



VIRGINIA:

BEFORE THE THIRD DISTRICT—SECTION I SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
DENIS CHARLES ENGLISBY

VSB Docket No. 17-031-107655

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On June 5, 2017, a meeting was held in this matter before a duly convened Third District Subcommittee consisting of Carolyn V. Grady, Esquire, Steven B. Novey, Esquire, Chair, and Charles J. Kehoe, lay member. 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 Kathryn R. Montgomery, Deputy Bar Counsel, and Denis Charles Englisby, Respondent, *pro se*.

WHEREFORE, the Third District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. Respondent is a member of the Virginia State Bar and was admitted to practice law in Virginia on September 21, 1972.
2. On June 27, 2016, Complainant Frank Michalek hired Respondent to represent him in divorce, custody and support matters.
3. Complainant told Respondent he wanted 50/50 custody of the children, with both parents having equal time with the children and neither party paying child support. Complainant also wanted the children to stay in the same school district. Complainant explained to Respondent that he worked odd hours, and that his wife had a similar work schedule. The parties had thus far been able to coordinate work schedules with visitation. Complainant did not have a set visitation schedule in mind.

Complainant, however, told Respondent he wanted a specific visitation and holiday schedule set.

4. On August 9, 2016, Complainant, Respondent, Complainant's wife and her attorney met to work out an agreement for custody and visitation. The parties came to an oral agreement. However, soon thereafter, Complainant's wife changed her mind. The parties were set to appear in Chesterfield Juvenile and Domestic Relations Court on August 25, 2016.
5. Complainant, his father and his sister appeared in Court on August 25, 2016. Respondent, opposing counsel, and the GAL met privately in a conference room at the courthouse to discuss a settlement. Respondent emerged from the conference room and announced to Complainant that the matter was settled, and that Complainant had gotten what he wanted, which was for the kids to remain in their home school district. The GAL would write up an order. The attorneys then appeared in Court without the parties and told the Judge that the case had settled and an order would be forthcoming.
6. On Friday, August 26, 2016, the GAL sent by fax a proposed order to Respondent for review. The order did not set forth a detailed visitation schedule for holidays. The order provided Complainant with daytime visitation three days a week, but only one overnight weekend per month. Respondent wrote "looks good" on the proposed order and faxed it back to the GAL.
7. At some point after Respondent exchanged faxes the GAL, Respondent mailed a copy of the order to Complainant. Respondent did not otherwise contact Complainant about the order.
8. On Saturday, September 3, 2016 (Labor Day weekend), Complainant received the order from Respondent by mail. Complainant was extremely dissatisfied with the proposed visitation schedule, as it would reduce significantly the amount of time he had been spending with his children. Complainant planned to contact Respondent after the Labor Day holiday.
9. On the morning of Tuesday, September 6, 2016 (the day after Labor Day), having heard nothing from Complainant, Respondent signed the order and hand-delivered it to the courthouse for presentation to the Judge.
10. On Tuesday afternoon, September 6, 2016, Complainant met with Respondent to discuss the order. Complainant asked Respondent to withdraw the order, but Respondent refused, explaining that the order had already been presented for entry. Respondent told Complainant he could appeal the order to Circuit Court within 10 days. Complainant said he intended to write the Judge a letter asking him not to enter the order. Respondent discouraged Complainant from pursuing this course of action.

11. After Complainant left Respondent's office, he immediately wrote a letter to the Judge asking that the order not be entered. Complainant also notified the GAL and an emergency hearing was set for September 8, 2016. Respondent could not appear due to a prior commitment in another court. Complainant represented himself at the hearing. The Judge voided the order and continued the case to November 14, 2016.
12. Complainant subsequently terminated Respondent and hired another lawyer. A new order was entered following the November 14, 2016 hearing, which gave Complainant more time with his children (26 more days per year than the order signed by Respondent), and which required Complainant to pay less child support.
13. The bar's investigator asked Respondent why he signed the order that gave Complainant significantly less time with his children. Respondent explained that he did not know whether Complainant would indeed receive less visitation under the order he signed, as Complainant had never specified a particular schedule of visitation that he wanted to pursue.

## II. NATURE OF MISCONDUCT

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

### **RULE 1.2    Scope of Representation**

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

### **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.

(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 REPRIMAND WITH TERMS

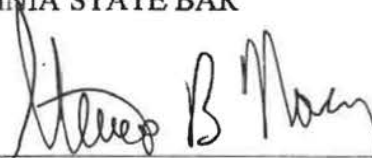
Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. The terms shall be met by October 31, 2017 and are as follows:

1. Respondent shall complete and certify in writing to undersigned bar counsel his completion of four (4) hours of CLE credit in the area of ethics. These credits must be taken at a live, in-person CLE and must be approved for Virginia MCLE credit. Respondent, however, shall not submit these hours for MCLE credit.

If the terms are not met by October 31, 2017, the District Committee shall impose a Certification to the Disciplinary Board for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.F and 13-15.G. 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.

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.

THIRD DISTRICT—SECTION I  
SUBCOMMITTEE  
VIRGINIA STATE BAR

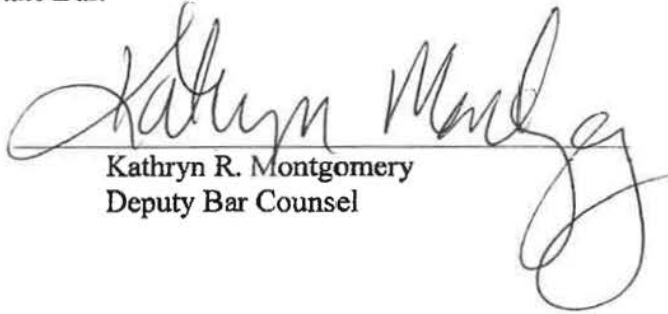


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Steven B. Novey  
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on June 12, 2017, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Denis Charles Englisby, Respondent, at P.O. Box 85, Chesterfield, VA 23832-0085, Respondent's last address of record with the Virginia State Bar.

  
Kathryn R. Montgomery  
Deputy Bar Counsel