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VIRGINIA:

BEFORE THE THIRD DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

FEB 17 2006

VSB CLERK'S OFFICE

IN THE MATTERS OF
WALTER BALLARD HARRIS

VSB Docket Nos. 05-031-2389 and
05-031-4440

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On February 1, 2006, a meeting in these matters was held before a duly convened Third District, Section I Subcommittee consisting of W. Richard Hairfield, Chair, H. Martin Robertson, Esquire and William Manns, lay person to consider acceptance of a proposed Agreed Disposition presented by the Respondent and Paulo E. Franco, Jr., Assistant Bar Counsel.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District, Section I Subcommittee of the Virginia State Bar hereby accepts the Agreed Disposition and serves upon the Respondent the following PUBLIC Reprimand with Terms:

I. FINDINGS OF FACT AND NATURE OF MISCONDUCT

A. VSB Docket No. 05-031-2389

1. Findings of Fact

1. Mr. Harris was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.
2. At all times relevant to this proceeding, Mr. Harris was an attorney active and in good standing to practice law in the Commonwealth of Virginia.
3. At all times relevant, Mr. Harris was employed as an Assistant Public Defender for the City of Petersburg.

4. On or about December 3, 2003, Mr. Harris was appointed to represent Ronald E. Artis on a felony cocaine possession charge.

5. Despite his plea of innocence, on April 5, 2004, Mr. Artis was convicted of the crime in the Petersburg Circuit Court, and on May 20, 2004, he was sentenced to a term of incarceration.

6. Mr. Artis directed Mr. Harris to note an appeal, and Mr. Harris filed a notice of appeal on **June 18, 2004**.

7. Mr. Harris sent letters to the Clerk of the Court of Appeals of Virginia and the Assistant Commonwealth's Attorney dated **June 3, 2004**, purportedly enclosing a copy of the notice of appeal.

8. By letter dated **June 3, 2004**, Mr. Harris requested the court reporter to prepare a transcript of the trial, including all motions, bench conferences and opening and closing arguments, as well as the sentencing hearing.

9. Mr. Harris' letter to the court reporter states: "In order to become part of the record on appeal, the transcript will have to be filed with the Clerk of the Circuit Court on or before **April 26, 2004**."

10. On August 3, 2004, Mr. Harris wrote the court reporter again, stating: "In order to become part of the record on appeal, the transcript will have to be filed with the Clerk of the Circuit Court on or before August 3, 2004."

11. On or about August 4, 2004, Mr. Harris faxed the court reporter a handwritten note stating: "Amended transcript to be filed date – now Aug. 3, 2004 but circuit court has not acknowledged appeal being filed yet so have more time."

12. Mr. Harris never moved for an extension of time within which to file the transcript.
13. A transcript of the sentencing hearing was filed in the circuit court on August 24, 2004.
14. The Court of Appeals issued a show cause order on August 26, 2004, based upon the untimely filing of the transcript, and an amended order on September 22, 2004, giving Mr. Harris until October 7, 2004, to show cause why the court should not dismiss Mr. Artis' appeal.
15. Mr. Harris failed to respond to the show cause order, and on October 14, 2004, the Court of Appeals entered an order dismissing Mr. Artis' appeal.
16. The Court of Appeals reported the procedural default to the Virginia State Bar.
17. Deputy Intake Counsel sent Mr. Harris letters dated December 28, 2004, and January 19, 2005, requesting him to respond to the report that Mr. Artis' appeal had been dismissed due a procedural default by Mr. Harris.
18. By letter dated January 20, 2005, Mr. Harris requested an extension of time to prepare a response to the procedural default report.
19. Mr. Harris never submitted a response to the procedural default report.
20. Mr. Harris acknowledges that he did not communicate with Mr. Artis after he was sentenced on May 4, 2004.
21. Based upon information and belief, Mr. Artis is deceased.

2. Findings of Misconduct

The foregoing Stipulated Findings of Fact give rise to the following Findings of Misconduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

* * * *

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.

* * *

(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.

A VSB Docket No. 05-031-4440

1. Stipulated Findings of Fact

1. Mr. Harris was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.

2. At all times relevant to this proceeding, Mr. Harris was an attorney active and in good standing to practice law in the Commonwealth of Virginia.

