

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE DEC 4 2012
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Russell Nardy Allen

VSB Docket No. 12-033-089213

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On September 18, 2012, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Raymond R. Ratke (lay member), Thomas O. Bondurant, Jr., Esquire, and Lee Ann Anderson, Esquire, Chair, presiding. During the meeting, the Subcommittee indicated that it would approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia. The Respondent having entered into such an agreement with the Virginia State Bar, the Third District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. STIPULATIONS OF FACT

1. At all times relevant hereto the Respondent, Russell Nardy Allen, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On August 30, 2011, the Court of Appeals of Virginia notified the bar of its dismissal of three different appeals by two of Mr. Allen's court-appointed clients because of procedural defaults by Mr. Allen.
3. The court-appointed clients whose appeals were dismissed are William Jefferson Blye and Robert A. Blackwell.

William Jefferson Blye
4. In the Blye matter, the Court of Appeals notified Mr. Allen by memorandum that it had received the record on October 29, 2010, triggering the due date for the petition for appeal forty days later on December 8, 2010, in accordance with Rule 5A:12(a) of the Rules of Court.

5. Mr. Allen filed the petition for appeal one day late by hand-delivery on December 9, 2010, resulting in its dismissal on December 17, 2010, according to the court's order.

6. On December 29, 2010, Mr. Allen timely petitioned for a delayed appeal under Virginia Code Section 19.2-321.1 and restored the appeal to the appellate docket.

7. Mr. Blye, however, subsequently asked Mr. Allen to withdraw the appeal by letter, dated February 5, 2011, indicating that somewhere down the line he would be sending Mr. Allen "paperwork on a motion to reconsider sentence."

8. Mr. Allen attempted to reply by letter on February 14, 2012 indicating that he would withdraw the appeal, but sent the letter to the wrong location: the Henrico County Regional Jail East (17320 New Kent Highway, Barhamsville, VA). His client was in the Department of Corrections at the Baskerville Correctional Center, as indicated on the client's envelope from his February 5, 2011 letter to Mr. Allen.

9. Mr. Blye was never housed at the Henrico Regional Jail either, but had been at the Richmond City Jail prior to his transfer to the Department of Corrections.

10. Mr. Allen also used an incorrect name for his client on the envelope, resulting in the jail returning the letter to him.

11. Mr. Allen did not consult the online inmate locator service or take any other action to ascertain the correct whereabouts of his client.

12. Having been moved to the Department of Corrections, however, Mr. Blye was no longer eligible for a post-trial motion to reduce or modify his sentence.

13. On May 13, 2011, the Court of Appeals received the record and, once again, informed Mr. Allen by memorandum of the forty-day deadline for filing the petition for appeal.

14. By letter dated May 18, 2011, Mr. Allen requested the Court of Appeals to withdraw the appeal in accordance with Mr. Blye's request of February 5, 2011. The Court replied by letter, dated May 23, 2011, notifying Mr. Allen of its policy not to withdraw appeals without a supporting affidavit from the client, and furnished a form affidavit for Mr. Allen to use.

15. Mr. Allen tried to send the affidavit with post-it note instructions to Mr. Blye but, once again, used an incorrect address. For this reason, Mr. Blye never saw the affidavit.

16. By then, however, Mr. Blye had learned through his own research that a motion to reduce or modify his sentence was not possible because he had been moved to the Department of Corrections.

17. Mr. Allen explained to the bar that he knew a motion to reduce or modify a sentence was not available to a defendant once transferred to the Department of Corrections, but did not recall that Mr. Blye wrote to him about a motion to reconsider his sentence.

18. Mr. Blye verified with the bar's investigator that his prior mailing to Mr. Allen on February 5, 2011, showed his correct at the Baskerville Correctional Center.

19. Mr. Allen having filed neither an affidavit from his client nor a petition for appeal by the due date, the Court of Appeals dismissed the appeal a second time on July 8, 2011.

Robert A. Blackwell

20. On November 3, 2010, the Circuit Court of Henrico County sentenced Mr. Blackwell to forty-eight years to serve in the Department of Corrections for multiple felony convictions. The Court relieved Mr. Blackwell's defense counsel and appointed Mr. Allen for the appeal. Mr. Allen had no prior involvement in the case.

