

**VIRGINIA:**

**BEFORE THE SECOND DISTRICT COMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
DONALD ROMAIN RAY**

**VS B Docket No.     05-021-2526  
                          05-021-2527**

**DISTRICT COMMITTEE DETERMINATION  
(PUBLIC DISMISSAL FOR EXCEPTIONAL CIRCUMSTANCES)**

On September 14, 2006, a hearing in this matter was held before a duly convened Second District Committee panel consisting of Donald C. Schultz, Esquire, Mary M. Kellam, Esquire, Robert W. McFarland, Esquire, Michael C. Moore, Esquire, David McDonald, Lay Member, Michael S. Brewer, Lay Member, and Paul K. Campsen, Esquire, Chair, presiding.

The Respondent, Donald Romain Ray, Esquire appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis, Esquire.

The matter proceeded upon the Notice of Hearing, dated July 10, 2006, on appeal of a Subcommittee Determination. The Notice of Hearing set forth allegations that the Respondent's conduct violated Rules of Professional Conduct 1.1, *Competence*, and 1.3 (a), *Diligence*.

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The parties made opening statements, and the panel then received the testimony of the Respondent, Donald Romain Ray, who testified in his own behalf and as an adverse witness for the bar. The panel also received Virginia State Bar Exhibits 1-4 without objection.

Upon the conclusion of the bar's evidence, the Respondent moved to dismiss the allegations of misconduct, which motion the Committee took under advisement and overruled at the conclusion of the case. The parties presented closing arguments, and the panel adjourned to deliberate whether any of the charges of misconduct had been proven by clear and convincing evidence.

Pursuant to Part 6, Section IV, Paragraph 13.H.2 (m) of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Dismissal for Exceptional Circumstances:

### **I. FINDINGS OF FACT**

1. During all times relevant hereto, the Respondent, Donald Romain Ray, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On August 31, 2002, Nelson J. Tobin was arrested in the City of Chesapeake for disorderly conduct and refusing to identify himself, both misdemeanors, and taken to the local jail.
3. At the jail, he was arrested again for assaulting a sheriff's deputy, a class six felony, in violation of Virginia Code Section 18.2-57 (c).
4. On November 22, 2003, the Chesapeake Circuit Court found Mr. Tobin guilty of the felony charge, ordered a presentence report, and scheduled sentencing for February 11, 2003.
5. In the misdemeanor case, the Commonwealth obtained a single indictment for disorderly conduct, and trial was scheduled for January 31, 2003 in the Chesapeake Circuit Court.
6. As a favor to a friend, Mr. Ray agreed to assist Mr. Tobin in both cases, and had himself substituted as counsel on January 3, 2003.
7. On January 13, 2003, Mr. Ray filed a motion to set aside the verdict and a new trial in the felony case, which was denied.

8. When he filed the motion, he also filed the trial transcript from the November 22, 2002 trial, and came to rely upon that filing later when he noted the appeal.

9. After a plea of guilty to the misdemeanor charge on January 31, 2003, the court chose to consolidate the sentencing hearing in this case with the felony matter on February 11, 2003.

10. On February 11, 2003, the court sentenced Mr. Tobin to a net sentence of six months to serve on the charge of assaulting a sheriff's deputy, and two months on the disorderly conduct charge.

11. Mr. Ray timely filed notices of appeal in both cases with the Court of Appeals on March 13, 2003.

12. Mr. Ray hand-delivered the same notices to the trial court on March 10, 2003.

13. Unbeknownst to Mr. Ray, the trial court erroneously filed both notices of appeal in the felony file, causing the record in the misdemeanor case to reflect no notice of appeal.

14. On May 23, 2003, having received the trial court record in the misdemeanor case with no notice of appeal, the Court of Appeals dismissed the appeal.

***Allegations relating to VSB Docket Number 05-021-2527:***

15. The appeal of the misdemeanor conviction (Case Number CR02-3637, Record Number 0662-03-1) having been dismissed, the deadline to request a rehearing was June 6, 2003.

