Virginia State Bar Council to Review UPL Opinion 209 Concerning a Foreign Attorney Representing a Client Before the Virginia Gas & Oil Board

RICHMOND—Pursuant to Part Six: Section IV, Paragraph 10(c)(iii) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on October 20–21, 2005, in Charlottesville, Virginia, is expected to consider for approval, disapproval, or modification, proposed Unauthorized Practice of Law Opinion 209, *Foreign Attorney Representing Client Before Virginia Gas & Oil Board*, issued by the Standing Committee on the Unauthorized Practice of Law ("UPL Committee") on June 14, 2005.

UPL Opinion 209 addresses the issue of whether it is the unauthorized practice of law for an attorney licensed to practice law in a jurisdiction other than in Virginia to represent a client in Virginia before the Virginia Gas and Oil Board ("the Board"). Relying upon the definition of a non-lawyer found in Part 6, § I(C) of the Rules of the Virginia Supreme Court, UPR 1-101(A) (which prohibits a non-lawyer from representing another before a tribunal) and UPC 1-1 (which defines "tribunal") as well as UPL Opinions 158, 195 and 201 (which address the scope of practice by a foreign (non-Virginia licensed) attorney in Virginia), the UPL Committee determined that it would be the unauthorized practice of law for an attorney licensed in a jurisdiction other than Virginia to represent a client before the Virginia Gas and Oil Board.

This conclusion is based primarily upon the determination that the Virginia Gas and Oil Board is a "tribunal." The Board was created by the Virginia Gas and Oil Act, § 45.1-361.1 *et seq.* of the Virginia Code (1950, as amended). A review of the provisions of the Act indicates that the Board does more than simply "promulgate rules and regulations of general applicability." It does determine the rights and responsibilities of the parties before it. Further, it must conduct its hearings pursuant to the "formal litigated issues hearing provisions" of the Administrative Process Act (§ 2.2-4000 *et seq.*), which makes no allowance for appearance by a non-lawyer to represent a party in such a hearing. Without such authority, and the Board being a "tribunal," any representation must be by a licensed Virginia attorney. Based on this authority the Committee finds that representation by a non-lawyer (which includes a lawyer licensed elsewhere than in Virginia) before the Virginia Gas and Oil Board is not appropriate and would be the unauthorized practice of law.

Inspection and Comment

The proposed unauthorized practice of law opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed opinion can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at **http://www.vsb.org**.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the opinion by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than ***October 3, 2005***.

UPL Opinion No. 209

Foreign Attorney Representing Client Before Virginia Gas and Oil Board

You have requested that the Committee opine as to whether it is the unauthorized practice of law for an attorney who is licensed to practice law in a jurisdiction other than Virginia to represent a client before the Virginia Gas and Oil Board ("the Board").

Virginia Unauthorized Practice of Law Rule ("UPR") 1-101(A) states that:

> A non-lawyer, with or without compensation, shall not represent the interest of another before a tribunal, otherwise than in the presentation of facts, figures or factual conclusions, as distinguished from legal conclusions

A "non-lawyer" is defined as:

> . . . any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia.

Part 6, § I (C) Rules of the Supreme Court of Virginia. Virginia Unauthorized Practice of Law Consideration ("UPC") 1-1 defines "tribunal:"

> The term "tribunal" shall include, in addition to the courts and judicial officers of Virginia or of the United States of America, the State Corporation Commission of Virginia and its various divisions, the Virginia Workers' Compensation Commission, and the Alcoholic Beverage Control Board, *or any agency, authority, board, or commission when it determines the rights and obligations of parties to proceedings before it,* as opposed to promulgating rules and regulations of general applicability. Such term does not include a tribunal established by virtue of the Constitution or laws of the United States, to the extent that the regulation of practice before such tribunal has been preempted by federal law, nor does it include a tribunal established under the Constitution or laws of Virginia before which the practice or appearance by a non-lawyer on behalf of another is authorized by statute (emphasis added).

