

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF SPOTSYLVANIA

VIRGINIA STATE BAR EX REL  
SIXTH DISTRICT COMMITTEE  
VSB DOCKET NO. 20-060-118813

v.

Case No. CL21003866-00

JOSPEH TAYLOR BROWN

MEMORANDUM ORDER

THIS MATTER came to be heard on March 3 and March 31, 2022, before a Three-Judge Circuit Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of The Honorable Steven C. McCallum, Judge of the Twelfth Judicial Circuit, Chief Judge designate (“Chief Judge”), The Honorable Jeanette A. Irby, Judge of the Twentieth Judicial Circuit, and The Honorable Dontae L. Bugg, Judge of the Nineteenth Judicial Circuit (collectively the “Panel”). The Virginia State Bar appeared through Assistant Bar Counsel Shelley L. Spalding. Joseph Taylor Brown (“Respondent”) appeared in person and with his counsel, Mary Morgan. Kathleen L. Hnatt, court reporter, Frances K. Haley & Associates, after being duly sworn, served as court reporter for the two-day hearing.

At the outset of the hearing, Judge McCallum polled the 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 responded in the negative.

All legal notices of the date and place were timely served in the manner prescribed by the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-18 and Virginia Code §54.1-3935.

Pursuant to the Pre-Hearing Order entered on February 3, 2022, the Panel admitted the following exhibits: VSB Exhibits 4-5, 7-8, 11-14, 18, 20 and 32, and Respondent Exhibits 1-53. Respondent's Exhibits 18-21 were sealed. VSB Exhibit 15 was admitted as a duplicate of Respondent Exhibit 16. VSB Exhibit 28 was admitted as a duplicate of Respondent Exhibit 51 and VSB Exhibit 29 was admitted as a duplicate of Respondent Exhibit 52.

The parties then presented opening statements.

The bar presented evidence in the form of testimony from two witnesses: Complainant ("M.C.") and the bar's investigator, Lisa Marshall, after which the bar rested. During the course of the hearing, VSB Exhibits 1-3, 10, 13, 17, and 23-25 and Respondent Exhibits A, B, C, D and E were also admitted.

Following the conclusion of the bar's case, Respondent moved to strike the bar's evidence. Following arguments and deliberation, the Panel took the motion under advisement.

During Respondent's case, Respondent testified on his own behalf, and then rested.

The parties then made their closing arguments.

#### MISCONDUCT

Respondent has been a licensed attorney in the Commonwealth of Virginia at all times relevant to the conduct set forth herein. Pursuant to the Certification, Respondent was charged with Misconduct under Rules 2.1 (Advisor) and 1.7(a)(2) (Conflict of Interest). Following deliberation, and upon consideration of the evidence and arguments presented, the Panel unanimously found that the VSB did not prove by clear and convincing evidence that Respondent violated Rule 2.1. The Panel found that Respondent violated Rule 1.7 (a)(2) based on the following material facts:

