

VIRGINIA:

BEFORE THE FOURTH DISTRICT SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF SAMUEL HOWARD WOODSON, III, ESQUIRE
VSB Docket No. 03-042-2170

SUBCOMMITTEE DETERMINATION
PRIVATE ADMONITION WITH TERMS

On the 22nd day of February, 2005, a meeting in this matter was held before a duly convened a subcommittee of the Fourth District Committee Section II consisting of David T. Williams, Esq., Daniela Spigai, and J. Casey Forrester, Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the Rules of Virginia Supreme Court, a subcommittee of the Fourth District Committee Section II of the Virginia State Bar hereby serves upon the Respondent the following Private Admonition with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Samuel Howard Woodson, III (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. At some time between September of 2000 and November of 2001, the Complainant, Ernest Lee Hobley, filed suit *pro se* against Boddie Noell Enterprises, Inc., (BNE), alleging that he was wrongfully discharged based on racial discrimination. BNE is the parent company of Roy Rogers restaurants, for which the Complainant served as a manager in two different facilities from March of 1998 until September of 2000. The Complainant hired the Respondent in November of 2001 to represent him in the action, which was pending in the United States District Court, Western District of Virginia, Charlottesville Division.

3. During the pendency of the case, the Complainant admitted the following under oath during his deposition:

- that he had threatened one of his black male employees, telling him he would get "hot oil out of the fry vat and pour it on him" if the employee crossed the Complainant again;

- that he yelled "F--- you!" at a female subordinate employee during a confrontation;

- that he called the same female employee a "stupid little girl";

- that he told another black female subordinate employee that he could "out manage any white man in the store and that no white man was going to tell him what to do"; and

- that he had accused the same female subordinate of being a "white man's flunkie" and called her a "poor excuse for an employee."

4. Based in part on the Complainant's statements made during his deposition, the Respondent became aware that the Complainant's discharge was based on his performance as a manager and his behavior on the job, rather than being racially motivated.

5. Trial of the matter was set for December 9 and 10, 2002. On October 28, 2002, defendant BNE filed a Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the grounds that the Complainant could not prove a *prima facie* case of discrimination, which grounds were supported by evidence that the termination was for a legitimate and non-discriminatory reason.

6. According to the Court's Pretrial Order, following the filing of a motion, "if the motion is opposed, a brief in opposition must be filed within 14 days of the date of service of the movant's brief ...". The Respondent failed to file any response to BNE's Motion for Summary Judgment. The failure of the Respondent to serve or file a response to the Motion for Summary Judgment caused the Court to consider BNE's Motion to be unopposed, following which the Court

granted BNE's Motion for Summary Judgment and dismissed the case on November 22, 2002. The Respondent admitted during the investigation of this Bar complaint that his failure to file a response to the Motion for Summary Judgment was by his choice.

7. A dispute exists as to when and what the Complainant was told regarding the filing of BNE's Motion for Summary Judgment. The Complainant states that he was not informed at any time prior to the dismissal of the case that a Motion for Summary Judgment had been filed, the significance of such motion, the 14 day deadline for response, and the consequences of failing to file a response. The Respondent states that he informed the Complainant of the filing of the Motion on October 29, 2002, the same date that the Respondent had received the Motion, that he [the Respondent] needed more information, and that things "didn't look good".

8. During the investigation of this Bar complaint, the Respondent stated he should have contacted the Complainant and explained to him that the Motion was indefensible and that there was nothing to argue rather than permitting the 14 day response period to lapse. The Respondent also stated that he should have pursued the option of a voluntary dismissal to permit time to gather more information and make a reasoned decision whether or not to refile the action.

9. By letter dated January 13, 2003, Mr. Hobley terminated the Respondent.

10. Documentation provided to the Bar indicates that one comprehensive billing statement was issued to the Complainant by the Respondent, dated January 17, 2002, and covering services and charges from November 19, 2001 through January 15, 2002. Based on the notations documented on the January 17, 2002 billing statement, the Complainant is owed \$589.68 by the Respondent.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been

violated:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

III. PRIVATE ADMONITION WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by March 15, 2005, shall be a predicate for the disposition of this complaint by imposition of a Private Admonition With Terms. The terms and conditions which shall be met by March 15, 2005 are:

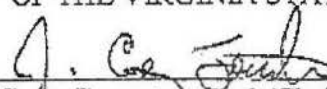
1. The Respondent shall reimburse the Complainant in the amount of \$589.68. The Respondent shall present proof of compliance with the above noted terms in the form of a copy of the check made payable to the Complainant and its accompanying correspondence, to be sent to the Complainant by Certified Mail. Such proof shall be provided in correspondence to Marian L. Beckett, Esquire, Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314. Such documentation of compliance shall be mailed timely in order to be received by Ms. Beckett on or before March 15, 2005. Upon satisfactory proof that the above noted terms and conditions have been met, a Private Admonition With Terms shall then be imposed. If, however, the terms and conditions have not been met by the Respondent by March 15, 2005, a PUBLIC REPRIMAND WITH TERMS shall be imposed.

IV. COSTS

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

FOURTH DISTRICT SECTION II SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By


J. Casey Forrester, Chair/Chair Designate