



VIRGINIA:

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

**IN THE MATTER OF
Michael Denis Kmetz
VSB Docket No. 15-022-103103**

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

On March 9, 2016 a meeting was held in this matter before a duly convened Second District Section II Subcommittee consisting of Mr. Francis R. Nance, Lay Member, Cal Thompson Bain, Esquire, and Charisse Lee Black, Esquire, Chair presiding (the subcommittee). During the meeting, the Subcommittee voted to approve an agreed disposition for a PUBLIC Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Christine Corey, Assistant Bar Counsel, and Michael Denis Kmetz, Respondent, pro se.

WHEREFORE, the Second District Section II Subcommittee of the Virginia State Bar hereby serves upon Respondent the following PUBLIC Reprimand with Terms:

I. STIPULATIONS OF FACT

- 1) At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.
- 2) This matter arose when the Virginia Supreme Court notified the Virginia State Bar that in three of Respondent’s cases, the appeals were dismissed because the Respondent did not timely file the petitions for appeal.
- 3) The Virginia State Bar considered only two of these cases because the third was eleven years old.

SHAKIDA BOWERS CASE

4) In the Shakida Bowers matter, the defendant pled guilty to first degree murder, malicious wounding, and robbery and was sentenced on May 8, 2009.

5) Robert C. Neely, Jr., Ms. Bowers' trial attorney, filed a Notice of Appeal on May 29, 2009. Respondent was appointed to represent Ms. Bowers on the appeal.

6) The record of the proceedings was received by the clerk's office of the Court of Appeals on July 24, 2009.

7) Respondent filed the Petition for Appeal on August 31, 2009.

8) The Court of Appeals denied the appeal by order dated October 21, 2009.

9) Respondent filed a Notice of Appeal to the Supreme Court of Virginia on November 24, 2009. In order to have been timely, the notice had to be filed by November 20, 2009.

10) Respondent filed the Petition for Appeal in the Supreme Court of Virginia on November 25, 2009.

11) The Supreme Court of Virginia dismissed the appeal on January 14, 2010 because the Notice and Petition were not timely filed.

12) When asked by the Virginia State Bar investigator about the appeal, the Respondent stated that he did not file a late appeal on defendant's behalf because the defendant's mother told him that the defendant did not wish to pursue a late appeal.

13) On September 29, 2015, when the investigator spoke to the defendant, the defendant stated that she did not know who her appeal attorney was and that he had never called, emailed, written or visited. She had no idea her appeal had been dismissed on January 14, 2010.

14) The defendant's mother told the investigator that she never told Respondent that her daughter did not want to pursue an appeal, but she did recall telling the Respondent to file an appeal to the Virginia Supreme Court. The defendant's mother was unaware of the status of the appeal and that it had been dismissed.

BREON ORE CASE

15) In the second matter, the Breon Ore case, the defendant was found guilty of a second offense of possession of heroin with intent to distribute and he was sentenced on September 13, 2013.

16) The Respondent filed a Notice of Appeal on September 25, 2013, and a Petition for Appeal on January 29, 2014, and an Amended Petition for Appeal on February 18, 2014.

17) The Petition was denied by Order from the Court of Appeals on May 7, 2014.

18) Respondent filed a Notice of Appeal to the Supreme Court of Virginia on May 21, 2014.

19) Respondent filed the Petition for Appeal to the Supreme Court of Virginia on June 10, 2014.

20) In order to be timely, the Petition for Appeal needed to be filed by June 6, 2014.

21) The Supreme Court of Virginia dismissed the appeal by order dated August 22, 2014, because the Petition for Appeal had not been timely filed.

22) Respondent stated to the investigator that he intended to file a late appeal, but he did not do so.

23) Mr. Ore, the defendant, stated that Respondent never told him that the appeal to the Virginia Supreme Court was dismissed, but he found out from his girlfriend.

24) Mr. Ore's girlfriend had told Respondent to file the appeal to the Virginia Supreme Court and he told her that he did file it, but later told her he did not file it on time. He told her he would file a late appeal, which he did not do.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

Failure to Communicate in violation of RPC 1.4

- (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.