## FACT FINDINGS

1. Respondent undertook legal representation of C.C. following an initial consultation with her on August 16, 2017. VSB Ex. 2, 15. A written contract for representation was signed by Respondent and C.C. that same day. Respondent Ex. 8, 15. Respondent did not know, was not acquainted with and had not previously represented C.C. prior to August 16, 2017. VSB. Ex. 15.
2. Respondent undertook to represent C.C. in several litigation matters, all pending in Spotsylvania County, including a divorce proceeding filed against C.C. by her then husband M.C. VSB. Ex. 15. The representation also included a custody proceeding, a protective order proceeding, and a domestic assault and battery proceeding. Respondent Ex. 8.
3. The various litigation matters ended at various times, but specifically with respect to the divorce proceeding, the following timeline is relevant:
  - a. M.C. filed his complaint for divorce on August 3, 2017. Respondent Ex. 5. The complaint alleged that C.C. had committed adultery on numerous occasions and the complaint specifically sought divorce on the grounds of adultery. *Id.*
  - b. Respondent filed an answer and cross-complaint for divorce on behalf of C.C. on August 25, 2017. Respondent Ex. 6. The answer denied the majority of the allegations in the complaint, admitting essentially only the jurisdictional allegations. *Id.* The cross-complaint for divorce alleged cruelty by M.C., and specifically sought divorce on grounds of cruelty. *Id.* The cross-complaint also requested spousal support payable by M.C. to C.C., among other items of relief requested in the cross-complaint. *Id.*
  - c. There were periods of activity in the divorce litigation, and there were periods of inactivity in the divorce litigation. For example:
    - i. In 2018 there were sporadic communications between C.C. and Respondent regarding C.C.'s legal matters. Testimony of Respondent, Mar. 31, 2022 Tr. at 8.
    - ii. In 2019, the evidence showed that there was not communication between C.C. and Respondent regarding legal matters or anything else. VSB. Ex. 15; Testimony of Respondent, Mar. 31, 2022 Tr. at 9.
    - iii. Communication between C.C. and Respondent resumed on or around May 4, 2020. Testimony of Respondent, Mar. 31, 2022 Tr. at 10.
  - d. There was even a period of some years when husband and wife, M.C. and C.C. were living together under the same roof in Texas. Testimony of Respondent, Mar. 31,

2022 Tr. at 10. The parties disputed whether that amounted to a full reconciliation as a legal matter, or something short of a full reconciliation, and the Panel made no finding on the question of whether the parties had in fact reconciled.

- e. Even during the periods of inactivity in the divorce litigation, it remained an open matter pending on the docket of the Spotsylvania Circuit Court, and Respondent remained as counsel of record for C.C. Testimony of Respondent, Mar. 31, 2022 Tr. at 18.
- 4. At all times from August 25, 2017, when Respondent filed C.C.'s answer and cross-complaint, until July 10, 2020, when Respondent was removed as counsel by court order, Respondent was counsel of record for C.C. in the divorce litigation pursuant to Rule 1:5 of the Rules of the Supreme Court of Virginia and Rule 1.16(c) of the RPCs. VSB Ex. 5; Testimony of Respondent, Mar. 31, 2022 Tr. at 18, 141-142.
- 5. On May 5, 2020, Respondent also emailed C.C., confirming that the divorce proceeding remained pending and he was her counsel of record. VSB Ex. 20.
- 6. Between May 6 and 12, 2020, numerous texts were exchanged between Respondent and C.C. VSB Ex. 29. Those texts became increasingly sexual in nature. *Id.* By way of example, on May 10, 2020 Respondent revealed that he was attracted to C.C. on the first day they met in his conference room in 2017. *Id.* Also on May 10, 2020, C.C. stated in a text to Respondent "you're grooming me." *Id.*
- 7. On May 6, 2020, Respondent had the following conversation with C.C. via text messages:

Respondent: Hey I found something that will help you get rid of that agreement.

C.C.: Oh really

Respondent: Oh yes

Respondent: It didn't have a clause that said if you reconcile that the agreement remains in place. You lived together again for 2 years after it was signed.

Respondent: So va code says that if you reconcile the agreement is voided

C.C.: Omg thank u so much!!!

Respondent: Yeah I think that should blow it up

C.C.: So it begins

Respondent: Haha yes

Respondent: Plus he has condoned all of the adultery he was trying to prove and can't use it anymore

Respondent: If you have emails or texts from him you should save them

C.C.: I've got lots and lots Actually

Respondent: Is he talking about getting back together and s\*\*t like that?

C.V\$B12344C.: oh yes

\* \* \* \* \*

Respondent: So I think we file to dismiss the current divorce

Respondent: Because it can't stand any longer since you reconciled

Respondent: Then file custody visitation spousal and child support in JDR

VSb Ex. 29.

