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VIRGINIA:

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF EDDIE RAYMOND VAUGHN, JR., ESQUIRE

VSB Docket Nos. 05-060-1146

05-060-1147

05-060-1148

05-060-1149

05-060-4836

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

On the 8th day of September, 2006, a meeting in these matters was held before a duly convened subcommittee of the Sixth District Committee consisting of Richard Henry Stuart, Esq., David R. Millard, and Jennifer Lee Parrish, Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(d) of the Rules of Virginia Supreme Court, a subcommittee of the Sixth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Eddie Raymond Vaughn, Jr., Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket Numbers 05-060-2146 and 05-060-1147:

2. The Respondent was court appointed to represent client Richard S. Maulick ("Maulick") on appeal for a probation revocation hearing in the Hanover County Circuit Court held on December 18, 2002. The court revoked the suspension of sentence imposed in a prior case by Judgment entered March 17, 2003. The Respondent timely filed a Notice of Appeal

but did not file a Petition for Appeal, based on his belief that the appeal was without merit. No Anders brief was filed.

3. The Court of Appeals dismissed the appeal by Order entered August 20, 2003. Thereafter, Maulick filed a petition for a writ of habeas corpus on December 29, 2003, contending in part that he was denied his right to appeal to the Court of Appeals. The Supreme Court of Virginia awarded a writ of habeas corpus limited to the issue of the denial of Maulick's right of appeal with leave granted to file a notice of appeal and to apply to the Court of Appeals for Virginia for an appeal of the judgment rendered on March 17, 2003, by the Circuit Court of Hanover County. Maulick, by court appointed counsel, filed a Petition for Appeal to the Court of Appeals on December 8, 2004 and the appeal was thereafter denied.

4. The Respondent's paralegal erroneously filed a second Notice of Appeal. No Petition for Appeal was filed for that second notice and that appeal was subsequently dismissed as well.

5. As there were two notices of Appeal and two dismissals, two files were opened by the Virginia State Bar related to the same matter.

The subcommittee finds that the following Rules of Professional Conduct have been violated:

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.

VSJ Docket Number 05-060-1148:

6. The Respondent was retained to represent client Robert Jennings (“Jennings”) on appeal, and entered an appearance as substitute counsel in the Hanover County Circuit Court on October 30, 2001. The posture of the case when Respondent entered the case was that Jennings had pled guilty and was awaiting sentencing. Jennings wanted to withdraw his guilty plea. Respondent made the appropriate motion to withdraw the guilty plea, which motion was denied on October 30, 2001. Respondent further represented Jennings at his sentencing hearing on March 18, 2002. The Court entered its Judgment/Sentencing Order on March 18, 2002. The Respondent timely filed a Notice of Appeal but failed to file a Petition for Appeal. The appeal was subsequently dismissed.

7. It is the Respondent’s contention that the appeal was dismissed because the court reporter failed to produce a critical October 30, 2001 hearing transcript containing the defendant’s request for a withdrawal of his guilty plea. The Clerk’s Office for the Court of Appeals received the Record of the trial court proceedings on June 12, 2002. The Record, however, did not include the transcript of the October 30, 2001 argument. Respondent mailed by first class mail on July 29, 2002, a Petition for Extension of Time to file a Petition for Appeal which was denied on July 30, 2002. Respondent then filed a Petition for Rehearing with the Court of Appeals, on August 6, 2002, which was denied on August 21, 2002.

8. The client contends that the Respondent failed to inform him of the dismissal of the appeal and failed to communicate with him regarding the status of the case. Mr. Jennings did not learn of the dismissal until he was informed of such by the Virginia State Bar investigator.

The subcommittee finds that the following Rules of Professional Conduct have been violated:

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.

VSB Docket Number 05-060-1149:

9. The Respondent was court appointed on June 15, 2000 to represent client Terry Lee Tyler (“Tyler”) in the Hanover County Circuit Court on appeal of charges of breaking and entering, grand larceny and conspiracy charges. Respondent filed a Motion in *limine* to exclude the introduction of evidence of burglaries allegedly committed in surrounding jurisdictions. The motion was argued by Respondent on September 13, 2000 and denied by the court. Tyler was found guilty and sentenced on May 21, 2001.

10. The Respondent timely filed a Notice of Appeal on June 26, 2001. At Respondent’s insistence, the Court of Appeals, by Order entered November 9, 2001, ordered that the transcript of the motions and trial proceedings be prepared. The Record from the trial court was filed with the Court of Appeals on December 20, 2001 but did not include the transcript of the motion in *limine*. Respondent filed a motion for an extension of time to file a Petition for Appeal, as the sole appealable issue pertained to the trial court’s denial of the motion in *limine*. The Court of Appeals denied the motion for an extension and Respondent was unable to file a Petition for Appeal. The Court of Appeals subsequently dismissed Tyler’s appeal on February

14, 2002. Tyler, by counsel, filed a late filed Petition for Appeal, which was dismissed on the merits. The transcript of the September 13, 2000 motion in *limine* was filed with the Court of Appeals on August 6, 2003.

