

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR

RECEIVED

MAR 4 2011

IN THE MATTER OF
JAMES FRED SUMPTER

VSB CLERK'S OFFICE

VSB Docket No. 11-032-085088

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On February 18, 2011, a meeting in this matter was held before a duly convened Third District Subcommittee, Section II consisting of Tony H. Pham, Esq., Chairman; Steven C. McCallum, Esq., Member; and Judith G. Napier, Lay Member.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Third District Subcommittee, Section II of the Virginia State Bar hereby serves upon the Respondent James Fred Sumpter ("Respondent") the following Public Reprimand with Terms:

TAMMY JOELL GOODWIN

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In 2008 and 2009, Respondent represented Tammy Joell Goodwin, a relative of Respondent's deceased wife, on a *pro se* basis, on multiple charges in the Circuit Court of the City of Richmond.
3. On January 12, 2009, Respondent defended Ms. Goodwin at her trial in the Circuit Court of the City of Richmond. Ms. Goodwin was convicted of all charges, and she was sentenced on March 17, 2009.
4. Ms. Goodwin requested Respondent appeal the convictions.
5. On April 6, 2009, Respondent timely noted Ms. Goodwin's appeal to the Court of Appeals of Virginia.
6. On May 8, 2009, Respondent argued post-trial motions, which were denied.

7. Respondent failed to timely file a Petition for Appeal on Ms. Goodwin's behalf.
8. By order entered July 31, 2009, the Court of Appeals of Virginia dismissed Ms. Goodwin's appeal for failure to timely submit the Petition for Appeal.
9. Respondent believes the Court of Appeals of Virginia sent him a copy of the July 31, 2009, Order of Dismissal of the Appeal. The Order was in Respondent's file.
10. Respondent did not timely advise Ms. Goodwin of the dismissal of her appeal, nor did he advise her of her rights and options upon the dismissal of her appeal.
11. Respondent did not timely move for leave to file a delayed appeal in the Court of Appeals of Virginia pursuant to Va. Code Section 19.2-321.1.
12. On January 26, 2011, the Virginia State Bar's investigator interviewed Respondent regarding this matter. Respondent advised that from 2008 to 2010, which includes the time period of Respondent's representation of Ms. Goodwin, he underwent many personal crises, including a divorce, the death of his mother, and health issues. As a result of these crises, Mr. Sumpter sought professional assistance. He is now working with a licensed clinical social worker and a physician.
13. By letter dated February 1, 2011, Respondent advised Ms. Goodwin that if she still wished to pursue her appeal, he would submit a motion to the Court of Appeals of Virginia.
14. On February 9, 2011, Respondent filed a Motion for Leave to File a Delayed Appeal pursuant to Va. Code Section 19.2-321.1, with the Court of Appeals of Virginia. His Motion acknowledged that he submitted the same outside the time limit provided by the statute.
15. By letter dated February 9, 2011, to Ms. Goodwin, Respondent has offered to assist her in preparing a habeas petition if the Court of Appeals of Virginia denies the Motion for Leave to File a Delayed Appeal.

II. NATURE OF MISCONDUCT

Such conduct by James Fred Sumpter constitutes misconduct 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.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

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.

JOSHUA SMITH

I. STIPULATIONS OF FACT

1. At all times relevant, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In April 2008, the General District Court of Caroline County appointed Respondent to represent Joshua Smith. In March 2008, Smith was arrested on multiple felony charges.
3. On April 15, 2009, Respondent defended Mr. Smith at his trial in Caroline County Circuit Court on multiple felony charges. Mr. Smith was convicted of seven felonies.
4. By order entered September 14, 2009, the Circuit Court of Caroline County sentenced Mr. Smith, and it suspended portions of the sentences. By separate order entered September 14, 2009, the Court denied Respondent's motion for additional suspensions of Mr. Smith's sentences.
5. Mr. Smith requested Respondent appeal the Court's orders.
6. Respondent noted Mr. Smith's appeal, but he failed to file the trial transcript with the appeal.
7. Respondent also failed to file the Petition for Appeal on Mr. Smith's behalf.
8. By order entered January 29, 2010, the Court of Appeals of Virginia dismissed Mr. Smith's appeal because Respondent failed to timely file the Petition for Appeal.
9. Respondent did not timely advise Mr. Smith of the dismissal of his appeal, nor did he advise him of his rights and options upon the dismissal of his appeal.
10. Respondent did not timely move for leave to file a delayed appeal in the Court of Appeals of Virginia pursuant to Va. Code Section 19.2-321.1.

11. On January 26, 2011, the Virginia State Bar's investigator interviewed Respondent regarding this matter. Respondent advised that from 2008 to 2010, which includes the time period of Respondent's representation of Mr. Smith, he underwent many personal crises, including a divorce, the death of his mother, and health issues. As a result of these crises, Mr. Sumpter sought professional assistance. He is now working with a licensed clinical social worker and a physician.
12. By letter dated February 1, 2011, Respondent advised Mr. Smith that if he still wished to pursue his appeal, he would submit a motion to the Court of Appeals of Virginia.
13. Pursuant to Va. Code Section 19.2-321.1, as of February 1, 2011, the time to file a delayed appeal had lapsed.
14. Mr. Smith advised that he would like to pursue a motion, which Respondent will file on Mr. Smith's behalf. If unsuccessful, Respondent will assist in preparing a habeas petition.

II. NATURE OF MISCONDUCT

Such conduct by James Fred Sumpter constitutes misconduct 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.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

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.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions are:

1. For a period of one year following the entry of this Order, the Respondent shall not engage in any conduct that violates Rules 1.1, 1.3, and 1.4 of the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the rules of Professional Conduct referred to above, provided, however, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.
2. No later than June 1, 2011, Respondent shall consult with a named lawyer, approved by Assistant Bar Counsel, to serve as a mentor to Respondent and for the purpose of reviewing and making recommendations concerning Respondent's law practice policies, systems, and procedures. Respondent shall submit the name or names of lawyers he has identified to review his procedures and policies to Assistant Bar Counsel for approval no later than May 1, 2011. Respondent shall grant the attorney access to his law practice both to review his policies and procedures and to ensure that Respondent has instituted and is complying with his/her recommendations. Assistant Bar Counsel shall have access, by telephone conferences and/or written reports, to the findings and recommendations, as well as the attorney's assessment of Respondent's level of compliance with the recommendations.
3. Not later than April 1, 2011, Respondent shall participate in an evaluation conducted by Lawyers Helping Lawyers ("LHL") and shall implement all of LHL's recommendations. Respondent shall enter into a written contract with LHL for a minimum period of one (1) year and shall comply with the terms of such contract, including, *inter alia*, personally meeting with LHL and its professionals, as directed. Respondent shall authorize LHL (i) to provide periodic reports to the Office of Bar Counsel stating whether Respondent is in compliance with LHL's contract with Respondent, and (ii) to notify the Office of Bar Counsel promptly if Respondent fails to follow the LHL-prescribed program, or ends participation in the LHL-prescribed program sooner than the expiration of the LHL contract.

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 by April 1, 2012, Respondent agrees that the Third District Committee, Section II shall impose a thirty (30) day suspension pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G.

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By


Tony H. Pham
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on March 3, 2011, I mailed by Certified Mail, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to James Fred Sumpter, Esquire, Respondent, *pro se*, at P. O. Box 5564, Midlothian, VA 23112, Respondent's last address of record with the Virginia State Bar.


Renu M. Brennan, Assistant Bar Counsel