

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
DAVID LASSITER, JR.

VSB Docket Nos. 06-032-0336 [VSB]
06-032-1293 [Nelson]
06-032-1725 [VSB/Melson]
07-032-0271140 [VSB]
08-032-073414 [Brockenbrough]

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On September 2, 2009, a hearing in this matter was held before a duly convened Third District Subcommittee consisting of Coral C. Gills, Lay Member; Alana M. Ritenour, Esq.; and Steven C. McCallum, Esq., Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand Without Terms:

1. At all times relevant hereto, David Lassiter, Jr. ["Lassiter"], has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket No. 06-032-0336 (Virginia State Bar)¹:

I. Findings of Facts:

2. Lassiter was court-appointed to represent Antwan Callahan [Callahan] on charges of first degree murder, armed robbery and use of a firearm in the commission of a felony. Callahan was convicted of second degree murder, attempted armed robbery and use of a firearm in the commission of a felony based upon an unwritten plea agreement as to the crimes but not as to the sentence. Callahan was sentenced to forty-eight years in prison on February 15, 2005.

3. On March 4, 2005, Callahan filed a *pro se* motion to reduce or suspend some of his sentence.

¹ Antwan Callahan also filed a related bar complaint which was combined into this docket number.

4. On March 7, 2005, Callahan filed *pro se* a notice of appeal in the Virginia Court of Appeals.

5. By letter dated March 9, 2005, to Lassiter, a Court of Appeals deputy clerk enclosed a copy of the notice of appeal and stated that Lassiter's appointment continued through any appeals pursuant to Virginia Code Section 19.2-159. Lassiter received the letter on March 10, 2005.

6. By letter dated March 10, 2005, to Callahan, Lassiter acknowledged receiving the notice of appeal from the Court of Appeals, reminded Callahan he had accepted the offer of the Commonwealth and pled guilty to all three charges and indicated Lassiter and the trial court had explained that by doing so Callahan could not appeal his case in chief. Lassiter also stated he would assist Callahan to the extent the "legal process [would] allow."

7. By letter dated March 10, 2005, to a Court of Appeals deputy clerk, Lassiter stated he had informed Callahan several times he could not appeal his case if he elected to accept the offer of the Commonwealth, that a guilty plea negated an appeal. However, Lassiter also stated he would assist Callahan to the extent the "legal process [would] allow."

8. On May 18, 2005, the Court of Appeals issued an order requiring the appellant to show cause by June 2, 2005, why the appeal should not be dismissed because neither a transcript nor a statement of facts had been timely filed.

9. By letter dated May 18, 2005, to a Court of Appeals deputy clerk, Lassiter stated that he had previously sent a letter saying he did not represent the appellant. He stated the following:

I am sick and tired of the bar following up on things like this and make it appear that I do not know what I am doing... I have nothing to do with this case.

Lassiter also said that Callahan was informed by the court and by himself that his guilty plea amounted to waiver of his right to appeal.

10. By letter and motion dated May 19, 2005, Lassiter sent Callahan a motion to withdraw as counsel in which he stated, *inter alia*, that he was not appointed as counsel for appellate purposes. The motion was filed in the Court of Appeals on May 23, 2005.

11. Lassiter did not file a response to the show cause order of the Court of Appeals.

12. On June 9, 2005, the Court of Appeals denied Lassiter's motion to withdraw.

13. By order entered June 13, 2005, the Court of Appeals dismissed the appeal on the lack of response to the show cause order and the fact that neither a transcript nor a statement of facts had been timely filed in the case.

14. On June 27, 2005, a Court of Appeals deputy clerk sent Lassiter a letter received from Callahan, and indicated that Lassiter represents Callahan.

15. On August 9, 2005, Lassiter responded to the Virginia State Bar's (bar) preliminary investigation letter in this matter. Lassiter stated that Callahan had pled guilty, both the trial court and Lassiter had informed Callahan that he waived his right of appeal upon pleading guilty. Lassiter also stated that he had not filed one document on behalf of Callahan in the appeal and had not been asked to do so.

