

VIRGINIA:

**BEFORE THE TENTH DISTRICT—SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
STEPHANIE ALLETTE PEASE**

SEP 4 2012

VS B Docket No. 11-102-086711

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

On August 27, 2012, a meeting in this matter was held before a duly convened Tenth District – Section II Subcommittee consisting of Lisa A. McConnell, Esq., Chair; James E. Rasnic, Esq., member and Jaculyn C. Hanrahan, lay member.

Pursuant to Part 6, Section IV, Paragraph 13-15.E of the Rules of the Virginia Supreme Court, the Tenth District Subcommittee—Section II 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 hereto, Stephanie Allette Pease ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent represented Complainant Jessee Raymond Smith, sometimes known as Jessee Raymond Smith, Jr. ("Mr. Smith") in criminal proceedings before the Circuit Court for Wise County/City of Norton.
3. The criminal proceedings against Mr. Smith included felony rape charges, Commonwealth of Virginia v. Jessee Raymond Smith, Case No. F04-121 ("Case No. F04-121"). Case No. F04-121 is also sometimes referred to as Case No. F04-121(02) in court documents.
4. During the course of her representation of Mr. Smith, Respondent came into possession of certain videotapes and cassette tapes that were relevant to the criminal proceedings pending against Mr. Smith, including Case No. F04-121.
5. On or about June 25, 2004, Mr. Smith was found guilty of rape in the Circuit Court for Wise County/City of Norton in Case No. F04-121.
6. In a letter to Mr. Smith dated August 23, 2004, Respondent discussed the jury's verdict and the trial in general. Respondent stated in the letter:

“The videotape was not introduced at trial because I felt that it could potentially do more harm than good. I explained this to [you] in detail throughout the course of the trial and you were in agreement and seemed to understand my reasons for not introducing the tape. The fact that she told Ms. Mullins that you did not rape her was presented to the jury and that was the most important part.”

7. On or about September 20, 2004, Respondent filed a Notice of Appeal on behalf of Mr. Smith in Case No. F04-121.
8. By Order dated October 15, 2004 (the “Sentencing Order”), Mr. Smith was sentenced to 20 years’ incarceration for the rape conviction. The Sentencing Order also imposed sentences on Mr. Smith for numerous other criminal offenses.
9. On or about February 15, 2005, Respondent filed a Petition for Appeal, pursuant to Anders v. California, 386 U.S. 738 (1967), and a Motion to Withdraw as Legal Counsel with the Court of Appeals of Virginia in Smith v. Commonwealth of Virginia, Case No.: 2225-04-3.
10. On or about February 23, 2005, the Court of Appeals of Virginia granted Mr. Smith an extension of time to file, *pro se*, a supplemental petition for appeal.
11. On or about April 22, 2005, Mr. Smith filed his supplemental petition for appeal with the Court of Appeals. Mr. Smith stated in the supplemental petition:

“The trial Judge never viewed the “VIDEO TAPE” The trial judge asked both Attorney’s, are they going to view the “VIDEO TAPES”? The both of them stated “yes”. The trial Judge asked Mr. Smith’s Attorney and the Commonwealth Attorney if there was any objections to the “VIDEO TAPE” being introduced into evidence, both Attorney’s stated “no”. But Mr. Smith’s Attorney was already planning on using the “VIDEO TAPE” that could prove Mr. Smith’s innocence at trial. The trial Judge should have admitted the “VIDEO TAPE” into evidence and let the Jury view the “VIDEO TAPE”it show[s] the jury the conflict in testimony’s and it would show the testimony . . . has been rehearsed.”

12. On or about July 29, 2005, Respondent shipped to Mr. Smith, via UPS, a copy of his file from the criminal proceeding, including Case No. F04-121. Respondent did not include in the copy of the file that she shipped to Mr. Smith copies of the videotapes and cassette tapes she had in her possession.

13. On or about August 26, 2005, the Court of Appeals denied Mr. Smith's Petition for Appeal and granted Respondent leave to withdraw as counsel for Mr. Smith.
14. The August 26, 2005 Court of Appeals Order denying Mr. Smith's petition for appeal contained the following statement:

