

**VIRGINIA:**

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

**IN THE MATTER OF  
KENNETH PAUL MERGENTHAL**

**VSB Docket No. 04-060-3404**

**SUBCOMMITTEE DETERMINATION  
(Public Reprimand with Terms)**

On December 7, 2004, a duly convened subcommittee of the Sixth District Committee, consisting of lay member John E. Graham, Jennifer L. Parrish, Esquire, and Christopher A. Abel, Esquire, Chair and presiding officer, met to consider an agreed disposition of the above-referenced matter.

Pursuant to the Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13.G.4., the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the respondent, Kenneth P. Mergenthal, the following Public Reprimand with Terms:

**I. Findings of Fact**

1. Mr. Mergenthal was admitted to the practice of law in the Commonwealth of Virginia on September 24, 1976.
2. During all times relevant to this proceeding, Mr. Mergenthal was an attorney in good standing to practice law in the Commonwealth of Virginia.
3. On or about November 4, 2002, Mr. Mergenthal was appointed to represent Joe Lewis Johnson on an appeal of a criminal conviction.
4. Mr. Mergenthal pursued the appeal, which the Court of Appeals denied on April 30, 2003.
5. While the appeal was pending, Mr. Lewis repeatedly requested Mr. Mergenthal in writing to provide him information about the status of the appeal.
6. Mr. Mergenthal never responded in writing to any of Mr. Lewis' repeated requests for information about the status of the appeal.

6. Mr. Lewis advised Mr. Mergenthal in writing that, if the Court of Appeals denied the appeal, he wanted to appeal to the Supreme Court of Virginia.

7. Nonetheless, Mr. Mergenthal did not notify Mr. Lewis that the Court of Appeals had denied his appeal until May 18, 2004, more than a year after the Court of Appeals rejected the appeal and long after the deadline for noting an appeal to the Supreme Court of Virginia had expired.

8. Mr. Mergenthal failed to submit a written response to Mr. Lewis' bar complaint, notwithstanding two letters from the bar demanding that he do so.

## **II. Findings of Misconduct**

The foregoing findings of fact, which are supported by clear and convincing evidence, give rise to findings that Mr. Mergenthal violated the following Rules of Professional Conduct:

### **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**

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

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(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.

## **III. Imposition of Sanction**

Accordingly, it is the decision of the Sixth District Committee to impose a Public Reprimand with Terms and Mr. Mergenthal is hereby so reprimanded and the following terms imposed.

1. Mr. Mergenthal shall withdraw as counsel from all criminal matters in which he serves as court appointed counsel.

2. Mr. Mergenthal shall not accept any new court appointments to serve as counsel

in criminal matters for a period of not less than three years from the issuance of the determination in this matter

3. Mr. Mergenthal shall certify in writing to Bar Counsel no later than thirty days after issuance of the determination in this matter that he has complied with the two foregoing terms.

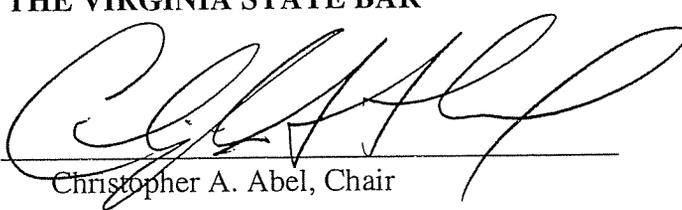
If Mr. Mergenthal fails to comply with one or more of the foregoing terms, Bar Counsel may notice a show cause hearing before the Sixth District Committee. The only issue to be decided at that hearing will be the sufficiency of Mr. Mergenthal's compliance with the agreed upon terms. If the Sixth District Committee finds that Mr. Mergenthal has not complied with one or more of the agreed upon terms, Mr. Mergenthal agrees that the case shall be certified to the Disciplinary Board pursuant to Paragraph 13.I. of the Rules of Court for imposition of an appropriate sanction.

The Subcommittee Determination (Public Reprimand with Terms) shall become part of Mr. Mergenthal's disciplinary record, and the Clerk of the Disciplinary System shall assess the appropriate administrative fees.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

**SIXTH DISTRICT COMMITTEE  
OF THE VIRGINIA STATE BAR**

By

  
Christopher A. Abel, Chair

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 14<sup>th</sup> day of December 2004, mailed by certified mail, return receipt requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to the respondent, Kenneth P. Mergenthal, Esquire, at this last address of record with the Virginia State Bar, 806 Princess Anne Street, Fredericksburg, Virginia 22401-5820.

*Barbara Ann Williams*