

VIRGINIA:

**BEFORE THE THIRD DISTRICT COMMITTEE, SECTION III,
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
DAVID ALBERT POWERS, III
VSB Docket No. 03-033-1314**

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On February 10, 2004, a hearing in this matter was held before a duly convened Third District Committee, Section III, panel consisting of Joyce Rene Hicks, attorney member; Cullen D. Seltzer, attorney member; John D. Sharer, attorney member; Andrew J. Gibb, lay member and Charlotte Peoples Hodges, Esquire, chair designate.

David Albert Powers appeared in person pro se and Linda Mallory Berry, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Third District Committee, Section III, of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms.

I. FINDINGS OF FACT

1. At all times relevant hereto, **David Albert Powers, III** (hereinafter Mr. Powers or Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Charles Entwistle (hereinafter C. Entwistle) retained Mr. Powers, on October 29, 2001, to represent him in his appeal of two felony convictions. Mr. Powers was paid a \$5,000.00 retainer and a \$500.00 escrow fee for transcripts.
3. When C. Entwistle's appeal was noted in the Virginia Court of Appeals (Court of Appeals), Mr. Powers did not order the volumes of transcript of the October 6, 1998, October 22, 2001, and January 17, 2002, hearings nor did the Petersburg Circuit Court order them, as anticipated by Mr. Powers.
4. On October 31, 2001, the Notice of Appeal was filed in the Circuit Court of Petersburg, and a copy was mailed to the Assistant Commonwealth Attorney for Petersburg. The Notice of Appeal was filed in the Court of Appeals without the necessary filing fee. The fee was paid on or before March 11, 2002.

5. On March 1, 2002, the Court of Appeals issued a Show Cause why the appeal should not be dismissed, as the volumes of transcript of the hearings in the matter were not timely filed in the case. Mr. Powers filed his answer on March 13, 2002. Mr. Powers stated that the transcripts were essential to the determination of the issues on appeal and that they were filed as soon as they were prepared by the court reporter. He also stated, “[t]hese [volumes of transcripts] took some time, as the reporter had difficulty in finding and preparing her transcript from 1998.” Mr. Powers did not reveal that he had not even ordered the transcripts until January 30, 2002.
6. In fact, Accu-Beta Court Reporting reported that their records show that Mr. Powers contacted their office on January 12, 2002, to get an estimate for the hearing volumes of transcript, but Mr. Powers did not order them. On January 30, 2002, Mr. Powers ordered the transcripts. The volumes of transcripts for the October 22, 2001, and the January 17, 2002, hearings were sent to Mr. Powers on February 18, 2002. The October 6, 1998, transcripts were sent to Mr. Powers by Accu-Beta Court Reporting on or about February 1, 2002. The transcripts were filed with the Court of Appeals with Mr. Powers’s request to consider them timely filed.
7. On April 3, 2002, the Virginia Court of Appeals dismissed C. Entwistle appeal because the transcripts, essential to the appeal, had not been timely filed, Record No. 0462-02-2.
8. When the appeal was noted on October 31, 2002, no appeal bond was set for Mr. Entwistle, but Mr. Powers arranged for a bond hearing before the trial judge on December 6, 2002. Mr. Powers said that it was clear to all during the bond hearing that C. Entwistle was returning to Illinois and that the address of C. Entwistle’s brother was given as C. Entwistle’s place of residence for the immediate future.
9. After bond was set and while the paperwork was being addressed, C. Entwistle was told that he could not leave the Commonwealth by a deputy clerk of the Petersburg Circuit Court. C. Entwistle questioned this requirement to remain in Virginia. The clerk and the bondsman told C. Entwistle to get in touch with his lawyer for clear direction. C. Entwistle called Mr. Powers, questioned the restriction, directed Mr. Powers to get things right at the courthouse, and was told by Mr. Powers that he could return to Illinois.
10. C. Entwistle remained for approximately a week in Virginia as he suffered another stroke and had to be hospitalized in John Randolph Hospital. C. Entwistle’s family contacted Mr. Powell who, without ever referencing the recognizance papers on which C. Entwistle was released, again okayed his return to Illinois.
11. When the Virginia Court learned of C. Entwistle departure from the Commonwealth, on January 2, 2003, the Court issued a detainer for C. Entwistle’s return. After waiving extradition, C. Entwistle was brought back to Virginia.
12. On January 17, 2002, Mr. Powers made an appearance on behalf of C. Entwistle in an attempt to remove the detainer. Mr. Powers said that he was unaware of any

problem with C. Entwistle's release until he received a call almost a month later from C. Entwistle informing him that C. Entwistle had been detained. Mr. Powers argued that he believed that the Court had authorized C. Entwistle to return to Illinois pending appeal and stated that the bondsman knew that C. Entwistle would be in Illinois pending appeal.

