no secret federal reason for the rescheduling of the sentencing hearing. Additionally, Judge Payne stated:

If one did not know better, one might think from those statements that you intended to convey the notion that you were forced by me to move the state court trial because federal interests necessitated having the sentencing on September 21, a circumstances shown in the September 13 transcript not to have been the case at all. *** I certainly hope that you have been misquoted and I certainly expect that you will not advance reasoning such as that in explaining why you did not disclose the existence of the state court case during the September 13 hearing.

Judge Payne also said had he known there was a state court trial on that date, let alone a trial that was set before the sentencing hearing, he would not have set the sentencing hearing to conflict with the trial. Finally, Judge Payne pointed out the Hardison sentencing finished at 11:45 a.m., suggesting Robinson had time to attend the 2:00 p.m. trial in the Foulks Case.

8. At the show cause hearing on October 5, 2001, Robinson pled *nolo contendere* to the

contempt of court charge. He offered no testimony or other evidence, including any evidence regarding the Hardison sentencing hearing. Judge Kelsey accepted the *nolo contendere* plea, found Robinson guilty of contempt of court and asked the parties to submit any written materials they wished on the issue of appropriate punishment, particularly in light of the letter from Judge Payne.

9. In a written Opinion and Order entered October 19, 2001, Judge Kelsey found the Robinson's behavior fell within the category of misbehavior which tended to obstruct or interrupt the administration of justice. Noting that Robinson had been found in contempt of court before and suffered only monetary sanctions, Judge Kelsey sentenced Robinson to ten days in jail with five days suspended on terms and conditions.

10. Robinson appealed and the Court of Appeals affirmed the conviction but remanded for re-sentencing, finding Robinson had the right of allocution; that is, to be present in court at sentencing and to address the Court. Our Supreme Court affirmed the Court of Appeals, and re-sentencing was set for May 28, 2004. At the re-sentencing hearing, Judge Ford (sitting as Judge Kelsey was appointed to the Court of Appeals) sentenced Robinson to 10 days in jail with all 10 days suspended for a period of 5 years on terms and conditions and a fine of \$250.

[Rules violated: 3.5(f) and 8.4(c)]

The Northampton Circuit Court Matter

11. On July 23, 2001, Robinson was to appear in the Circuit Court of the County of Northampton (Northampton Circuit Court) as defense counsel for criminal defendants Karing Medley, Delio Anzualda and Shauntae Giddens.

12. On July 19, 2001, W. Donald Brown (Brown), a member of Robinson's staff called the prosecutor, Bruce D. Jones, Jr. (Jones), and asked if those cases could be continued to July 24th. Jones told Brown Northampton Circuit Court did not convene on that date and, in any event, he had a substantial docket in General District Court on that date. Jones suggested Brown contact Circuit Judge Glen A. Tyler's (Judge Tyler's) office directly. Brown did not advise Jones that Robinson also had cases scheduled in Virginia Beach on July 24th.

13. Brown contacted Judge Tyler's secretary, informed her of a scheduling conflict for July 23rd but indicated Robinson could be present for trial on July 24th. Subsequently, Judge Tyler continued Robinson's cases to July 24, 2001 at 11:00 a.m. Brown informed Robinson of the new date and time.

14. Brown requested the continuances in Northampton County due to the fact one of Robinson's other cases, an anticipated two day jury trial in Southampton County, was pushed back such that the second day of that trial would overlap with the original date of the Northampton cases, July 23rd.

15. At the time Robinson asked Brown to continue the Northampton County cases to July 24th, he knew he had cases set in Virginia Beach Circuit Court for 9:30 a.m. on July 24th. On July 20, 2001, Robinson sent letters to the Virginia Beach Circuit Court Clerk's Office in five of the six cases requesting a continuance.

16. The anticipated two day jury trial in Southampton resolved and Robinson was in his office on July 23rd. He was not in any jury trial on that day.

17. On July 24, 2001 at 11:00 a.m., all parties and necessary court personnel appeared in

Northampton Circuit Court except for Robinson. In fact, Robinson went to Virginia Beach to follow up on his continuance requests, and discovered an additional case in which he made no continuance request.

18. Judge Tyler waited until sometime between 1:10 and 1:30 p.m. and then closed court and left the courthouse.

19. Robinson did not communicate with the Court regarding the fact he was going to be late or the reason why he was late.

20. On July 30, 2001, still not having heard from Robinson, Judge Tyler issued a Rule to Show Cause why Robinson should not be held in criminal contempt for his failure to appear or proffer any reason for his failure to appear.

21. On August 27, 2001, Robinson wrote Judge Tyler indicating he was in a jury trial late on July 23rd, keeping him from earlier obtaining continuances in the Virginia Beach matters and resulting in his required appearance in Virginia Beach on July 24th.

22. The Show Cause was returnable September 4, 2001, but the case was continued twice at Robinson's request and was heard November 7, 2001. At the hearing, Robinson acknowledged on cross examination he was not in a jury trial on July 23rd. After hearing evidence and the arguments of counsel, Judge Tyler found Robinson in criminal contempt and imposed a sentence of 30 days in jail, all suspended, and a \$1,000 fine. Judge Tyler also barred Robinson from accepting any new cases in Northampton County for a period of one year.

23. Robinson appealed, and the Court of Appeals and the Virginia Supreme Court both affirmed his contempt conviction.

[Rules violated: 3.5(f) and 8.4(c)]

The Hampton General District Court Matter

24. Robinson represented one Howard W. Payne, Jr., on criminal charges pending in Hampton, Virginia.

25. Robinson became counsel of record on or about January 10, 2001, and the preliminary hearing set to take place in Hampton General District Court (the Hampton Court) was continued to March 23, 2001. At Robinson's request, the matter was then continued to May 22, 2001, and later to June 26, 2001 at 2:00 p.m.

