

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF  
David Richards DuBose

VSB Docket Nos. 14-032-099034,  
14-032-097904, 14-032-099869, and  
14-033-098816

**SUBCOMMITTEE DETERMINATION**  
**(PUBLIC REPRIMAND WITH TERMS)**

On August 15, 2014 a meeting was held in this matter before a duly convened Third District Subcommittee consisting of Michelle H. Papierniak, lay member; Devika E. Davis, member; and R. Braxton Hill, IV, chair presiding. During the meeting, the Subcommittee voted to 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 agreed disposition was entered into by the Virginia State Bar, by Renu Mago Brennan, Assistant Bar Counsel; David Richards DuBose, Respondent; and Craig Stover Cooley, Esquire, counsel for Respondent.

WHEREFORE, the Third District Subcommittee, Section II of the Virginia State Bar hereby serves upon Respondent the following PUBLIC Reprimand with Terms:

**I. FINDINGS OF FACT**

1. At all times referenced herein Respondent David Richards DuBose (Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

**VSB 14-032-099034 (Hopkins and Randolph)**

**Mark Leigh Hopkins**

2. Respondent represented, *pro bono*, Mark Leigh Hopkins at trial in the Circuit Court of Hanover County on two charges: assault on law enforcement and threatening telephone calls. The Court dismissed the telephone threat charge on a defense Motion to Strike.

3. By Order entered October 15, 2013, the Circuit Court of Hanover County appointed Respondent counsel for Mr. Hopkins in his appeal from judgment rendered against him by the Hanover County Circuit Court on September 10, 2013, upon conviction for assault on law enforcement in violation of Va. Code Section 18.2-57(C).
4. Respondent timely noted Mr. Hopkins's appeal to the Court of Appeals of Virginia.
5. The record in the case was filed with the Court of Appeals of Virginia on December 12, 2013.
6. By e-mail dated December 13, 2013, to Respondent, the Court of Appeals of Virginia advised Respondent that the Court had received the trial transcript.
7. Respondent acknowledges receipt and review of the December 13, 2013, e-mail from the Court of Appeals of Virginia.
8. Respondent states that upon notification that the Court of Appeals has the trial transcript, he typically calendars the deadline to file the Petition for Appeal, however, here, he failed to do so.
9. The Petition for Appeal was due January 22, 2014.
10. Respondent did not timely file the Petition for Appeal by January 22, 2014.
11. By Order entered February 28, 2014, the Court of Appeals of Virginia dismissed Mr. Hopkins's appeal because Respondent did not timely file the Petition for Appeal.
12. Respondent did not communicate with Mr. Hopkins or keep him advised of the status of his appeal. Respondent did not advise Mr. Hopkins that his appeal was dismissed, the reason for dismissal, or of his options on dismissal.
13. In March 2014, Mr. Hopkins received a letter from the Court of Appeals of Virginia stating that his appeal was dismissed. Mr. Hopkins contacted Respondent to inquire about the dismissal, but Respondent did not return Mr. Hopkins's messages.
14. In May or June 2014, Respondent filed a Motion to Permit Mr. Hopkins to file a Delayed Appeal pursuant to Va. Code Section 19.2-321.1. The Court of Appeals of Virginia inquired whether Mr. Hopkins still wanted to pursue the appeal.
15. On June 9, 2014, Respondent contacted Mr. Hopkins to determine whether he wanted to proceed with the appeal. Mr. Hopkins advised Respondent that he did.
16. On Respondent's motion, by Order entered June 24, 2014, the Court of Appeals of Virginia granted Mr. Hopkins leave to file a replacement notice of appeal from the judgment rendered against him September 10, 2013. The Court of Appeals of

Virginia ordered the Circuit Court of Hanover County to appoint counsel to represent Mr. Hopkins on appeal, with all computations of time as required by the Rules of Court and applicable statutes commencing on the date of the entry of the order appointing counsel.

17. The Circuit Court of Hanover County appointed Respondent to file the Replacement Appeal.
18. Respondent filed the Replacement Notice of Appeal.