16. An attorney court-appointed to represent a defendant charged with the commission of a crime punishable by death or imprisonment has a right to counsel in all courts of the Commonwealth including an appeal, if any, until relieved or replaced by other counsel. See *Dodson v. Director of the Department of Corrections*, 233 Va. 303 (1987); Va. Code Sections 19.2-157, 19.2-159, and 19.2-326. An attorney who finds an appeal to be frivolous must nevertheless request permission to withdraw and file an *Anders* brief referring to anything in the record which might arguably support the appeal. *Brown v. Warden of the Virginia State Penitentiary*, 238 Va. 551 (1989), citing *Anders v. California*, 386 U.S. 738 (1967).

II. Nature of Misconduct:

Such conduct by David Lassiter, Jr., constitutes violations of the following provisions of the Virginia 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 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.

VSJ Docket No. 06-032-1293 (Nelson):

I. Findings of Facts:

17. In November of 2004, Lassiter was asked by the mother of Complainant Derrick Nelson [Nelson] to seek a writ of habeas corpus for Nelson. Lassiter agreed to do so for a fee of \$3,500.00, and he asked to be provided with the trial and sentencing transcripts. In 2003, Nelson had been convicted of breaking and entering as well as assault and battery and sentenced to serve time in the Department of Corrections by the Greensville County Circuit Court. He appealed the convictions unsuccessfully to the Virginia Court of Appeals and the Virginia Supreme Court. Lassiter was not counsel for Nelson either at trial or on appeal.

18. On or about November 11, 2004, Nelson's mother met with Lassiter, gave him copies of the transcripts and a check for \$3,000.00.

19. On or about December 21, 2004, Lassiter visited Derrick at the Southampton Work Center for Men which is located at the Southampton Correctional Center. Lassiter informed Derrick that there was no basis for pursuing a writ of habeas corpus. Lassiter also told Derrick that a motion to reconsider the sentence could be pursued for the same fee and Derrick said to pursue it.

20. On or about December 25, 2004, Nelson received an institutional charge for failing a drug test and subsequently he was moved to another area at the Southampton Correctional Center.

21. On December 29, 2004, Lassiter mailed a motion to reconsider to the Greensville County Circuit Court for filing. It was filed January 4, 2005.

22. Nelson's mother paid Lassiter another \$250.00 by her check dated January 12, 2005.

23. On or about March 15, 2005, Nelson was transferred to the Nottoway Correctional Center.

24. On March 24, 2005, Lassiter wrote to Nelson and explained that when Nelson was moved from the Southampton Work Center for Men due to failure of a drug test, it "derailed" the motion to reconsider. But Lassiter also stated he wanted the court to entertain an amended motion to reconsider. However, he needed to know all the details concerning the drug allegation and events since the allegation was made. Lassiter further said,

...it would still be a long shot since the allegation is that you used illegal narcotics, but if you wish to pursue the original motion, I will do so once you present the details of the drug allegation.

25. During the investigation of this matter, Investigator Cam Moffatt [Moffatt] interviewed Lassiter. Lassiter, *inter alia*, told Moffatt that he had a phone call from Nelson in which Nelson stated he wanted to get into court to tell his story about what he felt was an unjustified drug charge. Lassiter said he told Nelson:

...if [he] could get the judge to enter some nunc pro tunc order after getting the judge to believe that [Nelson] should never have been taken off the farm, then [the judge] can hear [Nelson's] motion again.

26. Lassiter obtained a June 16, 2005, hearing date for the motion.

27. On the hearing date, Nelson and his mother were present. The court determined that it had no jurisdiction to entertain the motion and it was denied.

28. During the investigative interview with Moffatt, Lassiter, *inter alia*, informed her that while Nelson was housed at the Southampton Work Center for Men, he was not in the Department of Corrections system and, therefore, the trial court still had jurisdiction to consider the motion to reconsider. Moffatt informed Lassiter that according to the records of the Department of Corrections [DOC], Nelson went into the DOC on April 9, 2004, at Deep Meadow Correctional Center and was later transferred to other facilities within the system including the Southampton Work Center for Men which is a security level one center for men located at the Southampton Correctional Center.

29. When informed by Moffatt that the Southampton Work Center for Men is located at the Southampton Correctional Center, Lassiter indicated that he did not know that the work center was in the DOC. Nelson had told him the work center was not in the DOC, and Nelson had not told him of being housed at other DOC facilities. Lassiter did not check with the DOC to determine whether Nelson was in the DOC system.