Unauthorized Practice of Law Opinions 158, 195 and 201 address the scope of practice by a foreign (non-Virginia) attor-

ney in Virginia. A foreign attorney, while in Virginia, may practice the law of the jurisdiction(s) in which he/she is licensed, so long as the attorney is in good standing in that jurisdiction and is competent to provide the services; federal law, to the extent the federal matter is not impacted by Virginia law and not involving Virginia law, and assuming that the attorney is properly admitted to the federal court; and federal or state agency practice, provided the attorney is properly authorized to practice before the particular agency and such agency allows practice by non-attorneys or non-Virginia attorneys. Unauthorized Practice Rule 9 specifically addresses agency practice:

UPR 9 102. Agency Practice.

(A) A non-lawyer shall not furnish to another for compensation, direct or indirect, advice or service under circumstances which require his use of legal knowledge or skill in the application of any law, federal, state or local, or administrative regulation or ruling applicable thereto, except:

(1) As an employee to his regular employer.

(2) As permitted by the rules of such agency and reasonably within the scope of his practice authorized by such agency.

(B) A non-lawyer shall not undertake, with or without compensation, to prepare for another legal instruments of any character incident to his practice before an administrative agency, except:

(1) As an employee for his regular employer.

(2) In the regular course and reasonably within the scope of his practice authorized by such agency.

(C) As to representing the interest of another before an administrative tribunal, see Unauthorized Practice Rule 1, Practice Before Tribunals.

In the inquiry presented, the attorney is licensed to practice in a jurisdiction other than Virginia and the attorney and his firm represent a major corporation doing business in a number of states, including Virginia. The corporation/client has matters before the Virginia Gas and Oil Board on a routine basis and it would like this attorney to appear with its employee representatives before the Board. Whether this attorney, or any non-Virginia attorney, can do this will depend upon the determination of whether the Virginia Gas and Oil Board is a "tribunal."

The Board is created by the Virginia Gas and Oil Act, §45.1-361.1 et seq. of the Virginia Code (1950, as amended) ("the Act"). Section 45.1-361.14(B) provides that the Board has the power "necessary to execute and carry out all its duties specified in this chapter." Section 45.1-361.15(A) sets out additional duties and responsibilities of the Board, including safe and efficient development, conservation and production of the Commonwealth's oil and gas resources, administration of "procedures for the recognition and protection of the rights of gas or oil owners with interests in gas or oil resources contained within a pool," and hearing and deciding appeals of the Director. Section 45.1-361.27 sets out the duties, responsibilities and authority of the Director. These include promulgating and enforcing rules, regulations and orders "necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth." § 45.1-361.27(A). Additionally, under paragraph "E" of this section, the Director has specific enforcement authority against violation of provisions of the Act, which enforcement would effect rights and responsibilities of the offending party.[1] Section 45.1-361-15(B) authorizes the Board to issue "rules, regulations or orders pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 *et seq.*)." ("the VAPA") The Board accepts applications and conducts hearings pursuant to §§ 45.1-361.20, 45.1-361.21 and 45.1-361.22. These sections address, respectively, field rules and drilling units for wells, pooling of interests in drilling units and pooling of interests for coalbed methane gas wells. Section 45.1-361.19(C) provides that the "Board shall conduct all hearings on applications made to it pursuant to *the formal litigated issues hearing provisions* of the Administrative Process Act (§ 2.2-4000 *et seq.*)."(emphasis added.) The Virginia Administrative Code provisions dealing with procedures before the Board allows that:

G. All parties in any proceeding before the board are entitled to appear in person or be represented by counsel or other qualified representative, as provided for in the Administrative Process Act, § 2.2-4000 *et seq.* of the Code of Virginia.

4 VAC 25-160-30 (G). Section 2.2-4020(C) of the VAPA ("Formal hearings; litigated issues") provides that "the parties shall be entitled to be accompanied by and represented by counsel."

