

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
EILEEN MARIE ADDISON

VS. Docket No. 08-060-073840

MEMORANDUM ORDER

This matter came on to be heard on August 8, 2011 by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Timothy A. Coyle, Tyler E. Williams III, Samuel R. Walker, Robert W. Carter, Lay Member, and Pleasant S. Brodnax III, 2nd Vice Chair presiding (the Panel).

Kathryn R. Montgomery, Deputy Bar Counsel, appeared as counsel for the Virginia State Bar, and Eileen Marie Addison (“Respondent”) appeared in person with counsel, Rodney G. Leffler.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented same to the Panel.

The Vice Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Vice Chair, verified they had no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel unanimously accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. Respondent was licensed to practice law in the Commonwealth of Virginia on January 14, 1988. At all times relevant to this matter, Respondent was in good standing with the Virginia State Bar.
2. At all times relevant to this matter, Respondent was the Commonwealth's Attorney for York County and the City of Poquoson.
3. On or about May 4, 2006, Michael Tyler ("Tyler") was shot as he approached a vehicle in York County. He died shortly thereafter.
4. Inside the vehicle were Marquis Edwards (driver), Kwaume Edwards (front seat passenger) and Carlos Chapman (back seat passenger). Following the shooting, a gun that was later determined to be the murder weapon was found by police under some clothing in the back seat of the car.
5. Police soon arrested Marquis Edwards ("Marquis"), Kwaume Edwards ("Kwaume") and Carlos Chapman ("Chapman") on charges of first-degree murder and use of a firearm in commission of a felony.
6. All three men initially told police that Marquis was the shooter.
7. Police learned that on the day of the shooting, Marquis had been in a verbal altercation with Tyler's friends. Later, Marquis obtained a gun and drove to Kwaume's house. Kwaume is Marquis's cousin. Marquis told Kwaume what had happened and they decided to find Tyler and his friends. On the way, Marquis stopped by Chapman's house and asked if he wanted to come along. Chapman agreed and climbed into the back seat. Later, Marquis drove to Tyler's location. Tyler approached Marquis's car and was shot. Following the shooting, Marquis drove off and Chapman hid the gun in the back seat.
8. Douglas Walter, Esquire ("Walter") was appointed counsel for Chapman.
9. Michael King, Esquire, was appointed counsel for Kwaume.

10. Assistant Commonwealth's Attorney Leslie Siman-Tov ("Siman-Tov") was assigned to work on Kwaume's prosecution with Respondent. The VCAIS case management program in the Commonwealth's Attorney's Office listed Respondent as lead prosecutor in all three cases.
11. On or about May 11, 2006, Respondent met with Investigator Kevin Rowe ("Rowe") and Walter, who said Chapman was now insisting that Kwaume was the shooter. Walter told Respondent that Chapman had said Kwaume had a criminal record and did not want to take the blame for the shooting. Marquis was willing to take the blame. Chapman said that Kwaume had threatened him if he told the truth and that he was afraid of Kwaume.
12. On or about May 12, 2006, Respondent, Rowe, Siman-Tov, Walter and Chapman met at the jail to interview Chapman. Chapman said Kwaume was the shooter and had told Chapman not to "snitch." Chapman said Marquis was willing to take the blame because Kwaume was his cousin. Chapman demonstrated how Kwaume had leaned over Marquis to shoot Tyler.
13. In or about July 2006 attorney Holly Smith ("Smith") joined the York County Commonwealth's Attorney's Office and was assigned to work on Chapman's and Marquis's prosecution with Respondent. The VCAIS case management program in the Commonwealth's Attorney's Office listed Respondent as lead prosecutor in all three cases.
14. On or about July 12, 2006, Respondent, Rowe, Smith, and Siman-Tov met with Marquis and his attorney. Marquis said Kwaume was the shooter. Marquis demonstrated how Kwaume had leaned over him to shoot Tyler. He said he had wanted to take the blame because he felt responsible for what Kwaume had done.
15. On or about August 27, 2006, Respondent received a report of the competency and sanity evaluation which Walter had requested on Chapman. The report indicated that Chapman had below average intellect.
16. According to Respondent, Smith, Siman-Tov, and Respondent discussed the cases against Marquis, Kwaume, and Chapman and believed that Chapman was the least culpable. They believed a felony case against Chapman was very weak given his role in the case and his limited intellect.
17. According to Respondent, she never considered using Marquis as a witness against Kwaume due to his culpability in the murder.
18. On or about August 30, 2006, Respondent called Walter to discuss Chapman's case and left a message. On or about August 31, 2006, Respondent and Walter spoke and

discussed a possible plea agreement for Chapman. Respondent's notes from the file read as follows:

