

VIRGINIA:

BEFORE THE NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JON IAN DAVEY

VS. Docket No. 08-090-072907

SUBCOMMITTEE DETERMINATION
([PUBLIC REPRIMAND WITH TERMS])

On April 22, 2008, a meeting in this matter was held before a duly convened Ninth District Subcommittee consisting of James McGarry, Esquire, Chair, Frank Wright, Esquire, and John Crowder, Lay Member.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Ninth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was court-appointed to represent Complainant, Phillip J. Hairston, on appeal of his convictions for drug and firearm offenses.
3. The Petition for Appeal to the Court of Appeals was denied on August 24, 2006. By August 31, 2006 letter, Respondent informed Mr. Hairston of the denial and asked Mr. Hairston to notify him should he want to appeal to the Virginia Supreme Court. Respondent further indicated he had demanded reconsideration by a 3-Judge Panel of the Court of Appeals.

4. By September 5, 2006 letter, Mr. Hairston conveyed his desire to appeal to the Virginia Supreme Court. He further states: "I really don't understand what is going on. As far as the '3-Judge panel' does, But yes I would like to appeal to the Supreme Court."

5. By November 1, 2006 correspondence, Respondent notified Mr. Hairston of the November 28, 2006 oral argument before the 3-Judge Panel.

6. The record shows the 3-Judge Panel of the Court of Appeals denied the appeal on December 28, 2006. Respondent, however, contends he never received notice of the Court's disposition. Respondent contends he relies upon receipt of the Court's decision to determine his deadline for filing an appeal with the Virginia Supreme Court.

7. After his November 2006 communication with Respondent, Mr. Hairston contends he unsuccessfully tried to obtain a status report from Respondent about his appeal.

8. Counselor Booker with Greensville Correctional Center informed the bar's Investigator that he left voicemail messages for Respondent in March 2007 and again in the summer of 2007 asking Respondent to contact Mr. Hairston about his appeal.

9. Respondent denies receiving any correspondence from Mr. Hairston after November 2006. He further contends that had Mr. Hairston or his counselor called his office, he did not answer such calls; moreover, his secretary has been instructed not to accept collect phone calls from incarcerated clients if he is not in the office to speak to them.

10. Mr. Hairston filed his bar Complaint in November 2007, and Respondent was notified of the same by letter dated November 19, 2007.

11. At no time between the November 28, 2006 oral argument and Mr. Hairston's November 2007 bar Complaint did Respondent obtain a status report from the Court of Appeals.

12. Respondent acknowledges both that he never communicated with Mr. Hairston after November 2006 and that he is unfamiliar with Va. Code § 19.2-321.2 which authorizes, in pertinent part, a delayed appeal to the Virginia Supreme Court if an appeal has never been initiated due to error, neglect, or fault if filed within six months of the appeal's dismissal. Given the time that has transpired since the Court of Appeals' December 28, 2006 denial, Mr. Hairston is unable to invoke the provisions of Va. Code § 19.2-321.2.

II. 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.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee 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 are:

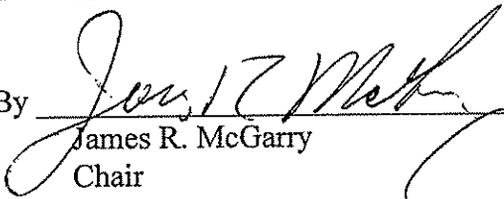
1. Respondent must create and implement a docket control system to ensure that Respondent periodically tracks and reviews the status of all pending matters as an advance reminder of key deadlines and other obligations so as to avoid the kind of unreasonable inactivity occurring in the instant case. Respondent is charged both with describing in detail the docket control system and with certifying its adoption and implementation to the Office of Bar Counsel within **45 days** after the date of the Subcommittee Determination.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by the specified dates, this subcommittee shall impose a Sanction a Certification For Sanction Determination as defined by Part VI, Section IV, Paragraph 13.A of the Rules of the Virginia Supreme Court and set forth in Part VI, Section IV, Paragraph 13.G.5.b. of the Rules of the Virginia Supreme Court. If there is disagreement as to whether the Terms were fully and timely completed, the Ninth District Committee will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the Terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

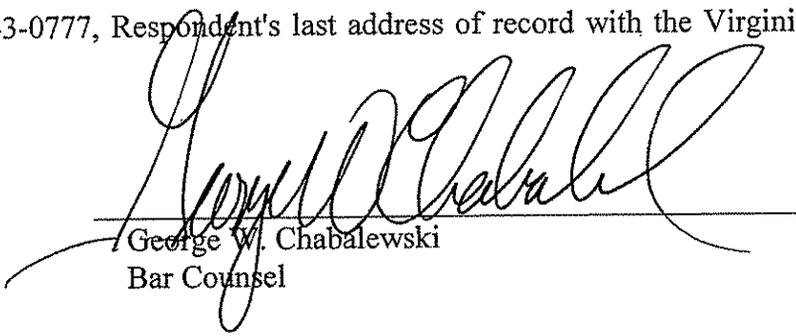
By


James R. McGarry

Chair

CERTIFICATE OF SERVICE

I certify that on May 6, 2008, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination, a Public Reprimand with Terms to Jon Ian Davey, Esquire, Respondent, at Law Office of Jon I. Davey, 128 South Market Street, P.O. Box 777, Danville, VA 24543-0777, Respondent's last address of record with the Virginia State Bar.


George W. Chabalewski
Bar Counsel