

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
RONNIE LEE CLAY**

**VS B DOCKET NO. 20-080-117080**

**AGREED DISPOSITION MEMORANDUM ORDER  
PUBLIC REPRIMAND WITHOUT TERMS**

On November 5, 2020 this matter was heard by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part Six, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Yvonne S. Gibney, Chair; Sandra L. Havrilak; Kamala H. Lannetti; Sandra M. Rohrstaff; and Martha J. Goodman, Lay Member. The Virginia State Bar was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. Respondent Ronnie Lee Clay ("Respondent") was present and was represented by counsel Phillip V. Anderson. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter, to which each member responded in the negative. Court Reporter Beverly Lukowsky, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

**WHEREFORE**, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition and the Respondent shall receive a Public Reprimand without Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective November 5, 2020.

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

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, regular and electronic mail to his last address of record with the Virginia State Bar at Spigle, Massey & Clay, PLC, PO Box 529, Fincastle, VA 24090, and a copy by electronic mail to Phillip V. Anderson, Respondent's counsel, Frith Anderson + Peake PC, 29 Franklin Road, SW, P.O. Box 1240, Roanoke, VA 24006-1240, and a copy by electronic mail to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, Suite 700, 1111 E. Main Street, Richmond, VA 23219.

Entered this 5<sup>th</sup> day of November 2020

VIRGINIA STATE BAR DISCIPLINARY BOARD

**Yvonne S.  
Gibney**

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Yvonne S. Gibney  
Chair



VIRGINIA:

BEFORE THE DISCIPLINARY BOARD  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
RONNIE LEE CLAY

VS B Docket No. 20-080-117080

AGREED DISPOSITION  
(PUBLIC REPRIMAND WITHOUT TERMS)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H., the Virginia State Bar, by Paulo E. Franco, Jr., Assistant Bar Counsel and Ronnie Lee Clay, Respondent, and Phillip V. Anderson, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

**I. STIPULATIONS OF FACT**

1. Stephanie Neal was charged with three counts of petit larceny and one count of contempt/failure to appear in Botetourt County Circuit Court. One count of petit larceny and the contempt/failure to appear charge were *nolle prosequi* by the Commonwealth's Attorney.
2. Ms. Neal was represented by Respondent's partner at the trial and entered pleas of guilty. On May 2, 2019, following the guilty pleas, the court appointed Respondent as counsel for Ms. Neal to represent her at the sentencing hearing due to a conflict in his partner Michael Massey's schedule.
3. Respondent represented Ms. Neal at the sentencing hearing wherein she was given 1 year and 8 months for each charge for a total of 3 years and 4 months, which were sentences within the sentencing guidelines.
4. The court sentenced Ms. Neal on June 4, 2019 and entered the Order that same day.
5. Respondent wrote in his answer to the Complaint, "After the hearing and before she left the Court, I confirmed that she understood the time to serve that was imposed and confirmed that she did not wish to appeal the decision."
6. Respondent informed the Bar's investigator during his interview that he was certain he asked Ms. Neal after the sentencing hearing and prior to her being removed from the courtroom whether she wished to appeal the decision, but he did not recall her response.

