

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTERS OF
WILLIAM THEODORE LINKA**

VS **BSB Docket Nos.; 05-033-0959
05-033-2226; 05-033-2295; 05-033-2296;
05-033-4283; 06-033-1513; 06-033-1737**

ORDER OF PUBLIC REPRIMAND (WITH TERMS)

These matters were certified to the Virginia State Bar Disciplinary Board ("Board") by the Third District Committee-- Section III, and were set for hearing for June 23, 2006. On June 23, 2006, the Respondent, William Theodore Linka, and his counsel, Thomas O. Bondurant, Jr. appeared before a panel of the Board. The Virginia State Bar ("Bar") was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. The duly convened panel consisted of Peter A. Dingman, Chair Presiding, Russell W. Updike, David R. Schultz, Roscoe B. Stephenson, III, and Stephen A. Wannall, Lay Member.

Prior to commencing the proceedings, the Chair swore in the court reporter and polled the Board members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

The Virginia State Bar and the Respondent then advised the Board that they had a proposed Agreed Disposition that contained a Stipulation of Findings of Fact and Stipulated Finding of Misconduct and a Joint Request for a Public Reprimand with Terms. In colloquy with the Board, Mr. Bondurant and Mr. Franco advised the Board that, by agreement of the parties,

the matter was to be presented pursuant to a stipulation that, upon a full hearing, the Bar's witnesses and documentary exhibits would establish the facts as set forth in a pleading, styled "Proposed Agreed Disposition" and executed by Mr. Linka, Mr. Bondurant, and Mr. Franco, a copy of that pleading being jointly tendered to the Board. The Chair then queried the Respondent, who acknowledged, in person and through counsel, that the Bar's evidence was sufficient to prove each and every allegation set forth in the Certification by clear and convincing evidence. Further, Respondent, his counsel, and the Bar acknowledged that the Board was not bound in any respect by the recommendation for discipline contained in the "Proposed Agreed Disposition". The Board also received into evidence, without objection, the Bar's book of exhibits, numbered 1-38, which it marked as Bar Exhibit A.

After duly deliberating, the Board found that, considering the stipulation of the Respondent and the other matters in evidence, the Bar had met its burden of proof as to each charge of misconduct set forth in the Certification.

Accordingly, the Board makes the following:

FINDINGS OF FACT AND DETERMINATIONS OF MISCONDUCT:

AS TO ALL DOCKET MATTERS

A. Mr. Linka was admitted to the practice of law in the Commonwealth of Virginia on September 4, 1981.

B. At all times relevant to this proceeding, Mr. Linka was an attorney active and in good standing to practice law in the Commonwealth of Virginia.

VSB Docket No. 05-033-0959

Complainant: Antonio C. Villeda

Findings of Fact

1. Mr. Linka was appointed by the Circuit Court of Henrico County to represent Antonio C. Villeda on charges of murder.
2. Mr. Villeda was convicted of first degree murder, and on February 18, 2004 he was sentenced to 60 years, with 22 years suspended.
3. On February 25, 2004, Mr. Linka filed a Notice of Appeal.
4. On April 26, 2004, the Henrico County Circuit Court advised Mr. Linka that the trial transcripts were ready for filing.
5. Mr. Linka filed the trial transcripts on April 28, 2004.
6. Approximately one week before the Petition for Appeal was due, Mr. Linka reviewed the trial transcript and realized that his motion to strike the evidence was not among the matters that had been transcribed.
7. Mr. Linka contacted the Clerk's Office and was advised that because it was the court's policy not to transcribe opening and closing statements, his motion to strike the evidence was not transcribed.
8. Rather than seek to file a statement of facts with the record on appeal or seek an extension time within which to file the necessary transcripts, Mr. Linka elected to purposefully file the petition for appeal one day late on July 2, 2004.
9. On July 8, 2004, the Virginia Court of Appeals dismissed Mr. Villeda's Petition for Appeal on the grounds that it was not timely filed.
10. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar established, by clear and convincing evidence, the following Charge of Misconduct:

