VIRGINIA:

BEFORE THE FIFTH DISTRICT—SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

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IN THE MATTER OF JOHN DOUGLAS PRIMEAU
VSB Docket No. 13-053-094029

SUBCOMMITTEE DETERMINATION
Public Reprimand With Terms

On 7 March 2014 a meeting was held in this matter before a duly convened Fifth District Subcommittee consisting of Christie A. Leary, Esq., Chair, Peter O. Francescon, Esq., Member, and Daniel H. Aminoff, Lay Member.

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 Prescott L. Prince, Assistant Bar Counsel, and John Douglas Primeau, Respondent, and Rhetta M. Daniel, Esquire, counsel for Respondent.

WHEREFORE, the Fifth District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant to the conduct set forth herein, John Douglas Primeau was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Mr. Primeau represented one Kendrick Cobb before the Circuit Court of Spotsylvania on charges that included one specification of possession of cocaine with intent to distribute; one specification of eluding a police officer; and one specification of obstruction of

justice. Mr. Cobb was convicted of possession of cocaine and on 10 January, 2011 was sentenced thereto to ninety (90) days in jail.

3. Mr. Primeau did not discuss with Mr. Cobb his (Cobb's) options for appeal and potential appealable issues after Cobb's conviction on the charge of possession of cocaine. Mr. Primeau did send to Mr. Cobb an e-mail dated 5 January 2011 in which he (Primeau) stated that he (Primeau) was not available to do the appeal in Mr. Cobb's case and, that even if he (Primeau) had the time, he (Primeau) did not believe that appealable issues existed.

4. Mr. Cobb noted his appeal, *pro se,* on or about 24 January 2011. On or about 8 February 2011, the trial court appointed Mr. Primeau to represent him (Cobb) on the appeal, notwithstanding the fact that Mr. Cobb specifically advised the court that Mr. Primeau had informed Cobb that he (Primeau) did not believe that any legitimate issues existed for appeal.

5. The trial court notified Mr. Primeau via telecopier that he had been appointed to represent Mr. Cobb on appeal.

6. Mr. Primeau did not advise the court that he was not available to do the appeal.

7. Mr. Primeau filed a Notice of Appeal in the Circuit Court of Spotsylvania County on or 9 February 2011.

8. On April 11, 2011, Mr. Primeau sent Mr. Cobb a letter advising Mr. Cobb that he (Primeau) had reviewed the trial transcripts and had concluded that no appealable issues existed in the case. In this same letter, Mr. Primeau also stated that he would not be continuing with the appeal. Mr. Primeau made no effort to follow up on this letter by telephone or e-mail and did not further attempt to contact Mr. Cobb to discuss the appeal.

9. Mr. Primeau failed to take further action to pursue the appeal of Mr. Cobb's case with the Virginia Court of Appeals.

10. The Virginia Court of Appeals dismissed Mr. Cobb's case due to a procedural default in that a Petition for Appeal was not filed.

11. When Mr. Primeau was notified by the Virginia Court of Appeals that Mr. Cobb's appeal was dismissed, he did not attempt to notify Mr. Cobb that the appeal was dismissed.

II. NATURE OF MISCONDUCT

Such conduct by John Douglas Primeau constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct.

Rule 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

III. PROPOSED DISPOSITION
(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 and conditions with which the Respondent must comply are as follows:

1. On or before forty-five (45) days after the Respondent and Respondent's counsel have received Notice, by Certified Mail, Return Receipt, that this Agreed Disposition has been officially accepted by the Subcommittee, the Respondent agrees to engage a law office management consultant acceptable to the Virginia State Bar. The consultant's engagement shall be for the purposes of reviewing Respondent's current law practice policies, methods, systems and record-keeping to ensure compliance with all provisions of Rules 1.2, 1.3, 1.4 and with the other provisions of law office management Rules of the Virginia Rules of Professional Conduct (hereafter "said Rules"), as determined relevant by the law office management consultant.

2. In the event the consultant determines that Respondent is in compliance with the said Rules, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with the said Rules, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rules.

3. In the event the Respondent is determined by the consultant to be not in compliance with the said Rules, he shall have sixty (60) days following the date the consultant issues his written statement of the measures Respondent must take to comply with the said Rules within which to bring himself into compliance. The consultant shall be granted access to Respondent's office, books, records, and files following the passage of the sixty (60) day period to determine whether Respondent has brought himself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rules within the sixty day (60) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with the said Rules as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

4. The consultant shall again examine the Respondent's law practice policies, methods, systems, and escrow account maintenance and record-keeping at a time not earlier than nine (9) months following the date of the consultant's initial certification of compliance pursuant to the terms hereof, and not later than twelve (12) months following such date. The consultant shall thereafter either recertify Respondent's compliance with said Rules or issue a report to the Virginia State Bar and the Respondent stating that the Respondent is not in compliance, and the basis for such a determination. The Respondent shall be deemed to have violated the Terms hereof in the event the consultant, upon such re-examination of Respondent's said law practice policies, methods, systems and record-keeping reports any material noncompliance with the requirements of any provision of Rules 1.2, 1.3, 1.4, and with the other provisions of law office management Rules as determined relevant by the law office management consultant.

5. The Respondent shall be obligated to pay when due the consultant's fees and costs for his services (including provision to the Bar and to Respondent of information concerning this matter).

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed.

If, however, all the terms and conditions are not met by Respondent in accordance with the specifications provided above, the alternative disposition in this matter shall be a Certification to the Disciplinary Board for Sanction Determination pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G. 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.

FIFTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Christie A. Leary
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on March 29, 2014, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail, return receipt requested to John Douglas Primeau, Respondent, at John Primeau LLC, 9119 Church St., Manassas, VA 20110, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Rhetta Moore Daniel, counsel for Respondent, at #170, 3420 Pump Road, Richmond, VA 23233.

Prescott L. Prince
Assistant Bar Counsel