

VIRGINIA:

BEFORE THE TENTH DISTRICT COMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JOHN EDWARD STANLEY

VS B Docket No. 04-102-3712

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On October 20, 2005 a hearing in this matter was held before a duly convened Tenth District Committee, Section II, panel consisting of Gregory Dwayne Edwards, Esq., Chair Presiding; Eley Allen Harris, III, Esq; Robert Lucas Hobbs, Esq; Stanford Thomas Mullins, Esq; Scott Wayne Mullins, Esq; Donald Merle Williams, Jr., Esq.; and Mrs. Sandra Montgomery, lay member.

Respondent appeared in person *pro se*. Scott Kulp appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.1.2.d of the Rules of the Virginia Supreme Court, the Tenth District Committee, Section II, of the Virginia State Bar hereby serves upon the Respondent the following or Public Reprimand with Terms:

I. Findings Of Fact

1. At all times relevant to this matter, Respondent John Edward Stanley (hereinafter "the Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.

2. The Respondent served as court-appointed counsel for the Complainant Donald E. Honaker (hereinafter "Mr. Honaker") in a criminal case that went to trial on July 26, 2002 in the Russell County Circuit Court. After his bench trial and conviction, Mr. Honaker was incarcerated in the Russell County Jail for grand larceny (CR02-5540) and breaking and entering (CR02-5542). According to Mr. Honaker, he was convicted for allegedly accompanying another individual, Kenny Lee Dye, in the break-in. Mr. Honaker received 10 years on each charge with 5 years suspended on each charge. The 5 years remaining on each sentence were ordered to run concurrently.

3. Mr. Honaker asked the Respondent to file an appeal on his behalf.

4. On September 24, 2002, a final judgment order was entered by the Russell County Circuit Court.

5. On October 15, 2002, the Respondent visited Mr. Honaker in jail. According to the Respondent, this is when he learned that Kenny Lee Dye had changed his testimony about Mr. Honaker's involvement in the break-in. The Respondent then met with Mr. Dye who was also incarcerated. According to the Respondent, during this meeting, Mr. Dye said that Mr. Honaker was not involved in the subject offenses.

6. On or about October 21, 2002, the Respondent timely mailed a Notice of Appeal to the Court of Appeals.

7. The Respondent's file contains a February 2003 document from Counsel Press printing service stating, in part, "[p]lease keep in mind that we will prepare your appendix and provide an advance copy to make your brief writing a bit easier."

8. On February 24, 2003, the Court of Appeals granted Mr. Honaker's petition for appeal filed by the Respondent. Per the Court's Order, Mr. Honaker was required to file an appendix with an opening brief.

9. On April 9, 2003, the Respondent moved for a 7-day Extension of Time to File Appendix and File Appellant's corrected brief. By Order, the Court of Appeals granted an extension until April 14, 2003 to file the appendix.

10. On April 14, 2003, the Respondent moved the Court for a 30-day extension to file the appendix, to file Appellant's designation, and to file a corrected brief. For the second time, the Respondent stated "[t]he appellant has not been able to arrange for the appendix to be published and make corrections to the appellant's brief."

11. On April 29, 2003, the Court of Appeals granted an extension until May 2, 2003 to file the appendix. The appellant's motion to file a corrected brief was denied with the exception that the appellant was permitted to file a replacement brief, which references the appendix pursuant to Rules 5A:20(c) and (d).

12. On May 2, 2003, the Respondent moved for Extension of Time to File Amended Appendix and file Appellant's corrected brief.

13. On May 7, 2003, by Order, the Court of Appeals recounted that on April 9, 2003, pursuant to appellant's motion for extension of time to file the appendix, the Court granted the appellant an extension of time from April 5, 2003 to April 14, 2003 to file the appendix. On April 29, 2003, pursuant to a second motion for extension of time to file the appendix, the court granted appellant additional extension from April 14, 2003 to May 2, 2003 to file the appendix. Per the Order, "[a]s it does not appear from a review of the Court's records that an appendix has been filed in this case, appellant's motion to file an amended appendix is denied." The Court further ordered appellant to show cause by May 17, 2003 as to why the appeal should not be dismissed for failure to file an appendix.

14. On May 16, 2003, the Respondent responded to the Show Cause stating, in

part, “[t]he counsel for appellant failed to have the appendix properly file, but can have filed by May 24, 2003. In the interest of justice the appellant would ask for time to properly have all necessary documents filed.”