- 8/30/06 Called D. Walter—lm @ 230p.
 - 8/31/06 “ “ again-lm @245p. CB-discussed possible P/A + cond. that Δ testify ag. K. Edwards. Δ atty will s/w Δ re: waiving PH + cb next week.
19. Walter's notes of that conversation with Respondent indicate that Respondent had discussed Chapman pleading to second-degree murder with a sentence of ten years. Walter's notes also indicate that Respondent had said that Chapman's cooperation would be helpful to prosecute Kwaume successfully.
 20. Walter communicated to Chapman a possible offer from the Commonwealth of second-degree murder with a ten-year sentence. Chapman was not receptive to the offer.
 21. On or about September 8, 2006, Walter left Respondent a message stating that Chapman would waive his preliminary hearing. Chapman's preliminary hearing was continued briefly when his family informed Walter that they intended to retain private counsel. They then changed their minds and on or about September 13, 2006, Chapman waived his preliminary hearing.
 22. Soon thereafter, Chapman's trial date was set for November 14, 2006.
 23. Marquis's trial was set for November 14, 2006.
 24. On or about September 19, 2006, Kwaume hired attorney Michael Morchower (“Morchower”) to defend him.
 25. On or about September 19, 2006 Chapman's case was set for the grand jury. The Virginia Commonwealth's Attorneys' Case Information System for York County (“VCAIS”) event information page for Chapman's case includes an event note which states, “Likely to be a plea agreement with Def testifying against co-Def(s).”
 26. On October 3, 2006, Walter wrote Chapman a letter, which said in part:

Your matter is currently scheduled for November 14, 2006 with the anticipation of plea agreement on said date.....I have had conversations again with the prosecutor recently and advised that I need to know very soon what is the best offer which they will extend, so that you can have ample time to make an informed decision.

27. On October 19, 2006, Chapman sent Walter a letter from jail which stated that he had heard from another inmate that Kwaume had said he would “silence” him if he helped the prosecution. Chapman’s letter also stated in part:

First, can the Commonwealth win the against Kwaume Edwards without me? If they can, it’s all good. I am still willing to help them with my testimony, but everything has it’s price. First, I like freedom as much as the next innocent person. A reasonable plea agreement is good but I am not looking to have a large amount of time over my head. [Emphasis in the original].

28. On or about November 3, 2006, Walter appeared in Smith’s office and Respondent was also present. Smith may have been present for some or all of the meeting. Respondent said she wanted to continue Chapman’s trial date until after Kwaume was tried. Walter agreed to continue the trial date. Walter asked Respondent about a plea agreement for Chapman. Walter advised that he was having difficulty communicating with Chapman, and said to Respondent, “just between you and me, where do you think we’re going with this case?” Respondent replied that, in view of Chapman’s minimal culpability and limited intellect, we can probably resolve it with misdemeanors. This was the last conversation that Respondent had about the case with Walter until after Chapman testified.
29. Walter advised Chapman of his discussions with Respondent about Chapman entering into a plea agreement for misdemeanors. Chapman was receptive to such a plea agreement.
30. On or about November 3, 2006, Paula Gooch, an employee in Respondent’s office, sent the following email to Michael Byser in Judge Smiley’s office:

Mike---Please ask Judge Smiley about this one.

Ms. Addison and Doug Walter, who represents Carlos Chapman (CR06-4397) request a joint continuance.

Mr. Chapman is currently set on 11/14/06 @1:00.
They expect Chapman to testify against the co-defendants, Kwaume Edwards and Marquise Edwards.
The date they’d like to put Chapman on is 2/22/07 @9:00 for a plea, with the Judge’s permission, of course.
Thanks Mike, Me

