

VIRGINIA:

**BEFORE THE SECOND DISTRICT SUBCOMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR**

In the Matter of Cynthia Dawn Garris

VS **Docket No.** **05-021-3150**

05-021-3151

05-021-3152

Complainant: VSB/Supreme Court of Virginia

**SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION)**

On March 24, 2006, a duly convened Second District, Section I, Subcommittee consisting of Donald C. Schultz, Esquire, Emmanuel W. Michaels, Lay Member, and Afshin Farashahi, Esquire, presiding, considered an Agreed Disposition in the above-referenced matter. It was the decision of the Subcommittee to accept the Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.c (1) of the Rules of the Supreme Court of Virginia, the First District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Cynthia Dawn Garris, was an attorney licensed to practice law in the Commonwealth of Virginia.

05-021-3150

2. During 2003, the Circuit Court for the City of Norfolk appointed Ms. Garris for the sentencing and appeal of Kevin Lamont Knight.

3. On November 7, 2003, Mr. Knight was found not guilty of robbery, but guilty of assault and battery, a misdemeanor, sentenced to 12 months in jail, and fined \$2,500. Another attorney served as his trial defense counsel.

4. Ms. Garris appealed the case to the Court of Appeals, which denied the appeal on its merits.
5. When she appealed to the Supreme Court of Virginia, her former secretary did not mail the petitions for appeal when instructed, causing a late filing.
6. Ms. Garris also did not file enough copies of the petition for appeal.
7. The appeal was dismissed accordingly on November 4, 2004.
8. Ms. Garris explained that she later terminated her former secretary because of a series of similar problems.
9. Ms. Garris promptly advised her client of the error and about seeking a delayed appeal through the habeas corpus process.
10. The Supreme Court of Virginia granted her client a delayed appeal.
11. Ms. Garris acknowledged that it was her responsibility to ensure the timely mailing of the petitions for appeal

05-021-3151

12. During 2001, the Circuit Court for the City of Norfolk appointed Ms. Garris and another attorney to represent Brandon Clay Nichols on various firearm and homicide offenses.
13. On June 5, 2001, the court found Mr. Nichols guilty as charged. On August 24, 2001, it sentenced him to 41 years in prison and fined him \$50,000.
14. The court appointed only Ms. Garris for the appeal. She perfected the appeal at the Court of Appeals, where it was dismissed on the merits.
15. In November 2002, the Supreme Court of Virginia dismissed the appeal because the petition for appeal was not filed on time. As in the previous case, Ms. Garris explained that her former secretary failed to mail the matter by certified mail the day that she instructed her to.
16. Ms. Garris promptly notified her client of the error in writing, and provided advice about seeking a delayed appeal.
17. Mr. Nichols obtained a delayed appeal through the habeas corpus process.

18. In March 2001, the Circuit Court for the City of Norfolk appointed Ms. Garris as appellate counsel for Adam Murdock Powell, previously convicted of various firearm, burglary, and malicious wounding offenses, and sentenced to fifteen years in prison.

19. Ms. Garris appealed the case to the Court of Appeals, which dismissed it on the merits on October 2, 2001.

20. On October 4, 2001, Ms. Garris mailed a copy of the dismissal order to her client with a cover letter that read:

The Court of Appeals affirmed your conviction and sentence.

If you wish to appeal to a three-judge panel, then you must follow the instructions contained in the final paragraph on page three.

21. The final paragraph on page 3 of the order read:

This order is final for purposes of appeal unless, within fourteen days for the date of this order, there are further proceedings pursuant to Code Section 17.2-407 (D) and Rule 5A:15 (a). If appellant files a demand for consideration by a three-judge panel, the demand should include a statement, not to exceed one typewritten page, identifying how this order is in error.

22. The letter did not advise the client about his right to further appeal to the Supreme Court of Virginia, nor did it indicate whether Ms. Garris would be taking further action on behalf of her client.

23. The author of the letter was a former associate of Ms. Garris, although Ms. Garris signed it.

24. Upon mailing the letter and order to the client, Ms. Garris' former secretary closed the file.

25. Accordingly, Ms. Garris took no steps to appeal the case to the Supreme Court of Virginia.

26. Ms. Garris explained that her letter of October 4, 2001 was not an attempt to abandon her client, just an attempt to advise him about seeking three-judge review of the dismissal order, that she would not file a frivolous motion for such relief.

27. Nonetheless, the client did not receive the letter because he had been transferred to the Department of Corrections.

28. Ms. Garris sent the letter to her client again, who responded with questions about the statute and Rule cited in the paragraph of the order.

29. By then, it was too late to appeal or seek further relief. Accordingly, she advised her client to seek habeas corpus relief.

29. The Supreme Court granted a delayed appeal on the grounds of ineffective assistance of counsel, and reported the matter to the Bar.

II. NATURE OF MISCONDUCT

The foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

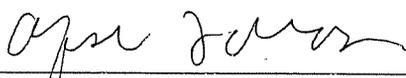
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

III. PUBLIC ADMONITION

Accordingly, it is the decision of the Subcommittee to impose a **Public Admonition**.

In accordance with the Rules of the Virginia Supreme Court, Part 6: §IV, ¶13(B) (8) (c) (1), the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By 
Afshin Farashahi, Committee Chair

CERTIFICATE OF SERVICE

I certify that I have this 28th day of March, 2006, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Public Admonition) to Cynthia Dawn Garris, the Respondent, at 132 West Olney Road, Norfolk, Virginia 23510, her address of record of record with the Virginia State Bar.



Edward L. Davis
Assistant Bar Counsel