

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF NEIL EDWARD MOTTER, ESQUIRE
VSB Docket No. 01-070-2416

AGREED DISPOSITION

Pursuant to Part Six, § IV, ¶ 13(G)(1)(c) of the Rules of Virginia Supreme Court, the Virginia State Bar, by Assistant Bar Counsel Claude V. Worrell, II, and the Respondent, Neil Motter, Esquire, hereby enter into an Agreed Disposition arising out of the above-referenced matter.

Both parties affirm that the proposed Subcommittee Determination of an Admonition with Terms, a true copy of which is attached hereto and incorporated herein by reference, reflects the stipulated facts, violations, and disposition for the above-referenced matter.

Respondent understands that should the Subcommittee accept this agreed disposition by unanimous vote, the Subcommittee Determination will be signed by the Chair or Chair Designate and thereafter mailed without the necessity of any hearing or further notice to the parties. Further, it is understood and agreed by the parties hereto that should the Subcommittee refuse the agreed disposition neither party shall be bound by the stipulations or findings contained herein and this matter shall be forthwith scheduled for a hearing by the full Committee.

SEEN AND AGREED TO:
THE VIRGINIA STATE BAR

Claude V. Worrell, II
Assistant Bar Counsel

Neil Edward Motter, Esquire
Respondent

SUBCOMMITTEE ACTION

Pursuant to Part Six, § IV, ¶ 13(G)(1)(c) of the Rules of Virginia Supreme Court, the duly convened subcommittee of the Seventh District Committee of the Virginia State Bar hereby accepts the Agreed Disposition in this matter.

Date: _____

Date: _____

Date: _____

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IN THE MATTER OF NEIL EDWARD MOTTER, ESQUIRE
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SUBCOMMITTEE DETERMINATION
ADMONITION WITH TERMS

On the 18th day of March, 2004, a meeting in this matter was held before a duly convened a subcommittee of the Seventh District Committee consisting of Thomas J. Chasler, Esquire, Anne C. Hall, and Frederick Warren Payne, Esquire, presiding.

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

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Neil Edward Motter (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In July of 1998, the Respondent represented Trevor Cooper in a criminal matter in Fauquier County. Mr. Cooper was convicted on or about July 7, 1998. Since his conviction, Mr. Cooper has made numerous requests to the Respondent that the Respondent send him his file and trial records, but the Respondent has not complied with Mr. Cooper's requests.

3. In February of 2001, Mr. Cooper sent a complaint to the Virginia State Bar regarding the Respondent's failure to comply with his request that the Respondent send him his file and records. On March 14, 2001, Mary Martelino, Assistant Intake Counsel at the Virginia State Bar, sent the Respondent a letter advising him of the complaint and explained that Mr. Cooper's file should be returned to Mr. Cooper within ten days. The Respondent did not

respond to Ms. Martelino's letter. On April 2, 2001, Ms. Martelino sent the Respondent another letter requesting a response in five days.

4. The Respondent's reply to Ms. Martelino's letter was received on or about April 5, 2001. The Respondent apologized for the delay and attached a copy of his cover letter to Mr. Cooper. The Respondent claimed that the file was in storage and that he would forward copies "in the next several days." Ms. Martelino did not open a case file.

5. Mr. Cooper sent another complaint to the Bar, dated July 13, 2001, and informed the Bar that he had not received his file from the Respondent. The file on this complaint was open shortly after the complaint was received. Bar Investigator Robert K. Smith investigated this matter. The Respondent advised Mr. Smith that he was unaware that Mr. Cooper needed his files until he received the complaint from the Bar. The Respondent claimed that he thought he had sent three sets of documents to Mr. Cooper, but not a transcript of the trial because it had not been transcribed. The Respondent told Mr. Smith that he would check his files and provide the Bar with a copy of the documents he sent to Mr. Cooper along with copies of any correspondence he had sent. As of April 8, 2003, the date of Mr. Smith's report, Mr. Smith had not received any documents from the Respondent.

6. On June 10, 2003, Bar Counsel sent this matter for further investigation, instructing Investigator Smith to obtain information from the mailrooms of the prison where Mr. Cooper was incarcerated. James Bruce of the Buckingham Correctional Center in Dilwyn, Virginia, and Brenda Delbridge of the Greenville Correctional Facility, in Jarrett, Virginia reviewed their respective records. Each found that Mr. Cooper received no mail from Mr. Motter.

7. Mr. Cooper advised the Bar that he wanted a copy of his file because his co-

defendant received a much shorter sentence and Mr. Cooper thought that an appeal or a motion to reconsider might have been appropriate in his case. However, he could not file an appeal or motion to reconsider because he did not have the information he needed from his file.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Disciplinary Rules have been violated:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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 1.16 Declining Or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer of wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

III. ADMONITION 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 March 20, 2004, and December 1, 2004 respectively, shall be a predicate for the disposition of this complaint by imposition of an Admonition with Terms. The terms and conditions which shall be met by March 20, 2004 and December 1, 2004 respectively are:

1. The Respondent shall within 48 hours of the acceptance of this agreement send to the Complainant the entire contents of his file concerning the Complainant. The file shall be sent via certified mail return receipt requested. The Respondent shall provide the Bar with proof of mailing by sending the Bar the original postal service receipt as well as the return receipt.

2. The Respondent shall complete four (4) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the area of Ethics. His 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 Claude V. Worrell, II, 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 met, an Admonition with terms shall then be imposed. If, however, the terms and conditions have not

been met by December 1, 2004, a Public Reprimand shall be imposed.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____
Frederick Warren Payne, Chair

CERTIFICATE OF SERVICE

I certify that I have this ____ day of _____, 2004, mailed a true and correct copy of the Subcommittee Determination Admonition with Terms by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Neil Edward Motter, Esquire, at P.O. Box 132, Brandy Station, VA 22714-0132, his last address of record with the Virginia State Bar.

Claude V. Worrell, II