

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF

JAMES ANTHONY BULLARD, JR.

VS. VSB Docket Nos.

09-032-077894

09-032-077767

09-032-078765

MEMORANDUM ORDER
(PUBLIC REPRIMAND WITH TERMS)

This matter came on to be heard on August 19, 2010 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 Timothy A. Coyle, Nancy C. Dickenson, John Casey Forrester, Robert W. Carter, lay person, and William E. Glover, Chair, presiding (the Panel).

Kathryn R. Montgomery, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent James A. Bullard, appeared in person with counsel, Craig S. Cooley.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent 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 or her ability to be impartial in these matters. Each member, including the Chair verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary

record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel unanimously accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.

VSB Docket No. 09-032-077894 (Staton)

2. On or about January 30, 2007, Jamar D. Staton (“Staton”) was convicted of two counts of first degree murder in the Circuit Court for the City of Richmond.

3. On or about May 1, 2007, attorney Horace F. Hunter was appointed to handle Staton’s appeal.

4. Attorney Hunter did not perfect the appeal.

5. On or about November 30, 2007, Judge Richard D. Taylor, Jr. of Richmond Circuit Court appointed Respondent to handle Staton’s appeal.

6. Respondent did not thereafter pursue the appeal or communicate with Staton until January 2009, after Staton had filed a bar complaint against Respondent.

7. Respondent believes he did not have knowledge of the appointment until he received a fax from attorney Hunter on or about August 12, 2008. The notes of Judge Taylor’s secretary indicate that in November 2007 Respondent was informed of and accepted the appointment.

8. On or about November 21, 2008, attorney Hunter sent his file to Respondent.

9. On or about December 22, 2008, Staton filed a bar complaint against Respondent alleging lack of diligence and failure to communicate.

10. By letter dated January 8, 2009, Respondent advised Staton of his intent to move for a delayed appeal in the Court of Appeals.

11. On or about February 12, 2009, Respondent filed a Motion for Delayed Appeal in the Court of Appeals on behalf of Staton. On March 23, 2009, Cynthia L. McCoy, Clerk of the Court of Appeals, advised Respondent by letter that it was unnecessary for the Court to rule on his motion because the original notice of appeal had been timely filed.

12. On or about May 4, 2009, Respondent filed a Petition for Appeal in the Court of Appeals on behalf of Staton. On or about July 29, 2009, the Court of Appeals dismissed Staton's appeal.

13. On or about August 28, 2009, Respondent filed a Petition for Appeal in the Supreme Court of Virginia on Staton's behalf. Oral argument was set for December 11, 2009.

14. As of July 10, 2009, when he was interviewed by the Virginia State Bar's investigator, Staton stated that he had not heard from Respondent since February 2009.

VSB Docket No. 09-032-077767 (Daniel)

15. On or about February 6, 2007, Philip S. Daniel ("Daniel") was convicted of first degree murder and use of a firearm in the commission of murder in the Circuit Court for the City of Richmond.

16. Thereafter, attorney Reuben Greene was appointed by the Court to handle Daniel's appeal. Attorney Greene did not perfect the appeal.

17. On or about February 27, 2008, Judge Richard D. Taylor, Jr. of Richmond Circuit Court appointed Respondent to handle Daniel's appeal. On or about February 27, 2008, Judge Taylor's office faxed Respondent the order of appointment.

18. Respondent contacted the Clerk's Office for the Court of Appeals of Virginia to try to determine the deadline for filing the appeal. The Clerk's Office advised Respondent he needed to find out on what authority Judge Taylor had appointed him.

19. Respondent attempted to set up an appointment with Judge Taylor but concedes he was not as diligent as he should have been.

20. On or about October 15, 2008, Respondent received a letter from Daniel inquiring about the status of his appeal.

21. On or about December 10, 2008, Daniel filed a bar complaint against Respondent alleging lack of diligence and failure to communicate.