It is apparent from a review of the provisions of the Act that the Board, either by virtue of its own jurisdiction or its authority to hear appeals of decisions of the Director, does more than simply "promulgate rules and regulations of general applicability." It must conduct its hearings pursuant to the "formal litigated issues hearing provisions" of the Administrative Process Act and these hearings address, and the Board's decisions effect, the rights and obligations of the parties appearing

FOOTNOTES

1 E. The Director shall also have the authority to:

1. Issue, condition and revoke permits;
2. Issue notices of violation and orders upon violations of any provision of this chapter or regulation adopted thereunder;
3. Issue closure orders in cases of imminent danger to persons or damage or the environment or upon a history of violations;
4. Require or forfeit bonds or other financial securities;
5. Prescribe the nature of and form for the presentation of any information and documentation required by any provision of this article or regulation adopted thereunder;
6. Maintain suit in the city or county where a violation has occurred or is threatened, or wherever a person who has violated or threatens to violate any provision of this chapter may be found, in order to restrain the actual or threatened violation;
7. At reasonable times and under reasonable circumstances, enter upon any property and take such action as is necessary to administer and enforce the provisions of this chapter; and
8. Inspect and review all properties and records thereof as are necessary to administer and enforce the provisions of this chapter.

before it. As such, it is the Committee's opinion that the Board would constitute a "tribunal" as defined by UPC 1-1.

There is no provision within the Act or the VAPA which specifically authorizes representation of a party by a non-attorney. In Unauthorized Practice of Law Opinion 113, the Committee determined that a non-lawyer could represent a party in an *informal* fact-finding conference before the Virginia State Health Department. In reaching this determination, the Committee noted that the provisions of the VAPA applicable to an informal fact-finding conference specifically authorized non-attorney representation.[2] The provisions of the VAPA applicable to the hearing process before the Board do not include a similar authorization.[3] The Virginia Administrative Code does provide that parties before the Board may be represented by "other qualified representative" but only "as provided for" in the VAPA. Virginia Code Section 2.2-4020 (C) (the formal litigated issues hearing provisions) provides only that parties are entitled to be represented by counsel.[4] Based on this authority the Committee finds that representation by a non-lawyer (which includes a lawyer licensed elsewhere than in Virginia) before the Virginia Gas and Oil Board is not appropriate and would be the unauthorized practice of law.

Unauthorized Practice Rule 1-101 (A) cited above provides that a non-lawyer can only represent another before a tribunal in the presentation of "facts, figures or factual conclusions, as distinguished from legal conclusions." The question arises, then, whether the non-lawyer identified in this request could represent the major corporation before the Board only presenting facts, figures or factual conclusions. The request suggests that this is possible, and indeed, would be the only information necessary to present to the Board. If that is the case, and indeed only "facts, figures or factual conclusions" were presented, this would be permissible under Rule 1-101 (A). However, given the scope of authority of the Board, and the matters that can be brought before it, there is certainly the possibility that there would be instances when legal argument would be necessary and in those instances the non-lawyer/lawyer licensed other than in Virginia, could not do so on behalf of a party before the Board.

The request also states that:

> Issues before the Board do not involve the application of legal principles to facts or desires. Rather, the Board makes procedural and factual determinations under the statutes regarding the pooling of various interests and considers appeals of decisions made by its Director.
>
> The Board does not " . . . determine the rights and obligations of parties before it . . ." as in a contested case. We submit, therefore, that the Board is not a "tribunal," as that word is defined by the Supreme Court of Virginia and is generally understood by practitioners. This view, we submit, is bolstered by Virginia Code § 45.1-361.9 (A), which legislates that appeals from the Board to a circuit court are heard de novo. Consequently nothing in a Board decision precludes a fully litigated claim of the same issues in circuit court.

