

VIRGINIA:

**BEFORE THE TENTH DISTRICT—SECTION II COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
PAUL MICHAEL CHILDERS**

VS Docket No. 08-102-073221

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On August 17, 2009, a hearing in this matter was held before a duly convened Tenth District Committee panel consisting of R. Lucas Hobbs, Esquire, Chair, Terry Kilgore, Esquire, Lisa McConnell, Esquire, Edward Stout, Esquire, Sandra Montgomery, Lay Member, and Linda Rasnick, Lay Member.

Respondent did not appear. Kathryn R. Montgomery, Assistant Bar Counsel appeared as counsel for the Virginia State Bar.

Pursuant to Part Six, Section IV, Paragraph 13-16.Z: of the Rules of the Virginia Supreme Court, the Tenth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, Paul Michael Childers ("Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was court-appointed to handle an appeal to the Virginia Court of Appeals for the complainant, Douglas R. Clifton ("Complainant.").
3. Respondent timely filed the appeal, arguing that the trial court abused its discretion by imposing a sentence outside the range recommended by the sentencing guidelines and by failing to provide a written explanation for that departure.
4. On July 12, 2006, the Court of Appeals, *per curiam*, denied Complainant's appeal. The order was final unless further proceedings were initiated within fourteen days under Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a).

5. On July 24, 2006, before Complainant learned the outcome of the appeal, he wrote Respondent a letter instructing him to demand a rehearing before the Court of Appeals and, if necessary, to file an appeal to the Supreme Court of Virginia, should his current appeal be denied.
6. On July 28, 2006, Respondent wrote Complainant a letter advising that his appeal had been denied. Respondent said he had not sought a rehearing due to a lack of case law supporting his argument. Respondent acknowledged receiving Complainant's July 24, 2006 letter, and said he was moving to withdraw because he could not ethically seek a further appeal.
7. Respondent's motion to withdraw was denied.
8. Despite Complainant's instructions, Respondent did not appeal to the Supreme Court of Virginia.
9. On December 13, 2007, Complainant filed a bar complaint against Respondent alleging, among other things, that Respondent had failed to return his file and the trial transcripts despite repeated requests.
10. On February 9, 2008, Respondent filed a written response to the bar complaint stating that although he had already returned a copy of the file and transcripts to Complainant, he would resend the materials. Respondent's letter said, "I am working to copy my file and will send it to him."
11. On April 9, 2008, Respondent was interviewed by the bar's investigator. During the interview, Respondent admitted that he had not resent the file or transcripts to Complainant. Respondent also admitted that he did not know what an *Anders* brief was.
12. On June 25, 2008, the bar's investigator interviewed Respondent again. Respondent admitted that he had not resent the file or transcripts to Complainant.
13. On November 19, 2008, the Virginia State Bar served a subpoena *duces tecum* on Respondent, which sought "copies of all documents, including but not limited to a cover letter, envelope, delivery charge invoice, or mail log, evidencing the transmittal of the client file and transcripts to Douglas Robert Clifton. If no such documents exist, please indicate that in your response."
14. Respondent did not respond to the bar's subpoena.
15. On February 4, 2009, the Virginia State Bar Disciplinary Board suspended Respondent's license to practice law for failing to comply with a bar subpoena.
16. Respondent did not send the transcripts or a copy of the client file to the Complainant as requested by Complainant.

II. NATURE OF MISCONDUCT

Such conduct by Paul Michael Childers constitutes violations 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 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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.
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs

collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

RULE 8.1 Bar Admission And Disciplinary Matters

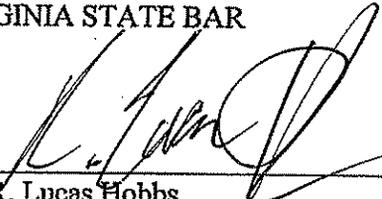
An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

III. PUBLIC REPRIMAND WITHOUT TERMS

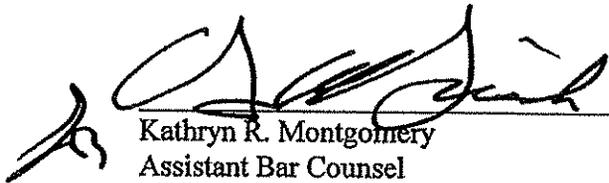
Accordingly, it is the decision of the District Committee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded. Pursuant to Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs. The Clerk is directed to send a copy of this Determination to Respondent both at his address of record and his home address.

TENTH DISTRICT—SECTION II COMMITTEE
OF THE
VIRGINIA STATE BAR

By 
R. Lucas Hobbs
Chair

CERTIFICATE OF SERVICE

I certify that on August 18, 2009, I caused to be mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Reprimand) to Paul Michael Childers, Respondent, at Pruitt & Childress, P.C., 1080 Walnut Street, PO Box 1259, Grundy, VA 24614-1259, Respondent's last address of record with the Virginia State Bar and by Certified Mail, Return Receipt Requested and regular mail to Respondent's home address, 1010 Frank Hollow Road, Grundy, VA 24614.


Kathryn R. Montgomery
Assistant Bar Counsel