31. Chapman's trial was then continued from November 16, 2006 to February 22, 2007. A note from the outside cover of Respondent's file lists the date of November 14, 2006 alongside the word "plea," which is circled.
32. The VCAIS data sheet for Chapman's case indicates that on November 14, 2006, Chapman's case was set for a plea agreement, but continued by agreement of counsel.
33. The VCAIS event information page for Chapman's case includes an event type "plea agreement" with an event date of November 14, 2006, and an event status of "Continued by Agreement." Respondent is listed as the event prosecutor.
34. On or about November 8, 2006, Chapman wrote Walter a letter that said in part:
- I told my mom the good news and she want you to call her as soon as possible she would like to here from you to make shore what I told her was right and I would like to know can you please send me a copy of the plea agreement through the mail.
35. On or about November 12, 2006, Chapman wrote Walter a letter that said in part:
- I would like to see a copy of the plea agreement you mentioned. I am still willing to testify as long as the agreement is in place.
36. On or about November 14, 2006, Siman-Tov sent a letter to Morchower disclosing information in anticipation of a motion for discovery. The letter did not mention Respondent's statement to Walter on November 3, 2006 that Chapman's case could probably be resolved with misdemeanors. According to Siman-Tov, she was unaware of the statement and would have disclosed it had she known.
37. On or about November 14, 2006, Marquis appeared for trial. To Respondent's surprise, Marquis entered an Alfred Plea to charges of first-degree murder and use of a firearm. There was no agreement regarding Marquis' plea or sentencing.
38. Soon thereafter, Kwaume's trial was set for January 20, 2007.
39. On or about November 20, 2006, Chapman wrote Walter a letter that said in part:
- When I go to court in January to testify is my plea going to be signed that day by the judge so when I go to court on February 22, 2007 I should be released on the same day. If you don't already have it set that way. Can you please try to get my plea on paper the day before I go to court to testify with the judge's signature on so we all be on the same pages. That way when I do to my trail we

can get in an out the courtroom in send me on my way timed surve.

40. On or about December 11, 2006, Walter wrote Chapman a letter which said in part:

As I indicated to you previously, any plea agreement in your matter can not and will not proceed until Kwaume's trial has been concluded. If his [Kwaume's] matter proceeds in January, then your plea would be done on the scheduled date of February 22, 2007.... I will be provided a written plea agreement, which I will have the opportunity to review with you before we go into court to enter the plea, so that you will know exactly what you will be facing when the matter is concluded.

41. On or about December 15, 2006, Walter wrote Chapman a letter which said in full:

This letter will acknowledge receipt of your letter postmarked December 12, 2006. As soon as I receive a copy of the proposed plea agreement in your matter, I will provide such to you; however, keep in mind you will not receive a set plea agreement until after the co-defendant's trial. Otherwise, the co-defendant's attorney would impeach you as a witness by arguing to the jury that you are only giving your testimony because you are being offered such a good plea agreement, so the Commonwealth's intentions, of course, would be not to formalize any plea agreement until after the co-defendant's trial, so at that point you would honestly be able to testify that you have no set formal agreement in place.

I will be in touch with you once I receive information after the first of the year regarding whether the Commonwealth is still going to need you to testify as a witness.

42. On or about December 15, 2006, Morchower filed a motion for discovery. In it, he asked for the following:

Pursuant to Giglio v. United States, 405 U.S. 150 (1972) and Napue v. Illinois, 360 U.S. 264 (1959), all evidence affecting the credibility of any prosecution witness, including but not limited to the sum and substance of any oral or written plea negotiation or any understanding existing between the Commonwealth and any prosecution witness who may testify in the trial of this case.

43. Siman-Tov told the bar's investigator that after she received Morchower's request for exculpatory information, she discussed with Respondent whether there was a plea agreement concerning Chapman, and that Respondent had said that they would wait and see.
44. In response to the motion for discovery, the Commonwealth did not disclose Respondent's communications with Walter concerning a plea agreement for Chapman.
45. On or about January 18, 2007, Marquis was sentenced. He took the stand but refused to answer any questions about the shooting.
46. On or about January 22, 2007, Chapman wrote Walter a letter that said in part:

I'm just wondering if the Commonwealth still need me as a witness because my co-defendant's trial is next week. If the Commonwealth say they don't need to testify would that change anything in my case far as the plea agreement. From what I'm understanding everything is going as planned right.

47. On or about January 25, 2007, Morchower advised Siman-Tov that Kwaume would plead guilty to a charge of possessing a firearm. Morchower requested a continuance for the remaining charges. Kwaume's trial was then continued to April 26, 2007.
48. On or about January 29, 2007 Paula Gooch, an employee of Respondent's office, sent Respondent an email asking whether they needed to move "Chapman's plea date." Respondent answered, "Yes—I'm sorry, I thought Leslie had told you to do that. It will be a Joint Motion for continuance (you/Mike may need to remind the Judge that this defendant is scheduled to testify against K. Edwards). Either of those dates in May are fine with me."
49. On or about January 29, 2007 Paula Gooch sent Michael Byser of Judge Smiley's office an email that stated:

Mike: Please ask Judge Smiley for permission to move this case.
Carlos Chapman-(CR06-4397)—2/22/07@ 9:00
Doug Walter is his attorney and has no objection.
The CA & defense are requesting a joint continuance.
Mr. Chapman is scheduled to testify against Kwaume Edwards on
4/26/07
We'd like to set Mr. Chapman on either May 1 @ 1:00 or May 3
@ 9:00 or 1:00 (Mr. Walter's available dates).
Thank you for checking with Judge Smiley, Paula.

