

**VIRGINIA:**

**BEFORE THE EIGHTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
ROBERT BRITTON ARMSTRONG**

**VS B Docket No.: 06-080-0392**

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)**

Pursuant to the Rules of the Supreme Court of Virginia Part Six, Section IV, Paragraph 13.G.1.d(3) the Eighth District Subcommittee, consisting of Tracy A. Giles, Esquire, Anderson W. Douthat, IV, lay member, and Robin J. Mayer, Esquire, Chair presiding, hereby approve the Agreed Disposition for a Public Reprimand with Terms entered into by the Virginia State Bar, by Kathryn R. Montgomery, Assistant Bar Counsel, and the Respondent, Robert Britton Armstrong (“Respondent”).

**I. FINDINGS OF FACT**

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In November 2004, Jane Doe and her aunt (hereinafter “Aunt”) went to Respondent’s law office for an appointment made by Aunt. They were accompanied by Complainant, sister of Aunt, who attended for moral support. During the appointment, Aunt sought Respondent’s opinion about the competency of her divorce attorney, and he assured her that her attorney was doing a good job. Afterwards, Jane Doe told Respondent that she was raped by her uncle, the soon to be ex-husband of Aunt, twenty-nine years earlier, and asked Respondent what she should do. Respondent told Doe there was nothing he could do to help her at that time, and that she

should file a report with the police. Respondent did not agree to represent either Jane Doe or Aunt, and thereafter did not represent either.

3. Soon thereafter, Jane Doe filed a report with police, and her uncle (hereinafter "Uncle") was arrested and charged with aggravated sexual battery of Jane Doe.

4. In December 2004, Uncle retained Respondent to represent him on the aggravated sexual battery charge. At the time of the retention, Respondent did not connect Uncle with Jane Doe.

5. Later, Respondent spoke with Aunt's divorce attorney about his representation of Uncle. Aunt's divorce lawyer then called the Virginia State Bar Ethics Hotline and asked whether it was a conflict for Respondent to represent Uncle on an unrelated criminal matter after Aunt had sought Respondent's legal advice concerning the competency of her divorce attorney, the caller. Aunt's divorce attorney did not inquire about a possible conflict between Jane Doe's meeting with Respondent and Respondent's later representation of Uncle. Aunt's divorce lawyer was told the facts she presented did not constitute a conflict. Respondent later spoke with Aunt's divorce lawyer, and assumed he had no conflict. (As part of the Bar's investigation, Aunt's divorce lawyer agreed to release Ethics Counsel's confidential notes concerning her call to the Hotline).

6. At Uncle's preliminary hearing, Jane Doe complained to the Assistant Commonwealth's Attorney about Respondent representing Uncle, but the Commonwealth did not seek removal of Respondent from the case. Respondent did not offer to withdraw.

7. Discovery was had and Uncle's trial was set for September 2005. Complainant filed her bar complaint in August 2005 alleging a conflict of interest. Thereafter, Respondent and the Assistant Commonwealth's Attorney notified the Court of the bar complaint and its allegations.

Respondent then requested a continuance until the bar complaint was resolved and the Commonwealth did not object. The continuance was granted.

8. Thereafter, the Commonwealth nolle prossed the case against Uncle due to insufficient evidence. It is unknown whether the case will be refiled.

## II. RULES OF PROFESSIONAL CONDUCT

Based upon the factual findings listed above, the Subcommittee finds violations of the following Rules of Professional Conduct:

### RULE 1.7 Conflict of Interest: General Rule

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another existing client, unless:
  - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
  - (2) each client consents after consultation.

*Eff. June 30, 2005*

### RULE 1.7 Conflict of Interest: General Rule

- 1. Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - a. the representation of one client will be directly adverse to another client;  
or
  - b. there is significant risk that the representation of one or more clients will be materially limited by the lawyers' responsibilities to another client, a former client or a third person by a personal interest of the lawyer.

### RULE 1.9 Conflict of Interest: Former Client

- (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

### III. DISPOSITION

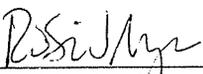
Accordingly, the Subcommittee hereby imposes upon Respondent a Public Reprimand with Terms as follows:

1. Immediately withdraw from his representation of Uncle on any case or charge related to the alleged rape of Jane Doe.
2. Attend six (6) hours of *live* (not telephone or internet) MCLE-approved Continuing Legal Education in the area of ethics and certify completion to Assistant Bar Counsel Kathryn R. Montgomery, or her designee, by **December 1, 2006**. These six (6) hours of live CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization.

If, however, Respondent fails to meet these terms within the time specified, the Eighth District Committee shall certify this case to the Virginia State Bar Disciplinary Board for a sanction determination. If there is disagreement as to whether the terms were fully and timely completed, the Eighth District Committee will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

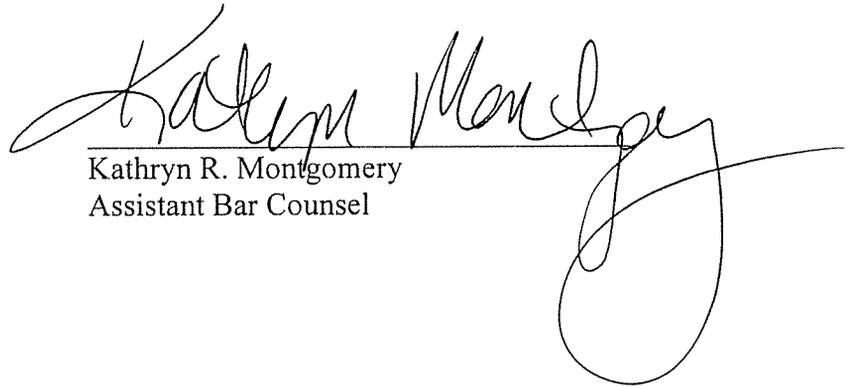
The Clerk of the Disciplinary System shall assess the appropriate administrative fees.

Eighth District Subcommittee  
Virginia State Bar

By:   
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Robin J. Mayer, Esquire  
Subcommittee Chair Presiding

**CERTIFICATE OF SERVICE**

I certify I have, this the 21<sup>ST</sup> day of March, 2006, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand with Terms) to Respondent Robert Britton Armstrong, at his last address of record with the Virginia State Bar, 3 McDowell Street, Lexington, Virginia 24450.

  
Kathryn R. Montgomery  
Assistant Bar Counsel