RULE 1.3 Diligence

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

VS B Docket No. 05-033-2226

Complainant: Anonymous

Findings of Fact

11. Jason Loftis retained Mr. Linka and John Boatwright to represent him on charges of murder, conspiracy to commit murder and use of a firearm in the commission of a felony.
12. On November 6, 2000, Mr. Loftis' trial resulted in a hung jury.
13. Mr. Linka represented Mr. Loftis on retrial on January 22, 2001, whereby Mr. Loftis was convicted of murder, conspiracy to commit murder and use of a firearm in the commission of a felony.
14. During trial, Mr. Linka and the Commonwealth's Attorney presented arguments on jury instructions in judge's chambers.
15. The court reporter was present but failed to transcribe the proceedings that took place in chambers.
16. On April 12, 2001, the trial court sentenced Mr. Loftis to 30 years.
17. On April 19, 2001 Mr. Linka filed a Notice of Appeal with the Halifax Circuit Court.
18. On June 8, 2001, Mr. Linka was given an extension until July 11, 2001 to file the trial transcripts.

19. Ten days prior to the date that the petition for appeal was due, Mr. Linka realized that his arguments relating to the jury instructions were not transcribed, even though he had received the trial transcripts in advance.
20. Mr. Linka subsequently failed to file a Petition for Appeal.
21. The Court of Appeals entered an Order dated September 14, 2001, dismissing the appeal on the grounds that no Petition for Appeal was filed.
22. On June 19, 2002, Mr. Linka executed an Affidavit related to the incidents of Mr. Loftis' appeal.
23. In the affidavit, Mr. Linka states that he received the transcript well in advance of the date the petition for appeal was due and that had he taken earlier action he could have approached the Commonwealth's Attorney concerning a statement of facts in lieu of the missing portion of the transcript.
24. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of

Misconduct:

RULE 1.3 Diligence

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

VSB Docket No. 05-033-2295
Complainant: Ralph Fauntleroy

Findings of Fact

25. Ralph Fauntleroy retained William T. Linka in the Fall of 2002 to represent him on charges of Driving While Under the Influence, 2nd Offense, driving on a suspended license and refusing to submit to a breath sample in Chesterfield County (“Chesterfield Charges”) and on charges of violating the terms of his Court Ordered ASAP probation and for refusing to submit to a breath sample in Henrico County (“Henrico Charges”).
26. On November 25, 2002, the Circuit Court of Chesterfield County convicted Mr. Fauntleroy on the Chesterfield Charges.
27. Mr. Linka filed a Notice of Appeal on the Chesterfield Charges with the clerk’s office, and believed he had ordered the transcript in order to perfect the appeal.
28. Mr. Linka did not indicate on the Notice of Appeal he filed in connection with the Chesterfield Charges that his representation was limited to solely filing the appeal in order to protect his client’s rights.
29. Mr. Linka never ordered the transcript and otherwise failed to perfect Mr. Fauntleroy’s appeal on the Chesterfield Charges.
30. The Court of Appeals of Virginia entered an Order on March 17, 2003 requiring Mr. Fauntleroy to show cause why his appeal should not be dismissed.
31. Mr. Linka failed to file a response to the Show Cause Order.
32. The Court of Appeals of Virginia dismissed Mr. Fauntleroy’s appeal of his Chesterfield County convictions on April 10, 2003 because he failed to respond to the Show Cause Order and because the appeal had not been properly perfected.
33. At no time did Mr. Linka ever seek leave to withdraw as counsel of record.
34. On October 24, 2002, Mr. Fauntleroy was convicted by the Henrico County General District Court on the Henrico Charges.
35. Mr. Linka filed a Notice of Appeal of that conviction to the Henrico County Circuit Court.

36. On February 6, 2003, the Henrico County Circuit Court convicted Mr. Fauntleroy on the Henrico Charges.
37. Mr. Linka filed a Notice of Appeal.
38. The record on appeal was transmitted to the Clerk's Office of the Court of Appeals on May 16, 2003.
39. Mr. Linka filed a Petition for Appeal on the Henrico Charges on June 23, 2003.
40. On October 22, 2003, the Court of Appeals denied part of the appeal and transferred a part of the case to the Virginia Supreme Court.
41. On October 30, 2003, Mr. Fauntleroy requested that the Court of Appeals appoint him counsel.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of

Misconduct:

RULE 1.3 Diligence

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

VS B Docket No. 05-033-2296

Complainant: Anonymous

Findings of Fact

42. Mr. Linka was appointed to represent Lawrence Fitzgerald on charges of possession of heroin with intent to distribute.
43. In addition to these charges, Mr. Linka was appointed to represent Mr. Fitzgerald on other unrelated charges.