50. The VCAIS data sheet for Chapman's case indicates that on February 22, 2007, Chapman's case was set for a plea agreement, but continued by agreement of counsel.
51. The VCAIS event information page for Chapman's case includes an event type "plea agreement" with an event date of February 22, 2007, and an event status of "Continued by Agreement." Respondent is listed as the event prosecutor. No one in the Commonwealth's Attorney's office was aware of the correspondence between Walter and Chapman until the hearing on the Motion for a new trial.
52. On or about February 2, 2007, Walter sent Chapman a letter which said in part:
- Since Kwaume's case has been continued out until the end of April, your case would need to be continued until after his trial is concluded.
53. On or about February 21, 2007, Walter sent Chapman a letter which said in part:
- Again, I don't believe that the Commonwealth's Attorney will provide certain terms on a plea agreement until Kwaume's trial is concluded, because otherwise if you are provided a set written plea agreement, which is signed prior to Kwaume's trial, Kwaume's attorney can use the fact that you reached that agreement to impeach your testimony.
54. According to Siman-Tov and Smith, they did not know that Respondent had offered Chapman a plea agreement or had made any statements to Walter that Chapman would be offered a plea agreement after he testified against Kwaume. According to Siman-Tov and Smith, they did not understand why Respondent would not reduce the charges against Chapman, given their discussions about Chapman's lesser culpability and limited intellect.
55. Smith told the bar's investigator that as Kwaume's trial approached, she and Siman-Tov had discussions about the evidence against Chapman being insufficient for a murder charge. According to both Smith and Siman-Tov, Respondent refused to discuss reducing the charges against Chapman. Respondent denies that Walter, Siman-Tov or Smith ever approached her about reducing the charges against Chapman prior to his testimony, other than the conversation she had with Walter on November 3, 2006.
56. On or about March 30, 2007, Siman-Tov and Smith met with Walter and Chapman to prepare Chapman to testify against Kwaume. According to Siman-Tov, Respondent had said she was unavailable and could not attend the meeting. During this meeting, the prosecutors told Chapman that there was no plea agreement. Chapman was told his case would be determined after Kwaume's trial.

57. On or about April 9, 2007, Respondent sent Morchower a letter enclosing an agreement of stipulation of facts in Kwaume's case that had been prepared by Siman-Tov.
58. On or about April 11, 2007, Chapman wrote Walter a letter, which said in part:
- My mom and I would like to know are you still trying to get my charges dropped from a felony because when you came to visit me after you talk with the commonwealth in October you said you were going to try to get it down to a misdemeanor.
59. On or about April 17, 2007, Morchower wrote Siman-Tov a letter asking that she confirm that all Brady material would be furnished to him prior to Kwaume's trial.
60. On or about April 17, 2007, Siman-Tov responded in writing to Morchower's request for Brady material. She said that Chapman would be a witness and that the Commonwealth had no agreements and had not given any consideration for his testimony.
61. Respondent told the bar's investigator that all of the statements in Siman-Tov's letter of April 17, 2007 to Morchower were true because they did not know for sure until a week before Kwaume's trial that Chapman would testify, and regardless of whether he testified, the accessory after the fact charges were the most her office could prove.
62. According to Respondent, she was unaware of Morchower's request for Brady material or Siman-Tov's response. Respondent was away from the office a great deal between mid-January, 2007 and April 24, 2007 helping care for a terminally ill friend.
63. On or about April 24, 2007, Siman-Tov met with Walter and Chapman again to prepare his testimony. Siman-Tov advised Chapman that he did not have a plea agreement. According to Siman-Tov, at the time of this meeting, she did not know that Respondent had told Walter in early November, 2006 that Chapman's case could probably be disposed of with misdemeanors. Respondent told the investigator that she could not attend the meeting to prepare Chapman to testify because she was attending her friend's funeral. While Respondent submits that she expected Siman-Tov to inquire of Chapman whether he thought he would be given consideration for his testimony, Respondent admits that she did not take the necessary steps to inquire whether this had been done.
64. On or about April 26, 2007, Chapman testified at Kwaume's trial. Siman-Tov conducted the direct and re-direct of Chapman. Chapman identified Kwaume as the shooter. Chapman testified that he had no agreements with the Commonwealth and had not been offered consideration for his testimony. When asked by Morchower if he thought his testimony would help his case, he replied that he did not know.

65. Respondent and Siman-Tov remained silent during Chapman's testimony.
66. On or about April 26, 2007, Respondent wrote the following note in Chapman's file:
- Δ testified for Comm against K. Edwards. Did an excellent job. We could probably not prove anything /felony if we tried case against this Δ. [Emphasis in original.]
67. On or about April 27, 2007, the jury in Kwaume's trial returned a verdict of guilty of second degree murder, use of a firearm in a murder, and shooting from an occupied vehicle.
68. On or about April 27, 2007, Respondent wrote the following note in Chapman's file:
- s/w D. Walter-offered to amend both chgs to Access. After—12 mos each Δ will have served time 2 plea. Doug to s/w Δ's family re taking him o/s VA for safety as soon as he's released.
69. On or about April 27, 2007 and/or April 30, 2007, Respondent and Walter worked out a plea agreement for Chapman, based on the conversation they had had on November 3, 2006.
70. On or about May 3, 2007, Respondent filed the motion to amend Chapman's indictment to two class 1 misdemeanors: accessory after the fact to murder and accessory after the fact to use of a firearm.
71. On or about May 3, 2007, Chapman's plea agreement was presented to the Court and approved. Chapman pleaded guilty to two class 1 misdemeanors: accessory after the fact to murder and accessory after the fact to use of a firearm. He received twelve months in jail, and was given credit for time served.
72. On or about May 11, 2007, Morchower filed a motion for a new trial in Kwaume's case alleging that the Commonwealth had failed to disclose its understanding with Chapman that he would receive a favorable plea agreement following his testimony, and alleging that the Commonwealth had knowingly elicited untruthful testimony from Chapman regarding a plea agreement.
73. On or about May 24, 2007, the Court held a hearing on the motion for a new trial. It was at that time that the Commonwealth was made aware of the correspondence between Walter and Chapman.
74. On or about August 7, 2007, the Court granted the motion for a new trial. The Court found that the Commonwealth violated *Brady v. Maryland*, 373 U.S. 83 (1963), by

failing to disclose its understanding with Chapman that he would be offered a plea agreement after he testified in Kwaume's case. The Court found that Kwaume was prejudiced by this non-disclosure because Chapman was a crucial witness for the prosecution.

75. Respondent assigned Assistant Commonwealth's Attorney Charles E. Powell to handle Kwaume's retrial. The Commonwealth did not call Chapman as a witness at the second trial. Kwaume was acquitted of both charges.
76. In October 2007, Smith left the York County Commonwealth's Attorney's Office and began employment as an Assistant Commonwealth's Attorney in Williamsburg/James City County.
77. In or about November 2007, Siman-Tov left the York County Commonwealth Attorney's Office and began employment as an Assistant Commonwealth's Attorney in Hampton.
78. Respondent told the bar's investigator that she was not certain until a week or two before Kwaume's trial that Chapman would testify at Kwaume's trial.
79. Respondent told the bar's investigator that she was under no duty to disclose her November 3, 2006 comment to Walter because it was not an agreement. Respondent submits that she did not know that it had even been conveyed to Chapman until late May, 2007 and she would have offered the same thing even if he had not testified due to his minimal culpability and limited intellect.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Eileen Marie Addison constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 3.8 Additional Responsibilities Of A Prosecutor

A lawyer engaged in a prosecutorial function shall:

- (d) make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence which the prosecutor knows tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment, except when disclosure is precluded or modified by order of a court;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that Respondent receive a Public Reprimand, effective August 8, 2011. By entry of this Order, the Board publicly reprimands Eileen Marie Addison for her misconduct in connection with this matter.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to Eileen Marie Addison at her last address of record with the Virginia State Bar, Commonwealth Attorney's Office, P.O. Box 40, Yorktown, Virginia 23690, and 300 Ballard Street, Yorktown, Virginia 23690, and by regular mail to her counsel, Rodney G. Leffler, Leffler & Mosely, P.C., Suite 600, 10555 Main Street, Fairfax, Virginia 22030-3309, and by hand-delivery to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Valarie L.S. May, RPR, Chandler & Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, 804-730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: August 23, 2011

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: PSB III
Pleasant S. Brodnax III, 2nd Vice Chair