

VIRGINIA:

**BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF
KEVIN PETER SHEA**

VS. B Docket Nos. 04-010-1311 and 04-010-2610

MEMORANDUM ORDER

These matters came to be heard by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of W. Jefferson O’Flaherty, lay member, Russell W. Updike, Esq., Glenn W. Hodge, Esq., Bruce T. Clark, Esq., and Joseph R Lassiter, Jr., Esq., Chair presiding (the Panel). The Virginia State Bar appeared through its Assistant Bar Counsel, Richard E. Slaney (the Bar), and the Respondent, Kevin Peter Shea (Mr. Shea), was present and represented by Timothy G. Clancy, Esq. and B. Carter Phillips, Esq.(Respondent’s Counsel).

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13(B)(5)(c), the Bar, Mr. Shea and Respondent’s Counsel entered into a written proposed Agreed Disposition and presented same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel as well as Mr. Shea's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. The Panel then accepted the Agreed Disposition with the caveat that the language of Term No. 3 be made more precise, which caveat was accepted and agreed to by the parties. As such, the Board FINDS as follows:

I. FINDINGS OF FACT

1. At all times material to these matters, the Respondent, Kevin Peter Shea (Shea) was an attorney licensed to practice law in the Commonwealth of Virginia.

The Bailey Matter 04-010-1311

2. In late September, 2003, one Dave Bailey, Jr. (Bailey) hired Shea to represent him on a charge of possession of marijuana with intent to distribute, a felony. At that time, a hearing was scheduled for October 1, 2003 before the York County General District Court. Bailey paid Shea \$470.

3. Shea told Bailey that Bailey would not need to appear at the October 1 hearing and that Shea would have the hearing continued, although Shea would testify Bailey told him the October 1 date was merely a "check attorney" date.

4. On the morning of the hearing, Shea is expected to testify his office contacted the Court in an attempt to obtain the continuance. Neither Shea nor Bailey appeared at the October 1 hearing, and the Court issued a capias for Bailey and continued the matter to October 22. Bailey thereafter was required to post a \$5,000 surety bond.

5. When Shea learned of the capias he faxed a letter to the Court on October 8, and later appeared before the Court to explain the situation and ask that the capias be withdrawn. The

Court declined to withdraw the capias at that time.

6. Shea or someone from his office informed Bailey Shea would not represent him further; however, Shea never moved the Court to withdraw as Bailey's counsel.

7. A hearing was held on October 22. At that time, the Court questioned Bailey as to the whereabouts of Shea. After hearing from Bailey, the Court dismissed the capias and appointed another attorney to represent Bailey.

[Rules applicable: 1.3(a), 1.16(c) and (d)]

The Bennett Matter 04-010-2610

8. In 1998, one Berace Bennett (Bennett) was convicted in Hampton Circuit Court of murder and use of a firearm. Shea represented Bennett at trial and undertook to represent him in his appeals.

9. The Court of Appeals denied Bennett's appeal on the merits in an order dated May 18, 1999. Shea sent the order to Bennett in a letter dated May 28, 1999, and indicated he would pursue an appeal to the Supreme Court of Virginia.

10. In a letter to Bennett dated July 14, 1999, Shea stated in part: "The appeal has been noted to the Supreme Court and we have not received a date as of when your appeal will be due." Shea agreed with the Bar Investigator this language was "off", in that the Petition for Appeal would have been due thirty days after the denial by the Court of Appeals.

11. Shea filed a Notice of Appeal in the Court of Appeals, but failed to file anything further (including a Petition for Appeal) in the Supreme Court of Virginia. Shea suggested to Bennett that something was amiss in his letter of October 27, 1999, in which Shea stated: "No

date has been set before the Supreme Court. We are having the same problem that we had with the Court of Appeals. Their position is that they never received the brief. We overcame this problem in the Court of Appeals, and I am confident that your matter will be heard by the Supreme Court.”

