

VIRGINIA:

BEFORE THE SECOND DISTRICT, SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
Kelly Lynn DiCorrado

VSB Docket No. 22-022-125525

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On December 6, 2022, a meeting was held in this matter before a duly convened Second District, Section II, Subcommittee consisting of Edwin Stuart Booth, Esq.; Sarah Barrie Stedfast, Lay Member; and Laura Geringer Gross, Esq., Chair presiding. 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 Seth T. Shelley, Assistant Bar Counsel; Kelly Lynn DiCorrado, Respondent; and Mary Teresa Morgan, Esquire, counsel for Respondent.

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

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia in September 2015. At all times relevant, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On January 11, 2021, Respondent was appointed by the Norfolk Circuit Court to represent Larry Williams (“Complainant”) on a Petition for Civil Commitment as a Sexually Violent Predator (“Petition”) filed by the Office of the Attorney General. In a letter dated January 12, 2021 to Respondent that accompanied the petition and appointment order, Deputy Clerk Lindsey Thomas (“Deputy Clerk Thomas”) requested

that Respondent “contact Erin D. Whealton, Assistant Attorney General, to set a probable cause hearing within 90 days.”¹

3. Respondent did not contact Assistant Attorney General Erin Whealton (“AAG Whealton”). On July 26, 2021, AAG Whealton emailed Respondent and the Clerk to schedule the matter as it had “slipped through the cracks.” On July 28, 2021, the probable cause hearing was scheduled for October 18, 2021.
4. After taking evidence at the October 18, 2021 hearing, the Honorable Judge Jerrauld C. Jones (“Judge Jones”) ruled there was probable cause for the case to proceed to trial. At the end of the hearing, Judge Jones noted that the probable cause hearing had not been held within the 90-day statutory requirement. Judge Jones later stated that he “would like us to expedite this on the docket” and “we need to get this case moving.” Judge Jones encouraged both parties to contact Wendy Spivey, Judicial Docket Administrator (“Ms. Spivey”) to quickly schedule a trial date.²
5. On October 21, 2021, AAG Whealton emailed Respondent and Ms. Spivey regarding available dates for trial. Ms. Spivey provided possible dates in January, February, and March 2022. On October 22, 2021, Respondent wrote that “[t]he first date I have available is the February 28th date and that is beyond the 120-day requirement.” Respondent stated that she was “not willing to waive that requirement.” Later that day, Ms. Spivey provided additional potential dates in January. On November 4, 2021, after prompting from AAG Whealton, Respondent wrote “I am booked all three days and trying to work on moving my schedule around.” Respondent stated she “should know hopefully by tomorrow or Monday” and was “waiting to hear back from the prosecutor.” However, no trial date was set at that time. Respondent stated that she had never heard back from the special prosecutor on the case she was trying to move and she had two jury trials scheduled in January of 2022.
6. On February 9, 2022, Jennifer Swetits, paralegal for Respondent, emailed AAG Johnson and Ms. Spivey and requested possible trial dates. The parties had considerable difficulty in setting a trial date due mostly to the limited schedules of the Commonwealth’s expert and the defense expert. On March 3, 2022, a two-day trial was scheduled for September 8-9, 2022.

¹ “Upon the filing of a petition alleging that the respondent is a sexually violent predator, the circuit court shall (i) forthwith order that until a final order is entered in the proceeding, in the case of a prisoner, he remain in the secure custody of the Department of Corrections or, in the case of a defendant, he remain in the secure custody of the Department and (ii) schedule a hearing within 90 days to determine whether probable cause exists to believe that the respondent is a sexually violent predator.” Va. Code § 37.2-906.A.

² “Within 120 days after the completion of the probable cause hearing held pursuant to § 37.2-906, the court shall conduct a trial to determine whether the respondent is a sexually violent predator. A continuance extending the case beyond the 120 days may be granted to either the Attorney General or the respondent upon good cause shown or by agreement of the parties.” Va. Code § 37.2-908.A.

7. Respondent asserted that under the Supreme Court Judicial Emergency due to Covid-19, “the 90-day requirement for the Probable Cause hearing pursuant to Virginia Code § 37.2-906 was suspended.” Respondent also asserted that this was her first SVP case and she relied upon her review of the Virginia Code for Sexually Violent Predators. When asked why she didn’t contact AAG Whealton to schedule the hearing as the Clerk’s letter instructed, Respondent stated I don’t have an answer for that; it was over a year ago, perhaps I didn’t read the letter, but I can’t tell you for certain.
8. Between January 11, 2021 and October 18, 2021, Respondent did not communicate with Complainant. The first time Respondent communicated with Complainant was prior to the hearing on October 18, 2021 in the courthouse. Respondent stated that her paralegal attempted to locate Complainant, but that he moved between Virginia Department of Corrections (“DOC”) facilities a number of times. Respondent stated that Complainant was fully advised of the SVP process, the Complainant’s rights and provided a copy of his evaluation by the Attorney General prior to her involvement. When asked why she didn’t at least write a letter to Complainant during this time period, Respondent said there was no new information to provide to the Complainant, and Respondent did not receive any correspondence or communication from the Complainant requiring a response
9. Respondent sent two letters to Complainant in 2022. In a letter dated February 16, 2022, Respondent wrote that she was attempting to schedule the trial, and explained that the Attorney General had requested a jury trial, which required a date that had to be coordinated with the court, attorneys and all witnesses. On March 4, 2022, Respondent sent a letter to Complainant informing him that the 2-day trial had been scheduled for September 8-9, 2022.
10. In April 2022, Respondent filed a motion to withdraw from the matter at the request of Complainant. The Court granted that motion.

II. NATURE OF MISCONDUCT

Such conduct by Respondent 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

- (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.

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 March 31, 2023 and are as follows:

1. Respondent will complete six hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of law office management or SVP Continuing Legal Education. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward her Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law.
2. Respondent will certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to Bar Counsel, promptly following her attendance of each such CLE program(s).

If any of the terms are not met by March 31, 2023, 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 Certification for Sanction Determination should not 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.

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, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Laura Geringer Gross
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on December 16, 2022, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Kelly Lynn DiCorrado, Respondent, at Delpierre & DiCorrado, PLC, 500 E Plume St Ste 210, Norfolk, VA 23510, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid, to Mary Teresa Morgan, counsel for Respondent, at Golightly Mulligan & Morgan, PLC, 4646 Princess Anne Rd Unit 104, Virginia Beach, VA 23462.



Seth T. Shelley
Assistant Bar Counsel