Failure to act with Diligence in violation of RPC 1.3

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with the terms and conditions will be a predicate for the disposition of a Public Reprimand with Terms. The terms and conditions are:

1. Respondent shall notify the Indigent Defense Commission of this Public Reprimand pursuant to the Agreed Disposition.
2. Respondent shall not handle criminal appeals, either as retained or court appointed counsel, for a period of one year beginning June 15, 2016 and concluding June 15, 2017. Respondent may note an appeal from a criminal conviction in order to preserve a client's right to appeal before referring the matter to other counsel.
3. During the one-year period in which Respondent is not handling criminal appellate matters, Respondent shall attend 6 hours of Continuing Legal Education credits in the area of appellate practice and/or criminal law ethics that are approved by the Indigent Defense Commission. However, at least three of the credit hours shall be in the area of appellate practice. These Continuing Legal Education credits shall not apply towards Respondent's annual Continuing Legal Education credits requirement. Respondent shall certify his completion of this requirement to Assistant Bar Counsel Christine M. Corey or her designee.
4. Respondent shall withdraw from any appellate matters he was handling and notify Assistant Bar Counsel pursuant to the terms of the Agreed Dispositions.

Upon satisfactory proof that the Terms have been met, this matter shall be closed. If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the

Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why a thirty-day suspension of Respondent's license to practice law in the Commonwealth of Virginia should not be imposed. The burden of proof shall be on Respondent to show compliance with the Terms by clear and convincing evidence. As set forth in Paragraph 13-15.F, if Respondent fails to comply with the Terms as determined by the Subcommittee, including written certification of compliance, within the stated time period, the alternative disposition for a thirty-day suspension shall be imposed. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

In accordance with the Agreed Disposition for a Public Reprimand with Terms, this **ORDER** is **FINAL** and **NON-APPEALABLE**.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

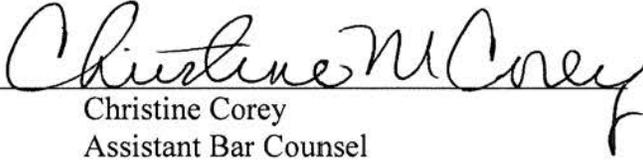
SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Charisse Lee Black
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 12/5/16, a true and complete copy of the Subcommittee Determination ([PUBLIC Reprimand With Terms) was sent by certified mail to Michael Denis Kmetz, Respondent, at Law Office of Michael D. Kmetz, 142 West York St Ste 807, Norfolk, VA 23510, Respondent's last address of record with the Virginia State Bar.


Christine Corey
Assistant Bar Counsel



VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MICHAEL DENIS KMETZ

VS B Docket No. 15-022-103103

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Christine M. Corey, Assistant Bar Counsel, and Michael Denis Kmetz, Respondent, hereby enter into the following agreed disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1) At all relevant times, Respondent was licensed to practice law in the Commonwealth of Virginia.

2) This matter arose when the Virginia Supreme Court notified the Virginia State Bar that in three of Respondent's cases, the appeals were dismissed because the Respondent did not timely file the petitions for appeal.

3) The Virginia State Bar considered only two of these cases because the third was eleven years old.

SHAKIDA BOWERS CASE

4) In the Shakida Bowers matter, the defendant pled guilty to first degree murder, malicious wounding, and robbery and was sentenced on May 8, 2009.

5) Robert C. Neely, Jr., Ms. Bowers' trial attorney, filed a Notice of Appeal on May 29, 2009. Respondent was appointed to represent Ms. Bowers on the appeal.

6) The record of the proceedings was received by the clerk's office of the Court of Appeals on July 24, 2009.

7) Respondent filed the Petition for Appeal on August 31, 2009.

8) The Court of Appeals denied the appeal by order dated October 21, 2009.

9) Respondent filed a Notice of Appeal to the Supreme Court of Virginia on November 24, 2009. In order to have been timely, the notice had to be filed by November 20, 2009.

10) Respondent filed the Petition for Appeal in the Supreme Court of Virginia on November 25, 2009.

11) The Supreme Court of Virginia dismissed the appeal on January 14, 2010 because the Notice and Petition were not timely filed.

12) When asked by the Virginia State Bar investigator about the appeal, the Respondent stated that he did not file a late appeal on defendant's behalf because the defendant's mother told him that the defendant did not wish to pursue a late appeal.

13) On September 29, 2015, when the investigator spoke to the defendant, the defendant stated that she did not know who her appeal attorney was and that he had never called, emailed, written or visited. She had no idea her appeal had been dismissed on January 14, 2010.

