

VIRGINIA:

BEFORE THE CIRCUIT COURT OF THE CITY OF NORFOLK

SEP 19 2011

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

v.

Case No. CL11-4240

BENJAMIN THOMAS REED

VSB Docket Nos. 10-021-082582
 10-021-084359; and
 11-021-085874

MEMORANDUM ORDER

THIS MATTER came to be heard on August 18, 2011, by duly noticed teleconference upon a proposed Agreed Disposition entered into between the parties, which was presented to a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of The Honorable Richard D. Taylor, Chief Judge of the Thirteenth Judicial Circuit, Chief Judge presiding (“Chief Judge”), The Honorable William C. Andrews, III, Retired Judge of the Eighth Judicial Circuit, and The Honorable Aundria D. Foster, Retired Judge of the Seventh Judicial Circuit (“Panel”). The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared personally and through his counsel, Joseph R. Lassiter, Jr.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, applicable to this proceeding pursuant to §54.1-3935(B) of the Code of Virginia, 1950, as amended, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel for its consideration.

The Chief Judge 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 reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chief Judge, verified they had no such interests.

The Panel then heard argument from the parties and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel reconvened and announced its unanimous acceptance of the Agreed Disposition.

I. FINDINGS OF FACT

The Panel finds the following facts by clear and convincing evidence as stipulated by the parties:

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent has practiced law since 1978, concentrating his practice in criminal defense work. For the past 25 years he has served on the Norfolk Circuit Court list of approved attorneys for indigent defendants, and is certified to accept appointments for capital murder cases. He has accepted appointments to try capital murder cases in Norfolk, Virginia Beach and Newport News.

VSJ Docket No. 10-021-082582 (Graves/Lucas/Williams)

3. Respondent was appointed to represent Codie Dominique Graves on appeal following his conviction in the Norfolk Circuit Court of three felonies for which he was sentenced to an active period of incarceration of four years as reflected in a Sentencing Order entered February 12, 2009. Respondent timely filed a notice of appeal. The deadline to file the Petition for Appeal in the Court of Appeals of Virginia ("Court") was June 1, 2009. On that date Respondent began his second consecutive murder trial, having

just completed a four day murder trial. Respondent filed via certified mail a Motion for an Extension of Time to File Petition for Appeal in the Graves case, requesting an additional 10 days to file the petition for appeal due to his busy trial schedule.

Respondent deposited the envelope in the outside mailboxes at the main United States Post Office in Norfolk by 9:00 p.m., prior to the cutoff when the Postal Service no longer postmarks mail for the day. The item was apparently not postmarked. By order entered June 12, 2009, the Court denied the request for an extension as not timely filed, and dismissed the appeal on the basis that no petition for appeal had been filed (*Codie Dominique Graves v. Commonwealth of Virginia* (Record No. 0136-09-1)).

By letter dated June 18, 2009, Respondent filed a Motion for Leave to Pursue Delayed Appeal. By order entered July 22, 2009, a delayed appeal was granted. Respondent subsequently timely filed a notice of appeal and petition for appeal. By order entered December 30, 2009, the petition for appeal was granted. Following briefing and argument, the court affirmed the judgment of the trial court by order entered on July 13, 2010. Respondent timely filed a notice of appeal to the Supreme Court of Virginia.

4. Respondent was appointed to represent Fritz Augustus Lucas ("Lucas") on appeal following his conviction in the Norfolk Circuit Court of multiple felonies for which he was sentenced to an active period of incarceration of 25 years as reflected in his Sentencing Order entered February 18, 2009. Respondent filed a timely notice of appeal. On June 8, 2009, Respondent had just completed his second back to back four day murder jury trial, and began a two day trial for robbery and malicious wounding involving a Norfolk deputy sheriff. June 8, 2009 was also the deadline to file the Lucas petition for appeal. On that date, Respondent filed a Motion for an Extension of Time to

File Petition for Appeal in which he requested additional time to file the petition for appeal due to his busy trial schedule. The Court granted Respondent a ten day extension to June 18, 2009 (*Fritz Augustus Lucas v. Commonwealth of Virginia* (Record No. 0583-09-1)).