**Marcus Obrian Randolph**

19. Respondent was court appointed to represent Marcus Obrian Randolph in his criminal trial and appeal. Respondent represented Mr. Randolph in a jury trial on three felony charges. The jury acquitted Mr. Randolph on one of the three charges.
20. Respondent timely noted Mr. Randolph's appeal to the Court of Appeals of Virginia.
21. The record in the case was filed with the Court of Appeals of Virginia on December 10, 2013.
22. The Petition for Appeal was due January 22, 2014.
23. Respondent did not timely file the Petition for Appeal by January 22, 2014.
24. On the night of January 21, 2014, Respondent attempted to timely file the Petition for Appeal, but he was unable to secure postage, certified, from the vending kiosk at his local Richmond post office.
25. By Order entered February 28, 2014, the Court of Appeals of Virginia dismissed Mr. Randolph's appeal because Respondent did not timely file the Petition for Appeal.
26. Respondent did not communicate with Mr. Randolph or keep him advised of the status of his appeal. Respondent did not advise Mr. Randolph that his appeal was dismissed, the reason for dismissal, or of his options on dismissal.
27. In June 2014, Respondent filed a Motion to Permit Mr. Randolph to file a Delayed Appeal pursuant to Va. Code Section 19.2-321.1.
28. By Order entered June 24, 2014, the Court of Appeals of Virginia granted Mr. Randolph leave to file a replacement notice of appeal from the judgment rendered against him September 5, 2013. The Court of Appeals of Virginia also ordered the Circuit Court of Hanover County to appoint counsel to represent Mr. Randolph on appeal, with all computations of time as required by the Rules of Court and applicable statutes commencing on the date of the entry of the order appointing counsel.

Such conduct constitutes misconduct in violation of Rules of Professional Conduct 1.3(a) (Diligence) and 1.4(a) (Communication), cited below.

**VSB 14-032-097904 (Bridges)**

29. The Circuit Court of Hanover County appointed Respondent to represent Thomas Arsidious Bridges, III in his appeal from judgment rendered against him by the Hanover County Circuit Court, upon conviction for concealment/felony.
30. The Sentencing Order imposing judgment against Mr. Bridges was entered by the Hanover County Circuit Court on October 2, 2012.
31. By Amended Sentencing Order entered November 1, 2012, the Hanover County Circuit Court set aside the Sentencing Order entered October 2, 2012.
32. Mr. Bridges requested Respondent appeal the judgment.
33. Respondent calculated his deadline to note Mr. Bridges's appeal from the date of entry of the Amended Sentencing Order, November 1, 2012, instead of the date of entry of the Sentencing Order, October 2, 2012.
34. By Order entered October 9, 2013, the Court of Appeals of Virginia dismissed Mr. Bridges's appeal because the Notice of Appeal was not timely filed.
35. Respondent never communicated with Mr. Bridges regarding the status of the appeal. Respondent did not communicate with Mr. Bridges after he was sentenced and sent to jail.
36. Respondent did not advise Mr. Bridges that his appeal was dismissed or of the basis of the dismissal, nor did Respondent advise Mr. Bridges of his options upon dismissal of the appeal.
37. After learning of the dismissal of Mr. Bridges's appeal on October 9, 2013, Respondent did nothing further on Mr. Bridges's behalf, effectively terminating his representation without advising his client.

Such conduct constitutes misconduct in violation of Rules of Professional Conduct 1.3(a) (Diligence); 1.4(a) (Communication); and Rule 1.16 (c) and (d) (Declining or Terminating Representation) cited below.

**VSB 14-032-099869 (Mallory)**

38. Respondent was appointed to represent Andrew Izia Mallory in his criminal jury trial in the Circuit Court of Hanover County on two felony charges. The jury acquitted Mr. Mallory of one of the two felony charges.