30. Pursuant to Virginia Code Section 19.2-303 in effect prior to July 1, 2006, the trial court which heard the underlying felony case in which a person was sentenced to the DOC may suspend or otherwise modify the unserved portion of the sentence before the person is transferred to the DOC.

31. Nelson had been transferred to the DOC approximately seven months before Nelson or his mother sought Lassiter's services in the instant facts.

II. Nature of Misconduct:

Such conduct by David Lassiter, Jr., constitutes violations of the following provisions of the Virginia 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 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

VS B Docket No. 06-032-1725 (VS B/Melson):

I. Findings of Facts:

32. Lassiter represented Jason Pearson [Pearson] in the United States District Court, Eastern District of Virginia [court], in the defense of criminal charges in case number 3:05-cr-00053 which was set for trial on Tuesday, May 31, 2005, along with the case of a co-defendant represented by another attorney.

33. According to the court's Criminal Docket for the case, on Friday, May 27, 2005, in a hearing before the court, the co-defendant moved to continue the trial, which motion was granted by the court. In the same hearing, Lassiter, on behalf of Pearson, moved to sever the defendants and proceed with the May 31, 2005, trial date as to Pearson, which motion was denied. The court then ordered the two defendants to be tried together on June 22, 2005.

34. On or about Friday, May 27, 2005, Lassiter left a voice mail message for Tiana Odom [Odom], whom he had subpoenaed as a witness in the trial. In the voice mail message, Lassiter stated:

Hi, Mrs. Odom, this is David Lassiter. It's around quarter of two on Friday. Just giving you a heads up. This judge had a jury trial in his courtroom yesterday that spilled over to today and I think it is going to spill over to Tuesday so we got bumped. So the trial is not going to be on Tuesday for Mr. Pearson. It's going to be on June 22nd at the same time, 9:30, so I'm apologizing for any

inconvenience...

35. During the pendency of the case against Pearson, Odom allowed two federal agents to tape the voice mail message.

36. During the bar investigation of this matter, Bar Investigator Cam Moffatt [Moffatt] interviewed Lassiter. During the interview, Lassiter stated the trial was continued on the government's motion over Lassiter's objection. He further told Moffatt he did not tell Odom the case was continued on the government's motion, but instead told Odom the judge had a jury trial that was lasting longer than expected; "she was already afraid of the government so I told her it was continued but not on a motion by the government".

37. The explanation for the change of the trial date which Lassiter stated in the voice mail message was inconsistent with the facts as stated in the Criminal Docket for the case, as well as the explanation provided to Moffatt in the bar interview.

38. In the voice mail message, Lassiter misrepresented the reason for the change in the trial date. According to Lassiter's explanation to Moffatt of his phone message to Odom regarding what he said and why he said it, Lassiter deliberately gave Odom an explanation for the continuance of the trial date which was different from the facts.

II. Nature of Misconduct:

Such conduct by David Lassiter, Jr., constitutes violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

VSB Docket No. 07-032-071140 (VSB):

I. Findings of Facts:

39. On October 16, 2006, Craig Fife [Fife] was sentenced in the Circuit Court of the City of Richmond [circuit court] on a conviction for possession of cocaine with intent to distribute. Lassiter was retained at trial, but not on appeal.

40. On November 4, 2006, Lassiter filed a notice of appeal in the circuit court. In the Certificate of Service, Lassiter wrote, *inter alia*, at number 2.:

[Fife] was represented by [Lassiter]. Counsel has not been retained in

this matter. Counsel is simply fulfilling his duty as the trial attorney. The appellant is currently incarcerated and has alleged that he is indigent and requests court-appointed counsel.

41. By letter dated December 12, 2006, Lassiter wrote to Crane and Sneade [sp], court reporters, indicating although he had not been appointed as counsel for the appeal, he did expect the circuit court to appoint someone, and he asked that the transcripts of trial and sentencing be prepared and filed with the circuit court.

42. Also by letter dated December 12, 2006, Lassiter wrote to Fife indicating he had filed the appeal and asked the court to appoint counsel since he had not been so appointed.

43. By letter dated December 14, 2006, Lassiter again wrote Fife stating, *inter alia*, that the circuit court had not appointed an attorney, it was Fife's responsibility to make sure everything is done correctly in the appeal, and mentioning the time frame within which the transcripts had to be filed.