15. On June 23, 2003, by Order, the Court of Appeals dismissed Mr. Honaker’s appeal. According to the Court of Appeals, Appellant filed an opening brief on April 7, 2003 but failed to file an appendix. Accordingly, on May 7, 2003, after granting two extensions of time to file the appendix, the Court ordered appellant to show cause why this appeal should not be dismissed for failure to file an appendix. On May 16, 2003, appellant responded to the show cause by requesting additional time to file the appendix until May 24, 2003. As of June 23, 2003, appellant failed to file an appendix.

16. The Respondent would testify that he spoke with Mr. Honaker by phone sometime at the end of June 2003 or in early July 2003 to discuss Mr. Honaker’s options upon the Court of Appeals’ dismissal of the appeal. By contrast, Mr. Honaker would testify that he does not recall such a conversation occurring at this time, and he specifically denies learning that a granted appeal had been dismissed.

17. On August 29, 2003, the Respondent wrote to Mr. Honaker stating, in part, that he “will be moving to get your case back to the Court of Appeals as soon as possible. I will keep you informed on the progress of the case.”

18. The Respondent did not inform Mr. Honaker of the reasons why his appeal had been dismissed, and he neither provided Mr. Honaker with copies of any of his filings in the Court of Appeals nor with a copy of the dismissal order. Mr. Honaker was unaware that his Petition for Appeal had been granted by the Court of Appeals.

19. On or about November 22, 2003, Mr. Honaker wrote the Respondent seeking assistance with his case.

20. On December 18, 2003, the Respondent wrote to Mr. Honaker stating, in part, that “I will try to get you a new trial, but I can not promise I will be able to get you a new trial. I don’t know if Kenny’s change in testimony will result in a new trial being granted.”

21. A little over five months later, on May 24, 2004, Mr. Honaker’s bar complaint was filed.

22. On or about June 2, 2004, the Respondent conducted a telephone conference with Mr. Honaker to discuss his options at that time. The Respondent informed Mr. Honaker that his appeal was not looking good, and he agreed to assist Mr. Honaker in seeking a new trial based on Mr. Dye’s apparent recantation.

23. On June 21, 2004, the Respondent sent a letter and affidavit to Mr. Dye for his signature. The Affidavit states that Mr. Dye’s testimony at the 7-26-02 trial was false and that Mr. Honaker was not with Mr. Dye for the breaking and entering.

24. On or about October 7, 2004, Mr. Honaker wrote to the Respondent seeking a status report of his case.

25. On or about November 29, 2004, the Respondent sent another letter and affidavit to Mr. Dye.

26. On or about January 5, 2005, the Respondent received correspondence from Mr. Honaker seeking information concerning the disposition of his state appeal.

27. On or about January 30, 2005, Mr. Honaker wrote to the Respondent seeking assistance with his case.

28. On or about February 8, 2005, the Respondent sent another letter to Mr. Dye with an affidavit for his signature.

29. On or about February 16, 2005, the Respondent received a letter from Mr. Dye in which Mr. Dye refused to contradict his trial testimony.

30. The Respondent has neither provided Mr. Honaker with any indication that he has made further headway with respect to a Writ of Actual Innocence nor has he provided any indication that Mr. Honaker is proceeding toward a delayed appeal through the habeas corpus process.

II. Nature 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.

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:

Attend six (6) hours of MCLE-approved Continuing Legal Education in the area of criminal appellate practice and/or procedure in Virginia and certify completion to Assistant Bar Counsel Scott Kulp by **May 1, 2006**. These six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the foregoing Terms are not met by the date specified, this District Committee shall impose a Certification For Sanction Determination.

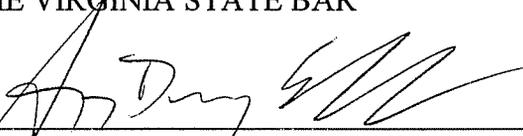
IV. Alternative Sanction

If the foregoing Terms are not met by the date specified, this District Committee shall impose a Certification For Sanction Determination as defined by Part 6, Section IV, Paragraph 13.A of the Rules of the Virginia Supreme Court and set forth Part 6, Section IV, Paragraph 13.H.2.p.2 of the Rules of the Virginia Supreme Court

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.

TENTH DISTRICT COMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR

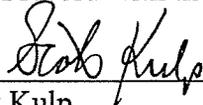
By



Gregory Dwayne Edwards, Chair

CERTIFICATE OF SERVICE

I certify that on seventh day of November, 2005, I mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Reprimand with Terms) to John Edward Stanley, Respondent, at 376 West Main Street, Lebanon, VA 24266, Respondent's last address of record with the Virginia State Bar.



Scott Kulp
Assistant Bar Counsel