12. On March 10, 2000, Shea arranged for Bennett to sign a completed Petition for Writ of Habeas Corpus. Shea, however, never filed that Petition with any court.

13. Thereafter, correspondence from Shea to Bennett was less than clear regarding the status of the habeas corpus petition and any delayed appeal.

14. Bennett took it upon himself to write to the Supreme Court on August 7, 2003 to inquire about his appeal. The Court promptly wrote back that his conviction was affirmed by the Court of Appeals on May 18, 1999, and nothing had been filed on Bennett’s behalf with the Supreme Court.

15. Thereafter, Bennett filed his complaint against Shea with the Bar. He also filed his own habeas corpus petition and obtained a delayed appeal.

[Rules applicable: 1.3(a) and 1.4(a)]

II. NATURE OF MISCONDUCT

The Board finds that such conduct of Mr. Shea constitutes a violation of the following Disciplinary Rules:

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 1.16 Declining Or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

III. IMPOSITION OF SANCTION

The Board, having considered all the evidence before it, determined to accept the Agreed Disposition. Of significance to the Panel was the fact that, although Mr. Shea has a prior disciplinary record with the Bar, the vast majority of the sanctions against him, and the most serious sanctions, are over fifteen (15) years old. Having determined to accept the Agreed Disposition, the Board **ORDERS** that

Pursuant to Part 6, Section IV, Paragraph 13(I)(2)(f)(2)(c) of the Rules of the Supreme Court of Virginia, the license of the Respondent, Kevin Peter Shea, to practice law in the Commonwealth of Virginia be, and the same is, hereby **SUSPENDED** for a period of sixty (60) days, effective December 15, 2005. Further, pursuant to the agreement of the parties, the Board **ORDERS** that the following Terms shall be imposed:

1. Mr. Shea shall, within thirty (30) days of the date of this Order, pay to Dave H. Bailey, Jr.

(Mr. Bailey), the sum of \$470, representing the fee paid by Mr. Bailey to Mr. Shea; and

2. Mr. Shea shall not hereafter accept or handle any new criminal appeals in state of federal court; and that

3. For a period of one (1) year from the date of this Order, any new bar complaint filed against Mr. Shea in that period of time which results in a finding of misconduct shall be deemed to be a violation of the Terms of this Order.

Further, and pursuant to the agreement of the parties, the Board **ORDERS** that if Mr. Shea is found to be in violation of any of the three Terms of this Order as set forth above, his license to practice law in the Commonwealth of Virginia shall be further suspended by the Board for a period of one (1) year and one (1) day.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(B)(8)(c).

It is further **ORDERED** that the Clerk of the Disciplinary System shall send certified copies of this order to counsel of record and to the Respondent, Kevin Peter Shea, Esq., at 34 West Queen's Way, P.O. Box 310, Hampton, Virginia 23669-0310, his last address of record with the Virginia State Bar.

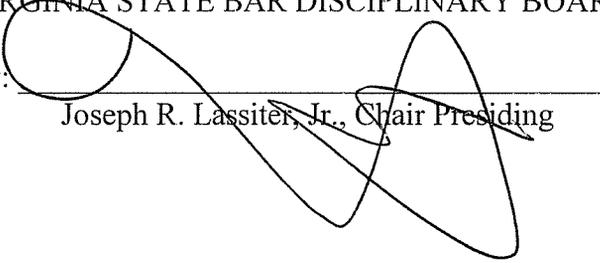
It is further **ORDERED** that the Respondent shall comply with the requirements of Part 6, Section IV, Paragraph 13 (M) of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from December 15, 2005, the effective date of the suspension in these matters. Issues concerning the adequacy of the notice and arrangements

required shall be determined by the Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph.

Teresa S. Griffith, Chandler and Halasz, Inc. Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the reporter for the hearing and transcribed the proceedings.

Entered this the 18 day of November, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Joseph R. Lassiter, Jr., Chair Presiding