

VIRGINIA :

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
SIMON HERBERT SCOTT, III

VS B Docket No. 07-031-0072

VS B Docket No. 06-031-3876

ORDER OF PUBLIC REPRIMAND WITH TERMS

On August 29, 2007, a telephone conference in this matter was held before the Disciplinary Board of the Virginia State Bar consisting of Robert E. Eicher, Chair, Timothy A. Coyle, Sandra L. Havrilak, Martha JP McQuade, and V. Max Beard, lay person, to consider acceptance of a proposed Modified Agreed Disposition presented by Simon Herbert Scott, III, Respondent, and Paulo E. Franco, Jr., Assistant Bar Counsel. Donna Chandler, Court Reporter for Chandler & Halasz, 8309 Powhickery Drive, Mechanicsville, Virginia 23116, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

VS B DOCKET NO. 07-031-0072

Complainant: Gloria D. Wood

STIPULATED FINDINGS OF FACT

1. Simon Herbert Scott, III, was admitted to practice law in the Commonwealth of Virginia on April 23, 1997.
2. At all times relevant, Mr. Scott was licensed to practice law in the Commonwealth of Virginia.
3. In March of 2006, Mr. Scott was an attorney in the offices of the law firm Scott & Sams.

4. On March 7, 2006, Ms. Gloria Woods met with Mr. Scott to discuss his representation of her in divorce proceedings.
5. The parties did not execute a formal retainer agreement, but Ms. Woods wrote Mr. Scott a check in the amount of \$1,580.00 as fee for the divorce representation.
6. On March 17, 2006, Ms. Wood called Mr. Scott for an update on her case, but he had not done anything in connection with the representation.
7. On April 7, 2006, Mr. Scott's secretary called Ms. Wood requesting information concerning the case.
8. On April 10, 2006, Ms. Wood called the secretary and provided the information.
9. Unbeknownst to Ms. Wood, Mr. Scott tendered his resignation from Sams & Scott but did not give Ms. Wood or any other of his clients notice.
10. Sams & Scott received several calls from courts in the Norfolk area wanting to know why Mr. Scott had not appeared in court appointed cases.
11. Prior to his departure, Mr. Scott did not take appropriate steps of filing motions to seek leave to withdraw from his court appointed and other cases, nor did he provide such courts with notice that he was leaving the firm.
12. Other attorneys in Sams & Scott continued in those cases that Mr. Scott abandoned once the firm became aware of Mr. Scott's appointment or role as counsel of record.
13. Mr. Scott did not inform any of the other attorneys at Sams & Scott that Ms. Wood was a client or that she had a pending divorce matter.
14. Sams & Scott discovered that Ms. Wood was a client only because she had called the firm after Mr. Scott's departure and advising the firm that she no longer wished Mr. Scott to represent his interests.
15. After his departure, Mr. Scott did not take appropriate steps to refund Ms. Wood the unearned portion of her retainer, nor did he take any appropriate steps to ensure that her records were returned to her.
16. Ms. Wood subsequently elected to retain LeRon Gilchrist, Esquire, an attorney with Sams & Scott.
17. Mr. Scott has advised Bar Counsel that he is no longer engaged in the active practice of law and is not representing clients. He has changed his status with the Virginia State Bar from Active to Associate Status.

STIPULATED FINDING OF MISCONDUCT

Such conduct by Simon Herbert Scott, III constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 DILIGENCE

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

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.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (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 in paragraph (e).

VSB DOCKET NO. 06-031-3876

Complainant: VSB/Anonymous – Jemar Leon White

STIPULATED FINDINGS OF FACT

1. Simon Herbert Scott, III, was admitted to practice law in the Commonwealth of Virginia on April 23, 1997.
2. At all times relevant, Mr. Scott was licensed to practice law in the Commonwealth of Virginia.

3. Jemar Leon White was convicted of possession of cocaine and resisting arrest and sentenced on September 9, 2005.
4. Respondent was appointed to represent Mr. White on appeal to the Court of Appeals of Virginia.
5. Prior to filing an appeal, Mr. White filed a motion to reconsider with the trial court. The trial court denied the motion to reconsider on November 8, 2005.
6. Respondent filed the transcripts of the proceedings at the trial court on December 6, 2005.
7. In calculating the date on which to file the transcripts as part of the appeal, Respondent erroneously used the date of November 18, 2005, the date of the order denying the Motion to Reconsider. The final order for calculating the date in which to file the transcripts was the sentencing order of September 9, 2005.
8. On December 13, 2005, the Court of Appeals issued a Rule to Show Cause requiring Mr. White to show cause why the appeal should not be dismissed.
9. On April 18, 2006, the Court of Appeals dismissed the case for failure to timely file the transcripts.
10. Respondent failed to advise his client that his appeal had been dismissed, and failed to advise his client that he left the firm.
11. Mr. Scott has advised Bar Counsel that he is no longer engaged in the active practice of law and is not representing clients. He has changed his status with the Virginia State Bar from Active to Associate Status.

STIPULATED FINDING OF MISCONDUCT

Such conduct by Simon Herbert Scott, III constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 DILIGENCE

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

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.

DISPOSITION

The Disciplinary Board finds that had this matter gone to a full hearing the Bar would have met its burden to prove the aforementioned Rule violations by clear and convincing evidence. Pursuant to Part 6, Section IV, Paragraph 13.I.2.f, g and h of the Rules of the Virginia Supreme Court, the Disciplinary Board of the Virginia State Bar hereby accepts by a unanimous vote the Modified Agreed Disposition tendered to it, as modified by the suggestion of the Board and freely and voluntarily accepted by Respondent and Assistant Bar Counsel, and

Accordingly it is ORDERED that the Respondent, Simon Herbert Scott, III, receive a Public Reprimand with Terms effective August 29, 2007.

The terms to which Respondent shall be held are as follows:

1. In the event that Respondent elects to return to the active practice of law and activates his status with the Virginia State Bar from Associate to Active, within 30 days of such activation he shall provide written certification to the Office of Bar Counsel that he is working under the supervision of another lawyer.
2. Respondent shall remain under the active supervision of such lawyer for a period of not less than one year.

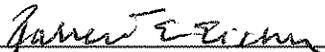
Should Respondent fail to comply with the foregoing terms the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The matter shall be referred to the Disciplinary Board for a hearing to determine an appropriate alternative sanction. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or

excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Disciplinary Board. At the hearing, the burden of proof shall be on the Respondent to show timely compliance with the terms, including timely certification of such compliance, by clear and convincing evidence.

It is further ORDERED that the Clerk of the Disciplinary System shall assess an administrative fee pursuant to Part 6, Sec. IV, Para. 13.B.8.C.1 of the Rules of the Supreme Court of Virginia.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Simon Herbert Scott, III, at his address of record with the Virginia State Bar, being 4012 Newport Avenue, Norfolk, Virginia 23508, by certified mail, return receipt requested, and hand delivered to Paulo E. Franco, Jr., Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 7th day of September, 2007



Robert E. Eicher, First Vice Chair
Virginia State Bar Disciplinary Board