

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
ARNOLD REGINALD HENDERSON, V**

VSB Docket Nos. 09-032-077156 and 10-032-080595

MEMORANDUM ORDER

This matter came on to be heard on July 13, 2011 before a panel of the Virginia State Bar Disciplinary Board consisting of Lay Member Robert W. Carter, and Attorney Members Raighne C. Delaney, William E. Glover, Whitney G. Saunders, and Martha JP McQuade, 1st Vice Chair presiding (the "Board"), for consideration of an Agreed Disposition between the parties.

The hearing was held by teleconference. Renu Mago Brennan, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar (the "Bar"), and Arnold Reginald Henderson, V appeared *pro se* (hereinafter referred to by name and/or as the "Respondent"). Terry S. Griffith, Certified Court Reporter, of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 303-7790, was the court reporter for the hearing and transcribed the proceedings.

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 could reasonably be perceived to affect, his or her ability to be impartial in this matter. Each member, including the

Chair, verified they had no such interest and/or conflict.

The Board heard from the Bar and the Respondent with regard to the proposed disposition, Respondent's prior disciplinary record, and aggravating or mitigating factors; and thereafter retired to deliberate on the Agreed Disposition. The Board then reconvened and the announced its decision to accept the Agreed Disposition.

The Disciplinary Board finds the following facts, by clear and convincing evidence, and further finds that such conduct by Arnold Reginald Henderson, V constitutes misconduct in violation of the following referenced provisions of the Rules of Professional Conduct:

I. VSB DOCKET NO. 10-032-080595
Complainant: Sheree Tamarle Weeden

FINDINGS OF FACT

1. At all times referenced herein, Respondent Arnold Reginald Henderson, V ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent represented Keith Franklin Weeden in a criminal matter in which Mr. Weeden was convicted.
3. On November 19, 2008, Mr. Weeden was sentenced, and the Circuit Court of King William County entered judgment against Mr. Weeden.
4. On November 28, 2008, Respondent and Complainant Ms. Sheree Weeden, Mr. Weeden's mother, entered into a retainer agreement by which Ms. Weeden retained Respondent to represent Mr. Weeden in his appeal to the Court of Appeals of Virginia. As set forth in the retainer agreement, Respondent was engaged solely to file the appeal with the Court of Appeals of Virginia, and his fee to file the appeal was \$12,500.00. The \$12,500.00 fee expressly did not include court costs or expenses. Per the agreement, Ms. Weeden agreed to pay the \$12,500.00 fee on or before January 30, 2009. The retainer agreement provided that if payment was not made as agreed, Respondent would not provide legal services for Mr. Weeden.
5. On November 28, 2008, Ms. Weeden paid Respondent \$500.00 towards the appeal. Respondent deposited the \$500.00 in his escrow account that same day.

6. By letter dated December 12, 2008, to Ms. Weeden, Respondent stated, in error, that his fee for the appeal was \$12,000.00 (not \$12,500.00). He reiterated that the fee was to be paid in advance, and he acknowledged Ms. Weeden would pay the fee in installments. Respondent agreed to file the notice of appeal and order the transcript, but he again noted that Ms. Weeden was responsible for the transcript fee. Respondent asked Ms. Weeden to notify Respondent if she could not pay his fee so that he could notify the Court.
7. On December 16, 2008, Ms. Weeden paid Respondent \$400.00 in cash. Respondent applied this payment for past services performed on behalf of Keith Weeden. He asserts that this payment was not toward the appeal.
8. On December 18, 2008, Respondent mailed or delivered to the Clerk of the Court of Appeals of Virginia a copy of Mr. Weeden's Notice of Appeal from the judgment of the Circuit Court of King William County entered November 19, 2008.
9. The Notice of Appeal prepared by Respondent stated that Respondent was counsel for Appellant Keith Franklin Weeden.
10. The Notice of Appeal was filed in the King William County Circuit Court on December 19, 2008.
11. On December 22, 2008, Respondent's legal assistant mailed a copy of the Notice of Appeal to Ms. Weeden. In her cover letter, Respondent's legal assistant advised Ms. Weeden that Respondent's office ordered the transcripts through Crane & Snead for a total cost of \$1,175.00. Consistent with the retainer agreement, the letter requested Ms. Weeden forward a check for the transcript fee.
12. On January 5, 2009, Ms. Weeden made a \$500.00 cash payment towards the appeal to Respondent's office. Ms. Weeden received a receipt for this payment.
13. By separate letters dated January 6, 2009, Respondent provided each of the Weedens with copies of the Sentencing Order and the Show Cause Sentencing Order.
14. On January 7, 2009, Respondent filed the trial transcript with the Circuit Court of King William County. On or before January 14, 2009, Respondent also filed the sentencing transcript with the Circuit Court for King William County. By letter dated January 14, 2009, Respondent provided the Commonwealth's Attorney with the Notice of Filing of Transcript. Respondent copied each of the Weedens on his correspondence to the Commonwealth's Attorney.