21. The Court entered its order on November 8, 2010, triggering a due date of December 8, 2010, for the notice of appeal.

22. Mr. Allen filed a notice of appeal on December 15, 2010, seven days late. For this reason, the Court of Appeals dismissed the appeal on February 25, 2011.

23. Mr. Allen said that the trial court notified him of his appointment by telephone, but that by the time he learned that the final order had been entered, it was too late to note the appeal. He candidly acknowledged that he did not monitor the entry of the final order and, therefore, missed his deadline.

24. Nonetheless, Mr. Allen obtained a delayed appeal for Mr. Blackwell and the Court of Appeals granted his petition and affirmed the convictions in an unpublished order. Mr. Allen appealed the decision to the Supreme Court of Virginia which dismissed the appeal.

25. Mr. Allen said that he has asked the court to stop appointing him for appeals and that he no longer takes court-appointed cases. He now tracks his cases with a legal notepad that he feels is working. He has no plans to use a tickler system or automated calendaring system.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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.

(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.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to impose a **Public Reprimand with Terms**. The terms shall be met by the dates set forth below, and are as follows:

By January 31, 2013, the Respondent will, at his own expense, identify a risk manager or mentor approved by the Virginia State Bar who is willing to review and make written recommendations concerning the Respondent's law office management practices and procedures to aid in the Respondent's future compliance with the Rules of Professional Conduct.

- a. The Respondent shall promptly inform Bar Counsel Edward L. Davis, Suite 1500, 707 East Main Street, Richmond, VA 23219-2800, in writing when he has obtained a risk manager/mentor, and seek the bar's approval of the mentor.
- b. The risk manager/mentor shall review all of the Respondent's law office management practices and procedures in general. In the event the mentor determines that the

Respondent has practices and procedures in place so as to aid in his future compliance with the Rules of Professional Conduct, the mentor shall so certify in writing to the Respondent and to the Bar Counsel's office at the Virginia State Bar.

- c. The Respondent shall be responsible for ensuring that the mentor furnishes this writing to the Bar Counsel's office no later than May 31, 2013.
- d. In the event the mentor determines that the Respondent's law office practices and procedures are deficient, such that in the mentor's opinion, the Respondent may likely commit future violations of the Rules of Professional Conduct, the mentor will make such report to the Bar Counsel's office by May 31, 2013, and the Respondent shall be responsible for ensuring that the mentor does so by the deadline provided.
- e. Following the date the mentor issues his or her written statement of the measures the Respondent must take to institute such measures; the Respondent shall institute such measures by June 30, 2013.
- f. The Respondent shall grant the mentor access to the Respondent's office after May 31, 2013, to determine whether the Respondent has instituted such measures. The mentor shall, by June 30, 2013, certify in writing to the Bar Counsel's office and to the Respondent either that the Respondent has instituted the recommended measures by the June 30, 2013 deadline, or that he has failed to do so. The Respondent shall be responsible for ensuring that the mentor furnishes this report to the Bar Counsel's office by the deadline provided.
- g. The Respondent's failure to conform his law office management practices and procedures of the mentor's recommendations by the June 30, 2013 deadline shall be considered a violation of the Terms set forth herein.

- h. If, by January 31, 2013, the Respondent has not found a risk manager or mentor suitable to the Virginia State Bar who is willing to do the work set forth above in (1), the Respondent shall promptly, at his own expense, engage Sensei Enterprises, Suite 225, 3975 University Drive, Fairfax, Virginia 22030, (703) 359-0700, to do so instead within the time periods stated above.

If the terms are not met by the dates referenced above, the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

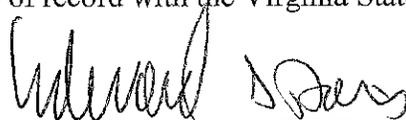
THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Lee Ann Anderson, Esquire
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on the 4th day of December, 2012, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Russell Nardy Allen, Respondent, at 2211 Colwyn Road, Richmond, Virginia 23229, Respondent's last address of record with the Virginia State Bar



Edward L. Davis
Bar Counsel