

**Matter of Callaway**  
**Del. Supr. No. 331, 2000 (8/22/00)**  
**Board Case No. 8, 2000**

**Disciplinary Rules:**            **DLRPC 1.2(a) and 1.3**

**Sanctions Imposed:**        Public Reprimand and One-Year Probation

The Delaware Supreme Court approved the Report and Approval of Conditional Admission and Order of Discipline by Consent of a panel of the Board on Professional Responsibility (the "Board"), and has ordered that E. Stephen Callaway, Esquire (the "Respondent"), a member of the bar since 1974, with an office in Georgetown, be publicly reprimanded and placed on probation for a period of one year, subject to certain conditions.

The Respondent represented a client in a criminal matter. After a jury trial in the Superior Court, the client was found guilty and sentenced. The client informed the Respondent at the time of the sentencing that he wanted to appeal his conviction. Although the Respondent drafted the notice of appeal, it was filed nine days beyond the jurisdictional requirements for appeals and in the wrong court. The Supreme Court dismissed the client's appeal for lack of jurisdiction and found that the Respondent's failure to timely perfect the appeal was ineffective representation. The client's case was remanded to the Superior Court for re-sentencing to renew the time to file a direct appeal.

The Respondent admitted that he violated Delaware Lawyers' Rules of Professional Conduct 1.2(a) (failure to abide by a client's decision) and 1.3 (lack of reasonable diligence and promptness in representing a client) by failing to file a timely notice of appeal in the Delaware Supreme Court pursuant to the express wishes of the client. The public reprimand and one-year probation is subject to the condition that the Respondent's supervising attorney in the Public Defender's Office review the Respondent's professional activities as a Public Defender and his case load and communications with clients to determine whether the Respondent is acting with reasonable diligence and promptness in representing his clients and abiding by his clients' decisions with respect to the objectives of representation. Other conditions include certain reporting requirements and payment of costs of the disciplinary action.

The Board considered as aggravating factors: that in 1986, the Respondent was publically reprimanded for neglect of a client matter and conduct involving deceit and misrepresentations; that in 1999, the Respondent received a private admonition for

violations of Delaware Lawyers' Rules of Professional Conduct 1.3 (lack of diligence in a client matter, 1.15(b) (failure to promptly deliver to a third person funds that the third person is entitled to receive), and 8.4(d) (failure to bring a known conflict to the attention of a trial judge). Also in aggravation, the Board found that the Respondent has substantial experience in the practice of law, did not advise his client of the late filing of the appeal notice until after the Supreme Court issued its remand order, and that clients of the Public Defender's Office do not have the ability to select counsel of their choice although they are entitled to the same competent and diligent representation as any other client.

In mitigation, the Board considered the absence of any dishonest or selfish motive and the Respondent's full disclosure to and cooperation with disciplinary authorities.