3. At all times relevant, Mr. Harris was employed as an Assistant Public Defender for the City of Petersburg.

4. On or about December 2, 2003, Mr. Harris was appointed to represent Tarika Patrice Davis on felony assault and misdemeanor obstruction of justice and disorderly conduct charges.

5. Ms. Davis was eventually acquitted on the felony assault charge, but on July 22, 2004, she was convicted of the misdemeanor obstruction of justice and disorderly conduct charges.

6. Ms. Davis directed Mr. Harris to note an appeal, and he filed a notice of appeal August 3, 2004.

7. On August 3, 2004, Mr. Harris sent the Clerk of the Court of Appeals of Virginia and the Assistant Commonwealth's Attorney a notice of appeal in Circuit Court Nos. CR04-470 and CR04-471, and by letter requested the court reporter to prepare a transcript of the proceedings in Circuit Court Nos. **CR04-135** and CR04-471.

8. By letter to the court reporter dated August 4, 2004, Mr. Harris corrected the Circuit Court No. CR04-135 to CR04-470.

9. By letter dated February 28, 2005, the Assistant Chief Deputy Clerk of the Circuit Court of the City of Petersburg notified Mr. Harris that the record had of the proceedings had been transmitted to the Court of Appeals.

10. Mr. Harris was notified that the Court of Appeals received the record on March 3, 2005, and that Ms. Davis' petition for appeal was due no later than 40 days after the date on which the record was received.

11. The Court of Appeals dismissed Ms. Davis' appeal in CR 04-420, CR 04-470 and CR04-471 on May 6, 2005, because Mr. Harris had not filed a petition for appeal in a timely manner.

12. Mr. Harris' records show that he did not communicate with Ms. Davis after July 22, 2004.

13. Ms. Davis learned her appeal had been dismissed after she contacted the Court of Appeals.

14. Ms. Davis called Mr. Harris after she learned her appeal had been dismissed, but he did not return her calls.

15. The Court of Appeals reported the procedural default to the bar.

16. Mr. Harris did not submit a written response to the report.

17. Mr. Harris represented to the bar investigation on August 18, 2005, that at his behest the Virginia Public Defender's Commission had agreed to file a delayed appeal on Ms. Davis' behalf.

18. Although Ms. Davis was anxious for her appeal to be reinstated, the Court of Appeals' electronic docket does not list any appeal for Ms. Davis other than the one that was dismissed.

2. Stipulated Findings of Misconduct

The foregoing Stipulated Findings of Fact give rise to the following Findings of Misconduct:

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

* * * *

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.

* * *

(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.

II. PUBLIC REPRIMAND 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 will be a predicate for the disposition of a PUBLIC Reprimand with Terms of this complaint. The terms and conditions are:

1. Respondent shall refrain from undertaking appeals to either the Virginia Court of Appeals and/or the Virginia Supreme Court of Appeals, save for noting any appeals with the appropriate trial court until July 31, 2007.

2. Respondent shall obtain at least four hours of Continuing Legal Education Credits in Appellate Advocacy and Procedure, which four hours shall **not** be applied towards his annual Mandatory Continuing Legal Education requirements. The Respondent must deliver written certification to Bar Counsel that he has complied with this term before July 31, 2007.

The alternate disposition of these matters, should Respondent fail to comply with the foregoing terms will be a **sixty (60) day suspension** from the practice of law.

In the event of the Respondent's alleged failure to meet one or more of the terms set forth above, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by a Subcommittee of the Third District Committee—Section I. At the hearing, the burden of proof shall be on the Respondent to show timely compliance with the terms, including timely certification of such compliance, by clear and convincing evidence. The Respondent agrees his prior disciplinary record may be disclosed to the Subcommittee.

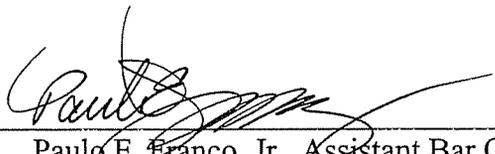
Pursuant to Paragraph 13.B.8.c.(1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

**THIRD DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By 
W. Richard Hairfield, Chair

CERTIFICATE OF SERVICE

I certify that on this 17th day of February, 2006, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Walter Ballard Harris, Respondent, at 2nd Floor, 105 Marshall Street, Petersburg, Virginia 23803-4544, Respondent's last address of record with the Virginia State Bar.


Paulo E. Franco, Jr., Assistant Bar Counsel