44. Mr. Fitzgerald was convicted by the Circuit Court for the City of Richmond on April 23, 2003, of possession of heroin with intent to distribute. He was sentenced to ten years with 7 years and nine months suspended.
45. Mr. Linka prepared and filed a Notice of Appeal on May 5, 2003.
46. Mr. Linka did not request that the incidents of trial be transcribed and did not file all of the necessary transcripts with the Virginia Court of Appeals.
47. Mr. Linka subsequently filed the necessary trial transcripts but did so in an untimely manner.
48. On September 17, 2003, the Virginia Court of Appeals dismissed Mr. Fitzgerald's appeal and denied the motion to have the untimely transcripts considered on appeal.
49. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of

Misconduct:

RULE 1.3 Diligence

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

VS B Docket No. 05-033-4283

Complainant: Supreme Court of Virginia

Findings of Fact

50. On July 24, 2002, the Circuit Court of Henrico County convicted Christopher E. Cottrell of one count of robbery and sentenced him to eleven years.

51. Mr. Cottrell's court appointed counsel, John McGarvey, failed to file a timely Notice of Appeal.
52. The Virginia Court of Appeals subsequently dismissed Mr. Cottrell's appeal.
53. On October 10, 2003, the Virginia Supreme Court granted Mr. Cottrell's Petition for Habeas Corpus and granted him the right to file a delayed petition for appeal.
54. The Virginia Court of Appeals appointed Mr. Linka to represent Mr. Cottrell on the delayed appeal.
55. On March 10, 2004, The Virginia Court of Appeals entered an order denying Mr. Cottrell's appeal.
56. On March 22, 2004, Mr. Linka filed a Petition for Appeal with the Supreme Court of Virginia.
57. On May 20, 2004, the Virginia Supreme Court dismissed Mr. Cottrell's Petition for Appeal on the grounds that he failed to timely file a Notice of Appeal with the trial court.
58. On December 13, 2005, Cam Moffat, investigator for the Virginia State Bar, interview Mr. Cottrell by telephone.
59. During that interview, Mr. Cottrell advised Ms. Moffat that Mr. Linka never told him that his appeal had been dismissed due to his error.
60. Mr. Cottrell did not learn about the dismissal until he contacted the Clerk of the Virginia Supreme Court to inquire about the status of his case.
61. Mr. Cottrell had to rely on the advice of "jailhouse" lawyers to assist him in preparing a Petition for a Writ of Habeas Corpus.
62. On December 15, 2005, Cam Moffat, investigator for the Virginia State Bar, conducted an interview with Mr. Linka.
63. During the interview, Mr. Linka admitted that he failed to file a notice of appeal with the trial court.
64. Mr. Linka further told Ms. Moffat that "I can't blame anyone but myself."

65. Mr. Linka also told Ms. Moffat that he had no specific recollection of ever advising Mr. Cottrell about the dismissal of his case and he had no documentation in his file to that effect.

66. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charges of

Misconduct:

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.

VSF Docket Nos. 06-33-1513 and 06-033-1737

Complainant: Anonymous (1513)/Desmond Higgs (1737)

Findings of Fact

67. Mr. Linka was appointed to represent Desmond Higgs on charges of murder and use of a firearm.
68. On May 24, 2005, the Circuit Court of Henrico County convicted Mr. Higgs of murder and use of a firearm.
69. Mr. Linka filed a Notice of Appeal on June 9, 2005.
70. Mr. Linka requested that the transcripts of the trial be prepared.
71. The Clerk of the Henrico County Circuit Court advised Mr. Linka on August 16, 2005 that the transcripts had not yet been filed.
72. Mr. Linka filed Motion for an Extension of Time in which to file the transcripts with the Virginia Court of Appeals.
73. The Virginia Court of Appeals denied the Motion as untimely.
74. On September 12, 2005, the Virginia Court of Appeals issued a Rule to Show Cause why the appeal should not be dismissed.
75. Mr. Linka failed to respond to the Show Cause Order.
76. On October 5, 2005, the Virginia Court of Appeals dismissed Mr. Higgs' appeal on the grounds that the transcripts of the proceedings had not been timely filed.
77. The Virginia State Bar received the Complaint from the Virginia Court of Appeals in Docket No. 06-033-1513.
78. Mr. Higgs filed his own Complaint with the Virginia State Bar in Docket No. 06-033-1737.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of