26. Late in the day on June 25, 2001, Robinson faxed both the Commonwealth Attorney's Office and the Hampton Court. He stated that "Due to a reconvened Special Session for Redistricting, I must respectfully request a continuance of this matter in accordance with Section 30-5 of the Code of Virginia...."

27. On June 26th, the Hon. Albert W. Patrick, III (Judge Patrick), a judge of the Hampton Court, asked his secretary to make inquiry into the continuance request. A call to Robinson's office revealed Robinson was in a jury trial in Suffolk that day. Further, a call to the General Assembly revealed the Special Session for Redistricting did not reconvene until July 9, 2001, and there was no information indicating Robinson was scheduled for any legislative meetings on June 26th. Judge Patrick called the Suffolk Circuit Court and was told Robinson was originally scheduled to appear there June 25th, but due to a conflict with a court appearance in Virginia Beach, the Suffolk matter was continued to June 26th.

28. On June 28, 2001, the Hampton Court issued a Rule to Show Cause against Robinson

for “Failure to properly represent to the Court, [his] reason for not being present in the matter of Commonwealth of Virginia v. Howard William P. Payne, Jr., on June 26, 2001, at 2:00 p.m., in the Hampton General District Court.” The return date was August 17, 2001, a date which Robinson’s letter of June 25th indicated would be an available date to conduct the preliminary hearing in the Payne matter. The Payne preliminary hearing was also scheduled for August 17th.

29. In a letter dated August 14, 2001, Robinson requested a continuance of the August 17th date due to a scheduled family vacation. He did not confirm with the Hampton Court that either the Show Cause or the Payne preliminary hearing was or would be continued

30. A new Rule to Show Cause issued on August 24, 2001, for Robinson’s “Failure to appear on behalf of [his] client, Howard William Payne, Jr., on 8/17/01.”

31. Both Show Causes were then set for October 25, 2001, a date Robinson’s letter of August 14 indicated was available.

32. At some point thereafter, Robinson met with Judge Patrick and claimed a conflict with the October 25 date. The preliminary hearing in Payne’s case was held November 16, 2001, and both Show Causes were rescheduled to January 8, 2002.

33. On January 8, 2002, the Hampton Court convicted Robinson of contempt of court, but withheld findings and judgment until April 1, 2002, conditioned on Robinson’s referral to the Community Corrections Program to complete 50 hours of community service. Due to Robinson’s medical condition at that time, the April 1 date was extended to July 3, 2002.

34. Robinson tendered proof of completion of 50 hours of community service and the matter was dismissed.

35. A set of Guidelines on Legislative Continuances approved by the General Assembly's House Committee on Rules states that continuances based on Code of Virginia Section 30-5 should only be sought when the court appearance conflicts with legislative responsibilities.
[Rules applicable: 3.5(f) and 8.4(c)]

II. NATURE OF MISCONDUCT

The above facts, as proven by clear and convincing evidence, evidence a violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

RULE 3.5 Impartiality And Decorum Of The Tribunal

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

The remaining allegations and Rule violations charged by the Bar were dismissed by the panel as not established by clear and convincing evidence.

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 Robinson's law license for 90 days, effective August 1, 2005. Accordingly, it is hereby

ORDERED that the law license of William P. Robinson, Jr., be **SUSPENDED** for a

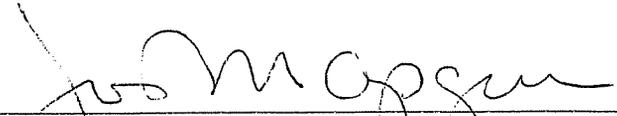
period of 90 days commencing August 1, 2005. It is further

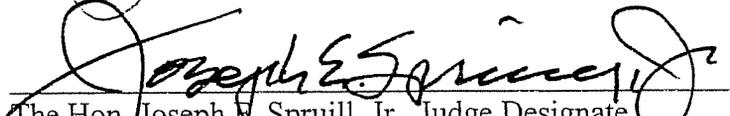
ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(B)(8)(c). It is further

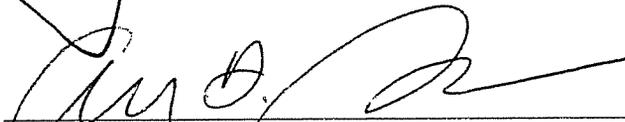
ORDERED that the Clerk of the Circuit Court shall send certified copies of this order to counsel of record and to the Clerk of the Disciplinary System. As stated in the Summary Order entered by the Court on April 19, 2005, it is further

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 2 day of June, 2005.


The Hon. Jonathan M. Apgar, Chief Judge Designate

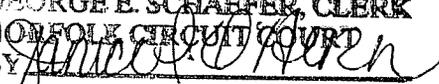

The Hon. Joseph E. Spruill, Jr., Judge Designate


The Hon. Alfred D. Swersky, Judge Designate

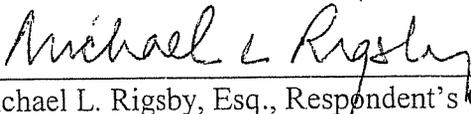
SEEN:


Richard E. Slaney, Assistant Bar Counsel

COPY TESTE:

GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT
BY 
Janice O'Hara, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date: 6-6-05

SEEN AND OBJECTED TO:


Michael L. Rigsby, Esq., Respondent's Counsel