

VIRGINIA:

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
JAN C. SMITH

VSB Docket No. 09-060-076463

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On April 27, 2010, a meeting in this matter was held before a duly convened Sixth District Subcommittee consisting of Michael D. Clower, Esquire, presiding Chair, Michael L. Heikes, Esquire, and Donald S. Buckless, Lay Member.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Sixth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto Jan C. Smith, [hereinafter "the Respondent"], has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Prior to the representation in the instant case, the Respondent had represented clients in appellate matters before the Virginia Court of Appeals.
3. A predecessor attorney of Complainant Albert Stewart, [hereinafter "the Complainant"] had failed to perfect an appeal on the Complainant's behalf due to his failure to timely file the Petition for Appeal. The Complainant thereafter proceeded *pro se* and was granted a writ of habeas corpus and reinstatement of his right to appeal.
4. The Respondent was appointed by the Circuit Court of Westmoreland County to represent the Complainant on an appeal to the Supreme Court of Virginia. At the time of

appointment, the Respondent was aware that the Complainant proceeding *pro se* had been granted a writ of habeas corpus and reinstatement of his right to appeal.

5. Although the Respondent had been appointed to represent the Complainant for an appeal to the Supreme Court of Virginia, the Respondent mistakenly thought he had been appointed to represent the Complainant for a habeas corpus petition. Believing that he had been appointed for a habeas petition, the Respondent failed to file the required Notice of Appeal to the Supreme Court.

6. When the Respondent learned of his mistake, he filed a Motion to Rescind the Order appointing him as appellate counsel and a Motion to Reappoint him as appellate counsel. The Circuit Court reappointed him to prepare and file the appeal.

7. The Respondent timely filed a Notice of Appeal with the Supreme Court of Virginia. However he did not file the Petition for Appeal until the time within which to do so had expired, making the appeal time-barred.

8. After being informed of the above by the Supreme Court, the Respondent neither attempted to obtain a delayed appeal for the Complainant nor did he withdraw from the representation.

9. The Respondent failed to communicate the status of the appeal to his client. Only when the Complainant contacted the Supreme Court himself did he learn that there was no appeal pending. The Complainant is now again proceeding *pro se*.

10. In his response to the bar complaint received by the bar on September 24, 2008, the Respondent admitted that he failed to understand the rules for filing an appeal to the Supreme Court of Virginia. In addition, his response to the bar complaint includes the statements, "I can

offer no excuse as for my handling Mr. Stewart's case" and "[t]he question of my ineffectiveness is beyond doubt."

11. During an interview with Virginia State Bar investigator O. Michael Powell on February 12, 2009, the Respondent agreed to contact Mr. Powell within the following two weeks to supply additional information. He failed to do so. Mr. Powell left a message with the Respondent's secretary on March 3, 2009, requesting a call from the Respondent. Mr. Powell's call was not returned.

## II. NATURE OF MISCONDUCT

Such conduct by Jan C. Smith constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **RULE 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

### **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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

### **RULE 8.1 Bar Admission And Disciplinary Matters**

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

### III. PUBLIC REPRIMAND 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 will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions are:

1. The Respondent shall complete six (6) hours of continuing legal education in the area of appellate practice on or before August 1, 2010. Such 6 hours of CLE may be obtained by attendance at live presentation(s), video replay(s) or on-line. The continuing Legal Education attendance obligation set forth in this paragraph shall *not* be applied toward the Mandatory Continuing legal education requirement in Virginia or any other jurisdiction(s) in which the Respondent may be licensed to practice law. The Respondent shall certify his compliance with the terms set forth in this paragraph on or before August 1, 2010, by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Marian L. Beckett, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, VA 23219, promptly following the attendance of such CLE program(s).

2. The Respondent shall review Part 5(A) of the Rules of the Supreme Court of Virginia pertaining to criminal matters appealed to the Court of Appeals. Such independent review shall not be considered to meet in full or in part the requirements of the terms set forth in paragraph (1) immediately above. The Respondent shall certify his compliance with the terms set


forth in this paragraph in writing on or before August 1, 2010, to Marian L. Beckett, Assistant Bar Counsel, at the address noted in paragraph (1) above.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by August 1, 2010, this subcommittee shall certify the matter to the Disciplinary Board for determination of sanction pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G.

Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SIXTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By

  
Michael D. Clower  
Chair

CERTIFICATE OF SERVICE

I certify that on May 20<sup>th</sup>, 2010, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Jan C. Smith, Esquire, Respondent, at 15381 Kings Highway, Montross, VA 22520, Respondent's last address of record with the Virginia State Bar.



Marian L. Beckett  
Assistant Bar Counsel