

VIRGINIA:

BEFORE THE THIRD DISTRICT—SECTION II SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR.

IN THE MATTER OF  
DAVID MICHAEL GAMMINO

VSB Docket Nos.: 06-032-0616  
06-032-1114  
07-032-0805

**SUBCOMMITTEE DETERMINATION**  
**(PUBLIC REPRIMAND WITHOUT TERMS)**

On October 19, 2007, a meeting was held before a duly convened Third District—Section II Subcommittee consisting of Steven C. McCallum, Esquire, chair presiding, Cliona Mary Burke Robb, Esquire, and John B. Wake, Jr., lay member. During the meeting, the Subcommittee authorized bar counsel to enter into an Agreed Disposition for a Public Reprimand. On January 28, 2008, an Agreed Disposition for a Public Reprimand was entered into between Kathryn R. Montgomery, Assistant Bar Counsel, and the respondent, David Michael Gammino, (“Respondent”), represented by counsel Michael L. Rigsby, Esquire.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13.G.1.d(3), the Third District—Section II Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition and serves upon Respondent the following Public Reprimand:

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.

VSB Docket No. 06-032-0616  
Complainant: Virginia State Bar

2. Respondent was court-appointed to represent Anthony Lee Malone in a criminal appeal.

3. On October 6, 2003, a three-judge panel of the Court of Appeals dismissed the appeal based on insufficiency of the evidence.

4. On November 3, 2003, Respondent filed a petition for appeal with the Supreme Court of Virginia. However, Respondent failed to file a notice of appeal with the Court of Appeals as required by the Rules of the Supreme Court of Virginia.

5. On December 15, 2003, the Supreme Court of Virginia dismissed the petition based on Respondent's failure to file a notice of appeal with the Court of Appeals.

VSB Docket No. 06-032-1114  
Complainant: Charles Harbison

6. On June 14, 2003, Respondent was retained by the complainant, Charles Harbison, to withdraw a guilty plea. At the time, Mr. Harbison was being held at the Riverside Regional Jail.

7. Respondent timely filed a motion to withdraw the plea, but failed to seek an order staying execution of Mr. Harbison's sentence. Such order would have kept Mr. Harbison at the local jail and within the court's jurisdiction.

8. On September 26, 2003, Mr. Harbison's family notified Respondent that Mr. Harbison was being transferred to the custody of the Department of Corrections. At this time, the motion to withdraw guilty plea had not been heard.

9. Respondent immediately moved the court for an order requiring that Mr. Harbison be held at Riverside Regional Jail until the motion to withdraw guilty plea could be heard. The court signed the requested order, but Mr. Harbison had already been transferred.

10. Because Mr. Harbison had been transferred to the custody of the Department of Corrections, the court lost jurisdiction and could not rule on the motion to withdraw guilty plea.

VSB Docket No. 07-032-0805  
Complainant: Rondell Hayes

11. Respondent was court-appointed to represent the complainant, Rondell Hayes, on appeal of a criminal conviction.

12. Respondent filed the notice of appeal on January 25, 2005 and the petition for appeal on May 24, 2005. The Court, per curiam, denied the appeal by order dated October 4, 2005. The order provided that Complainant could seek reconsideration by a 3-judge panel by filing a demand within 14 days of the order.

13. On October 6, 2005, Complainant wrote Respondent a letter asking for information regarding the status of his appeal. Respondent did not respond until November 30, 2005, when, by letter, he sent Complainant a copy of the dismissal order, announced he was retiring from practice and that another lawyer in his office would be taking over his cases. The letter further stated that he had already asked that lawyer to pursue an appeal with the Supreme Court of Virginia.

14. By the time Respondent sent this letter, the 14 day period to demand reconsideration by a 3-judge panel had lapsed. Moreover, the 30 day period within which to appeal to the Supreme Court had also lapsed.

## II. RULES OF PROFESSIONAL CONDUCT

The Subcommittee finds that Respondent 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.

### 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.

## III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, and he is so reprimanded. The Subcommittee imposes no new Terms, but notes that the Terms previously imposed by the Subcommittee in the January 9, 2006 Public Admonition with Terms remain in force.

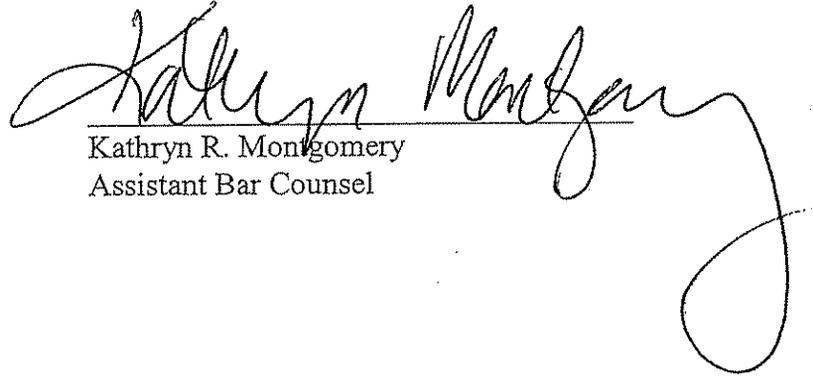
The Clerk of the Disciplinary System shall assess the appropriate administrative fees.

Third District—Section II Subcommittee  
Virginia State Bar

By:   
Steven C. McCallum, Esquire  
Subcommittee Chair Presiding

CERTIFICATE OF SERVICE

I certify I have, this the 5<sup>th</sup> day of February, 2008, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand) to Respondent David Micheal Gammino, at his last address of record with the Virginia State Bar, 328 South Cherry Street, Richmond, VA 23220, and to his counsel, Michael L. Rigsby, at 7275 Glen Forest Drive, Forest Plaza II, Suite 310, Richmond, VA 23226.

  
Kathryn R. Montgomery  
Assistant Bar Counsel