

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF) VSB Docket Nos. 09-090-079790
JON IAN DAVEY) and
) 09-090-079865

ORDER OF SUSPENSION

These matters came on to be heard on April 23, 2010, before a panel of the Virginia State Bar Disciplinary Board consisting of Thomas R. Scott, Jr., Chair, Timothy A. Coyle, Nancy C. Dickenson, J. Casey Forrester and Stephen A. Wannall, lay member [the "Board"].

The Virginia State Bar [the "Bar"] was represented by Renu M. Brennan, Assistant Bar Counsel. Jon Ian Davey [the "Respondent"] appeared in person and was represented by counsel, Craig S. Cooley. Tracy J. Johnson, a registered professional reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the proceedings and polled the members of the Board as to whether any of them had any personal or financial interest, which would impair, or reasonably could be perceived to impair his or her ability to be impartial. Each member of the Board, including the Chair, responded in the negative.

These matters came before the Board on the Subcommittee Determination for Certification by the Ninth District Subcommittee of the Bar. The Certification was sent to Respondent on November 24, 2009.

At the commencement of the hearing, Bar Exhibits 1 through 9 and Respondent Exhibits 1 through 6 were admitted without objection and collectively marked as Composite

Exhibit A. The parties also entered into the following Stipulations of Fact and Misconduct, which were admitted into evidence by agreement:

STIPULATIONS OF FACT AND MISCONDUCT

I. VS B Docket No. 09-090-079865

A. STIPULATED FINDINGS OF FACT

1. Respondent was court appointed to represent three defendants, Kenneth Thomas Morrison, Charles Van Hooker, and Shantae Lamond Stanfield, in underlying criminal matters and, either by virtue of the order or Virginia law, in their respective appeals. Respondent does not dispute that his appointments for each of the three defendants included representation of each defendant in his appeal.
2. Each client, Kenneth Thomas Morrison, Charles Van Hooker, and Shantae Lamond Stanfield, requested that Respondent appeal the Courts' respective decisions in their cases.
3. Respondent timely noted each of the three clients' appeals.

Kenneth Thomas Morrison

4. Mr. Morrison's petition for appeal was due February 23, 2009. On Friday, February 20, 2009, Respondent mailed Mr. Morrison's petition by first class mail. The Court of Appeals did not receive the petition by the February 23, 2009 deadline.
5. On February 27, 2009, the Court of Appeals dismissed Mr. Morrison's appeal because the petition was not timely filed.
6. Respondent learned of the dismissal of Mr. Morrison's appeal during the first week of March 2009.
7. Respondent did not inform Mr. Morrison of the dismissal of the petition until July 16, 2009, after he received a complaint from the Virginia State Bar and approximately four and one-half months after the dismissal.
8. Respondent assisted Mr. Morrison in obtaining successor counsel who requested leave to file a delayed appeal on Mr. Morrison's behalf.

Charles Van Hooker

9. Mr. Van Hooker's petition for appeal was due February 23, 2009. On Friday, February 20, 2009, Respondent mailed Mr. Van Hooker's petition by first class mail. The Court of Appeals did not receive the petition by the February 23, 2009 deadline.
10. On February 27, 2009, the Court of Appeals dismissed Mr. Van Hooker's appeal because the petition was not timely filed.
11. Respondent learned of the dismissal of Mr. Van Hooker's appeal during the first week of March 2009.
12. Respondent did not inform Mr. Van Hooker of the dismissal of the petition until July 16, 2009, after he received a complaint from the Virginia State Bar and approximately four and one-half months after the dismissal.
13. Respondent assisted Mr. Van Hooker in obtaining successor counsel who requested leave to file a delayed appeal on Mr. Van Hooker's behalf.

Shauntae Lamond Stanfield

14. Respondent requested a 15-day extension of time to file Mr. Stanfield's petition for appeal.
15. Although the Court of Appeals granted a seven-day extension to file the petition for appeal, Respondent did not timely file Mr. Stanfield's petition for appeal with the Court of Appeals.
16. On March 20, 2009, the Court of Appeals dismissed Mr. Stanfield's appeal because the petition was not timely filed.
17. Respondent learned of the dismissal of Mr. Stanfield's appeal March 20, 2009.
18. Respondent did not inform Mr. Stanfield of the dismissal of the petition until July 16, 2009, after he received a complaint from the Virginia State Bar and almost four months after the dismissal.
19. Respondent assisted Mr. Stanfield in obtaining successor counsel who requested leave to file a delayed appeal on Mr. Stanfield's behalf.

B. STIPULATED NATURE OF MISCONDUCT

Such conduct by Jon Ian Davey constitutes misconduct in violation of the following provisions of the 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.

