

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DANNY SHELTON SHIPLEY

VSB Docket No. 07-021-1348

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On March 12, 2008, a duly convened Second District Subcommittee consisting of William W. King (Lay Member), Ellen C. Carlson, Esquire, and Mary M. Kellam, Esquire, Chair, presiding, considered an Agreed Disposition in the above-referenced matter. It was the unanimous decision of the Subcommittee to accept the Agreed Disposition.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Danny Shelton Shipley, was an attorney licensed to practice law in the Commonwealth of Virginia.

The William A. Johnson Matter

2. On January 3, 2003, the Circuit Court for the City of Norfolk revoked William A. Johnson's previously suspended sentence and imposed a net sentence of three years to serve. Mr. Shipley was his appointed counsel.

3. On January 9, 2003, the court appointed Mr. Shipley for the appeal.

4. Mr. Shipley timely appealed the matter to the Court of Appeals of Virginia, which denied the appeal on June 26, 2003.

5. By letter, dated July 16, 2003, Mr. Shipley advised his client that he was appealing the matter to the Supreme Court of Virginia.

6. Mr. Shipley filed a petition for appeal to the Supreme Court of Virginia, but did not file a notice of appeal as required by Rule 5:14(a) of the Rules of Court.

7. Accordingly, on August 28, 2003, the Supreme Court of Virginia dismissed the appeal.

8. Mr. Shipley did not notify Mr. Johnson of this development and took no further action in the matter, his office having inadvertently closed the file.

9. Mr. Shipley said that he did not realize that there was a problem until he received the complaint from the Virginia State Bar three years later.

10. Mr. Johnson, therefore, was unable to avail himself of the delayed appeal process.

The Earnest Leon Dew Matter

11. On February 27, 2004, the Circuit Court for the City of Norfolk sentenced Earnest Leon Dew to a net sentence of four years to serve on his conviction of malicious wounding. Mr. Shipley was his appointed counsel.

12. His client desiring an appeal, Mr. Shipley timely appealed the matter to the Court of Appeals of Virginia, and on March 15, 2004, the court appointed Mr. Shipley for the appeal.

13. By letter, dated August 9, 2004, Mr. Shipley provided his client with a copy of his petition for appeal, and said that if the appeal were denied by the Court of Appeals that he would automatically appeal it to the Supreme Court of Virginia.

14. On October 15, 2004, a single judge at the Court of Appeals denied the petition for appeal, and the decision was affirmed by a three-judge panel on December 8, 2004.

15. Mr. Shipley appealed the matter to the Supreme Court of Virginia but once again failed to file the notice of appeal required by Rule 5:14(a) of the Rules of Court.

16. Accordingly, on March 3, 2005, the Supreme Court dismissed the appeal.

17. Mr. Shipley promptly advised his client about the problem, and filed a petition for a writ of habeas corpus for a delayed appeal which was granted, and the appeal was restored to the docket.

The Danuel L. Maye Matter

18. On August 5, 2005, the Circuit Court for the City of Norfolk sentenced Danuel L. Maye to a net sentence of two years to serve on his conviction of possession of a firearm by a convicted felon.

19. His client desiring an appeal, Mr. Shipley timely appealed the matter to the Court of Appeals of Virginia, and on September 7, 2005, the Court appointed Mr. Shipley for the appeal.

20. On March 22, 2006, the Court of Appeals denied the petition, and Mr. Shipley appealed the matter to the Supreme Court of Virginia.

21. On this occasion, Mr. Shipley filed the notice of appeal, but was late in filing the petition for appeal in accordance with Rule 5:17 (a) (2) of the Rules of Court, and the Supreme Court dismissed the appeal accordingly on June 8, 2006.

22. Mr. Shipley notified his client of the error and on September 16, 2006, petitioned for a delayed appeal in accordance with Virginia Code Section 19.2-321.2. The petition was granted and the matter was restored to the Supreme Court's docket, where it was ultimately refused on May 24, 2007.

II. NATURE OF MISCONDUCT

Such conduct by Danny Shelton Shipley constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

In failing to file a notice of appeal on two occasions, failing to timely file a petition for appeal on one occasion, and inadvertently closing the file after an appeal was dismissed because of his error, thereby depriving that client of the opportunity to seek a delayed appeal, the Respondent was in violation of the following provisions of the Rules 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.

RULE 1.3 Diligence

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

In closing the *Johnson* file after the appeal was dismissed due to his error, thereby not advising Mr. Johnson of the problem or of his option to seek a delayed appeal, the Respondent was in violation of the following provisions of the 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 REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a **Public Reprimand** and the Respondent is hereby so reprimanded.

Pursuant to Paragraph 13.B.8.c., the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Mary M. Kellam
Mary M. Kellam, Esquire
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on the 20th day of March, 2008, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand) to Danny Shelton Shipley, Esquire, Respondent, at, RBC Centura Building, Suite 1410, 555 East Main Street, Norfolk, VA 23510, his/her last address of record with the Virginia State Bar.

Edward L. Davis

Edward L. Davis
Assistant Bar Counsel