15. On January 14, 2009, Respondent mailed the Notice of Filing of Transcript to the Clerk of the Court of Appeals of Virginia and to opposing counsel.
16. On January 14, 2009, Ms. Weeden paid Respondent \$500.00 in cash. Ms. Weeden received a receipt for this payment.
17. The Court of Appeals received the trial court record on January 15, 2009. Respondent's file contained the Court of Appeals' Notification of Receipt of the Record and identification of pertinent deadlines, including the deadline to file the petition for appeal. The deadline was 40 days after January 15, 2009 (appeal deadline). Respondent's file, however, did not contain any evidence reflecting that he communicated the deadlines to either of the Weedens. The Weedens assert that Respondent did not communicate the deadlines to them. Respondent maintains that he verbally communicated with Sheree Weeden and notified her of the filing deadlines in conjunction with his requests for fee payments.
18. On January 23, 2009, Respondent deposited the \$1,000.00 received from Ms. Weeden on January 6 and 14, 2009, in his escrow account. As of January 23, 2009 Respondent's ledger reflected a balance of \$1,500.00 from Ms. Weeden.
19. On February 4, 2009, Ms. Weeden paid Respondent's office \$325.00 in cash, for which she received a receipt.
20. On February 23, 2009, Respondent deposited the \$325.00 in his escrow account. As of February 23, 2009, the balance in Respondent's escrow account of funds paid by Ms. Weeden was \$1,825.00.
21. Ms. Weeden says she tried to call Respondent to determine the status of the appeal, but she could never reach him. Respondent maintains that he spoke with Ms. Weeden numerous times, telephonically and in person, stressing the need for complete payment when she came to Respondent's office.
22. The deadline to file Mr. Weeden's appeal with the Court of Appeals of Virginia was February 24, 2009. Prior to the expiration of the appeal deadline, Respondent did not advise either of the Weedens that the appeal deadline was approaching and that he would not file the petition if he did not receive the sum by a date certain. Respondent did not give the transcripts or the file to his client or Ms. Weeden prior to the filing deadline. The Weedens did not request the same because they believed Respondent was working on the appeal. Respondent asserts the retainer agreement clearly stated that if the Weedens did not pay Respondent \$12,500.00 on or before January 30, 2009, Respondent would not perform legal services on their behalf. Respondent also asserts that Ms. Weeden frequented his office while waiting for her youngest child who received medical treatment near Respondent's office. On these occasions,