7. Ms. Neal would testify if called that upon conclusion of her sentencing hearing on June 4, 2019, she was escorted from the courtroom before she could speak with Respondent but that she was not satisfied with the sentence and wished to consider her post sentence options.
8. Ms. Neal would testify that at no time did she advise Respondent that she did not wish to appeal the court's sentence.
9. Respondent would testify that he met with Ms. Neal at the jail on May 10, 2019 and May 31, 2019 prior to her sentencing on June 4, 2019 and discussed the sentencing guidelines with her and confirmed that she did not wish to seek an appeal provided the sentences were within the guidelines which the sentences imposed on June 4, 2019 were.
10. On June 11, 2019, a week following the sentencing hearing, Ms. Neal contacted Respondent's office by phone from the Botetourt County Jail ("BCJ").
11. Audio recordings obtained by the Bar from the BCJ establish that Ms. Neal made two calls on June 11, 2019 to Respondent's law office. She spoke on one occasion with Respondent's assistant, Ms. Bonnie Roope and also left a voicemail. In the conversation with Ms. Roope, Ms. Neal expressed a desire to speak with Respondent about her post sentence options, a possible appeal or reconsideration of her sentence.
12. Based on those phone calls, Ms. Roope scheduled an appointment for Respondent to visit Ms. Neal in jail on Friday of that week or June 14, 2019.
13. At the time of the call on June 11, 2014, Respondent had been out of the office for several days attending to family matters.
14. Respondent acknowledges that a review of his calendar reflects the scheduled appointment to meet Ms. Neal at the BCJ on June 14, 2019.
15. Respondent returned to the office on June 12, 2019 following several days out. On June 14, 2019, he had a number of meetings scheduled with other clients and acknowledged that he did not keep the scheduled appointment with Ms. Neal and had no independent recollection of the appointment being scheduled or missing the appointment or the appointment being rescheduled. Respondent further acknowledged that in response to the Complaint, he reviewed his office messages and discovered Ms. Neal had spoken to his secretary, Ms. Roope, Ms. Neal wanted to speak with Respondent to discuss her post-sentence options including an appeal or reconsideration of her sentence and that Ms. Roope scheduled an appointment for him to meet with Ms. Neal at the BCJ.
16. Ms. Neal states that Respondent did not visit her at any time after her sentencing hearing.

17. Despite failing to keep the appointment with Ms. Neal after her conviction, even though an appointment had been calendared, Respondent signed a letter to Ms. Neal on June 26, 2019 enclosing the Court's Sentencing Orders and confirming his understanding that she did not wish to appeal her sentences.
18. In his interview with the Bar's investigator, Respondent stated he based the statement in his Answer to the Complaint on Ms. Neal's statement in court following her sentencing hearing and during their two prior jail visits wherein she had related to him that she would not choose to appeal her sentences provided the sentences were within the sentencing guidelines which these were.
19. Ms. Neal denies that she ever told Respondent that she did not wish to appeal her sentence, and in fact, she had scheduled an appointment to discuss an appeal.
20. During his interview with the Bar's investigator on April 7, 2020, Respondent was questioned about his answer to the Complaint, and he affirmed that he wrote it and ratified the contents.
21. In response to questioning from the Bar's investigator, Respondent stated the secretary he referred to in his answer was Ms. Roope. Respondent did not become aware of Ms. Neal's wish to schedule a jail visit for them to discuss post-sentencing options until after Ms. Neal's letter of October 6, 2019.
22. Respondent stated that at the time the messages came in, he did not routinely see them or keep track of them because Ms. Roope did. He also stated he had no recollection of speaking to Ms. Roope about her phone conversation with Ms. Neal until later when he asked her if she remembered it.
23. Ms. Roope advised the Bar's investigator that the June 14, 2019 appointment with Ms. Neal was moved to June 26, 2019.
24. Ms. Roope told the Bar's investigator during her interview that she did not think that she changed the date of the meeting with Ms. Neal, but it was possible.
25. Ms. Roope also stated to the Bar's investigator that she and Respondent would have had access to Respondent's calendar to change the dates of Ms. Neal's appointment from June 14 to June 26, 2019.
26. In response to a question from the Bar's investigator concerning the change to Ms. Neal's appointment, Ms. Roope further stated that she believes that Respondent made the change.
27. During his interview with the Virginia State Bar's investigator, Respondent admitted that based on Ms. Neal's letter of October 6, 2019, it was obvious to him that Ms.

Neal had wanted to meet to discuss her post-sentence options of either an appeal or reconsideration of her sentence.