Given the provisions of the Act cited herein which set out the duties, responsibilities and authority of the Board and its Director, these statements, while perhaps accurate some of the time, do not accurately encompass the full scope of the Board's reach and authority. Nothing in the rules or the statutes mandate that the matter be "contested" in order for the body hearing the matter to determine rights and obligations of the parties and for that body to be considered a tribunal.[5] The fact that appeals are heard de novo before the circuit court also does not per se establish that the Board does not determine the rights and responsibilities of parties before it and that it is not a tribunal. A de novo hearing simply means that the matter is heard "anew," "afresh," "as if it had never been heard before."[6] It has no bearing on the status of the body hearing the matter below.

In this opinion request, several Unauthorized Practice of Law Opinions have been cited in support of the requestor's position. Specifically, the requestor cites UPL Opinions 200 and 92 (a foreign attorney may appear before an arbitration panel in Virginia); UPL Opinion 89 (it is not unauthorized practice for a non-Virginia attorney to represent a party before a military court on a military reservation); and UPL Opinion 78 (a non-lawyer may represent another at a faculty tenure hearing). These opinions are distinguishable from the present case. In UPL Opinions 200 and 92, the Committee found that while representation before an arbitration panel would be the practice of law, an arbitration panel was not a "tribunal" as defined under UPC 1-1. In UPL Opinions 89 and 78, the non-attorney was otherwise authorized to appear before the particular body. In the present case, the Committee has determined that the Board is a tribunal and that the rules of practice before the Board do not otherwise authorize a non-attorney to represent a party before it. Therefore these opinions are not dispositive.

This opinion is based only on the facts you presented and is subject to review by Bar Council at its next regularly scheduled meeting in June 2005, after the requisite period for public comment, in accordance with Part Six: Section IV:¶ 10 (c)(iv) of the Rules of the Virginia Supreme Court. Should Council approve the Opinion, it will then be reviewed by the Supreme Court pursuant to Part Six: Section IV ¶ 10 (f) (iii).

Committee Opinion
June 14, 2005

FOOTNOTES

2 Va. Code § 2.2-4019 (formerly Va. Code § 9-6.14:11), "*Informal fact-finding*," of the APA provides that parties to administrative informal fact-finding proceedings have the right to appear in person or by counsel or *other qualified representative* for the purpose of informally presenting factual data, argument or proof in connection with any case. UPL Op. 113 (1988).

3 Va. Code § 2.2-4020(C): In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch.

4 *Id.*

5 *See* UPC 1-1.

6 *Black's Law Dictionary*, 5th Edition (1979)

Virginia State Bar Council to Review a Proposed Amendment to Rule 1.3 of the Rules of Professional Conduct

Pursuant to Part Six: Section IV, Paragraph 10(c) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on October 20–21, 2005, in Charlottesville, Virginia, is expected to consider for approval, disapproval, or modification, a proposed amendment to Rule 1.3 of the Rules of Professional Conduct by the Receivership Task Force and the Standing Committee on Legal Ethics.

RULE 1.3

In November of 2003, the Receivership Task Force was formed to study the costs and procedures involved when receivers are appointed to terminate the law practices of deceased or impaired attorneys, or of attorneys whose licenses to practice law have been suspended or revoked under circumstances that would preclude their further involvement in client matters, or with funds in the possession of the law practice. The Task Force has focused on the issues of costs of receiverships, qualifications and responsibilities of receivers, insurance for receivers and amendments to Sections 54.1-3900.01, 54.1-3936 and 2.2-1839 of the Code of Virginia, which were adopted this past year by the General Assembly. The Task Force continues to work on a handbook and potential CLE training to be provided to receivers to assist them in completion of their duties.

The proposed amendment to Rule 1.3 (Diligence) includes the addition of a new comment to the rule to clarify that the duty of diligence includes planning for client protection in the event of the attorney's death or disability. The purpose of that provision is to inform and educate the legal profession about their continuing obligation to safeguard the client by addressing the transition of client matters should the lawyer suddenly be unable to continue the representation.

Inspection and Comment

The proposed amendment may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendment can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at **http://www.vsb.org**.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendment by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **October 3, 2005**.