Misconduct

RULE 1.3 Diligence

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

IMPOSITION OF DISCIPLINE

After announcing its conclusion that it had made the forgoing determinations of misconduct, the Board received from the parties such evidence and statements as they chose to present in mitigation and/or in aggravation of the misconduct. The Board received a certified copy of Respondents prior disciplinary record (Dismissal with Terms on a found violation of DR6-101) and heard statements (in addition to the joint recommendation contained in the “Proposed Agreed Disposition”) from the Bar, Mr. Bondurant and Respondent. Both the Bar and Mr. Bondurant spoke of Mr. Linka’s strong reputation as an effective advocate for indigent defendants and his continuing service to the criminal justice system of the Commonwealth. The Board notes that Mr. Linka, in his remarks, was unflinching in his acceptance of personal responsibility for the misconduct found by the Board. He offered no excuses, did not seek to minimize the severity of the misconduct and indicated his readiness to make practice changes to assure the misconduct is not repeated. With regard to the client matters referenced in each Docket matter, Mr. Linka had taken steps to ameliorate the effect of his misconduct, and it appears that no client sustained significant, unremediated harm. The joint recommendation of the parties incorporated terms intended to address the source of Respondent’s misconduct.

The Board then retired to consider the appropriate discipline to be imposed upon the misconduct found, and after deliberation returned to announce its disposition in this matter, as follows:

ORDERED that the Respondent, William Theodore Linka, be issued a **PUBLIC REPRIMAND WITH TERMS**.

The terms to which Respondent shall be held are as follows:

1. **On or before August 25, 2006**, Consult with VSB Risk Manager John Brandt, Esquire at 800-215-7854 regarding establishing and implementing docket controls and procedures for case deadlines, with Respondent to report in writing to Assistant Bar Counsel Paulo E. Franco, Jr. the date, time, substance, and resulting changes in Respondent's practice of said consultation; and
2. **On or before December 31, 2006**, the Respondent shall complete four hours of continuing legal education (CLE) in the subject of criminal appeals and two hours of general ethics. Such hours shall **not** be submitted or applied toward Respondent's Mandatory Continuing Legal Education annual requirement in the Commonwealth of Virginia or in any other jurisdiction where Respondent is admitted to practice law. Respondent shall certify his compliance with said CLE terms by promptly delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form to Assistant Bar Counsel Paulo E. Franco, Jr.; and
3. **On or before August 25, 2006**, the Respondent shall certify that he has purchased and implemented a suitable commercial docket control computer program to track deadlines within his office. The respondent shall provide compliance of implementing such system, in writing, to Assistant Bar Counsel Paulo E. Franco, Jr.
4. **Up and through September 30, 2006**, the Respondent shall engage Craig S. Cooley, Esquire, to supervise any and all criminal appeals that respondent undertakes, whether such appellate work be court appointed or retained work. The Respondent shall submit a written report each month from Mr. Cooley noting Respondent's preparation of all appellate work within the rules of each court in which Respondent presents an appeal on behalf of a client.

The alternate disposition of these matters, should Respondent fail to comply fully with the foregoing terms, will be a **forty-five (45) day suspension** from the practice of law.

In the event of the Respondent's alleged failure to meet one or more of the terms set forth above, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause before the Disciplinary Board why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of the Board's Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of the Board's Disposition shall be determined by the Disciplinary Board, and Respondent hereby waives any right he may have to have a three judge Board consider imposition of the alternate disposition. At the hearing, the burden of proof shall be on the Respondent to show, by clear and convincing evidence timely compliance with the terms, including timely certification of such compliance.

Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy *teste* of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, William Theodore Linka at 7 South First Street, Richmond, Virginia 23219, his last address of record with the Virginia State Bar; by regular mail to Respondent's counsel Thomas O. Bondurant, Jr., at 3600 Douglasdale Road, Richmond, Virginia 23221-3801, and hand delivered to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219- 2800.

Donna Chandler, Chandler and Halasz, Inc., Court Reporters, P.O. Box 9349, Richmond,
Virginia 23227, 804/730-1222, was the reporter for the hearing and transcribed the proceedings.

ENTERED this 7th day of July, 2006.

VIRGINIA STATE BAR DISCIPLINARY
BOARD

By: 

Peter A. Dingman, Chair