22. On or about December 22, 2008, after Respondent had received the bar complaint, Respondent sent Daniel a letter stating his intent to file a motion for delayed appeal.

23. According to Respondent, on or about January 29, 2009, Respondent met with Judge Taylor to discuss Daniel's case.

24. On or about March 30, 2009, Respondent filed a Motion for Delayed Appeal in the Court of Appeals of Virginia.

25. On or about April 3, 2009, Respondent sent Daniel a letter confirming that the Motion for Delayed Appeal had been filed.

26. On April 13, 2009, the Court of Appeals denied the Motion for Delayed Appeal as untimely, noting that Virginia Code Section 19.2-321.1 requires that the motion be filed within six months after the appeal has been dismissed or the circuit court judgment sought to be appealed has become final. No prior appeal had been filed on behalf of Daniel and the trial court's judgment had become final on May 21, 2007.

27. On or about April 17, 2009, Respondent sent Daniel a letter advising of the Court's decision and advising him that he may petition for writ of habeas corpus.

28. On or about May 14, 2009, Respondent sent Daniel a letter stating that he could not file a habeas petition against himself.

VSB Docket No. 09-032-078765 (VSB)

(The Haley Appeal)

29. On or about October 5, 2006, Nakohma Andres Haley ("Haley") was convicted of grand larceny and breaking and entering in the Circuit Court for the County of Henrico.

30. On or about October 27, 2006, Respondent was court appointed to represent Haley on his appeal.

31. Haley instructed Respondent to appeal his case through the Supreme Court of Virginia, if necessary.

32. By letter dated October 27, 2006, Respondent advised Haley that he had noted an appeal to the Court of Appeals of Virginia.

33. On or about January 8, 2007, Respondent filed a Petition for Appeal with the Court of Appeals of Virginia. On May 4, 2007, the appeal was denied.

34. According to Haley, throughout the representation, Respondent did not return his telephone calls or the calls of his family members.

35. According to Haley, Respondent never told him that his appeal to the Court of Appeals was denied. Instead, Haley learned of the denial from the Court.

36. On or about May 11, 2007, Respondent filed in the Court of Appeals a Notice of Appeal, noting the appeal of Haley's case to the Supreme Court of Virginia.

37. On or about May 23, 2007, Respondent received a letter from Haley in which Haley stated “as you know, my appeal didn’t go through,” and inquired about a sentence reduction.

38. On or about June 6, 2007, Respondent filed in the Court of Appeals and in the Supreme Court a motion for extension of time to file a notice of appeal and petition for appeal. On June 19, 2007, the Supreme Court denied the motion.

39. Respondent thereafter took no further action on Haley’s behalf.

40. Respondent failed to communicate to Haley that his appeal to the Supreme Court had been dismissed.

41. On July 7, 2009, Haley told the Virginia State Bar investigator that he did not know whether or not Respondent had even appealed his case to the Supreme Court of Virginia.

(The Moore Appeal)

42. On or about February 8, 2006, Anthony Moore (“Moore”) was convicted of grand larceny and statutory burglary in the Circuit Court for the County of Henrico.

43. Attorney Samuel P. Simpson, V was initially appointed to represent Moore in his appeal. On August 23, 2006, the Court of Appeals of Virginia dismissed Moore’s appeal because neither a transcript nor statement of facts was timely filed.

44. On or about October 31, 2006, Judge Burnett Miller, III of the Henrico County Circuit Court appointed Respondent to handle Moore’s delayed appeal.

45. Respondent obtained a delayed appeal. On or about April 4, 2007, he filed a Petition for Appeal on behalf of Moore in the Court of Appeals.

46. By letter dated April 4, 2007, Respondent sent Moore a copy of the Petition for Appeal.

47. On June 7, 2007, the Court of Appeals denied Moore's appeal.

48. On or about July 9, 2007, Respondent filed Notice of Appeal to the Supreme Court of Virginia.

49. On or about July 9, 2007, Respondent filed a Petition for Appeal in the Supreme Court of Virginia.

50. On January 11, 2008, the Supreme Court of Virginia dismissed Moore's appeal, finding that the Notice of Appeal was not timely filed.