44. By letter dated December 19, 2006, Lassiter wrote to the clerk of the circuit court, copied to the clerk at the Virginia Court of Appeals and Fife, stating, *inter alia*, the letter was an effort to eliminate any exposure for himself and to insure Fife's appellate rights were preserved. Lassiter said, on behalf of Fife, he asked the circuit court to appoint counsel and indicated he did not wish to be appointed. Furthermore, Lassiter asked the court to "grant any necessary extensions (specifically for the filing of transcripts) that are necessary to preserve the appeal..." Lassiter personally delivered the letter himself to both clerk's offices on the date of the letter.

45. On January 11, 2007, Lassiter wrote Crane-Snead & Associates, Inc. stating he had filed the notice of appeal but did not represent Fife; the circuit court should appoint counsel and, if not, Lassiter would accept the financial obligation.

46. Lassiter was court-appointed to represent Fife in the appeal by the circuit court on January 22, 2007, having learned of the appointment on January 17, 2007, when he wrote Fife to inform him.

47. On January 30, 2007, the Virginia Court of Appeals issued a show cause order requiring Lassiter to file an answer by February 14, 2007, because neither the transcripts nor a statement of facts had been timely filed.

48. Lassiter filed a response to the show cause order on February 2, 2007, in which he stated the deadline for the filing of transcripts had passed before he was appointed by the circuit court; he had filed the December 19, 2006, letter addressed to the circuit court and copied to the clerk of the Virginia Court of Appeals, in which he asked for a filing extension.

49. On March 7, 2007, Lassiter filed a petition for appeal in the Virginia Court of Appeals.

50. By letter dated March 25, 2007, to Fife, Lassiter enclosed a copy of the petition for appeal. In the letter he stated he had not been appointed before the trial transcript was due so the Court would not allow use of the transcripts. Lassiter indicated he had filed a motion to allow the appeal to proceed anyway and he filed the appeal on time, but had not received an answer.

51. On May 16, 2007, the Virginia Court of Appeals dismissed the appeal for lack of timely filing of either transcripts or a statement of facts. The court stated Lassiter was mistaken when he asserted he had filed a letter dated December 19, 2006, requesting an extension of time to file the transcripts since the letter was addressed to the circuit court and only copied to the clerk of the Court of Appeals, and the request for an extension was directed to the circuit court clerk.

52. During the bar's investigation of this matter, Lassiter was interviewed by Bar Investigator Cam Moffatt [Moffatt]. During an interview, Lassiter told Moffatt he did not file a motion for an extension of time to file the transcripts in the Court of Appeals pursuant to Rule 5A:8(a) of the Rules of the Virginia Supreme Court because he did not know about the rule.

53. Lassiter informed Fife of the dismissal of the appeal by letter dated May 25, 2007, in which he advised Fife he could seek a writ of *habeas corpus*.

54. In his interview, Lassiter informed Moffatt he did not pursue a delayed appeal on behalf of Fife pursuant to Virginia Code Section 19.2-321.1 because he had already filed a petition for appeal.

55. Lassiter did not pursue an appeal to the Virginia Supreme Court on behalf of Fife.

56. An attorney court-appointed to represent a defendant charged with the commission of a crime punishable by death or imprisonment has a right to counsel in all courts of the Commonwealth including an appeal, if any, until relieved or replaced by other counsel. See *Dodson v. Director of the Department of Corrections*, 233 Va. 303 (1987); Va. Code Sections 19.2-157, 19.2-159, and 19.2-326. An attorney who finds an appeal to be frivolous must nevertheless request permission to withdraw and file an *Anders* brief referring to anything in the record which might arguably support the appeal. *Brown v. Warden of the Virginia State Penitentiary*, 238 Va. 551 (1989), citing *Anders v. California*, 386 U.S. 738 (1967).

II. Nature of Misconduct:

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- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

VSF Docket No. 08-032-073414 (Brockenbrough):

I. Findings of Facts:

57. Lassiter was court-appointed to represent Complainant Christopher Brockenbrough [Brockenbrough] in the appeal of criminal convictions for first degree murder and use of a firearm in the commission of a felony. Lassiter did not represent Brockenbrough at trial.