On June 10, 2009, Respondent began treatment for a debilitating nervous condition that periodically renders Respondent incapacitated for unpredictable periods of time. In this case he received treatment for two weeks. On June 18, 2009, Respondent filed a second request for extension of time to file the Lucas petition for appeal in which he requested an additional four day extension to file the petition for appeal. On June 24, 2009, Respondent received a copy of an order granting him a second extension until June 22, 2009. Respondent did not file a petition for appeal by the June 22, 2009 deadline, and since the deadline had already expired, it was not possible to file a request for further extension, even though the statute provides for an extension of up to 30 days, which would have been July 8, 2009. By order entered July 13, 2009, the Court dismissed the Lucas appeal for failure to timely file the petition for appeal. Respondent filed a Motion for Leave to Pursue Delayed Appeal by letter dated January 12, 2010, the last day such a motion could have been timely filed. The Court granted a delayed appeal by order entered February 3, 2010. Respondent timely filed a notice of appeal and petition for appeal, which petition was denied September 2, 2010. Respondent timely filed a notice of appeal to the Supreme Court of Virginia.

5. Respondent was appointed to represent Troy Lee Williams, Jr. for manslaughter, use of a firearm, and possession of marijuana with intent to distribute. Following a three-day jury trial, Williams was convicted on two felony counts for which he was sentenced

to an active period of incarceration of 11 years by Sentencing Order issued August 20, 2009. Respondent timely filed a notice of appeal and Appeal Transcript Order Form. On October 16, 2009, Respondent received a telephone message from the assistant clerk at the Norfolk Circuit Court Clerk's Office who is responsible for handling appeals, advising that the transcripts were due on October 20, 2009. When the transcripts were not ready to be filed by that date, Respondent filed a Motion for Extension of Time to File Transcripts on October 20, 2009. However, while Respondent was preparing and filing the motion, Respondent realized that the deadline had been miscalculated by both his assistant and the assistant clerk, and that the actual deadline for filing the transcripts was October 19, 2009. Respondent's motion for additional time to file transcripts was denied as being not timely filed, and the appeal was dismissed on December 30, 2009, on the basis that no petition for appeal had been filed (*Troy Lee Williams, Jr. v. Commonwealth of Virginia* (Record No. 1983-09-1)). Respondent filed a Motion for Leave to File Delayed Appeal, which was granted March 25, 2010. Respondent timely filed a notice of appeal and petition for appeal. By order entered August 25, 2010, the petition for appeal was denied. Respondent timely filed a notice of appeal to the Supreme Court of Virginia.

VSB Docket No 10-021-084359 and 11-021-085874 (Everage)

6. Respondent was appointed by the Virginia Beach Circuit Court to represent Michael Lee Everage on appeal of his conviction of first degree murder. Respondent did not represent Everage at trial. Respondent timely filed a notice of appeal, and sent to the Court, via certified mail, a Motion for an Extension of Time to File Petition for Appeal in which he requested an additional 30 days to file the petition for appeal due to his

extremely busy trial schedule and the voluminous transcripts of Everage's trial and sentencing hearings. By order entered March 12, 2010, the court granted the motion and extended the deadline to March 23, 2010. (*Michael Lee Everage v. Commonwealth of Virginia* (Record No. 2364-09-1)). On that date, Respondent sent to the Court, via certified mail, a Second Motion for an Extension of Time to File Petition for Appeal in which he requested an additional two days to file the petition for appeal. By order entered on March 29, 2010, the court granted the motion and extended the deadline to March 25, 2010. Respondent personally mailed the Petition for Appeal to the Court, via certified mail, on March 25, 2010, by depositing it in the proper receptacle inside the post office prior to the 9:00 p.m. deadline at which the postal service stops postmarking mailed materials. However, the Petition for Appeal was not received by the Court until April 5, 2010. Because of the 11 day delay between the deadline and the receipt of the Petition for Appeal, the Court sent Respondent a letter dated April 8, 2010, requesting, pursuant to Rule 5A:3 of the Rules of the Supreme Court of Virginia, that Respondent provide the official certified mail receipt within 10 days. The U.S. Postal Service does not provide mailing receipts for documents mailed after 5:00 p.m. in Norfolk. Respondent was unable to provide a mailing receipt, and by order entered June 4, 2010, the Court dismissed the appeal on the basis that the petition for appeal was not timely filed.

