

VIRGINIA:

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

**In the Matter of BENJAMIN THOMAS REED
VSB Docket Number 05-021-0456**

Complainant: Ernest Lamont Young

**SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION)**

On December 5, 2005, a duly convened Second District, Section I, Subcommittee consisting of Donald C. Schultz, Esquire, Emanuel W. Michaels (Lay Member), and Afshin Farashahi, Esquire, presiding, considered the above-referenced matter and determined that an Agreed Disposition for a Public Admonition would be acceptable as an appropriate disposition if it were set for hearing before the District Committee.

The Respondent having tendered such an agreement, the Second District Subcommittee, therefore, pursuant to Part Six, Section IV, Paragraph 13(G)(1)(c)(2) of the Rules of the Supreme Court of Virginia, hereby serves upon the Respondent the following Public Admonition:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Benjamin Thomas Reed, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On July 17, 2003, a jury sitting in the Circuit Court for the City of Norfolk found Ernest Lamont Young guilty of second degree murder, three counts of the use of a firearm during the commission of a felony, malicious wounding, robbery, and conspiracy. Mr. Reed did not represent Mr. Young at trial.
3. Thereafter, Mr. Young hired Mr. Reed to represent him at sentencing, post-trial motions, and on appeal. He paid a fee of \$1,800.
4. On August 15, 2003, the court substituted Mr. Reed as counsel.
5. On October 10, 2003, the court sentenced Mr. Young to thirty-seven years in prison with no time suspended.

6. Mr. Reed represented Mr. Young at sentencing as agreed, filed a motion to set aside the guilty verdict, and appealed the case to the Court of Appeals of Virginia, and to the Supreme Court of Virginia, which dismissed the petition for appeal on July 28, 2004.

7. The Court of Appeals considered the petition for appeal on its merits.

8. The Supreme Court of Virginia, however, dismissed the appeal for a procedural default: failure to cite Assignments of Error. Mr. Reed, however, actually cited a single assignment of error that read:

The Trial Court erred in refusing to set-aside the jury's verdicts as contrary to the law and the evidence; the Court of Appeals erred in failing to grant appellant's Petition for Appeal on the aforesaid ground that the Trial Court should have granted appellant's motion to set aside the jury's verdicts as contrary to the law and the evidence.

9. Rule 5:17 (c) of the Rules of the Supreme Court of Virginia provides: *an assignment of error which merely states that the judgment or award is contrary to the law and the evidence is not sufficient. If the petition for appeal does not contain assignments of error, the appeal will be dismissed.*

10. Mr. Reed explained that he had crafted similar assignments of error in the past, as many attorneys have, and never had a petition for appeal dismissed for this reason.

11. The complainant, however, alleged that Mr. Reed never advised him that the appeal was dismissed because of Mr. Reed's error. Mr. Reed candidly confirmed this during his interview with the Virginia State Bar investigator.

12. Mr. Reed did not advise Mr. Young about the dismissal of the appeal at either appellate court until Mr. Young telephoned him on August 11, 2004.

II. NATURE OF MISCONDUCT

The foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.4 Communication

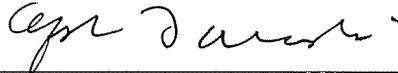
- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

III. PUBLIC ADMONITION

Accordingly, it is the decision of the Subcommittee to impose a **Public Admonition**.

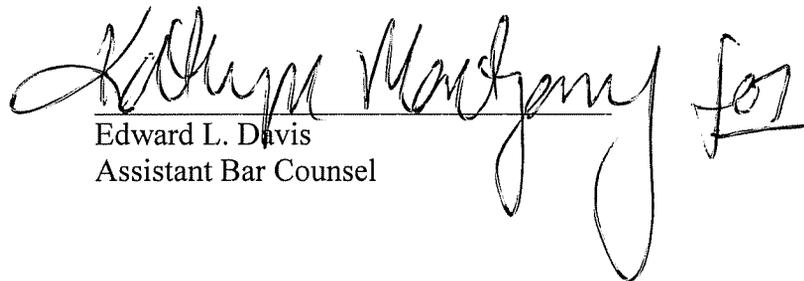
In accordance with the Rules of the Virginia Supreme Court, Part 6: §IV, ¶13(B) (8) (c) (1), the Clerk of the Disciplinary System shall assess costs.

**SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By 
Afshin Farashahi, Acting Chair

CERTIFICATE OF SERVICE

I certify that I have this 14th day of July, 2006, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Public Admonition) to Benjamin Thomas Reed, the Respondent, at 4504 Colley Avenue, Norfolk, Virginia 23510, his address of record of record with the Virginia State Bar.


Edward L. Davis
Assistant Bar Counsel