8. On or about May 10, 2020, it became clear that Respondent and C.C. were planning to meet for sex. VSB Ex. 29; Testimony of Respondent, Mar. 31, 2022 Tr. at 83-84.
9. On May 12, 2020, Respondent and C.C. met at the Hilton Garden Inn in Fredericksburg. VSB. Ex. 15. Initially the meeting had been planned to occur at Respondent's law office because the stated purpose for the meeting was to address and respond to allegations made by a friend of M.C., Mr. Clayman, that C.C. was posting pornography on her social media accounts. Testimony of Respondent, Mar. 31, 2022 Tr. at 30-32. Respondent alerted C.C. to Mr. Clayman's allegation. *Id.* C.C. denied the allegation and stated, in substance, that her social media accounts are on her phone and she could show Respondent. *Id.* at 166-67
10. However, when Respondent and C.C. met on May 12, 2020, Mr. Clayman's allegations and C.C.'s social media postings were not addressed. *Id.* Instead, Respondent and C.C. engaged in sexual activity. VSB Ex. 2, 3.
11. On the same day, May 12, 2020, M.C. learned of the sexual activity between C.C. and Respondent. Testimony of Respondent, Mar. 31, 2022 Tr. at 73-75. That day M.C. placed a call to the Hilton Garden Inn and asked for Joseph Brown's room. Testimony of Respondent, Mar. 31, 2022 Tr. at 73-75. Respondent answered the phone but M.C. did not say anything. Testimony of Respondent, Mar. 31, 2022 Tr. at 96.
12. M.C. monitored C.C.'s whereabouts and activities during the divorce proceeding, and that was known, or reasonably should have been known to Respondent. VSB Ex. 15 at ¶54; VSB Ex. 29 at VSB EXH 01181, 01255.

13. On May 12, 2020, when Respondent was still counsel of record for C.C. in the pending divorce case, Respondent engaged in sexual relations with C.C. Respondent was pursuing his personal interest in having sexual relations with C.C., and that personal interest presented a significant risk that his representation of her would be limited, among other things. Respondent's sexual relations with C.C. created new or additional grounds for divorce, specifically adultery.
14. While C.C. had been a defendant in a divorce proceeding alleging adultery for years, Respondent had advised C.C. that her past alleged adultery was in his legal opinion no longer sufficient grounds for divorce because of the alleged reconciliation, and therefore a condonation by cohabitation with M.C. VSB Ex. 29; Testimony of Respondent, Mar. 31, 2022 Tr. at 37-38.
15. Respondent filed a Motion to Withdraw as Counsel for C.C. in the divorce proceeding on May 20, 2020. VSB Ex. 4; Respondent Ex. 1-2. The stated basis for the motion was a conflict of interest. Respondent Ex. 2. An Order to Withdraw was entered on July 10, 2020, removing Respondent as counsel of record for C.C. in the divorce litigation. Respondent Ex. 4.
16. After Respondent was removed as counsel by court order, C.C. proceeded *pro se* in the divorce litigation. Testimony of L. Marshall, Mar. 31, 2022 Tr. at 37-38.
17. A final decree of divorce between C.C. and M.C. was entered on September 4, 2020. Respondent Ex. 17. The final decree awarded C.C. no spousal support. *Id.* The final decree affirmed, ratified, and incorporated a marital property settlement agreement between C.C. and M.C. dated October 19, 2017, and modified effective July 10, 2020. Respondent Ex. 9, 14, & 17.

### MISCONDUCT FINDINGS

The Panel unanimously found there was not clear and convincing evidence that Respondent violated RPC 2.1 and dismissed that charge.

The Panel unanimously found under the clear and convincing evidentiary standard that the conduct of Respondent set forth above constitutes misconduct in violation of the following provisions of the RPCs:

By engaging in sexual relations with his client, for whom he was counsel of record in her pending divorce proceeding, Respondent violated:

RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

...

