

VIRGINIA:

**BEFORE THE SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
JOHN W. WESCOAT
VSB Docket No. 05-021-0107**

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)**

On April 13, 2006, a hearing in this matter was held before a duly convened Second District Committee panel consisting of Donald C. Schultz, Esquire, S. Clark Daugherty, Esquire, Robert W. McFarland, Esquire, Emmanuel W. Michaels, Lay Member, Michael S. Brewer, Lay Member, and Afshin Farashahi, Esquire, Chair, presiding.

The Respondent, John W. Wescoat, Esquire appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis, Esquire.

The matter proceeded upon the Notice of Hearing, dated February 21, 2006, on appeal of a Subcommittee Determination. The Notice of Hearing set forth allegations that the Respondent's conduct violated Rules of Professional Conduct 1.1, *Competence*, 1.3 (a), *Diligence*, 1.4 (a), (b) and (c), *Communication*, and 8.4 (c), *Misconduct*.

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The parties made opening statements, and the panel then received the testimony of the Complainant, Mr. Frederick E. Walker, who testified by telephone from the Haynesville Correctional Center, Haynesville, Virginia, by agreement with the Respondent. Corrections

Sergeant Russell Radebaugh, Notary Public, Haynesville, placed the witness under oath. The panel received Virginia State Bar Exhibits 1-19 without objection. The rest of the bar's evidence consisted of the testimony of the Respondent, who also testified in his own behalf.

Upon the conclusion of the bar's evidence, the Respondent moved to strike the bar's case, and the matter was argued by counsel. Upon due deliberation, the panel chose to grant the motion to strike with respect to Rules 1.4 (c) and 8.4 (c), and proceeded on the remaining charges. Thereafter, the parties presented closing arguments.

Pursuant to Part 6, Section IV, Paragraph 13.H.2 (m) of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, John W. Wescoat, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On June 21, 2002, the Circuit Court for the County of Northampton found Frederick E. Walker guilty of breaking and entering, and assault and battery. Mr. Wescoat was his appointed counsel.
3. On September 16, 2002, the Court sentenced Mr. Walker to eight years and twelve months to serve in the Department of Corrections.
4. Mr. Wescoat timely noted an appeal of the convictions.
5. By letter, dated April 28, 2003, Mr. Wescoat informed his client that he was preparing the petition for appeal to the Court of Appeals.
6. On September 23, 2003, the Court of Appeals of Virginia denied the petition for appeal.
7. Thereafter, Mr. Wescoat took no further action in the matter, although his client wanted him to appeal further to the Supreme Court of Virginia.
8. By letter, dated June 25, 2003, Mr. Walker inquired about the status of his appeal, but Mr. Wescoat did not respond.

9. By letter, dated September 30, 2003, Mr. Walker inquired again about the status of his appeal, but Mr. Wescoat did not respond.

10. By letter, dated February 10, 2004, Mr. Walker inquired a third time to inquire about the status of the appeal, but Mr. Wescoat did not respond.

11. By letter, dated April 9, 2004, Mr. Walker inquired a fourth time about the status of the appeal, but Mr. Wescoat did not respond.

12. Mr. Walker also wrote to Mr. Wescoat on May 12, 2003, May 13, 2003, and May 20, 2003, but Mr. Wescoat did not respond.

13. On an unknown date during 2004, having not heard from Mr. Wescoat, Mr. Walker wrote to the trial court to inquire about the status of his appeal.

14. By letter, dated June 7, 2004, the court informed him that his petition for appeal had been denied on September 23, 2003. This was the first time that Mr. Walker learned about the denial of his appeal.

15. By letter, dated June 14, 2004, he informed Mr. Wescoat about this development, and asked for a copy of the order.

16. Mr. Wescoat said that when he received this letter, he contacted the Commonwealth's Attorney to confirm it, and, having not received a copy the dismissal order himself, then learned for the first time that the appeal had been dismissed. He then responded to Mr. Walker by letter, dated June 18, 2004, and enclosed a copy of the order. Mr. Wescoat closed the letter with,

I'm sorry that the appeal was unsuccessful and hope that things are going as well as possible for you under the circumstances.

16. Mr. Wescoat did not mention his client's right to further appeal to the Supreme Court of Virginia, or that Mr. Wescoat had missed the deadline for appealing to the Supreme Court.

17. Mr. Wescoat explained to the bar that he did not do so because his client was well-informed about the court system, and he believed that a writ writer at the prison was assisting him. He also said that he did not respond to Mr. Walker's previous letters because he had no new information.

18. On August 18, 2004, Mr. Walker filed a petition for a writ of habeas corpus alleging ineffective assistance of counsel by Mr. Wescoat.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rules of Professional Conduct:

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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Committee did not find a violation of Rule 1.1 by clear and convincing evidence, and dismissed that charge accordingly.

III. PUBLIC ADMONITION

Accordingly, it is the decision of the Committee to impose a Public Admonition on the Respondent for the misconduct set forth herein, and the Respondent is hereby admonished.

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

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 
Afshin Farashahi, Esquire
Committee Chair

CERTIFICATE OF SERVICE

I certify that on the 25th day of April, 2006, I mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Admonition without Terms) to John W. Wescoat, Esquire, the Respondent, at 16418 Courthouse

Road, Post Office Box 97, Eastville, Virginia 23347-0097, his last address of record with the Virginia State Bar.

A handwritten signature in black ink, appearing to read "Edward L. Davis". The signature is written in a cursive style with a large initial "E".

Edward L. Davis, Assistant Bar Counsel