

VIRGINIA:

**BEFORE THE THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
MELVIN LORENZO TODD, JR.**

VS Docket No. 16-032-104870

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On March 11, 2016, pursuant to Part Six, Section IV, Paragraph 13-15.F. of the Rules of the Supreme Court of Virginia, a hearing was held for Respondent Melvin Lorenzo Todd, Jr. (Respondent) to show cause why the alternative disposition of a Public Reprimand without Terms should not be imposed as set forth in the Private Reprimand with Terms issued by a Subcommittee of the Third District Committee, Section II on March 31, 2015.

The matter was held before a duly convened Third District Committee, Section II panel consisting of Alexander N. Simon, Esq., Vice Chair of the Third District Committee, Section II and Chair presiding of the hearing; John S. Jung, Esq., Secretary; R. Braxton Hill, Esq., member; Michael R. Shebelskie, Esq., member; John J. Mable, lay member; Barry Green, lay member; and Michelle H. Papierniak, lay member (Panel).

Respondent appeared in person with his counsel, Elliott Park, Esq. Renu Brennan, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. Ms. Tracy J. Stroh, with Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222, having been duly sworn, reported the hearing.

The Panel was polled as to whether any member had any conflict of interest, any apparent conflict of interest, or other reason why the member should not participate in the hearing. Each panel member, including the Chair, answered in the negative.

On January 29, 2016, the Bar had issued to Respondent a Notice of Show Cause Hearing regarding Respondent's violation of Term 2 of the March 31, 2015, Private Reprimand with Terms. The Notice of Show Cause with exhibits was admitted at the hearing as Bar Exhibit A. The exhibits to the Notice of Show Cause, admitted as part of Bar Exhibit A, are as follows: Private Reprimand with Terms (Exhibit A); letters dated October 14, 2015, and December 15, 2015, between the Bar and Respondent's counsel (Exhibit B); and December 22, 2015, e-mail from Respondent's counsel to the Bar (Exhibit C). E-mails between the Bar and Respondent's counsel from October 2015 to December 2015 were admitted at the hearing as Bar Exhibit B.

Respondent's CLE registration for a May 2016 conference was admitted at the hearing as Respondent's Exhibit A. Respondent also testified in his case, and the Bar cross-examined Respondent. Respondent stipulated that he did not comply with Term 2 of the Private Reprimand with Terms, requiring completion of certain CLE by October 1, 2015.

Upon hearing all the evidence and the stipulation, the Panel determined that Respondent did not prove by clear and convincing evidence that he complied with Term 2 of the Private Reprimand with Terms. Accordingly, pursuant to Part Six, Section IV, Paragraph 13-15.F, and 13-16.Z. of the Rules of the Virginia Supreme Court, the Panel hereby serves upon the Respondent the following Public Reprimand:

I. **FINDINGS OF FACT**

1. Respondent Melvin Lorenzo Todd, Jr. (Respondent) was licensed to practice law in the Commonwealth of Virginia in 2008, and at all times referenced herein, Respondent was an attorney licensed to practice law in Virginia.

A. **VS B Docket No. 15-032-100273 (Antonio A. Fountain)**

2. By Order entered April 26, 2013, Respondent was appointed to represent Complainant Antonio A. Fountain (Fountain) on criminal charges including first-degree murder and use of a firearm in commission of a felony.

3. Respondent represented Fountain at his jury trial held October 25, 26, and 31, 2012.

4. The jury convicted Fountain of voluntary manslaughter and found that Fountain was not guilty of using a firearm in the commission of murder.

5. By Judgment entered August 21, 2013, Fountain was sentenced to ten years in prison. Fountain was also found in violation of the terms of an earlier suspended sentence.

6. Fountain sought to appeal the Judgment, and Respondent timely perfected Fountain's appeal to the Court of Appeals of Virginia.

7. By Order entered March 13, 2014, the Court of Appeals of Virginia denied Fountain's appeal.

8. Respondent advised Fountain of the Court of Appeals of Virginia's denial of his appeal and filed a Petition for Appeal with the Supreme Court of Virginia.

9. Respondent did not file a Notice of Appeal with the Court of Appeals of Virginia prior to filing the Petition for Appeal with the Supreme Court of Virginia as required by Rule 5:14(a) of the Rules of the Supreme Court of Virginia.

10. By Order entered June 12, 2014, the Supreme Court of Virginia dismissed Fountain's petition for appeal because Fountain, through Respondent, had not filed the Notice of Appeal in the Court of Appeals of Virginia as required by Rule 5:14(a) of the Rules of the Supreme Court of Virginia.

11. Respondent did not advise Fountain of the Supreme Court of Virginia's dismissal of his appeal, nor did he advise Fountain of his rights upon such dismissal, including Fountain's right under Va. Code Section 19.2-321.2 to file a motion for delayed appeal in the Supreme Court of Virginia, and/or Fountain's right to file a petition for a writ of *habeas corpus*, nor did Respondent advise Fountain of the time limits to bring such motion and/or petition, nor did Respondent advise Fountain of how or when to file a motion for delayed appeal and/or a petition for writ of *habeas corpus*.