- Respondent asserts that he reminded Ms. Weeden that she had passed the deadline for payment.
23. Respondent did not file the petition for appeal on or before the appeal deadline.
 24. Respondent did not file a motion to withdraw as counsel of record in the appeal on or before the appeal deadline.
 25. Ms. Weeden was unaware that Respondent did not timely file the petition, and she continued to make payments to Respondent's office. She states that she periodically called to check on the status of the appeal but was unsuccessful in reaching Respondent by phone and began to visit his office. Respondent asserts that he informed Ms. Weeden that the filing deadline was forty (40) days after January 15, 2009, and that Ms. Weeden continued to make payments in hopes that Respondent would attempt to file a late petition for appeal. Respondent's records confirm that all additional payments made to his office were placed in the escrow account and that no additional payments were deposited as earned funds. Ms. Weeden asserts that on one occasion, Respondent advised her that matters were progressing well, but he needed to have her son sign a document. Ms. Weeden asserts that Respondent told her "he could not tell her anymore about the matter and that he needed to speak to Keith Weeden." Respondent denies ever telling Ms. Weeden that matters were progressing well or that he needed Keith to sign a document. Respondent admits that he informed Ms. Weeden that he intended to travel to the prison facility and meet with Mr. Weeden.
 26. On March 6, 2009, Ms. Weeden made a \$500.00 cash payment to Respondent's office, for which she received a receipt. Respondent's office accepted this sum even though Respondent had not filed Mr. Weeden's petition for appeal.
 27. On March 6, 2009, Respondent deposited the \$500.00 he received from Ms. Weeden, in his escrow account. As of March 6, 2009, Respondent's escrow ledger reflected a balance of \$2,325.00 from Ms. Weeden.
 28. On March 13, 2009, the Court of Appeals dismissed Mr. Weeden's appeal because no petition had been filed.
 29. Ms. Weeden and Keith Weeden assert that Respondent failed to advise them of the dismissal of the appeal. Respondent maintains that he informed both Sheree Weeden and Keith Weeden of the dismissal of the appeal by telephone and in person.
 30. After the appeal was dismissed, Ms. Weeden continued to bring cash payments to Respondent's office. Respondent's office continued to accept these payments, which were deposited into Respondent's escrow account. Respondent asserts either he or

his office staff placed the Weedens' payments in his escrow account and that his bookkeeper reconciled his trust account during the relevant time period. Respondent should have been aware of the growing balance in the Keith Weeden escrow fund for work he had not performed.

31. On March 30, 2009, Ms. Weeden paid Respondent's office staff \$1,000.00 in cash, for which she received a receipt.
32. Respondent's escrow ledger reflects that he deposited the \$1,000.00 from Ms. Weeden in his escrow account on April 1, 2009. As of April 1, 2009, Respondent's escrow ledger reflected a balance of \$3,325.00 for the Keith Weeden escrow fund.
33. On May 6, 2009, Ms. Weeden paid Respondent's office staff \$1,000.00 in cash, for which she received a receipt.
34. On May 13, 2009, Respondent traveled to Lunenburg Correctional Center to meet with Keith Weeden. Respondent asserts that during this visit he told Mr. Weeden that the Court of Appeals of Virginia had dismissed his appeal. Mr. Weeden asserts that Respondent never told him that his appeal was dismissed. Instead, according to Mr. Weeden, Respondent advised him that everything was going well with his appeal, and the parties were awaiting a court date. Mr. Weeden maintains that Respondent showed him his trial transcripts, and Mr. Weeden asked Respondent about an appeal bond. Mr. Weeden also states that Respondent advised him that he erred on the appeal bond and that he would send Mr. Weeden papers stating that he had erred. Mr. Weeden states that Respondent asked him to sign papers, which he would then send to the Office of the Attorney General. Mr. Weeden states that Respondent explained that he would then request a hearing on the appeal bond. Respondent denies this, and states that the purpose of his visit was to discuss how Mr. Weeden might best proceed in light of the dismissal of the appeal. Respondent asserts that he did not present any documents to Mr. Weeden, and that his file does not contain any such documents.
35. Mr. Weeden heard nothing further from Respondent.
36. On May 14, 2009, Respondent's staff deposited the \$1,000.00 received from Ms. Weeden on May 6, 2009, in his escrow account. As of May 14, 2009, Respondent's escrow account ledger reflects a balance of \$4,325.00 in the Weeden escrow fund.
37. By check no. 3036, dated May 15, 2009, written from the Respondent's escrow account, Respondent paid the court reporter's fee of \$1,079.80 from funds paid by Ms. Weeden and being held in the Keith Weeden escrow fund. As of May 15, 2009, the balance in the Keith Weeden escrow fund was \$3,245.20.