14) The defendant's mother told the investigator that she never told Respondent that her daughter did not want to pursue an appeal, but she did recall telling the Respondent to file an appeal to the Virginia Supreme Court. The defendant's mother was unaware of the status of the appeal and that it had been dismissed.

BREON ORE CASE

15) In the second matter, the Breon Ore case, the defendant was found guilty of a second offense of possession of heroin with intent to distribute and he was sentenced on September 13, 2013.

16) The Respondent filed a Notice of Appeal on September 25, 2013, and a Petition for Appeal on January 29, 2014, and an Amended Petition for Appeal on February 18, 2014.

17) The Petition was denied by Order from the Court of Appeals on May 7, 2014.

18) Respondent filed a Notice of Appeal to the Supreme Court of Virginia on May 21, 2014.

19) Respondent filed the Petition for Appeal to the Supreme Court of Virginia on June 10, 2014.

20) In order to be timely, the Petition for Appeal needed to be filed by June 6, 2014.

21) The Supreme Court of Virginia dismissed the appeal by order dated August 22, 2014, because the Petition for Appeal had not been timely filed.

22) Respondent stated to the investigator that he intended to file a late appeal, but he did not do so.

23) Mr. Ore, the defendant, stated that Respondent never told him that the appeal to the Virginia Supreme Court was dismissed, but he found out from his girlfriend.

24) Mr. Ore's girlfriend had told Respondent to file the appeal to the Virginia Supreme Court and he told her that he did file it, but later told her he did not file it on time. He told her he would file a late appeal, which he did not do.

II. NATURE OF MISCONDUCT

Christine M. Corey and the Respondent agree that the above factual stipulations could give rise to a finding of a violation of the following Disciplinary Rules:

RPC 1.4 Failure to Communicate

(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.

Failure to act with Diligence in violation of RPC 1.3

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

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to a subcommittee of the Second District Section II Committee for its approval the agreed disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Second District Committee. The terms shall be met during the year beginning **June 15, 2016 and ending June 15, 2017** and are as follows:

1) Respondent agrees to and shall notify the Indigent Defense Commission of this Agreed Disposition and provide them with a copy of the Agreed Disposition. Respondent shall certify to Assistant Bar Counsel Christine M. Corey or her designee that he has satisfied the notification requirement within fourteen (14) days of this Agreed Disposition.

2) Respondent shall not handle criminal appeals, either as retained or court appointed counsel, for a period of one year beginning June 15, 2016. Respondent may note an appeal from a criminal conviction in order to preserve a client's right to appeal before referring the matter to other counsel.

3) During the one-year period in which Respondent is not handling criminal appellate matters, Respondent shall attend 6 hours of Continuing Legal Education credits in the area of appellate practice that are approved by the Indigent Defense Commission. These Continuing Legal Education credits shall not apply towards Respondent's annual Continuing Legal Education credits requirement. Respondent shall certify his completion of this requirement to Assistant Bar Counsel Christine M. Corey or her designee.

4) If Respondent is handling any appellate matters as of June 15, 2016, he shall withdraw from those matters and certify to Assistant Bar Counsel Christine M. Corey or her designee that he has withdrawn from all appellate matters pursuant to this Agreed Disposition.

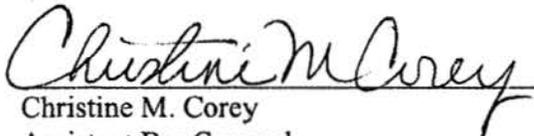
Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as set out in the terms, which conclude on **June 15, 2017**, Respondent agrees that the District Committee shall impose a **THIRTY (30) DAY SUSPENSION** pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

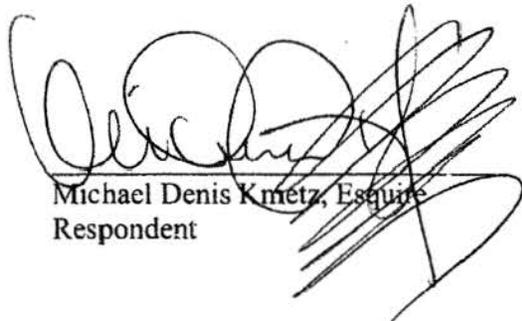
If this agreed disposition is accepted by the Subcommittee, Respondent agrees it is final and non-appealable.

If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR:


Christine M. Corey
Assistant Bar Counsel


Michael Denis Kmetz, Esquire
Respondent