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

SANCTION

The Panel then proceeded to the sanctions phase of the hearing and received evidence and argument from the bar and Respondent, following which the Panel retired to deliberate. The Panel also received the Respondent's Disciplinary Record. The Panel received character and reputation testimony from Jennifer Wayne, a former client of Respondent. Following deliberation, and after due consideration of the evidence, including the nature of the ethical misconduct committed by Respondent, and the aggravating and mitigating factors, and the arguments presented, the Panel reached the unanimous decision that Respondent shall receive a Public Reprimand with terms. Therefore, it is hereby **ORDERED** that the Respondent, Joseph Taylor Brown, is, **REPRIMANDED** effective March 31, 2022, with the following terms:

1. By March 31, 2023, Respondent shall take and pass the MPRE; and
2. By March 31, 2023, Respondent shall complete two hundred fifty (250) hours of community service at an organization with an established tax status under 26 USC § 501(c) as a so-called nonprofit or charitable organization.

If Respondent fails to fully and timely comply with any of the terms, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for one year and one day.

Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.



The Clerk of this Court shall send a copy *teste* of this order to: Joseph Taylor Brown at 4036 Plank Road, Fredericksburg, Virginia 22407; Mary T. Morgan, Esq., at Golightly Mulligan & Morgan, PLC, 4646 Princess Anne Road, Unit 104, Virginia Beach, Virginia 23454; Shelley L. Spalding, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219; and the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

ENTERED this 25<sup>th</sup> day of August, 2022.



The Honorable Steven C. McCallum  
Chief Judge

  
The Honorable Jeanette A. Arby

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The Honorable Dontae L. Bugg

[SIGNATURES OF COUNSEL ON FOLLOWING PAGE]

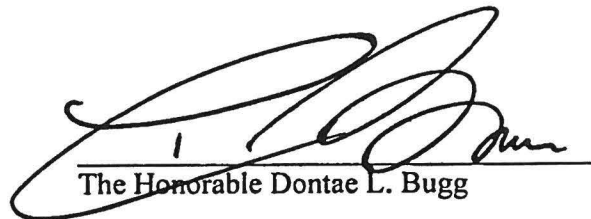


The Clerk of this Court shall send a copy *teste* of this order to: Joseph Taylor Brown at 4036 Plank Road, Fredericksburg, Virginia 22407; Mary T. Morgan, Esq., at Golightly Mulligan & Morgan, PLC, 4646 Princess Anne Road, Unit 104, Virginia Beach, Virginia 23454; Shelley L. Spalding, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219; and the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
The Honorable Steven C. McCallum  
Chief Judge

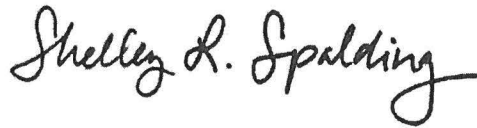
\_\_\_\_\_  
The Honorable Jeanette A. Irby

  
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The Honorable Dontae L. Bugg

[SIGNATURES OF COUNSEL ON FOLLOWING PAGE]

SEEN AND OBJECTED TO AS TO THE DISMISSAL OF RPC 2.1:


VIRGINIA STATE BAR



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Shelley L. Spalding  
Assistant Bar Counsel  
Virginia State Bar  
1111 E. Main Street, Suite 700  
Richmond, Virginia 23219  
(804) 775-0543

SEEN AND OBJECTED TO AS TO THE PANEL'S FINDING THAT RESPONDENT'S CONDUCT CREATED NEW OR ADDITIONAL GROUNDS FOR DIVORCE, AND AS TO THE FINDING OF A VIOLATION OF RULE 1.7(a)(2), AND AS TO THE PANEL'S DECISION TO ACCEPT THE VIRGINIA STATE BAR'S MEMORANDUM ORDER WHICH INCLUDES UNNECESSARILY EXPLICIT FINDINGS OF FACT, FOR ALL THE REASONS STATED ON THE RECORD DURING THE HEARINGS ON MARCH 3, 2022, MARCH 31, 2022 AND AUGUST 2, 2022 AND ON THE RECORD OF THE PROCEEDING:



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Mary T. Morgan  
Respondent's Counsel  
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