16. Mr. Ray mailed a request for a rehearing on June 5, 2003, but did so by regular mail, resulting in an untimely filing on June 9, 2003. For this reason, the Court of Appeals refused to consider it, and the appeal remained dismissed.

***Allegations relating to VSB Docket Number 05-021-2526:***

17. With respect to the appeal of the felony conviction (Case Number CR 02-3507, Record Number 0663-03-1), Mr. Ray did not order or file the transcript from the February 11, 2003 sentencing hearing, having filed only the transcript from the underlying trial of November 22, 2002.

18. Further, since he filed the transcript as an attachment to his motion to set aside the verdict and new trial, the trial court did not originally treat it as properly filed for the appeal.

19. On May 23, 2003, the Court of Appeals issued a show-cause order to Mr. Ray concerning his failure to file the transcript, and set a deadline of June 7, 2003 to file a response.

20. By letter dated June 5, 2003, the trial court filed the November 22, 2002 transcript.

21. Mr. Ray mailed his response to the show-cause on June 5, 2003, together with his response in the other case, but as in the other case, did so by regular mail, resulting in a late filing on June 9, 2003. Accordingly, the court did not consider his response to the show-cause order.

22. Mr. Ray's deadline for filing the petition for appeal in the felony case was July 2, 2003, but he did not file it until July 14, 2003. Accordingly, on July 16, 2003, the Court of Appeals dismissed the appeal.

***General Information (Continued):***

23. By letter, dated July 16, 2003, the Chief Deputy Clerk of the Court of Appeals explained these developments to Mr. Ray.

24. Mr. Ray appealed the matter, unsuccessfully, to Supreme Court of Virginia.

25. Having felt that he had done all he could do, he advised his client about the habeas corpus process.

**II. NATURE OF MISCONDUCT**

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rules of Professional Conduct:

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- In not mailing his response to the show-cause order by certified mail (in accordance with Rule 5A:3c of the Rules of Court), resulting in its late filing, and
- and in not filing the petition for appeal on time, resulting in the dismissal of the appeal,

and

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- In not mailing his response to the dismissal order by certified mail (in accordance with Rule 5A:3c of the Rules of Court), resulting in its late filing,

the Respondent violated the following Rule 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.

The Committee did not find a violation of Rule 1.3 (a) by clear and convincing evidence, and dismissed that charge accordingly.

### **III. DISMISSAL FOR EXCEPTIONAL CIRCUMSTANCES**

In determining an appropriate sanction, the Committee considered a number of mitigating factors adduced during the hearing, including the following:


- The Respondent accepted the underlying cases on a pro bono basis, and went to considerable expense in funding all of the costs for the benefit of his indigent client.
- The Respondent took these actions not for a selfish motive, but because he felt that the client had been wronged, and wanted to help him.
- In nearly forty-five years of practice, largely public service, the Respondent has no prior disciplinary record.
- Subsequent to the commencement of this action, the Respondent retired from the practice of law, and changed his membership status with the Virginia State Bar accordingly.

Wherefore, the Committee having found that the Respondent engaged in misconduct, but that there exist exceptional circumstances mitigating against further proceedings, it is the decision of the Committee to issue a Dismissal, Exceptional Circumstances, to the Respondent for the misconduct set forth herein.

Pursuant to Paragraph 13.B.8 (c) (1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

The court reporter who transcribed these proceedings is Ronetta Worrell, of Ron Graham and Associates, 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

SECOND DISTRICT COMMITTEE  
OF THE VIRGINIA STATE BAR

By   
Paul K. Campsen, Esquire  
Committee Chair

CERTIFICATE OF SERVICE

I certify that on the 28th day of September, 2006, I mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Dismissal for Exceptional Circumstances) to Donald Romain Ray, Esquire, the Respondent, at 207 Westover Avenue, Unit 205, Norfolk, Virginia 23507, his last address of record with the Virginia State Bar.

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Edward L. Davis, Assistant Bar Counsel