11. The client contends that the Respondent failed to inform him of the dismissal of the appeal and failed to return his telephone calls. Mr. Tyler did not learn of the dismissal until he contacted the court himself to determine the outcome of the proceeding.

The subcommittee finds that the following Rules of Professional Conduct have been violated:

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.

VSJ Docket Number 05-060-4836:

12. The Respondent was retained to represent client Darrell Madison, (hereinafter the Complainant on appeal of charges related to the possession of drugs and a firearm. Trial was scheduled for July 1, 2005 in the Hanover County Circuit Court.

13. The Respondent's fee for representation through completion of the trial was \$5,000. Mr. Madison's mother paid the Respondent \$5,000 by check dated December 18, 2004. The Respondent deposited the check in his operating account rather than his trust account.

14. On or about May 6, 2005, the Commonwealth informed Respondent that it would amend the charges against Complainant to include the use of a firearm if Complainant did not plead guilty to the existing charges. An amendment of the charges would have the effect of increasing the minimum sentence from three years to five years of active time served. Respondent informed Complainant of the Commonwealth's representation and Complainant

advised Respondent that he wanted a jury trial. This was the first time Complainant requested a jury trial and the request was contrary to Respondent's advice. On May 9, 2005, Respondent requested a jury trial for Complainant, which request was granted. The trial date was then continued to June 22, 2005. On May 13, 2005, Respondent moved the Court for permission to withdraw as counsel, which Motion was granted. Respondent made the Motion to Withdraw because he believed, and so informed Complainant, that a jury trial was not in Complainant's best interest. Madison was present and did not object to Respondent's withdrawal.

15. Both the Complainant and his mother requested the immediate return of unearned fees so that a successor attorney could be retained for representation at a trial less than two months away.

16. The Complainant and his mother also asked the Respondent for an itemized bill setting forth the time spent and specific activities performed on the case. The Respondent explained to Complainant and his mother that he accepted the case on a flat fee basis, and there was no underlying data from which to prepare an itemized statement. No such billing records were ever produced. At the request of the Virginia State Bar, however, Respondent provided the bar with a summary of the services he provided Complainant.

17. The Complainant found another attorney who agreed to represent him if the trial could be continued. The court refused to continue the trial and appointed counsel to represent Complainant. The Complainant ultimately pled guilty to the charges against him.

18. The Respondent agreed to refund \$2,500 to Complainant's mother in five payments of \$500 each. The Complainant's mother requested that it be paid in a lump sum and Respondent paid her as requested.

19. The Complainant and his mother also allege the Respondent failed to return their

telephone calls.

The subcommittee finds that the following Rules of Professional Misconduct have been violated:

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 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

II. NATURE OF MISCONDUCT

The Subcommittee finds that certain Rules of Professional Conduct have been violated, as noted at the conclusion of each docket number above.

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 by the dates set forth below, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand With Terms. The terms and conditions which shall be met are:

1. On or before December 31, 2006, the Respondent shall complete 4 hours of Continuing Legal Education credits by attending courses approved by the Virginia State Bar in the areas of appellate practice, and/ or ethics and/ or practice management. The Continuing Legal Education attendance obligation set forth in this paragraph shall *not* be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Marian L. Beckett, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

Upon satisfactory proof that the above noted terms and conditions have been complied with, in full, a PUBLIC REPRIMAND WITH TERMS shall then be imposed, and this matter shall be closed. If, however, the Respondent fails to comply with any of the terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the alternative disposition of CERTIFICATION TO THE VIRGINIA STATE BAR DISCIPLINARY BOARD shall be imposed, with an agreed stipulation of facts and misconduct as the facts and misconduct are set forth herein, for the sole purpose of the imposition of a sanction deemed appropriate by the Virginia State Bar Disciplinary Board.

IV. COSTS

Pursuant to Part Six, § IV, ¶ 13 (B)(8)(c) of the Rules of the Supreme Court of Virginia,

the Clerk of the Disciplinary System shall assess costs against the Respondent.

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Jennifer Lee Poir
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 2nd day of October, 2006, mailed a true and correct copy of the Subcommittee Determination (Agreed Disposition of Public Reprimand with Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Eddie Raymond Vaughn, Jr., Esq. at Atlee Commerce Center, 9410 Atlee Commerce Blvd., Suite 2, Ashland, VA 23005, his last address of record with the Virginia State Bar, and via first class mail, postage pre-paid, to Michael L. Rigsby, Esquire, counsel for the Respondent, at Carrell, Rice & Rigsby, 7275 Glen Forest Drive, Forest Plaza II, Suite 309, Richmond, VA 23226.

Marian Beckett
Marian L. Beckett
Assistant Bar Counsel