38. At the end of April and May 2009, Respondent asserts that, in the performance of monthly reconciliations and reviews of his escrow account, he was aware of the growing balance in the Keith Weeden escrow fund, but he did not return the money to the Weedens.
39. On June 24, 2009, Ms. Weeden paid Respondent's office staff \$500.00 in cash. Ms. Weeden received a receipt for this payment. On July 3, 2009, Respondent deposited the \$500.00 into the Keith Weeden escrow fund. As of July 3, 2009, Respondent's escrow account ledger reflected a balance of \$3,745.20 the Keith Weeden escrow fund.
40. Between March and July 2009, Ms. Weeden maintains she made numerous attempts to contact Respondent to determine the status of her son's appeal. Ms. Weeden maintains she called and visited Respondent's office several times and left messages to no avail. Respondent maintains he met and spoke with Ms. Weeden and continuously discussed the failure by Ms. Weeden to satisfy the agreed upon financial obligation.
41. On July 13, 2009, Ms. Weeden wrote to Respondent stating she had been to his office eight times since March 2009, and she had received no response. She asked Respondent to advise her of the status of the case and the fees she had paid. Ms. Weeden had just learned that her son's appeal had been dismissed in March 2010. She stated "My brother went on line and he said Keith case was never filed and it has a dismiss in March 13, 0. The paper work he has shows what went wrong I don't know what happen but I have been in your office a total of 8 times since March and left notes letters and every thing for you to call me and just let me know what was happening or had happen. I need you to call me about the money I have payed you because the transcript was (1,175.00) and the other money I don't know because nothing has been done . . . Call me. Thank you." Ms. Weeden personally delivered this letter to Respondent's office staff.
42. The Weedens assert they did not receive a response to this letter, and thus, by letter dated July 27, 2009, and delivered by Ms. Weeden in August 2009, Mr. Weeden notified Respondent that "as of July 16, 2009, I will no longer need your legal services." The letter states that Respondent had failed to respond to any of his letters and that Mr. Weeden was unaware of the status of his case. Mr. Weeden requested Respondent provide all paperwork and/or files to his mother. Respondent asserts he failed to respond in writing to both letters.
43. Despite the July 2009 termination and request for the file, Respondent did not deliver the file to either of the Weedens until almost one year later. Respondent concedes he did not deliver the complete file or transcripts to the Weedens upon his termination, nor did he return the unearned fee to the Weedens upon the July 2009 termination.

Respondent asserts that he did give Ms. Weeden a copy of Mr. Weeden's trial court paperwork, but, as set forth, Respondent did not return the unearned fee to the Weedens until May 2010, after the interview by the bar's investigator, and he provided the transcripts to Ms. Weeden in June 2010.

44. Ms. Weeden contacted Mr. Edwin F. Brooks, Esq., to represent her son.
45. Ms. Weeden filed a complaint with the Virginia State Bar dated August 7, 2009.
46. By letter dated August 11, 2009, Assistant Bar Counsel Harry M. Hirsch, Esq., provided Respondent with a copy of Ms. Weeden's complaint as part of the Bar's preliminary investigation of the complaint. In the letter, Mr. Hirsch demanded that Respondent respond in writing to the complaint within 21 days of the date of the letter.
47. Respondent did not file a written response to the bar complaint. Respondent asserts that he did not believe that a response was necessary because he believed he would ultimately be interviewed by the bar's investigator.
48. In August or September 2009, Mr. Brooks, on behalf of Mr. Weeden, requested Respondent execute an affidavit stating that Respondent had erred by not filing the appeal. Respondent asserts he advised Mr. Brooks that he would not sign an affidavit which was inaccurate. Respondent asserts he explained to Mr. Brooks that he quoted a fee, and he noted Mr. Weeden's appeal. Respondent explained to Mr. Brooks that Ms. Weeden failed to satisfy the required financial obligation.
49. On February 18, 2010, the Third District Committee, Section II issued a subpoena *duces tecum* to Respondent. The subpoena required production on or before March 11, 2010, of all files, records, and reports, and all trust account and operating account records, including cancelled checks, cash receipts journals, cash disbursements journals, subsidiary ledgers, bank statements, deposit tickets and evidence of reconciliations, in Respondent's possession, custody or control, relating to his representation of Keith F. Weeden in the appeal of King William Circuit Court case numbers CR08000069-00 and CR08000070-00.
50. On March 16, 2010, the VSB investigator interviewed Respondent. At that meeting, Respondent produced his file, subsidiary ledger, his record of deposits, and copies of receipts of Ms. Weeden's payments. Respondent's file did not include a copy of the retainer agreement, which Respondent produced in July 2011. Respondent asserts that he represented Mr. Weeden on five other criminal matters, and the appellate retainer agreement was previously misfiled in one of the other Weeden files.