58. The Virginia Court of Appeals entered an order on December 7, 2005, denying on the merits the petition for appeal filed by Lassiter.

59. By his letter to Brockenbrough dated December 12, 2005, Lassiter declined to handle the pursuit of a writ of *habeas corpus* with respect to trial counsel as requested by Brockenbrough.

60. In a February 21, 2006, letter to Lassiter, Brockenbrough, *inter alia*, asked whether Lassiter had heard anything about the appeal from the Virginia Court of Appeals.

61. By letter dated April 5, 2006, Lassiter indicated, *inter alia*, he would inform Brockenbrough of the next development in the appeal the moment Lassiter became aware of it.

62. By letter to Lassiter dated October 17, 2006, Brockenbrough asked about the development of his case.

63. By letter to Lassiter dated December 7, 2006, Brockenbrough asked about the status of his appeal. Lassiter received this letter on December 12, 2006.

64. According to Lassiter, on December 12, 2006, Lassiter went to the clerk's office at the Virginia Court of Appeals to check on the status of Brockenbrough's appeal and learned for the first time that the appeal had been denied on December 7, 2005.

65. By letter dated December 12, 2006, Lassiter informed Brockenbrough that the appeal had been denied in December of the prior year, stating, *inter alia*, "Had [Lassiter] received the disposition timely, [Lassiter] could have asked to have the matter re-heard or filed an appeal with the Virginia Supreme Court." Lassiter advised Brockenbrough to pursue a writ of *habeas corpus* to pursue further appeal. Lassiter enclosed a copy of the court order denying the appeal.

66. During the investigation of this matter by Bar Investigator Cam Moffatt [Moffatt], she interviewed Lassiter. In the interview, Lassiter stated he periodically checked the court web site to check on the status of appeals, but he failed to do so in Brockenbrough's case.

67. Lassiter told Moffatt that he was the person who opened his mail, and he never received a copy of the Virginia Court of Appeals order prior to December 12, 2006.

68. Lassiter did not inform Brockenbrough of the denial of his appeal by the Virginia Court of Appeals prior to his letter dated December 12, 2006.

69. Lassiter did not pursue a delayed appeal on behalf of Brockenbrough pursuant to Virginia Code Section 19.2-321.1.

70. Lassiter did not appeal Brockenbrough's case to the Virginia Supreme Court.

71. An attorney court-appointed to represent a defendant charged with the commission of a crime punishable by death or imprisonment has a right to counsel in all courts of the Commonwealth including an appeal, if any, until relieved or replaced by other counsel. See *Dodson v. Director of the Department of Corrections*, 233 Va. 303 (1987); Va. Code Sections 19.2-157, 19.2-159, and 19.2-326. An attorney who finds an appeal to be frivolous must nevertheless request permission to withdraw and file an *Anders* brief referring to anything in the record which might arguably support the appeal. *Brown v. Warden of the Virginia State Penitentiary*, 238 Va. 551 (1989), citing *Anders v. California*, 386 U.S. 738 (1967).

72. It is the policy of the clerk's office of the Virginia Court of Appeals to mail a copy of an order to counsel on the date it is entered without a cover letter. The back of the second page of the December 7, 2005, order contains a notation indicating that copies of the order were made and distributed to the clerk, counsel and the file on December 7, 2005.

73. Brockenbrough did pursue a writ of habeas corpus, but the petition was dismissed as not timely filed.

74. Lassiter submitted an affidavit to the Office of the Attorney General in the then pending habeas corpus proceeding. In the affidavit, Lassiter admitted and did not contest allegations of ineffective assistance of counsel.

II. Nature of Misconduct:

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- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the subcommittee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

Pursuant to Paragraph 13-9.E. the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Steven C. McCallum
Steven C. McCallum
Chair

CERTIFICATE OF SERVICE

I certify that on September 11, 2009, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public

Reprimand Without Terms) to David Lassiter, Jr., Esquire, Respondent, at, David Lassiter, Jr., P.C., 1557 East Main Street, Richmond, VA 23219, his last address of record with the Virginia State Bar, and by regular mail to Craig S. Cooley, Esq., Respondent's Counsel, at 3000 Idlewood Avenue, P.O. Box 7268, Richmond, VA 23221-0268.

A handwritten signature in black ink, appearing to read "Craig S. Cooley", is written over a horizontal line.