12. Respondent did not assist Fountain with pursuing any rights upon dismissal of his appeal for Respondent's failure to properly perfect his appeal, including Fountain's right to file for leave to pursue a delayed appeal or a petition for writ of *habeas corpus*.

13. By letter dated July 28, 2014, Fountain submitted a complaint against Respondent to the Virginia State Bar alleging that Respondent had not communicated with him and stating that Fountain wanted to know the status of his Petition for Appeal with the Supreme Court of Virginia.

14. Respondent did not respond to the bar complaint. Respondent asserts that he was moving offices and did not receive the complaint until after his deadline to respond expired. Respondent did participate fully in the Bar's investigation of the complaint.

15. Respondent did nothing further to communicate or assist his client, as Respondent asserts that he believed there was nothing further he could do to address the dismissal.

16. Fountain did not learn of the dismissal of the appeal until March 9, 2015, at which time the Virginia State Bar's investigator advised him of the dismissal.

Respondent's failure (1) to properly perfect Fountain's appeal to the Supreme Court of Virginia; (2) to advise Fountain of the Supreme Court of Virginia's dismissal of the appeal based on Respondent's error; (3) to advise Fountain of his right to file for leave to pursue a delayed appeal and/or a petition for writ of *habeas corpus*; and (4) to assist and pursue any of Fountain's rights upon dismissal of his appeal constitutes misconduct in violation of Virginia Rules of Professional Conduct 1.1 (Competence); 1.3(a) (Diligence); 1.4(a) and 1.4(b) (Communication); and 1.16(d) (Declining or Terminating Representation), as set forth in full below at Section II.

B. VSB Docket No. 15-032-101094 (Don C. Edmonds)

17. By Order entered April 26, 2013, the Circuit Court of the City of Richmond appointed Respondent to represent Complainant Don C. Edmonds (Edmonds) on charges of attempted murder, aggravated malicious wounding, and robbery.
18. Pursuant to Va. Code Section 19.2-159.C., Respondent was appointed to represent Edmonds, until relieved or replaced by other counsel, including throughout any appeal.
19. Respondent represented Edmonds in his criminal trial. On June 12, 2013, Edmonds was convicted of attempted murder and aggravated malicious wounding.
20. By Judgment entered December 9, 2013, Edmonds was sentenced to 60 years in prison, with 10 years suspended.
21. Edmonds sought to appeal the Judgment, and Respondent timely noted Edmonds' appeal.
22. By letter dated January 7, 2014, Respondent advised Edmonds that he noted the appeal, and that he would send Edmonds a copy of any petition, brief, or motion filed on Edmonds' behalf and keep Edmonds posted on developments during the course of his appeal.
23. Respondent took no further action on Edmonds' behalf. Respondent did not perfect Edmonds' appeal, and Respondent did not communicate further with Edmonds.
24. By Order entered May 23, 2014, the Court of Appeals of Virginia dismissed Edmonds' appeal because no Petition for Appeal was timely filed by April 16, 2014.
25. Respondent asserts that he was unaware that his court appointment included representation through all appellate stages. Respondent asserts that the appeals discussed herein were the first appeals he had handled, and he believed he only had to note Edmonds' appeal and that other counsel would be appointed to handle the appeal. Accordingly, and notwithstanding his representations to Edmonds, and notwithstanding the fact that he received the dismissal order, Respondent filed nothing further, nor did Respondent make any attempt to address or cure the dismissal of Edmonds' appeal, nor did Respondent advise Edmonds that his appeal was dismissed.
26. By letter October 21, 2014, to the Court of Appeals of Virginia, not having heard from Respondent regarding the status of his appeal, Edmonds requested that the Court of Appeals of Virginia appoint counsel to represent him in his appeal.
27. By letter dated October 28, 2014, the Deputy Clerk of the Court of Appeals of Virginia advised Edmonds that the Court's records indicated that Edmonds had appointed counsel, who was not relieved from representation, and further that final

order had been entered by the Court of Appeals dismissing Edmonds' appeal May 23, 2014, and no petition for rehearing or notice of appeal to the Supreme Court of Virginia had been filed by the deadlines of June 6 and June 22, 2014, respectively. Finally, the letter advised Edmonds that the Court of Appeals of Virginia no longer had jurisdiction of his appeal and could not provide Edmonds with legal advice.

28. By letter dated October 30, 2014, Edmonds submitted a complaint to the Virginia State Bar that Respondent advised Edmonds that he filed his appeal and would work on his appeal, however, Respondent did not do so, and Edmonds learned his appeal was dismissed.

