

VIRGINIA:

BEFORE THE THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DONALD FRANCIS LYNCH, III

VSB Docket No. 09-033-076156

SUBCOMMITTEE DETERMINATION
PUBLIC ADMONITION WITHOUT TERMS

On November 9, 2010, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Mary Hunton (lay member), Dennis Kiker, Esquire, member, and William S. Francis, Jr., Esquire, Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13-15.B.4 of the Rules of the Virginia Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition Without Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Donald Francis Lynch, III, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. From April 2001 to May 7, 2007, Mr. Lynch was employed as assistant general counsel for a major Virginia corporation (the corporation).
3. On January 17, 2005, the corporation entered into a contract with a software services provider (the provider) to provide automation services.
4. A dispute developed between the parties, the provider claiming that it wasn't being paid for its services while the corporation alleged that the services were inadequate, demanding that the provider should return what the corporation had paid it. Nearly two million dollars was in controversy.
5. On October 24, 2006, the provider filed suit against the corporation in the Fairfax Circuit Court for breach of contract
6. Mr. Lynch handled the litigation for the corporation in his capacity as assistant general counsel.

7. Finding that he was the sole attorney assigned to the case with no administrative support and no prospect of outside counsel being hired, Mr. Lynch could not and did not furnish all of the records requested during discovery. As a result, the provider aggressively pursued discovery through motions to compel resulting in a series of show-cause hearings in the Fairfax Circuit Court.
8. Despite his inability to respond to the discovery requests, the lack of administrative support, and no prospect of outside counsel to assist him, Mr. Lynch never sought to withdraw from the case or terminate his employment with the corporation, but stayed on as its assistant general counsel with sole responsibility for the litigation.
9. The court scheduled a hearing for February 2, 2007, on the provider's motion to compel and motion for sanctions for failure to comply with an earlier order.
10. Mr. Lynch, however, erroneously recorded the date of February 9, 2007, for the hearing and did not appear on February 2.
11. On February 2, 2007, the court granted the provider's renewed motion to compel, ordered the corporation to provide complete responses to interrogatories by February 9, 2007, and ordered the corporation to pay the provider \$1,000 in attorney's fees to reimburse the provider for the cost of bringing the motion.
12. Feeling responsible for the order because of his failure to appear on February 2, 2007, Mr. Lynch paid the \$1,000 out of his own funds at a subsequent hearing on February 9, 2007. He did not inform his employer about this development.
13. On March 30, 2007, the court ordered Mr. Lynch and the corporation's CEO to provide the court with affidavits indicating that they had complied with discovery. Mr. Lynch submitted an affidavit stating he had provided everything that the company had furnished, but did not inform the corporation about the order, and the CEO would not and did not provide an affidavit in accordance with the order.
14. Ultimately, with another show-cause hearing scheduled on May 4, 2007, the corporation hired outside counsel to handle the matter the day before.
15. On May 4, 2007, the court found that the corporation had failed to provide discovery in accordance with the court's previous orders and entered default judgment against the corporation on the issue of liability only. The court scheduled a hearing to determine the amount of damages for September 10, 2007.
16. On May 7, 2007, Mr. Lynch ceased employment with the corporation.
17. On September 10, 2007, the court ordered the corporation to pay monetary damages to the provider in accordance with the previous default judgment.

18. During the bar's investigation of this matter, Mr. Lynch candidly acknowledged that he failed to inform the CEO about the March 30, 2007 order to submit an affidavit concerning discovery or his payment of the sanctions order, and that he should have informed his employer about these developments.
19. Mitigating factors recognized by the American Bar Association Standards for Imposing Lawyer Sanctions are the Respondent's lack of a prior disciplinary record and his cooperation during these disciplinary proceedings.

II. NATURE OF MISCONDUCT

Such conduct by Donald Francis Lynch, III constitutes misconduct in violation of the following provisions of the 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

- (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. PUBLIC ADMONITION WITHOUT TERMS

Accordingly, it is the decision of the subcommittee to impose a Public Admonition Without Terms and Donald Francis Lynch, III is hereby so admonished.

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

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: _____

William S. Francis, Jr., Chair

Third District Committee, Section III

CERTIFICATE OF MAILING

I certify that on the 1st day of December, 2010, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the Subcommittee Determination (Public Admonition Without Terms) to Donald Francis Lynch, III, Respondent, at Mondial Assistance, 2805 North Parham Road, Richmond, VA 23294, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to E. Lewis Kincer, Jr., Respondent's Counsel, at Suite 180, 4951 Lake Brook Drive, Glen Allen, Virginia 23060.