51. While Respondent's file contained letters transmitting the Sentencing Order and the Show Cause Sentencing Order to the Weedens, Respondent's file did not contain any orders reflecting the disposition of the appeal, nor did Respondent's file contain any correspondence, evidence, or documentation of any communications from Respondent to either of the Weedens regarding the deadline to file the appeal or the dismissal of the appeal. Respondent has never produced any such correspondence, but Respondent maintains he verbally advised both of the Weedens of the appeal deadline and the disposition of the appeal.
52. Mr. Henderson provided the trial court transcripts on June 9, 2010 and returned all unearned fees paid on May 20, 2010.
53. Mr. Brooks filed a petition for writ of habeas corpus. Respondent asserts that he provided the Attorney General all requested documents, other than the Affidavit. Respondent did not object to the relief sought. Respondent asserts that he informed the Attorney General that he favored the delayed appeal sought by the habeas petition. Mr. Weeden has been granted a delayed appeal on his conviction for felony distribution of crack cocaine conviction.

NATURE OF MISCONDUCT

Violations of the Rules of Professional Conduct committed by Arnold Reginald Henderson, V by his actions as set forth above include:

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.

II. VSB DOCKET NO. 09-032-077156
Complainant: Everett Hayes

FINDINGS OF FACT

1. At all times referenced herein, Respondent Arnold Reginald Henderson, V ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. By letter dated June 12, 2007 to Complainant Everett Hayes, Respondent confirmed his representation of Mr. Hayes's nephew, Brandon Hayes, in his petition for writ of habeas corpus, and Respondent confirmed receipt of a \$12,000.00 check from Mr. Hayes for the representation. Respondent advised that the deadline to file the petition was February 28,

2008, and he stated that he hoped to finish the petition by the end of 2007. Respondent had represented Brandon Hayes in his underlying appeal of a criminal conviction for first degree murder but did not serve as Brandon Hayes's trial counsel. On June 13, 2007, Respondent deposited the \$12,000.00 fee in his escrow account. Within fifteen days, on June 28, 2007, Respondent disbursed \$3,000.00, or a quarter of the fee to his operating account. One month later, on July 27, 2007, Respondent disbursed an additional \$3,000.00 to his operating account. Thus, within one and one-half months of the retention, Respondent disbursed one-half of the fee to his operating account. In September and October 2007, Respondent disbursed \$1,000.00 to his operating account each month. In 2007, Respondent e-mailed Everett Hayes and indicated that he was working on the habeas petition. On November 23, 2007, Respondent disbursed \$1,500.00 to his operating account, leaving a balance of \$2,500.00 in the escrow account. On February 22, 2008, Respondent disbursed \$1,000.00 to his operating account, leaving a balance of \$1,500.00 in the escrow account. Respondent asserts that he did a great deal of work between June 2007 and February 2008, and he earned all fees before he transferred them from his escrow to operating account. Respondent studied all trial transcripts, researched intensively, and strategized in his firm and with his client's family.

