

VIRGINIA:

**BEFORE THE THIRD DISTRICT, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
ROBERT HENRY SMALLENBERG**

VS **Docket No.: 06-032-4208**

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Reprimand)

On March 14, 2008, a Third District, Section II, Committee panel assembled for a Hearing of this matter. Upon information that the bar and Respondent had endorsed an Agreed Disposition, a duly convened Third District, Section II, Subcommittee consisting of Martin Douglas Wegbreit, Esquire (Chair presiding), Steven Colin McCallum, Esquire, and Coral Coleman Gills, lay member, met and considered the proposed Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia, the Third District, Section II, Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Robert Henry Smallenberg ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Reprimand:

FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Complainant Kimberly D. Taylor hired Respondent to represent her on criminal charges in Dinwiddie County, Virginia.
3. In pertinent part, after the trial was twice continued, a new trial date was scheduled for May 12, 2006.

4. Respondent produced his time records to show he spoke with the Commonwealth's Attorney, George Marable, on May 1, 2006. Respondent contends he learned that Mr. Marable would accept a plea to one count in exchange for dropping the other three counts. Sentencing would be in accordance with the sentencing guidelines.

5. Respondent contends his time records, appointment book, and meeting notes show he then met with Ms. Taylor on May 2, 2006 to review the applicable sentencing guidelines should she agree to accept the Commonwealth's plea agreement. Respondent contends Ms. Taylor agreed to plead guilty in accordance with the Commonwealth's terms.

6. According to Respondent, he suffered a back injury on May 6, 2006, saw a doctor on May 9, 2006, and was prescribed muscle relaxants and pain medication and put to bed for the rest of the week. He returned to work the following Monday, May 15, 2006.

7. During his absence, Respondent claims he informed his office staff to advise clients of his injury, and he contends his law clerk and secretary would so testify.

8. Respondent acknowledges Ms. Taylor called on a couple of occasions during his absence without leaving a detailed message.

9. Ms. Taylor contends Respondent was unresponsive to her attempted communications leading up to the trial. She denies knowing about any plea agreement Respondent negotiated on her behalf.

10. The bar's Investigation revealed that Ms. Taylor's mother, Sandra Lewis, said she and Ms. Taylor called Respondent repeatedly as the trial date drew near without

getting a response. Ms. Lewis denies knowing Respondent was out with an injury or that he had negotiated any plea agreement.

11. A review of Ms. Lewis's cell phone records for the period April 1 – May 31, 2006 indicate she made a total of 13 calls to a number identified with Respondent. The last five calls beginning April 28, 2006 to May 9, 2006 were to Respondent's cell phone.

12. Respondent contends he and his law clerk each spoke to Ms. Lewis at least once between April 1, 2006 and May 2, 2006. Respondent acknowledges he has no recollection or records indicating he spoke to either Ms. Lewis or Ms. Taylor after May 2, 2006.

13. The record shows Ms. Taylor hired another attorney, Steve Novey, Esq., on May 11, 2006 because Respondent had not responded to her calls.

14. Upon interview by the bar's Investigator, Mr. Novey said he sent a letter to the court clerk notifying the court of his representation and enclosing an order of substitution signed by all parties. After the case was continued, Mr. Novey sent Respondent a letter dated May 17, 2006 requesting a copy of Ms. Taylor's file, but he never received a response.

15. Mr. Novey denies any indication that a plea agreement had been under discussion; however, he was successful in obtaining a plea deal for restitution and a suspended sentence after Ms. Taylor agreed to provide the Commonwealth with assistance.

16. Upon interview by the bar's Investigator, George Marable, Esq., Dinwiddie's Commonwealth's Attorney, said while he may have informally discussed a possible plea deal with Respondent, he has no recollection of it. He further has no record or

recollection of Respondent accepting a plea deal. According to Mr. Marable, it was unlikely he would have offered a 1-count plea deal because he had a strong case and Ms. Taylor had not then offered any cooperation. He confirmed that Mr. Novey later called him and offered Ms. Taylor's assistance. Upon hearing what Ms. Taylor had to say, he reached a plea agreement with Ms. Taylor.

NATURE OF MISCONDUCT

The foregoing Findings of Fact give rise to the following violations of the Rule 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

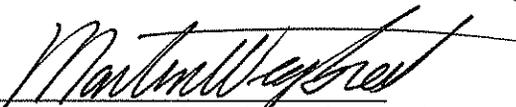
SUBCOMMITTEE DETERMINATION

It is the decision of the Third District, Section II, Subcommittee to accept the Agreed Disposition of the parties. Accordingly, a Hearing is not necessary to resolve this matter and Respondent shall receive a Public Reprimand without Terms pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia. This Public Reprimand without Terms is public discipline under the Rules of the Supreme Court of Virginia.

WHEREFORE, the Respondent is hereby issued a single Public Reprimand without Terms. This Public Reprimand without Terms shall remain a permanent part of Respondent's disciplinary record with the bar.

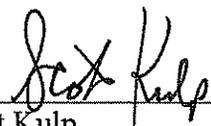
Pursuant to Part Six, Section IV, Paragraph 13.b.8.c.(1) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

**THIRD DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

By: 
Martin Douglas Wegbreit, Esquire
Subcommittee Chair Presiding

CERTIFICATE OF SERVICE

I certify I have, this the 19th day of MARCH, 2008, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand) to Respondent Robert Henry Smallenberg, at his last address of record with the Virginia State Bar, 1521 West Main Street, Richmond, VA 23220-4630, and by regular mail to 1415 Mechanicsville Tnpk, Richmond, VA 23223.



Scott Kulp
Assistant Bar Counsel