

VIRGINIA:

BEFORE THE SECOND COMMITTEE—SECTION I
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT CHARLES NEELEY, JR. VSB Docket No. 03-021-3256 (Matthews)

DISTRICT COMMITTEE DETERMINATION
(ADMONITION WITH TERMS)

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13 H.2 n, the Second District Committee - Section I, of the Virginia State Bar hereby serves upon the Respondent, Robert Charles Neeley, Jr., the following Admonition with Terms:

On February 12, 2004, a hearing in this matter was held before a duly convened panel from the Second District Committee—Section I, consisting of Paul Kevin Campsen, Esquire, Croxton Gordon, Esquire, Mr. Robert Carter, lay member, William Hanes Monroe, Jr., Esquire, Robert William McFarland, Esquire, and Ray Webb King, Esquire, Chair Presiding. The bar appeared by its Assistant Bar Counsel, Paul D. Georgiadis. The Respondent, Robert Charles Neeley, Jr., appeared *pro se*.

This matter proceeded upon due notice of the Notice of Hearing dated December 3, 2003, referring the matter from the Subcommittee of the Second District Committee—Section I. The Notice of Hearing set forth allegations that Respondent's conduct violated Rules of Professional Conduct 1.3(a), Diligence, and 1.4(a), Communication.

The Chair polled each member hearing panel as to whether any member had any personal or financial interest that might affect or reasonably be perceived to affect his or her ability be impartial.

Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

Without objection, the bar introduced and moved into evidence ten (10) exhibits, including the Notice of Hearing referring the matter from the Subcommittee of the Second District Committee—Section I. By agreement with the Respondent, the bar gave a summary of its evidence, which conduct Respondent stipulated constituted a violation of the cited Rules as follows:

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Robert Charles Neeley, Jr., hereinafter “Respondent”, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about January 26, 2001, Respondent was appointed by the Norfolk Circuit Court as appeals counsel for Arthur R. Matthews. The Court entered the order of appointment on or about February 9, 2001.
3. Notwithstanding his appointment, Respondent failed even to file a notice of appeal.
4. Until April 21, 2003, Respondent failed to respond to inquiries about the appeal and failed to advise Mr. Matthews of the status of his appeal.
5. On April 21, 2003, Respondent wrote Mr. Matthews in response to a pro-active inquiry by the Virginia State Bar and advised Mr. Matthews that “we failed to perfect the appeal.” Respondent further advised that “I will review the Norfolk Circuit Court file tomorrow and let you know exactly what was done incorrectly let you know by letter tomorrow. I will also advise you of what you may do to seek a remedy to this situation. I will do everything I can to

help you in this situation.”

6. Notwithstanding his promise to do so, Respondent failed to further communicate with Mr Matthews.

II. NATURE OF MISCONDUCT

Accepting the stipulation of the parties as to the facts in this matter and as to their constituting misconduct of the cited Rules, the Second District Committee–Section I, found that such conduct by the Respondent, Robert Charles Neeley, Jr., as set forth above, constitutes misconduct and violation of the following Rule of Professional Conduct:

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.

III. IMPOSITION OF ADMONITION WITH TERMS

Having found violations of the above-cited Rules, the Committee heard evidence from the bar of Respondent’s prior discipline record of two dismissals with terms. The bar presented evidence that in such two matters, Respondent failed to perfect appeals of criminal convictions and failed to timely notify clients of the dismissals of their appeals. The bar also presented mitigating evidence that Respondent’s client Matthews was granted a delayed appeal that ultimately and denied on its merits.

Respondent presented evidence that since these three matters occurred, he has taken steps to

prevent their recurrence. These include more selective acceptance of new cases, the purchase and implementation of case management software, and the involvement of Respondent with his staff in docketing case deadlines with his case management software.

Following argument and consideration of the evidence as to an appropriate sanction, the Committee accepted the recommendation of the bar of an Admonition with Terms, finding that Respondent's client Arthur Matthews had suffered no substantial harm and the Public had suffered no harm. The Committee further noted Respondent's candor with the Committee and affirmative steps taken to prevent a recurrence.

Accordingly, the Committee hereby ADMONISHES Respondent for such violations and requires the fulfilment of the following terms be performed within 120 days of the date of entry of this Committee Determination:

At his sole cost, Respondent shall engage VSB Risk Manager Janean Johnston to conduct an on-site consultation and review—but not a full audit, focusing on Respondent's administrative systems, including his case management and docketing procedures. Ms. Johnston shall also review Respondent's procedures for and the status of Respondent's review of current, open cases for compliance with case deadlines. Said engagement shall include the production of a report from Johnston with recommendations to be implemented. Thereafter, Respondent must certify to Johnston and to Assistant Bar Counsel Georgiadis—within the aforesaid 120 day period, his implementation of all recommendations from Johnston. Respondent shall cause Johnston to forward to Assistant Bar Counsel Georgiadis a copy of her report .

Upon satisfactory proof that such terms and conditions have been met, this matter shall be

closed. If, however, Respondent fails to meet the specified terms within the time set forth, the alternate sanction shall be a Certification of this matter to the Disciplinary Board, subject to a show-cause hearing. In the event of alleged failure to meet the terms as set forth above, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the imposed terms without legal justification or excuse. All issues concerning the Respondent's compliance with the imposed terms shall be determined by the Second District Committee--Section I. At said hearing, the burden of proof shall be on the Respondent to show timely compliance and timely Certification of such compliance by clear and convincing evidence.

SECOND DISTRICT COMMITTEE--SECTION I
OF THE VIRGINIA STATE BAR

By: Ray Webb King
Ray Webb King
Chair

CERTIFICATE OF SERVICE

I certify I have this the 4th day of March, 2004, mailed by CERTIFIED MAIL--RETURN RECEIPT REQUESTED, a true and correct copy of the District Committee Determination (Admonition with Terms) to the Respondent, Robert Charles Neeley, Jr., Esquire 256 West Freemason Street, Norfolk, Virginia 23510, and via First Class U.S. Mail, postage prepaid, to Mr. Arthur Matthews # 296891, Nottoway Correctional Center, P.O. Box 488, Burkeville, VA 23922.

Paul D. Georgiadis
Paul D. Georgiadis
Assistant Bar Counsel