

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 16th day of July, 2010.

Curtis Tyrone Brown, Appellant,

against Record No. 092510
Circuit Court No. CL08-7118

Virginia State Bar, ex rel.
Second District Committee, Appellee.

Upon an appeal of right
from a judgment rendered by the
Circuit Court of the City of
Norfolk.

Upon consideration of the briefs, record, and argument of counsel, the Court affirms the judgment of the three-judge circuit court.

The three-judge circuit court found by clear and convincing evidence that Curtis Tyrone Brown violated Rule 3.3(a)(1) of the Virginia Rules of Professional Conduct, that requires candor towards a tribunal, Rule 3.4(d), that concerns fairness to the opposing party and counsel, Rule 3.5(f), that concerns the decorum of the tribunal, and Rule 8.4(c), that concerns dishonesty. The court suspended Brown's license to practice law for 12 months because Brown engaged in dishonesty, misrepresentation and deceit. The court also suspended Brown's license to practice law for a concurrent period of 12 months because Brown disregarded a court order.

Brown argues that the Virginia State Bar did not prove by clear and convincing evidence that he violated Rules 3.3(a)(1), 3.4(d), 3.5(f), and 8.4(c). Brown also argues that the court

imposed a sanction that is not justified by a reasonable view of the evidence and is contrary to law and that the court improperly considered a prior private reprimand with terms as part of Brown's disciplinary record during the penalty phase of the disciplinary hearing.

The State Bar has the burden of proving by clear and convincing evidence that the attorney violated the relevant Rules of Professional Conduct. Barrett v. Virginia State Bar, 272 Va. 260, 268 n.4, 634 S.E.2d 341, 345 n.4 (2006); Blue v. Seventh District Committee, 220 Va. 1056, 1062, 265 S.E.2d 753, 757 (1980). Additionally:

The standard of review we apply to the [judgment] of a three-judge court in a Bar disciplinary proceeding is the same as the standard applicable to decisions of the Disciplinary Board. We conduct an independent examination of the entire record. We consider the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party in the trial court. We accord the trial court's factual findings substantial weight and view those findings as prima facie correct. Although we do not give the trial court's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears that they are not justified by a reasonable view of the evidence or are contrary to law. See Pilli [v. Virginia State Bar], 269 Va. at 391, 396, 611 S.E.2d at 389, 391 (2005)].

Anthony v. Virginia State Bar, 270 Va. 601, 608-09, 621 S.E.2d 121, 125 (2005); see also Barrett v. Virginia State Bar, 277 Va. 412, 413, 675 S.E.2d 827, 828 (2009); Pappas v. Virginia State Bar, 271 Va. 580, 585-86, 628 S.E.2d 534, 537 (2006).

Rule 3.3 states in relevant part:

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal.

Rule 3.4 states in relevant part:

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.

Rule 3.5 states in relevant part:

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

Rule 8.4 states in relevant part:

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

We hold that the State Bar proved the violations of the aforementioned Rules by clear and convincing evidence. The violations of the Rules of Professional Conduct occurred during a jury trial in a personal injury action, styled Pamela Martin v. Christopher Duncan, in the Circuit Court of the City of Chesapeake. Brown violated Rules 3.3(a)(1) and 8.4(c) when he falsely stated to the circuit court in the presence of the jury that: the defendant's counsel would not wait for him to appear at a deposition and Brown would make sure that another lawyer would attend the deposition on Brown's behalf; he had never seen a copy of the deposition transcript; and he did not know the questions the attorneys asked the deponent during the deposition. In actuality, Brown had spoken by telephone to the defendant's counsel and asked him to allow

another attorney to participate in the deposition on Brown's behalf. Brown also ordered a copy of the deposition transcript but never received the transcript because he refused to render payment for it.

Brown's false statements disrupted the circuit court proceedings in violation of Rule 3.5(f). During a separate hearing on a motion for sanctions in the circuit court, Brown's repeated requests that the trial judge recuse himself and Brown's disrespectful comments about the judge's rulings on Brown's objections also disrupted the tribunal in violation of Rule 3.5(f). Finally, Brown failed to comply with the circuit court's order to render payment of the attorney's fees and costs to the defendant's counsel in violation of Rule 3.4(d).

A three-judge court in a disciplinary hearing has broad discretion to impose penalties, and our holding in Maddy v. First District Committee, 205 Va. 652, 658, 139 S.E.2d 56, 60 (1964), is equally pertinent here:

In arriving at the punishment to be imposed, precedents are of little aid, and each case must be largely governed by its particular facts, and the matter rests in the sound discretion of the court. The question is not what punishment may the offense warrant, but what does it require as a penalty to the offender, as a deterrent to others, and as an indication to laymen that the courts will maintain the ethics of the profession.

Accord Delk v. Virginia State Bar, 233 Va. 187, 193, 355 S.E.2d 558, 562 (1987); see also Gibbs v. Virginia State Bar, 232 Va. 39, 42, 348 S.E.2d 209, 211 (1986); Pickus v. Virginia State Bar, 232 Va. 5, 15, 348 S.E.2d 202, 208-09 (1986). Applying these principles, we hold that the court did not abuse its discretion in suspending Brown's license for two concurrent periods of 12 months.

We hold that the circuit court properly considered Brown's prior private reprimand with terms as part of his disciplinary record during the penalty phase of the disciplinary hearing. Brown appealed the private reprimand with terms to this Court, which dismissed the appeal on February 25, 2004, and denied a petition for rehearing on April 30, 2004. Brown v. Virginia State Bar, Record No. 040179.

Brown's remaining arguments are without merit. In view of the evidence, the judgment appealed from is affirmed. The appellant shall pay to the Virginia State Bar thirty dollars damages.

This order shall be certified to the said circuit court with instruction to enter an order after notice to the appellant fixing the effective date of appellant's suspension and the date appellant shall comply with the provisions of Part 6, § IV, ¶ 13-29 of the Rules of Court.

A Copy,

Teste:

*original order signed by the
Clerk of the Supreme Court of
Virginia at the direction of the
Court*