

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

WILLIAM MADISON MCCLENNY, JR.

Attorney at Law

On May 20, 2005, came William Madison McClenney and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his resignation at a time when disciplinary charges are pending, he admits that the charges in the attached Certification are true.

The Board having considered the said Affidavit Declaring Consent to Revocation accepts his resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said William Madison McClenny, Jr., be and the same hereby is revoked, and that the name of the said William Madison McClenny, Jr., be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 1st day

of SEPTEMBER, 2005

Virginia State Bar Disciplinary Board



Robert L. Freed, Chair

VIRGINIA:

BEFORE THE SEVENTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF WILLIAM MADISON MCCLENNY, JR., ESQUIRE
VSB Docket Number 02-070-3916

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On January 14, 2004, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of Douglas K. Baumgardner, Esquire, Larry Lambert, and Grant A. Richardson, Esquire, presiding. Claude V. Worrell, II, Esq., Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶ 13(G) (1) (b) of the *Rules of Virginia Supreme Court*, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. STATEMENT OF FACTS AND NATURE OF MISCONDUCT

1. At all times relevant hereto, William Madison McClenny (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Respondent was appointed by the court to represent Michael J. Davis (hereinafter the Complainant) in Louisa County Circuit Court. The Complainant was charged with breaking and entering and the case was set for trial without a jury. The Complainant claims that the Respondent did not meet with him or contact him before trial. The Commonwealth was not prepared to go forward and the case was continued.
3. The Respondent did not contact the Complainant before his second trial date. The trial took place as scheduled and the Complainant was convicted. The Complainant alleges that

the Respondent did not do much for him at trial. The Complainant reports that the Respondent asked a few questions but presented no evidence on his behalf. The Complainant was convicted of breaking and entering and received a ten year sentence with all but two years suspended.

4. The Complainant told the Respondent that he wanted to appeal his conviction. Though the Respondent never discussed the appeal with the Complainant, the Respondent did note the appeal but failed to file in *forma pauperis*. The Respondent says that he requested that the transcript be produced but never received a copy. The Respondent never wondered why he did not receive a copy of the transcript he ordered. Lane's Court Reporters claims that the transcript was never ordered and therefore was not typed. The Court of Appeals advised the Respondent by phone and letter dated August 8, 2001 that a filing fee was due to the Court of Appeals Clerk's office by close of business on August 20, 2001, or the appeal would be dismissed. The Respondent did not pay the filing fee and did not file a petition to proceed in *forma pauperis*, and the appeal was dismissed.

5. The Respondent never advised the Complainant of the status of his appeal. The Complainant wrote a letter to the Court of Appeals to find out what happened in his appeal. The Court advised the Complainant that his appeal had been dismissed because the filing fee had not been paid. The Respondent admits that he received a letter from the Court of Appeals advising him of the filing fee problem, but that he lost the letter in his office. By the time he picked up the Court order appointing him as counsel, it was too late because the appeal had been dismissed.

6. In July of 2001, after the appeal was dismissed, the Complainant asked the Respondent for his file and trial transcript. In January of 2002, the Complainant received a portion of his file. He did not receive a copy of the trial transcript. The Virginia State Bar's investigator asked the Respondent for a copy of the file and the Respondent promised that he

would provide it. However, the Respondent never did provide it to the investigator. On September 12, 2002, the Respondent was informed that he should provide the entire contents of his file to the Complainant. The Complainant received photocopies of pictures, a report of the pre-sentence investigation, and a copy of the sentencing order.

7. The Complainant's father, Wayne Weaver, went to see the Respondent about his son's case. Mr. Weaver asked the Respondent if he was going to appeal the case and the Respondent said he would appeal. The Respondent also told Mr. Weaver that the appeal would cost money but did not say how much it would cost. Of course, the appeal would cost nothing up front since the Respondent was appointed as indicated in the court's sentencing order.

8. According to Mr. Weaver, the Respondent was in possession of the Complainant's file at the time of his conversation with the Respondent. Mr. Weaver asked for a copy of the file. The Respondent agreed to give him a copy of the file and told Mr. Weaver that he should return the next day to pick up the file and the transcript. Mr. Weaver was able to observe that the file contained pictures. The Respondent told Mr. Weaver that he would go to the courthouse and get a copy of the transcript for him.

9. When Mr. Weaver asked for the file, the Respondent told him that he did not know where the file was and could not therefore give him a copy of the file. The Respondent had no excuse for losing and or misplacing the file which he had had the previous day. The Respondent said if the Complainant wanted to say he, the Respondent, did not do a good job, he should do that. The Respondent went on to say that he could also "take it to the board."

10. The Complainant did not seek habeas corpus relief because he could not afford counsel. He thought about proceeding pro se but did not because he could not afford a transcript.