13. At the January 17, 2002, detainer hearing, despite Mr. Powers's arguments to the contrary, the Court stated, "the record, so far as I'm advised by the clerk, is void of any reference as to him [C. Entwistle] leaving the state." The Court refused to lift the detainer.
14. C. Entwistle filed a complaint with the Virginia State Bar against Mr. Powers on November 13, 2002. Mr. Powers responded to the Bar complaint in April 2003. Mr. Powers's response to the Bar complaint was sent to C. Entwistle and, in it, he read for the first time that his appeal had been denied; however, Mr. Powers did not give reason for the dismissal in the April 2003 bar response.
15. On January 30, 2003, Robert Entwistle (R. Entwistle), brother and attorney-in-fact for Charles Entwistle, requested that Mr. Powers continue representing C. Entwistle "in legal matters involving the State of Virginia and possible transfer to an Illinois Department of Corrections facility." On February 12, 2003, Mr. Powers advised R. Entwistle that he "...need[ed] the bar issues dismissed before [he] can continue in [his] efforts on Charlie's behalf."
16. To that end, Mr. Powers drafted a letter to the Virginia State Bar (VSB) which Mr. Powers believed would accomplish the dismissal of the bar complaint. On February 14, 2003, Mr. Powers hand-delivered to Assistant Bar Counsel a copy of the letter and represented it as an unsigned copy of R. Entwistle's writing, on its way by express mail, to Assistant Bar Counsel.
17. R. Entwistle wrote to Assistant Bar Counsel explaining that the letter was drafted for his signature by Mr. Powers and alleging two false statements made by Mr. Powers in the letter to the VSB that Mr. Powers drafted for R. Entwistle's signature. In his letter, received by the VSB on February 24, 2003, R. Entwistle denied more than two conversations at any time with Mr. Powers, and he stated that C. Entwistle nor R. Entwistle nor any member of C. Entwistle's family was fully or partially satisfied with Mr. Powers's representation of C. Entwistle.

II. NATURE OF MISCONDUCT

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law; or

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact;

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the committee 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 shall be met by the dates specified in each of the numbered paragraphs below. In each instance, the Respondent shall certify in writing to Assistant Bar Counsel, Linda Malloy Berry, by the specific dates specified, that he has done the following:

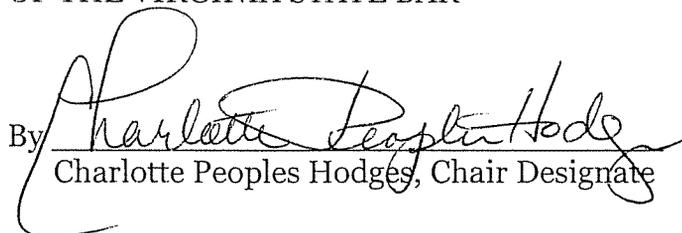
1. **No later than February 20, 2004**, the Respondent shall inform Mr. Nikas of this determination by the Third District Committee, Section III. Such information shall be in writing and may be accomplished by providing Mr. Nikas a copy of this determination accompanied by the Respondent's cover letter.
2. **No later than March 10, 2004**, the Respondent shall refund the amount of \$5,500.00 to Robert and James Entwistle, 147 Union Street, LaSalle, Illinois 61301.

3. Mr. Powers shall arrange for the services of a consultant to conduct a field audit of his law practice. The cost of such an audit shall be borne completely by Mr. Powers. Mr shall present the credentials and the identity of the proposed consultant for approval to the Office of Bar Counsel prior to the decision. Powers to engage a specific consultant and **no later than March 10, 2004**. The consultant shall review and make recommendations concerning proposed changes in and improvements to the everyday operation of Mr. Powers's law practice. The report and recommendations made by the consultant shall be provided to the Office of Bar Counsel **no later than September 10, 2004**. The consultation shall include a follow-up and a final report of compliance to the Office of Bar Counsel **no later than December 1, 2004**.
4. Mr. Powers shall develop a Call Log for use in his law practice. He shall provide a copy of the protocol outlining the procedures developed for recording and detailing calls received for him and calls returned by him to the Office of Bar Counsel **no later than March 10, 2004**, and shall implement the protocol into his law office practice as soon as possible.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified, a Show Cause will be issued and, upon a finding that you filed to comply with any of these terms, this District Committee shall direct a Certification for Sanction Determination to the Disciplinary Board, pursuant to Part Six, Section IV, Paragraph 13.H.2.p.(2)(a).

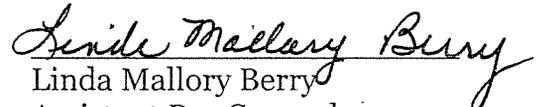
Pursuant to Part Six, Section IV, Paragraph 13.B.8.c.(1) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT COMMITTEE, SECTION III,
OF THE VIRGINIA STATE BAR

By 
Charlotte Peoples Hodges, Chair Designate

CERTIFICATE OF SERVICE

I certify that on this the 25th day of February 2004, I mailed by Certified Mail, Return Receipt Requested, No. 7106 4575 1294 4678 1737, a true copy of the District Committee Determination (Public Reprimand with Terms) to David Albert Powers, III, P. O. Box 116, Chesterfield, Virginia 23832-0116, his last address of record with the Virginia State Bar.


Linda Mallory Berry
Assistant Bar Counsel