

VIRGINIA:

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

IN THE MATTER OF
KENNETH ALBERT MORENO

VSB Docket No. 20-021-118028

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITHOUT TERMS

On December 16, 2020 and May 10, 2021, meetings were held in this matter before a duly convened Second District, Section I Subcommittee consisting of Constance J. Vandervelde, Chair; Karen M. Crowley, Member; and Julie L. McGuire, Lay Member. During the May 10, 2021 meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand without Terms entered into by the Virginia State Bar, by M. Brent Saunders, Senior Assistant Bar Counsel, and Kenneth Albert Moreno, Respondent, *pro se*, pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of the Supreme Court of Virginia.

WHEREFORE, the Second District, Section I Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In April 2018, Michelle P. Goggins and her husband, Dhyronn K. Goggins, hired Respondent to represent them in filing a Chapter 13 bankruptcy on their behalf, for which they paid him \$5,223.00 over the course of approximately 18 months.
3. In May 2018, Respondent filed a Chapter 13 petition and plan on behalf of the Gogginses in the United States Bankruptcy Court for the Eastern District of Virginia (Norfolk) (Case

No. 18-71736-FJS). In July 2018, Respondent filed two amended Chapter 13 plans. On August 7, 2018, Respondent filed a third amended Chapter 13 plan¹.

4. Around the same time as the filing of the third amended plan and before it had been confirmed, Mr. Goggins called Respondent and informed him that Mrs. Goggins had a new job. Respondent did not ask if Mrs. Goggins pay had increased as a result of her new job and Mr. Goggins did not volunteer that it had in fact increased substantially, roughly from \$42,000/year to \$52,000/year. According to Respondent, he always asks about any income change with new employment, but does not recall Mr. Goggins providing any information regarding that with respect to Mrs. Goggins' new job.
5. Respondent did not report the employment or income change to the Chapter 13 Trustee assigned to the Goggins' case, R. Clinton Stackhouse, Jr. ("Trustee").
6. A few weeks later, on September 23, 2018, the Court confirmed the third amended Chapter 13 plan without knowledge of the increase in the Gogginses income.
7. Respondent continued to be counsel for the Gogginses for the purpose of assisting them with any issues arising after the confirmation of their Chapter 13 plan.
8. The Gogginses reported on their 2018 federal tax return a combined gross income that was \$29,489² higher than the combined gross income they reported on their 2017 federal tax return. They provided a copy of that return to Respondent, who delivered it to the Trustee in April 2019³. At the request of the Trustee, Respondent also provided recent pay stubs for the Goggins in April 2019.
9. About a year into their Chapter 13 plan, the Gogginses needed to finance the purchase of a new car which required the preapproval of the Court. On September 30, 2019, they met with Respondent to discuss obtaining the Court's approval. At that meeting, the Gogginses related to Respondent that Mrs. Goggins was making an additional \$12,000.00 more annually. In their presence, Respondent placed a telephone call to counsel for the Trustee to discuss the car purchase approval process. The call became contentious when it was disclosed to counsel for the trustee that Mrs. Gogginses income had substantially increased.
10. On that same date, September 30, 2019, the Trustee filed a motion to dismiss the Goggins' bankruptcy case on the basis of their failure to timely report a significant increase in their household income.

¹ The third amended Chapter 13 plan proposed a total payment to the Trustee of \$56,457 over five years and included a Schedule I declaring the total gross monthly income of the Gogginses as \$10,516 (\$7,000 for Mr. Goggins and \$3,516 for Mrs. Goggins).

² That difference is comprised of Mrs. Goggins' salary increase and a bonus she received in 2018, as well as an increase in Mr. Goggins' income as well.

³ The Gogginses were required to provide copies of their tax returns to the Trustee annually.

11. In response, Mrs. Goggins sent an email to the Trustee complaining about Respondent's representation and specifically his failure to report her change in employment or to even inquire whether it had resulted in an increase in her income. She also indicated a desire to retain a new lawyer and asked how she could provide documents directly to the Trustee since she was having difficulty doing that through Respondent.
12. On October 10, 2019, the Trustee, concerned about the issues Mrs. Goggins raised in her email, filed a motion for a status hearing to provide the Gogginses an opportunity to express their concerns to the Court.
13. Following a hearing held on December 3, 2019, the status hearing was deemed concluded and the motion to dismiss was settled with a Consent Order requiring the filing of amended Schedules I (Income) and J (Expenses), within 14 days of the Consent Order, which was entered on December 17, 2019.
14. After the holding of that hearing and entry of the Consent Order, Respondent did not prepare proper amended schedules. When no amended schedules were filed by the deadline, the Trustee filed a motion to compel the filing of the amended schedules.
15. The Gogginses contacted Respondent to find out why he had not filed the amended schedules. He explained that he had not done so because he thought they were hiring new counsel. He agreed to meet with them for the purpose of discussing and preparing amended schedules, but when they showed up to his office at the scheduled time on February 14, 2020, he had left a note advising them he needed to call the Bar Ethics Hotline regarding a possible conflict in his further representation by virtue of their filing of this bar complaint⁴.
16. On February 26, 2020, Respondent filed a motion to withdraw as their counsel, on the basis that the filing of the bar complaint had conflicted him out of further representing the Gogginses.
17. On April 21, 2020, a hearing was held on the motion to compel and motion to withdraw. The motion to compel was denied at the request of the Trustee. By Order entered on May 19, 2020, Respondent was granted leave to withdraw as counsel.
18. Respondent never filed or prepared amended schedules on behalf of the Gogginses.

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

⁴ Shortly after the Trustee filed his motion to compel, the Gogginses filed this bar complaint.

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.16 Declining Or Terminating Representation

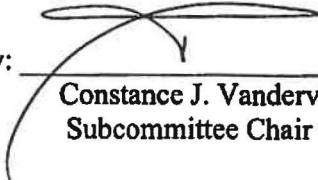
- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client
- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand Without Terms and Kenneth Albert Moreno is hereby so reprimanded.

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 I
SUBCOMMITTEE OF THE
VIRGINIA STATE BAR**

By: 

**Constance J. Vandervelde
Subcommittee Chair**

CERTIFICATE OF MAILING

I certify that on the 12 day of May, 2021, a true and complete copy of the Subcommittee Determination (Public Reprimand Without Terms) was sent by certified mail to Kenneth Albert Moreno, Respondent, at 3305 South Sandpiper Road, Virginia Beach, VA 23456, Respondent's last address of record with the Virginia State Bar.



Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel