

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MARK MICHAEL KANTRO

VS B Docket Nos. 08-021-071117 and 08-021-074925

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On April 29, 2009, a meeting in this matter was held before a duly convened Second District Subcommittee consisting of Mary M. Kellam, Esquire, Presiding Chair, Ellen C. Carlson, Esquire, Member, and Emanuel W. Michaels, Lay Member, during which consideration of an Agreed Disposition in the above-referenced matter was discussed. It was the unanimous decision of the Subcommittee to accept the Agreed Disposition.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.4 of the Rules of the Supreme Court of Virginia, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. **VS B Docket No. 08-021-071117**

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was appointed to represent Otis Antonio Carter ("Carter") on appeal following the revocation of Carter's probation in the Norfolk Circuit Court (Case No. CR03005005-01/F03).

3. By order dated May 11, 2007, the Court of Appeals of Virginia ("Court") dismissed the appeal as a result of Respondent's filing of the Petition for Appeal three days late (*Otis Antonio Carter v. Commonwealth of Virginia* (Record No. 3199-06-1)).

4. In a letter to Carter dated May 14, 2007, Respondent notified Carter that the appeal had been dismissed. In the letter, Respondent acknowledged that the appeal was dismissed “due to my error in miscalculating the due date,” and advised Carter of his right to pursue a delayed appeal “by filing a Habeas Petition.” However, Respondent did not advise Carter of his right to seek a delayed appeal under §19.2-321.1 of the Code of Virginia, 1950, as amended, or of the 6-month filing deadline applicable thereto. Respondent did not ask Carter if he wished to further pursue the appeal.

5. Respondent took no further action to pursue the appeal on behalf of Carter.

6. Carter filed a *pro se habeas corpus* petition with the Norfolk Circuit Court on June 22, 2007 that was returned to Carter because it was incomplete. There is no indication that it was ever refiled.

7. On October 10, 2007, the Commonwealth mistakenly filed a brief opposing the Petition for Appeal that had been dismissed on May 11, 2007 in *Otis Antonio Carter v. Commonwealth of Virginia* (Record No. 3199-06-1). Although the appeal had long been dismissed, Respondent sent a copy of the Commonwealth’s brief to Carter with a letter dated October 16, 2007 in which he stated that the brief had been filed in the “appeal you have pending in front of the Court of Appeals”. Respondent also stated in his letter that he would advise Carter of his options if and when the appeal was denied. Respondent has acknowledged that the sending of the letter to Carter was not appropriate given the procedural posture of the appeal at that time.

VSB Docket No. 08-021-074925

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was appointed to represent Najja K. Abernathy (“Abernathy”) on appeal following the revocation of Abernathy’s probation in the Norfolk Circuit Court (Case Nos. CR06000646-01 and CR06002056-01/F06).

3. In pursuing Abernathy’s appeal, Respondent was responsible for ensuring that the transcript of the probation revocation hearing was filed with the trial court within 60 days after

entry of the final orders pursuant to Rule 5A:8 of the Rules of the Supreme Court of Virginia. As the two (2) final orders revoking Abernathy's probation were entered on November 20, 2007, the transcript filing deadline was January 19, 2008.

4. Respondent timely filed a notice of appeal on November 6, 2007 in which he certified that the transcript of the revocation hearing had been ordered.

5. The transcript was not ordered until February 13, 2008.

6. Neither the hearing transcript nor a request for an extension to file the hearing transcript was filed by the deadline.

7. As a result, on February 27, 2008, the Court entered an order directing Abernathy to show cause why the appeal should not be dismissed. Respondent failed to respond to the show cause order, and the appeal was dismissed by order entered on March 27, 2008 (*Najja K. Abernathy v. Commonwealth of Virginia* (Record No. 2665-07-1)).

8. Respondent took no further action to pursue the appeal on behalf of Abernathy.

9. Respondent did not send Abernathy copies of either the February 27, 2008 show cause order or the March 27, 2008 dismissal order, and did not advise Abernathy of the dismissal of the appeal until more than 6 months after the appeal had been dismissed.

10. Respondent never advised Abernathy of his right to seek a delayed appeal pursuant to §19.2-321.1 of the Code of Virginia, 1950, as amended, and did not pursue that relief on behalf of Abernathy.

II. NATURE OF MISCONDUCT

Such conduct by Mark Michael Kantro constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

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.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(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.

RULE 1.16 Declining Or Terminating Representation

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client . . .

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to accept the Agreed Disposition of a Public Reprimand with Terms. The terms and conditions with which the Respondent must comply are as follows:

1. Respondent shall review the following materials available through Virginia CLE:

a) the video of the seminar conducted in 2004 titled "A Guide to Appellate Practice in Virginia;" and b) the book published in 2008 titled "Appellate Practice – Virginia and Federal Courts."

Respondent shall, on or before July 31, 2009, certify in writing completion of this requirement to M. Brent Saunders, the Assistant Bar Counsel assigned to these cases. Respondent shall not undertake the representation of any new client in a criminal appeal until such certification has been provided;

2. Respondent shall enroll and attend at least four (4) hours of continuing legal education (CLE) in the substantive area of law office management, which hours shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. The Respondent

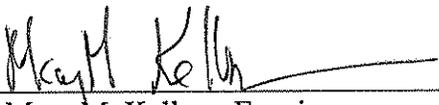
shall, on or before October 1, 2009, certify in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to these cases, completion of this requirement; and

3. Respondent shall implement a docket management system for his law practice that includes a procedure for tracking the deadlines for the filing of transcripts in civil and criminal appeals. Respondent shall, on or before June 15, 2009, certify in writing completion of this requirement to M. Brent Saunders, the Assistant Bar Counsel assigned to these cases.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If the terms and conditions are not met by the specified dates, the alternative disposition shall be a Certification for Sanction Determination pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G.

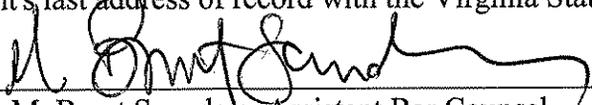
Pursuant to Part Six, Section IV, Paragraph 13-9.E. of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By 
Mary M. Kellam, Esquire
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on the 27th day of MAY, 2009, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Mark Michael Kantro, Esquire, Respondent, at Suite 807, 142 West York Street, Norfolk, VA 23510, Respondent's last address of record with the Virginia State Bar.


M. Brent Saunders, Assistant Bar Counsel