51. Respondent did not advise Moore that his appeal to the Supreme Court had been dismissed.

52. Respondent received a letter from Moore on or about June 16, 2008 requesting information about the status of his appeal. On or about July 22, 2008, Respondent sent Moore a letter enclosing copies of the orders of the Court of Appeals and Supreme Court of Virginia.

53. Respondent did not take any further action on Moore's behalf.

(The Harris Matter)

54. On or about December 14, 2006, Tranzle Lee Harris ("Harris") was convicted of possessing a firearm after having been convicted of a felony in the Circuit Court for the County of Henrico.

55. On or about December 19, 2006, Respondent was court appointed by Judge Gary A. Hicks of the Henrico Circuit Court to represent Harris on his appeal.

56. Harris instructed Respondent to appeal his case through the Supreme Court of Virginia, if necessary.

57. On or about May 9, 2007, Respondent filed Petition for Appeal with the Court of

Appeals of Virginia.

58. On or about May 10, 2007, Respondent sent Harris a copy of the Petition for Appeal.

59. On August 23, 2007, the Court of Appeals denied the appeal.

60. On or about September 24, 2007, Respondent filed a Notice of Appeal, noting the appeal of Harris' case to the Supreme Court of Virginia.

61. On or about September 27, 2007, Respondent filed the Petition for Appeal in the Supreme Court of Virginia.

62. On or about December 10, 2007, Respondent received a letter from Harris requesting information about the status of his appeal and complaining about Respondent's lack of communication since appointment.

63. By letter dated December 12, 2007, Respondent advised Harris that his appeal to the Court of Appeals had been denied, that he had filed an appeal to the Supreme Court of Virginia, and that he was awaiting the Supreme Court's decision.

64. On January 11, 2008, the Supreme Court of Virginia denied Harris' appeal on the basis that the Notice of Appeal was not timely filed.

65. Respondent failed to communicate to Harris that his appeal to the Supreme Court had been dismissed.

66. Respondent thereafter took no further action on Harris' behalf.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by James Anthony Bullard, Jr. constitutes misconduct 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.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that Respondent receive a Public Reprimand With Terms. The terms with which the Respondent must comply are as follows:

1. By November 1, 2010, undergo a law office management audit by Sensei Enterprises, Inc. ("Sensei") related to the management failures which are the subject of violations noted herein. Respondent shall cooperate with Sensei in all aspects of the audit and follow-up consultations. Respondent shall sign a release allowing Sensei to disclose its findings and reports to the Virginia State Bar. Respondent shall be responsible for payment to Sensei. Follow-up consultations may occur after November 1, 2010 as necessary.
2. For the time period September 1, 2010 to September 1, 2011, meet with a member of the Virginia bar once a quarter (for a total of four meetings) to discuss law office management, calendaring, and Respondent's caseload and deadlines. The person selected must be approved in advance by Assistant Bar Counsel Kathryn R. Montgomery or her designee. Within one week of each meeting, Respondent shall send to Assistant Bar Counsel Kathryn R. Montgomery or her designee a written summary of the meeting and the items discussed.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all the terms and conditions are not met by the deadlines imposed above, the Disciplinary Board shall impose a 60-day suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a copy of this order by certified mail to James Anthony Bullard, Jr. at his last address of record with the Virginia State Bar, James A. Bullard, Jr., P.C. , 2916 Chamberlayne Avenue , Richmond, VA 23222, and by regular mail to his counsel, Craig S. Cooley, 3000 Idlewood Avenue, Richmond, VA 23221-0268, and hand-delivered to Kathryn R. Montgomery at 707 East Main Street, Suite 1500, Richmond, VA 23219.

Valarie May of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: August 20, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____



William E. Glover, Chair