28. During his interview with the Virginia State Bar's investigator, Respondent admitted that a motion for a delayed appeal to the Court of Appeals of Virginia could have filed as of October 6, 2019 on behalf of Ms. Neal, and he did not undertake to do so. Ms. Neal had made it abundantly clear in her letter of October 6, 2019 that she did NOT want Respondent to take any action on her behalf and specifically asked that he notify the Court that he "no longer represent[ed] [her] on these matters."
29. Upon receipt of the letter dated October 6, 2019 from Neal, Respondent did place a call to the Botetourt County Clerk's Office and was informed that a Motion had been filed in Ms. Neal's case.
30. Even though Respondent became aware that Ms. Neal's *Pro Se* Motion for Reconsideration of her sentence was denied and that the file had been closed, Respondent undertook to file a Motion to Seek Appointment of new counsel for Ms. Neal to advise her of all of her options, including post-sentence relief for ineffective assistance of counsel. This Motion was granted on April 14, 2020 and Robert Hagan of Botetourt was appointed as counsel.
31. Respondent spoke with Mr. Hagan and cooperated fully.
32. Mr. Hagan filed a Writ of Habeas Corpus based on ineffective assistance of counsel.
33. Respondent spoke with counsel for the Commonwealth and explained that no appeal was noted for Ms. Neal because during the time that an appeal could be noted he did not understand that this was Ms. Neal's desire; nevertheless, he requested that the Commonwealth not oppose the Writ requesting a delayed appeal.
34. On July 7, 2020 the Circuit Court of Botetourt County entered an Order, endorsed by Counsel for the Commonwealth of Virginia requesting that the Commonwealth file a Motion requesting the Court of Appeals of Virginia to grant Ms. Neal a right of a delayed appeal.
35. On July 28, 2020 the Court of Appeals of Virginia entered an Order granting Ms. Neal the right to file a delayed appeal and further directing that she be appointed counsel to handle the appeal.
36. Ultimately the right to a delayed appeal resulted from Respondent's Motion requesting that Ms. Neal be appointed new counsel. The Motion for a reduction of her sentence filed by Ms. Neal *pro se*, the only motion filed by her post sentence, was summarily rejected by the Court.
37. Respondent was aware during the course of this Complaint and the subsequent investigation that it was his responsibility and ethical duty to discuss with Ms. Neal

her post-sentence options, to keep scheduled appointments with her and to note appeals for her, if that was her desire, before her appeal deadline expired and that the failure to do so, regardless of the reason for such failure, was a breach of his ethical duties.

38. Respondent further acknowledges that despite his acceptance of responsibility that he further failed to adequately review all written materials, calendar entries, emails and memos prior to responding to the Complaint and prior to meeting with the Bar's investigator and in so doing generated confusion, misunderstanding and misapprehension in the Bar's investigation and subsequent report to the Sub-Committee regarding the circumstances surrounding his representation, his failures and subsequent investigation.
39. Any misapprehension or confusion created by his failures to properly prepare for and participate in the investigation was not intentional but grew out of his acknowledgement and acceptance of responsibility for what he believed to be his primary error of missing the meeting with the client and failing to note an appeal or take such other action she desired that was legal and ethical.

## **II. STIPULATIONS OF MISCONDUCT**

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

### **Rule 1.2      Scope of Representation**

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

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### **Rule 1.3      Diligence**

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

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### **Rule 1.4      Communication**

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.





### **III. PROPOSED DISPOSITION**

Accordingly, Assistant Bar Counsel and the Respondent tender to the Disciplinary Board for its approval the agreed disposition of **PUBLIC REPRIMAND without Terms** as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Assistant Bar Counsel and the Respondent agree that the effective date for the sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess costs pursuant to ¶ 13-9.E of the Rules.

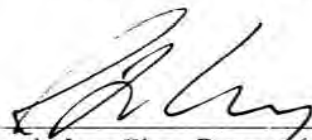
#### **THE VIRGINIA STATE BAR**

**Paulo Franco**

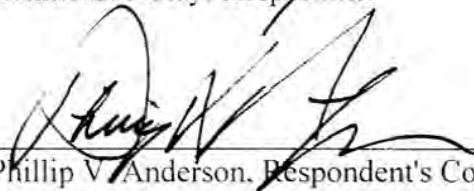
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Paulo E. Franco, Jr., Assistant Bar Counsel



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Ronnie Lee Clay, Respondent



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Phillip V. Anderson, Respondent's Counsel