Respondent's failure (1) to perfect Edmonds' appeal until relieved as counsel; (2) to communicate with Edmonds upon dismissal of his appeal and to advise Edmonds of the Court of Appeals of Virginia's dismissal of the appeal based on Respondent's error; (3) to advise Edmonds of his right to file for leave to pursue a delayed appeal and/or a petition for writ of *habeas corpus*; and (4) to assist and pursue any of Edmonds' rights upon dismissal of his appeal constitutes misconduct in violation of Virginia Rules of Professional Conduct 1.1 (Competence); 1.3(a) (Diligence); 1.4(a) and 1.4(b) (Communication); and 1.16(d) (Declining or Terminating Representation), as set forth in full below at Section II.

C. VSB Docket No. 15-032-100311 (Michael A. Young)

29. The Circuit Court of the City of Richmond appointed Respondent to represent Complainant Michael Anthony Young, Jr., (Young) after Young's criminal trial and prior to sentencing in November 2013.

30. Pursuant to Va. Code Section 19.2-159.C., Respondent was appointed to represent Young, until relieved or replaced by other counsel, including throughout any appeal.

31. By Judgment entered December 9, 2013, Young was sentenced to 28 years upon convictions for attempted murder – first degree, malicious wounding, use of a firearm, use of a firearm – first offense, and possession of a firearm by a violent felon.

32. Young sought to appeal the Judgment, and Respondent timely noted Young's appeal.

33. By letter dated January 8, 2014, Respondent advised Young that he noted the appeal, and that he would send Young a copy of any petition, brief, or motion filed on Young's behalf and keep Young posted on developments during the course of his appeal.

34. Respondent took no further action on Young's behalf. Respondent did not perfect Young's appeal, and Respondent did not communicate further with Young.

35. Young attempted to contact Respondent to no avail.

36. Young contacted the court reporter to ensure that Respondent ordered the transcripts to perfect his appeal and was advised that Respondent had not done so.

37. Young requested the Circuit Court of Richmond appoint counsel to perfect his appeal.

38. By Judgment entered *nunc pro tunc* appellate rights on March 6, 2014, the Circuit for the City of Richmond Court clarified that Respondent was appointed to represent Young on appeal.

39. Respondent did not perfect Young's appeal or timely file (by April 16, 2014) the Petition for Appeal with the Court of Appeals of Virginia.

40. By Order entered May 23, 2014, the Court of Appeals of Virginia dismissed Young's appeal because no Petition for Appeal was timely filed by April 16, 2014.

41. Respondent asserts that he was unaware that his court appointment included representation through all appellate stages. Respondent asserts that the appeals discussed herein were the first appeals he had handled, and he believed he only had to note Young's appeal and that other counsel would be appointed to handle the appeal. Accordingly and notwithstanding his representations to Young, and notwithstanding the Order entered *nunc pro tunc* March 6, 2014, Respondent filed nothing further, nor did Respondent make any attempt to address or cure the dismissal of Young's appeal, nor did Respondent advise Young that his appeal was dismissed.

42. By letter dated July 28, 2014, Young submitted a complaint to the Virginia State Bar that Respondent had not communicated with him regarding the status of his appeal.

Respondent's failure (1) to perfect Young's appeal until relieved as counsel; (2) to communicate with Young upon dismissal of his appeal and to advise Young of the Court of Appeals of Virginia's dismissal of the appeal based on Respondent's error; (3) to advise Young of his right to file for leave to pursue a delayed appeal and/or a petition for writ of a *habeas corpus*; and (4) to assist and pursue any of Young's rights upon dismissal of his appeal constitutes misconduct in violation of Virginia Rules of Professional Conduct 1.1 (Competence); 1.3(a) (Diligence); 1.4(a) and 1.4(b) (Communication); and 1.16(d) (Declining or Terminating Representation), as set forth in full below at Section II.

II. NATURE OF MISCONDUCT

Such conduct by Respondent 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.

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.

RULE 1.16 Declining Or Terminating Representation

(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 as indicated in paragraph (e).

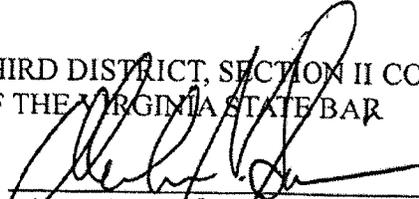
III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee to impose a Public Reprimand Without Terms, and the Respondent is hereby so reprimanded.

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

THIRD DISTRICT, SECTION II COMMITTEE
OF THE VIRGINIA STATE BAR

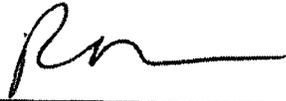
By



Alexander N. Simoh,
Chair

CERTIFICATE OF SERVICE

I certify that on March 29, 2016, a true and correct copy of the foregoing District Committee Determination (Certification) was sent by certified mail, return receipt requested to Melvin Lorenzo Todd, Jr., Respondent, at Todd Law P.C., 2020 A, E Franklin St, Richmond, VA 23223, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Elliott Purcell Park, counsel for Respondent, at Park and Company, P.C., Suite 300, 1011 East Main Street, Richmond, VA 23219-3537.



Renu Mago Brennan, Assistant Bar Counsel