The Subcommittee believes that such conduct constitutes misconduct in violation of the following Disciplinary Rules of the revised Virginia Code of Professional Responsibility:

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.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communications

- (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 8.4 Misconduct

It is professional misconduct for a lawyer to:

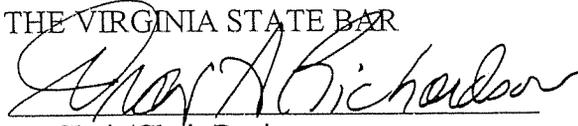
- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

II. CERTIFICATION

Accordingly, it is the decision of the subcommittee to certify the Charges of Misconduct to the Virginia State Bar Disciplinary Board.

THE SEVENTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

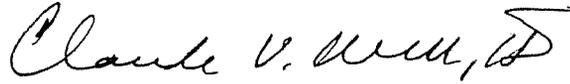
By:



Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 16th day of March, 2004, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing Subcommittee Determination (Certification) to the Respondent, William Madison McClenny, Jr., Esquire, at P.O. Box 1660, Louisa, VA 23093-1660, his last know address of record with the Virginia State Bar, and by first class mail, postage prepaid, to Respondent's counsel, Michael L. Rigsby, Esquire, at Michael L. Rigsby, Esq., Carrell, Rice & Rigsby, 7275 Glen Forest Dr., Forest Plaza II, Suite 309, Richmond, VA 23226.



Claude V. Worrell, II

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

CONSENT TO REVOCATION OF LICENSE TO PRACTICE LAW

TO THE HONORABLE MEMBERS OF THE VIRGINIA STATE BAR DISCIPLINARY BOARD:

Your Affiant, WILLIAM MADISON MCCLENNY, JR., first being duly sworn, upon his oath does respectfully represent unto the Disciplinary Board the following:

1. That he was licensed by the Board of Law Examiners on March 13, 1970 to practice law in the courts of the Commonwealth, and that he did on March 13, 1970, qualify before the Supreme Court of Virginia.

2. That this consent is freely and voluntarily rendered by him pursuant to Part 6, Section IV, Paragraph 13(L) of the Rules of the Supreme Court of Virginia, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to Revocation.

3. That he is aware that there are proceedings currently pending involving allegations of Misconduct (VSB Docket Numbers 01-070-1995, 02-070-2154, 02-070-3916 and 03-070-0776), the nature of which are that he failed to properly maintain or supervise the maintenance of his attorney trust account records, reconciliations, balances and deposits, failed to pay all federal withholding taxes, failed to perfect a criminal appeal in a court-appointed case, and did not act upon dispositive facts in another criminal case.

4. That the material facts upon which the allegations of Misconduct are predicated are true; and,

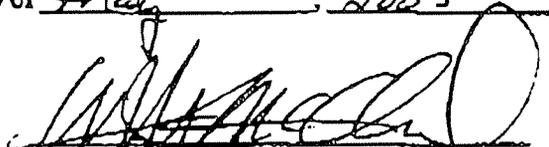
5. That he submits this consent to Revocation because he knows that if disciplinary Proceedings based on the alleged Misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

In accordance with Paragraph 13(L)(2), the admissions offered in this affidavit consenting to Revocation shall not be deemed an admission in any proceeding except one relating to the status of this attorney as a member of a bar.

WHEREFORE, your Affiant respectfully requests that he be allowed to consent to the Revocation of his license to practice law before this Honorable Board and before all other courts of the Commonwealth of Virginia, effective September 1, 2005; that his name be stricken from the roles of attorneys qualified to practice law in the Commonwealth of Virginia; and that such orders and decrees as may be necessary or required in this regard may be entered.

Your affiant agrees not to accept any new clients after the execution and filing of this Consent to Revocation, and agrees further that neither he nor anyone else may withdraw or revoke this Consent to Revocation for any reason once it is filed with the Virginia State Bar.

GIVEN under my hand this 20th day of May, 2005.

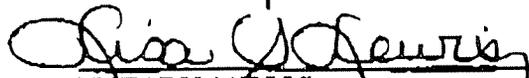

 WILLIAM MADISON MCCLENNY, JR.
 Affiant

STATE OF VIRGINIA

City/County of Northampton to wit:

I, Lisa S. Lewis, a Notary Public in and for the city/county and state aforesaid, whose notarial commission expires on the 30 day of April, 2006 do hereby certify that WILLIAM MADISON MCCLENNY, personally known to me, appeared before me on this 20 day of May, 2005, and was by me duly sworn and thereupon executed in my presence and acknowledged to me the truth and voluntariness of the foregoing Affidavit and Oath.

GIVEN under my hand this 20 day of May, 2005.


 NOTARY PUBLIC

My commission expires the 30 day of April, 2006.