

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

**DISTRICT COMMITTEE DETERMINATION
PUBLIC REPRIMAND**

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

Previously, on March 30, 2004, a subcommittee imposed an Admonition with Terms in accordance with an agreed disposition reached between Respondent and Bar Counsel. Pursuant to Part 6, ¶ IV, §13(G)(5)(a) of the Rules of Virginia Supreme Court, this hearing was held to require Respondent to show cause why the alternative disposition should not be imposed for his failure to comply with the terms imposed by the aforesaid subcommittee. Upon evidence and argument presented, the Seventh District Committee finds that Respondent was duly noticed of this hearing by a certified mailing, return receipt requested, to his address of record with the Virginia State Bar, and that he failed to comply with the terms of the subcommittee determination. Accordingly, the Committee hereby issues the following PUBLIC REPRIMAND.

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.

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

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. PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a PUBLIC REPRIMAND and Respondent is hereby so reprimanded.

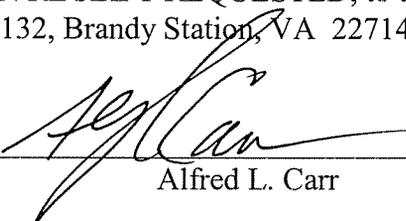
Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By _____
Frederick Warren Payne, Chair

CERTIFICATE OF SERVICE

I certify that I have this ~~17th~~ day of MARCH, 2005, mailed a true and correct copy of the District Committee Determination (PUBLIC REPRIMAND) 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.

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Alfred L. Carr