Respondent filed a Motion for Leave to Pursue Delayed Appeal on July 29, 2010, in which he asserted that although he had been unable to provide the official certified mail receipt as requested by the Court, he had in fact sent the Petition for Appeal to the

Court by certified mail on the evening of March 25, 2010. A delayed appeal was granted by the Court by order entered on August 12, 2010.

Respondent did not provide Everage with a copy of the petition for appeal as Everage requested or the June 4, 2010 dismissal order, nor did he respond to Everage's multiple inquiries regarding the status of his appeal.

II. NATURE OF MISCONDUCT

The Panel finds that such conduct by Benjamin Thomas Reed constitutes misconduct in violation of the following Rules of Professional Conduct as stipulated by the parties:

VSB Docket No. 10-021-082582

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

VSB Docket No. 11-021-085874

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.

Pursuant to the terms of the Agreed disposition, VSB Docket No. 10-021-084359 is dismissed.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Panel **ORDERS** that Respondent hereby receive a **PUBLIC REPRIMAND WITH TERMS**. The terms with which Respondent must comply are as

follows:

Respondent will be on probation for a period of two (2) years effective upon the issuance of this Memorandum Order. During such probationary period, Respondent will not engage in any professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law pertaining to docket control, diligence in representing clients or communication with clients. Any final determination made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia that Respondent engaged in such professional misconduct arising during such probationary period shall conclusively be deemed to be a violation of this term.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met, the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of sixty (60) days.

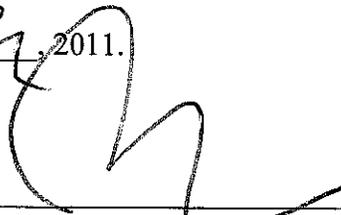
It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of this Court shall send a copy *teste* of this order by certified mail to Respondent, Benjamin Thomas Reed, at 4504 Colley Avenue Norfolk, VA 23508, his address of record with the Virginia State Bar; and a copy *teste* of this order by regular mail to: Respondent's Counsel, Joseph R. Lassiter, Jr., Roussos, Lassiter Glanzer & Marcus, P.L.C., Crown Center, Suite 300, 580 East Main Street, Norfolk, VA 23510; Assistant Bar Counsel M. Brent Saunders, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219; and Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

Tracy J. Stroh of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, was

the court reporter for the hearing and transcribed the proceedings.

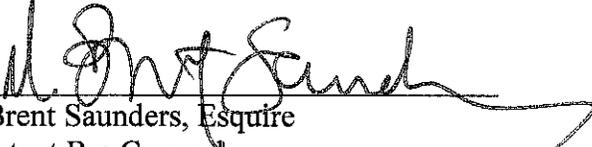
ENTERED this 12th day of September, 2011.



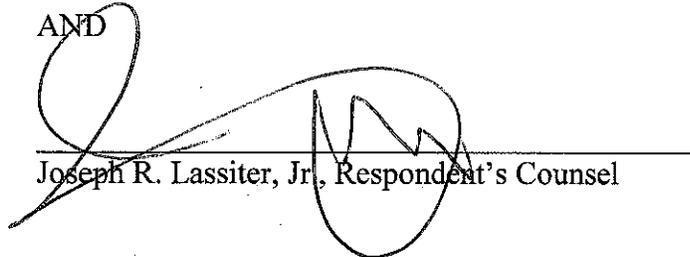
The Honorable Richard D. Taylor
Chief Judge

SEEN AND AGREED:

VIRGINIA STATE BAR

By: 
M. Brent Saunders, Esquire
Assistant Bar Counsel

AND



Joseph R. Lassiter, Jr., Respondent's Counsel

COPY TESTE:
GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT
BY: 
Janice O'Hern, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date: 9-16-11