RULE 1.3 Diligence

(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.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. A lawyer's work load should be controlled so that each matter can be handled adequately.

[1a] Additionally, lawyers have long recognized that a more collaborative, problem-solving approach is often preferable to an adversarial strategy in pursuing the client's needs and interests. Consequently, diligence includes not only an adversarial strategy but also the vigorous pursuit of the client's interest in reaching a solution that satisfies the interests of all parties. The client can be represented zealously in either setting.

[2] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness.

[3] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

[4] A lawyer should plan for client protection in the event of the lawyer's death, disability, impairment, incapacity or disappearance. The plan should be in writing and should designate a responsible attorney capable of properly discharging the lawyer's responsibilities to clients.

Virginia State Bar Council to Review Proposed Amendments to Paragraph 14 of Rules Governing the Organization and Government of the Virginia State Bar

RICHMOND—The Virginia State Bar Council is expected to consider for approval, disapproval, or modification, proposed amendments to Part 6, Section IV, Paragraph 14 of the Rules of the Supreme Court of Virginia ("Paragraph 14"). Under current law, lawyers admitted in a U.S. jurisdiction other than Virginia may establish a law office in Virginia if their practice is limited exclusively to areas involving federal law (i.e., patent, trademark, copyright, immigration, social security, federal taxation, etc). Moreover, the Code of Virginia permits those lawyers to conduct their limited practice in Virginia through limited liability entities—professional corporations, professional limited liability companies and registered limited liability partnerships. However, lawyers who practice through such limited liability entities must register those entities with the Virginia State Bar. Under existing law and rules, only Virginia licensed lawyers may apply to the Virginia State Bar to register their limited liability entity. No provision is made for non-Virginia lawyers whose practice is limited solely to matters for which a Virginia law license is not required. Under existing law, the non-Virginia lawyer may be authorized by law to establish a limited practice in Virginia and therefore form a limited liability entity, but he or she cannot register that entity with the Virginia State Bar to conduct their practice.

On October 21, 2005, at its meeting at the Boar's Head Inn in Charlottesville, Virginia, the Virginia State Bar Council will consider whether to seek an amendment to Virginia Code Section 54.1-3902, which currently restricts the registration of limited liability entities to those owned by Virginia licensed lawyers. The proposed statutory amendment would permit lawyers otherwise authorized to practice law in Virginia to register their limited liability entity with the Virginia State Bar. In addition, the Virginia State Bar Council will vote on whether to approve, disapprove or modify proposed amendments to Paragraph 14 that would allow an attorney admitted in a U.S. jurisdiction other than Virginia to register with the Virginia State Bar a limited liability entity for the practice of law, where such practice is otherwise authorized by law. The full text of the applicable statute showing the proposed amendment, followed by the proposed rule changes are set out below:

14. PROFESSIONAL CORPORATIONS, PROFESSIONAL LIMITED LIABILITY COMPANIES AND LIMITED LIABILITY PARTNERSHIPS (LIMITED LIABILITIES ENTITIES).—The rules and regulations in the following provisions of this Paragraph 14 shall constitute a Code of Ethics governing the professional conduct of the practice of law through professional law corporations, professional limited liability companies and registered limited liability partnerships in Virginia.

(a) Scope.

All applications, reports and other documents required to be filed with the Virginia State Bar by this Paragraph 14 shall be signed and verified by an officer, director, partner, or manager of the applicant who is ~~an~~ a duly licensed, active member of the Virginia State Bar or who is otherwise legally authorized to practice law in Virginia ~~and duly licensed to practice law or admitted to practice patent law in Virginia under the provisions of Section 54.1-3901 and Rule 1A:2 of the Rules of the Supreme Court (which for purposes of this Paragraph 14 shall be deemed included whenever the term "duly licensed to practice law in Virginia" is used herein except to the extent inconsistent with Section 54.1-3901 or Rule 1A:2)~~ and filed at the office of the Virginia State Bar.