39. Respondent was appointed to represent Mr. Mallory in the appeal of judgment rendered against Mr. Mallory by the Circuit Court of Hanover County on December 18, 2013.
40. Respondent timely noted Mr. Mallory's appeal to the Court of Appeals of Virginia.
41. The record in the criminal appeal was filed March 12, 2014. The deadline to file the Petition for Appeal was April 21, 2014.
42. On the night of April 21, 2014, the deadline to file the Petition for Appeal, Respondent could not locate a working postal kiosk, and Respondent did not timely file the Petition for Appeal.
43. Respondent hand delivered the Petition for Appeal to the Court of Appeals on April 22, 2014, the day after the Petition was due.
44. By Order entered May 23, 2014, the Court of Appeals of Virginia dismissed Mr. Mallory's appeal because Respondent did not timely file the Petition for Appeal.
45. Respondent did not keep Mr. Mallory advised of the status of his appeal or the dismissal of the appeal.
46. Respondent filed a Motion for Delayed Appeal on Mr. Mallory's behalf, which was granted by Order entered July 2, 2014, by the Court of Appeals of Virginia.
47. By Order entered July 10, 2014, the Circuit Court of Hanover County appointed Respondent to represent Mr. Mallory in filing a replacement Notice of Appeal.
48. Respondent filed a Replacement Notice of Appeal on Mr. Mallory's behalf in the Circuit Court of Hanover County.
49. After the bar complaint and investigation of this matter, Respondent advised Mr. Mallory of the status of the appeal, the dismissal of the appeal, the Motion for and Order granting the delayed appeal, and the Replacement Notice of Appeal. Respondent memorialized this conversation in a letter to Mr. Mallory.

Such conduct constitutes misconduct in violation of Rules of Professional Conduct 1.3(a) (Diligence) and 1.4(a) (Communication), cited below.

**VSB 14-033-098816/Complainant Derrick Brandon Graham**

50. Respondent represented, *pro bono*, Derrick Brandon Graham at trial in the Circuit Court of Hanover County on four felony charges.
51. By Order of the Circuit Court of Hanover County, Respondent was appointed counsel for Mr. Graham in his appeal from judgment rendered against him on January 10,

2012, by the Hanover County Circuit Court, upon convictions for statutory burglary in violation of Va. Code Section 18.2-91, conspiracy to commit burglary in violation of Va. Code Section 18.2-22, grand larceny in violation of Va. Code Section 18.2-95, and conspiracy to commit grand larceny in violation of Va. Code Section 18.2-23.

52. Despite numerous inquiries from Mr. Graham, Respondent did not communicate with Mr. Graham throughout the appellate process.
53. Throughout the appellate process, Mr. Graham had to inquire of the Court of Appeals as to the status of his appeal because Respondent failed to keep him advised.
54. Respondent timely noted and perfected Mr. Graham's appeal to the Court of Appeals of Virginia.
55. By Order entered October 18, 2012, the Court of Appeals of Virginia granted in part and denied in part Mr. Graham's appeal.
56. By letter dated December 17, 2012, Mr. Graham wrote to the Court of Appeals to inquire as to the status of his appeal.
57. By Memorandum Opinion dated April 2, 2013, the Court of Appeals of Virginia reversed and dismissed Mr. Graham's convictions for statutory burglary and conspiracy to commit burglary.
58. Respondent did not advise Mr. Graham of the Court of Appeals of Virginia's Order of October 18, 2012, or the April 2, 2013 dismissal of two counts. Respondent did not advise Mr. Graham of his right to appeal to the Supreme Court of Virginia that portion of the appeal denied by the Court of Appeals.
59. Respondent did not perfect Mr. Graham's appeal to the Supreme Court of Virginia.
60. Mr. Graham learned of the ruling of the Court of Appeals of Virginia from another attorney.
61. Respondent asserts that he spoke in person with Mr. Graham's mother shortly after the reversal of Mr. Graham's burglary related convictions.
62. Upon learning that of the Court of Appeals's ruling, Mr. Graham, by letter to Respondent, inquired as to why the Court of Appeals of Virginia did not reverse his remaining two convictions. Mr. Graham also asked Respondent why Respondent did not appeal to the Supreme Court of Virginia.
63. Respondent did not respond to Mr. Graham.
64. In June 2013, Mr. Graham wrote to Respondent requesting his file. Respondent did not respond to Mr. Graham.

65. In July 2013, Mr. Graham wrote to the Virginia State Bar and advised the Bar of Respondent's failure to respond to him.
66. In August 2013, upon receipt of a letter from the Bar to Respondent, Respondent, as directed, wrote to Mr. Graham to advise him of the status of his case. In his letter, Respondent advised Mr. Graham that he had requested a new sentencing hearing, which was denied, and further that he was researching whether the Court of Appeals of Virginia might require the Circuit Court to reconsider Mr. Graham's sentence. Respondent did not state why he did not appeal the remaining convictions to the Supreme Court of Virginia.
67. Mr. Graham sought to have Respondent return his file to him. Respondent did not respond to Mr. Graham. In March 2014, Mr. Graham advised the Bar that Respondent would not return his file to him.
68. In April 2014, Mr. Graham timely filed a Petition for Writ of *Habeas Corpus*.
69. Respondent spoke with the Assistant Attorney General of the Office of the Attorney General involved with Mr. Graham's Habeas petition, and Respondent offered his support in seeking to have Mr. Graham's petition granted. The Assistant Attorney General advised Respondent that he would recommend that the petition be granted.
70. The Assistant Attorney General will petition the Supreme Court of Virginia for a delayed appeal for Mr. Graham due to ineffective assistance of counsel because Respondent failed to appeal to the Supreme Court of Virginia.
71. As requested by the Bar, and after the investigation of the bar complaint, on August 5, 2014, Respondent asserts that he provided, via U.S. Mail, Mr. Graham's file to him.

Such conduct constitutes misconduct in violation of Rules of Professional Conduct 1.3(a) (Diligence) and 1.4(a) (Communication), and 1.16(e) (Declining or Terminating Representation) cited below.

## II. NATURE OF MISCONDUCT

Such conduct by Respondent 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.

#### **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.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

(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 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.

### **III. PUBLIC REPRIMAND WITH TERMS**

Accordingly, having approved the agreed disposition, it is the decision of the

Subcommittee to impose a PUBLIC Reprimand with Terms. The terms are:

1. No later than September 1, 2014, Respondent shall consult with a named lawyer, approved by Assistant Bar Counsel Renu M. Brennan, to serve as a mentor to Respondent and for the purpose of reviewing and making recommendations concerning Respondent's law practice policies, systems, and procedures. Respondent shall submit the name or names of lawyers he has identified to review his procedures and policies to Assistant Bar Counsel Brennan for approval no later than September 15, 2014. Respondent shall grant the attorney access to his law practice both to review his policies and procedures and to ensure that Respondent has instituted and is complying with his/her recommendations. Assistant Bar Counsel shall have access, by telephone conferences and/or written reports, to the findings and recommendations, as well as the attorney's assessment of Respondent's level of compliance with the recommendations.
2. On or before October 15, 2014, Respondent shall be responsible for:
  - a. Ensuring that the mentor has previously reported to Assistant Bar Counsel Renu M. Brennan his or her findings and recommendations regarding the Respondent's law practice.
  - b. Certifying in writing under oath to Assistant Bar Counsel Renu M. Brennan that the Respondent has fully complied with the mentor's findings and recommendations and provide written confirmation of same from the mentor.
3. On or before October 15, 2014, Respondent shall certify in writing under oath to Assistant Bar Counsel Renu M. Brennan that Respondent has installed and will consistently follow and use adequate docketing procedures to ensure that he keep his clients informed of the status of their cases and appeals, including procedures which ensure (1) the prompt return of clients' telephone calls and (2) the prompt sending of a letter to clients responding to their calls if Respondent is unable to reach them by telephone.
4. On or before September 1, 2014, Respondent shall provide proof to Assistant Bar Counsel Renu M. Brennan that he returned the file of Derrick Brandon Graham to Derrick Brandon Graham in accordance with Rule 1.16(e).

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why a Certification for Sanction Determination

should not be imposed. 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 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, SECTION II  
OF THE VIRGINIA STATE BAR



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R. Braxton Hill, IV  
Subcommittee Chair

**CERTIFICATE OF MAILING**

I certify that on August 18, 2014, a true and complete copy of the Subcommittee Determination (PUBLIC Reprimand With Terms) was sent by certified mail, return receipt requested to David Richards DuBose, Respondent, at DuBose Law Office, P.L.C., P. O. Box 18233, Richmond, VA 23226, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Craig Stover Cooley, counsel for Respondent, at 3000 Idlewood Avenue, P.O. Box 7268, Richmond, VA 23221-0268.



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Renu Mago Brennan  
Assistant Bar Counsel