"Appellant argues the trial judge erred by not admitting into evidence an exculpatory videotape. Based upon a review of appellant's citations to the transcript where the attorneys discussed the videotape, defense counsel never requested that the videotape be admitted into evidence. Rule 5A:18 bars consideration of the question on appeal and the record does not reflect any reason to invoke the good cause or ends of justice exceptions to Rule 5A:18."
15. In or about January 2010, Mr. Smith filed a complaint with the Virginia State Bar (the "Bar Complaint") alleging that he had made numerous written requests to Respondent that she provide him with copies of the videotapes and cassette tapes Respondent had in her possession that were relevant to the criminal proceedings against Mr. Smith, including Case No. F04-121. Mr. Smith stated that Respondent had failed to provide him with copies of the videotapes and cassette tapes. The Bar Complaint did not contain any allegation that Respondent had misappropriated client funds.
16. On or about January 27, 2011, the Virginia State Bar (the "Bar") sent Respondent a copy of the Bar Complaint and requested that Respondent provide a response on or before February 7, 2011.
17. In a letter dated February 9, 2011, Respondent stated to the Bar that "Mr. Smith has already received a copy of his entire file."
18. Respondent subsequently stated the following in a March 21, 2011 letter to Mr. Smith:

"You have already been provided a complete copy of your files. Specifically, on or about July 29, 2005, your filed was copied and shipped to you via UPS. Please find enclosed a copy of the receipt for the same. I have NOTHING else to give you."
19. The Bar informed Respondent, in a letter dated September 8, 2011, that the Bar Complaint had been referred to the Tenth District Committee for a more detailed investigation. The September 8, 2011 letter reminded Respondent of her duty, pursuant to Rule of Professional Conduct 8.1(c), to comply with the Bar's lawful demands for information not protected from disclosure by Rule of Professional Conduct 1.6.

20. On or about January 18, 2012, Respondent met with Virginia State Bar Investigator Eugene L. Reagan in regard to the Bar Complaint (the "January 2012 Interview"). Respondent confirmed to Mr. Reagan that she did possess certain videotapes and cassette tapes relevant to the criminal proceedings against Mr. Smith, including Case No. F04-121.
21. Respondent told Mr. Reagan during the January 2012 Interview that she initially did not believe that the Rules of Professional Conduct required her to provide copies of the videotapes and cassette tapes to Mr. Smith. She also stated that, after reviewing Rule of Professional Conduct 1.16(e), she understood, at the time of the January 2012 Interview, that Mr. Smith was entitled to copies of the videotapes and cassette tapes.
22. Respondent told Mr. Reagan during the January 2012 Interview that she would have copies of the videotapes and cassette tapes made and would send those copies to Jeremy O'Quinn, Mr. Smith's current attorney.
23. Mr. Reagan later attempted to contact Respondent by telephone on the following dates to confirm that Respondent had provided copies of the videotapes and cassette tapes to Mr. Smith's attorney, Mr. O'Quinn: January 23, 2012; January 24, 2012; February 24, 2012; February 29, 2012; and March 14, 2012.
24. On each of the forgoing dates, Mr. Reagan left a message on Respondent's answering machine requesting that she contact him in regard to the Bar Complaint. Respondent did not return any of Mr. Reagan's telephone calls.

II. NATURE OF MISCONDUCT

Such conduct by Stephanie Allette Pease constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.16 Declining or Terminating Representation

(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.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

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:

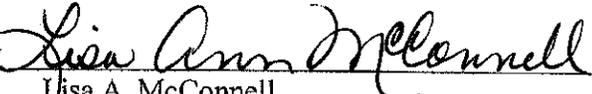
1. Within thirty (30) days of service of the Subcommittee Determination in this matter, Respondent shall deliver to Complainant's attorney, Jeremy O'Quinn, copies of the videos and cassettes relevant to Complainant's case that Respondent has in her possession and shall certify in writing to Assistant Bar Counsel Edward J. Dillon or his designee proof of delivery of the copies of the videos and cassettes to Mr. O'Quinn.

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, the matter shall be certified to the Virginia State Bar Disciplinary Board for proceedings to be conducted pursuant to Rules of

the Supreme Court, Part Six, Section IV, Paragraphs 13-15(F) ("Procedure in All Terms Cases"); 13-15(G) ("Alternative Disposition for a Public Reprimand with Terms"); and 13-20 ("Board Proceedings Upon Certification for Sanction Determination"). 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 Paragraph 13-9.E of the Rules of Court.

Pursuant to Part Six, Section IV, Paragraph 13-9.E of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

TENTH DISTRICT SUBCOMMITTEE—SECTION II
OF THE VIRGINIA STATE BAR

By 
Lisa A. McConnell
Chair

CERTIFICATE OF SERVICE

I certify that on September 4th, 2012, I mailed by certified mail, return receipt requested a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Stephanie Allette Pease, Esquire, Respondent, at Stephanie A. Pease, P.C., 20527 Westchester Circle, PO Box 645, Abingdon, VA 24212, Respondent's last address of record with the Virginia State Bar.


Edward J. Dillon
Assistant Bar Counsel