3. A few days prior to February 20, 2008, Respondent asserts that he placed calls and left messages at the Sussex II state prison facility for Counselor Shaw, then the direct point of contact for Brandon Hayes. Respondent's messages sought Counselor Shaw's assistance in having Mr. Hayes's verification page notarized and returned to Respondent. The efforts were unsuccessful.
4. On or about February 20, 2008, Respondent asserts that he spoke with Counselor Shaw at Sussex II state prison and again requested assistance with getting Brandon Hayes's signature notarized on the verification and returned to Respondent prior to the February 28, 2008 filing deadline. While Respondent's file does not reflect whether he mailed or faxed the verification to Counselor Shaw, Respondent asserts he both mailed and faxed the verification to Counselor Shaw.
5. On Monday, February 25, 2008, three days prior to the deadline to file Mr. Hayes's habeas petition, Respondent asserts that he went to the Supreme Court of Virginia and discussed his difficulty obtaining the notarized verification page. Respondent maintains he was told the he should submit an unsigned verification page and file the notarized verification page upon receipt. Neither the Supreme Court of Virginia's file, nor Respondent's file, contains any documentation regarding this conversation.
6. On Tuesday, February 26, 2008, Respondent again talked to Counselor Shaw and faxed a verification page to her stressing the need to have the notarized copy returned via fax and hard copy before the close of business February 28, 2008.

7. On Tuesday, February 26, 2008, Respondent filed the habeas petition in the Supreme Court of Virginia and included an unsigned copy of the verification page that had been sent to Counselor Shaw at Sussex II state prison. On Friday, February 29, 2008, Respondent received a faxed signed and notarized verification page copy from Sussex II state prison. On Tuesday, March 4, 2008, Respondent, in person, attempted to file the faxed copy of the signed, notarized verification page at the Supreme Court of Virginia, but the filing was refused because it was not an original filing.
8. On March 4, 2008, Respondent wrote a letter to Brandon Hayes requesting that he ask Counselor Shaw to return the original signed and notarized verification that was previously faxed. Included with that letter to Mr. Hayes was another original blank verification page in the event Counselor Shaw no longer had the initial verification page.
9. After Respondent filed the habeas petition, he was advised that service of process had not been secured on the warden of Brandon Hayes's prison facility. Respondent asserts that he subsequently went to the Office of the Clerk of the Supreme Court of Virginia, where it was suggested that he seek acceptance of service for the warden by the Attorney General's Office. Neither the Supreme Court of Virginia's file, nor Respondent's file, contain any documentation of this communication. Respondent asserts he then requested the Attorney General accept service for the warden.
10. By letter dated March 4, 2008, Respondent submitted Brandon Hayes's signed affidavit to the Supreme Court of Virginia. Respondent provided Everett Hayes with a copy of the habeas petition.
11. The Supreme Court of Virginia received the signed affidavit on March 6, 2008.
12. By letter dated March 10, 2008, the Chief Deputy Clerk of the Supreme Court of Virginia advised Respondent that he had to provide the Supreme Court of Virginia with documentation reflecting that he either personally served the signed Petition on the warden and the Office of the Attorney General, or that the Attorney General formally accepted service of the Petition on the warden's behalf. Additionally, the Chief Deputy Clerk of the Supreme Court of Virginia requested Respondent provide an addendum including any missing information required to be given in parts A and B of the statutory habeas corpus form. Respondent asserts that he personally met with someone in the Office of the Clerk of the Supreme Court of Virginia to determine the filing deficiencies and the cure for each, however, this person refused further communication about the filing deficiencies.
13. On April 4, 2008, the Attorney General moved to dismiss the habeas petition, in part, because it was untimely filed, as the original affidavit was filed after the February 28, 2008 deadline. A copy of the Attorney General's response to the habeas petition, which included the motion to dismiss and memorandum in support, was mailed to Respondent

on April 4, 2008. Paragraphs 29 and 30 of the memorandum in support of the response to the habeas petition assert that the habeas petition was not properly filed until March 4, 2008, the date Respondent submitted Mr. Hayes's signed affidavit to the Supreme Court of Virginia, and that March 4, 2008, was outside the relevant statute of limitations.

14. Respondent did not file any response to the Attorney General's response to the habeas petition. Respondent did not oppose the motion to dismiss. Respondent asserts that he did not oppose the motion to dismiss because he concluded the petition was properly filed.
15. Everett Hayes and Brandon Hayes assert they were not aware of the motion to dismiss the habeas petition. Everett Hayes estimated that he called Respondent several times from April to October 2008, without response. Respondent asserts that it is his practice to send pleadings such as the Attorney General's response to the habeas petition to clients. Respondent's file does not contain any transmittal letters which reflect that he sent the motion to dismiss to either Brandon or Everett Hayes.
16. On July 25, 2008, the Supreme Court of Virginia dismissed the habeas petition on the grounds that it was untimely filed, Va. Code Section 8.01-654(A)(2), and that it failed to comply with the requirements of Va. Code Section 8.01-655.
17. The Supreme Court of Virginia notified Brandon Hayes of the dismissal of his habeas petition, after which Brandon Hayes promptly contacted his uncle. Everett Hayes's records contain a July 31, 2008, e-mail from him to Respondent regarding the dismissal. Respondent recalls speaking with Mr. Everett Hayes regarding the dismissal. Respondent was unaware of the dismissal until he was contacted by Everett Hayes. Respondent told Everett Hayes that he would follow up with the Supreme Court of Virginia.
18. Respondent maintains that he went to the Supreme Court of Virginia and obtained a copy of the habeas petition dismissal order.
19. On August 2, 2008, and again on August 16, 2008, Everett Hayes sent Respondent e-mails requesting a status update. Everett Hayes asserts Respondent did not respond to his inquiries. Respondent asserts that he spoke with Everett Hayes by phone and he advised Everett Hayes of the dismissal and the reasons therefor. Everett Hayes and Brandon Hayes assert that Respondent never communicated with them after July 2008.
20. By letter dated October 7, 2008, Everett Hayes requested "the return of all monies paid ... for this most recent appeal and all papers pertaining to Brandon Hayes and his appeal process." Hayes wrote that he had attempted to contact Respondent several times via phone and e-mail. Mr. Everett Hayes did not have a power of attorney authorizing him to receive the file. Respondent admits he did not e-mail Hayes but asserts he did have

limited telephone contact sufficient to candidly inform Hayes of the dismissal of the habeas petition.

21. On October 7, 2008, Everett Hayes filed a complaint with the Virginia State Bar alleging that Respondent had not been in contact with him since the dismissal of the habeas petition and that he did not return the file or unearned fee to Mr. Hayes.
22. Respondent maintains that the client Brandon Hayes has never requested the return of his file or of money and that based on the theory of quantum meruit the funds paid to Respondent were earned.

NATURE OF MISCONDUCT

Violations of the Rules of Professional Conduct committed by Arnold Reginald Henderson, V by his actions as set forth above include:

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 having determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that a Public Reprimand with Terms be imposed on Respondent. The term with which the Respondent must comply is as follows:

For a period of one year following the entry of the Order approving this disposition, Respondent shall not engage in any conduct that violates Rule 1.3, 1.4, or 1.16 of the Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction to which Respondent may be admitted to practice law. This term shall be deemed violated when any ruling, determination, judgment, order, or decree has been issued against Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated Rules 1.3, 1.4, or 1.16, provided that the conduct upon which such finding was based occurred within the period referred to and that such ruling has become final.

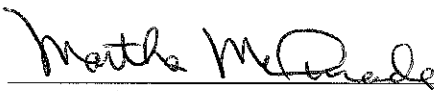
It is further Ordered that, upon satisfactory proof that the term has been met, this matter shall be closed. If, however, Respondent violates this term, the Respondent agrees that the Disciplinary Board shall impose a 20 day suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-18.O.

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 certified copy of this order to Arnold Reginald Henderson, V at his last address of record with the Virginia State Bar, being 116 East Franklin Street, Suite 102, Richmond, VA 23219, and to Assistant Bar Counsel, Renu M. Brennan, for the Virginia State Bar.

ENTERED July 20, 2011

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 
Martha JP McQuade
1st Vice Chair, Chair Designate