II. VSb Docket No. 09-090-079790

A. STIPULATED FINDINGS OF FACT

1. Respondent was counsel for appellant Willie Hampton Moss in the matter of *Willie Hampton Moss v. Commonwealth of Virginia*, Record No. 0589-08-3 (“Moss appeal”).
2. Respondent was counsel for appellant Ronnie Lee Warner, Jr. in the matter of *Ronnie Lee Warner, Jr. v. Commonwealth of Virginia*, Record No. 1144-08-3 (“Warner appeal”).
3. On March 5, 2009, the clerk of the Court of Appeals of Virginia (“Court”) notified Respondent that the case of *Willie Hampton Moss v. Commonwealth of Virginia*, Record No. 0589-03-3, was scheduled to be argued before a panel of judges of the Court in the Roanoke County Circuit Courthouse in Salem, Virginia, on Tuesday, April 7, 2009, at 10:00 a.m.
4. On March 5, 2009, the clerk of the Court notified Respondent that the case of *Ronnie Lee Warner, Jr. v. Commonwealth of Virginia*, Record No. 1144-08-3, was scheduled to be argued before a panel of judges of the Court in the Roanoke County Circuit Courthouse in Salem, Virginia, on Tuesday April 7, 2009, at 11:00 a.m.
5. Respondent received the March 5, 2009 letter from the clerk of the Court notifying him of the date, time, and location of the hearings in both the Moss and Warner appeals.

6. Respondent failed to appear on April 7, 2009, for oral argument in both the Moss and Warner appeals.
7. After Respondent failed to appear for oral argument in both the Moss and Warner appeals, the clerk of the Court notified Respondent that he was to file a letter with the Court concerning his failure to appear on April 7, 2009.
8. On April 10, 2009, Respondent filed a letter with the Court in which he stated that the notification of oral argument was never transferred to his calendar.
9. The Court subsequently issued Respondent an order to show cause why Respondent should not be held in contempt for his failure to appear at argument in each of the Moss and Warner appeals. The order to show cause compelled Respondent's attendance at the Court in Richmond, Virginia, on May 5, 2009.
10. On May 5, 2009, Respondent appeared before a three-judge panel of the Court in Richmond. Respondent acknowledged receiving the Court's notification of oral argument in both the Moss and Warner appeals, but he indicated he failed to calendar the matters. Respondent represented to the Court that he was unable to show good cause for his failure to appear.
11. On June 2, 2009, the Court found Respondent in contempt of Court. The Court fined Respondent \$250.00 for his failure to appear in each the Moss and Warner matters and prohibited Respondent from representing clients before the Court for two years from the date of the Order.
12. The Court appointed successor counsel for both Messrs. Moss and Warner in their appeals. Successor counsel filed appeals for both Messrs. Moss and Warner in the Supreme Court of Virginia.

B. STIPULATED NATURE OF MISCONDUCT

Such conduct by Jon Ian Davey constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

FINDING OF MISCONDUCT

Following the admission of the agreed exhibits (Composite Exhibit A) and the Stipulations of Fact and Misconduct, the Board recessed to consider whether the charges had been proven by clear and convincing evidence. When the proceedings reconvened, the Chair announced the decision of the Board: In VSB Docket No. 09-090-079865, the Bar has proven by clear and convincing evidence violations of Rules 1.3(a) and 1.4(a) of the Rules of Professional Conduct; in VSB Docket No. 09-090-079790, the Bar has proven by clear and convincing evidence a violation of Rule 1.3(a) of the Rules of Professional Conduct.

IMPOSITION OF SANCTION

After considering the testimony of Albert E. Rhodenizer, Jr., investigator for the Bar, the testimony of R. Bryan Haskins, Brian Turpin, Henry Crider, J. Patterson Rogers, III, and the Rev. Charles Wickham on behalf of the Respondent, the written testimony of Mark Holland, J. Victor Millner, Jr., Michael J. Newman and Robert Hurt on behalf of the Respondent, the testimony of the Respondent, all exhibits introduced by the Bar and the Respondent, including Respondent's prior disciplinary record (admitted as Bar's Exhibit B) and having heard argument, the Board recessed to deliberate. After due deliberation, the Board reconvened and the Chair announced that upon consideration of all the testimony, the exhibits, the factors in aggravation and mitigation, the Respondent's prior disciplinary record which includes three instances of private discipline and three instances of public discipline since 1998, and taking into account the fact that the Court of Appeals of Virginia has suspended Respondent from practicing before that Court for a period of two (2) years, the sanction to be imposed by the

Board is suspension of Respondent's license to practice law for a period of sixty (60) days, effective April 23, 2010.

Accordingly, it is ORDERED that the Respondent, Jon Ian Davey, be suspended from the practice of law for a period of sixty (60) days, effective April 23, 2010.

It is further ORDERED that, as directed in the Board's April 23, 2010 Summary Order in these matters, Respondent must comply with the requirements of Part Six, § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's client. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this order, Respondent shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 shall be determined by the Virginia State Bar

Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13-9E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent Jon Ian Davey, at his address of record with the Virginia State Bar, by certified mail, return receipt requested. The Clerk of the Disciplinary System shall also mail an attested copy of this order, by regular mail, to Craig S. Cooley, Esquire, 3000 Idlewood Avenue, Richmond, Virginia 23221 and to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 29th day of April, 2010

VIRGINIA STATE BAR DISCIPLINARY BOARD

by: Thomas R. Scott, Jr.
Thomas R. Scott, Jr., Chair