(b) Certificate of Registration.

An applicant for registration as a limited liability entity shall file with the Virginia State Bar an application for a Certificate of Registration, on a form furnished by the Virginia State Bar, and pay a fee of $100. The term "limited liability entity," as used in this Paragraph 14 shall include a professional law corporation, professional limited liability company, and a registered limited liability partnership.

(i) The Executive Director of the Virginia State Bar, or a person or persons designated by him, shall review such application for registration and, within 15 days after receipt of such application, approve the application and issue a Certificate of Registration provided the application conforms to the requirements of law and this Paragraph 14. If the application fails to include the information required in subparagraphs (c)(i) through (c)(v) of this Paragraph 14, the Executive Director shall refuse to approve the application and notify the applicant of the reasons therefor. A request by the Executive Director for further information to comply with the requirement of said subparagraph (c) of this Paragraph 14, or a request that the application be amended, may be deemed by the applicant to be a refusal to approve the application for purposes of initiating review under subparagraph (b)(iii) of this Paragraph 14.

(ii) The effective date of the Certificate of Registration shall be the date on which the applicant has filed with the Virginia State Bar all material required for approval of the application; provided, however, that (1) a later effective date may be granted if requested by the applicant prior to the issuance of the Certificate of Registration, or (2) in the discretion of the Executive Director an earlier effective date may be granted if good cause appears therefore.

(iii) An applicant may request a review of a refusal to approve its application within sixty days after the date of the notice of such refusal. Such request shall be heard by the Executive Committee of the Virginia State Bar. Upon completion of review, which may include examination of all information submitted by the applicant and a hearing, the Committee shall either (1) approve the application and order the issuance of a Certificate of Registration, or (2) request further information required by subparagraph (c) of this Paragraph 14 or amendments not theretofore supplied by the applicant, or (3) refuse to approve the application in any case where the applicant fails or refuses to supply the required information or has made a material misrepresentation of fact. The Committee shall report in writing its findings of fact and the reasons for its order, whether approving or refusing to approve the application. Notice of the order and a copy of the report shall be mailed to the applicant.

(iv) Insofar as applicable, the rules of procedure of the Virginia State Bar shall apply to the procedure in (b)(iii) above. An aggrieved applicant may proceed in a court of competent jurisdiction by motion for declaratory judgment for review of matters relating to its application.

(c) Application for Certificates.

A Certificate of Registration as a limited liability entity shall be issued if the application shows:

(i) The applicant is organized and qualified under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Corporations Act), organized and qualified under the provisions of Chapter 13 (Section 13.1-1100 et seq.) of Title 13.1 of the *Code of Virginia* (the Virginia Professional Limited Liability Company Act), organized and qualified under the provisions of ~~Article 7 (Section 50-43.1 et seq.) of Chapter 1~~ Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 (the Virginia Registered Limited Liability Partnership Act), or organized and qualified under the laws of a jurisdiction other than the Commonwealth of Virginia to perform a professional service of the type defined in Section 13.1-543(A) of the *Code of Virginia*.

(ii) All of the applicant's shareholders, directors, officers, partners, members or managers and their names and addresses are set forth in full in the application.

(iii) Each member, manager, partner, employee or agent of the applicant who will practice law in Virginia, the names and addresses of whom are set forth in full in the application, whether or not a director, officer, shareholder, partner, member or manager of the applicant, is an active member of the Virginia State Bar ~~and duly licensed to practice law in Virginia~~ or otherwise legally authorized to practice law in Virginia. Nothing in this Paragraph 14(c)(iii) shall be deemed to prohibit a non-licensed individual from serving as secretary, treasurer, office manager or business manager of any limited liability entity, provided, however, that such individual shall not be held out to be qualified or otherwise authorized to practice law or give advice on a legal or related matter to the clients of the entity. Any employee or agent of the applicant

who is duly licensed to practice law in Virginia and who is not held out to the public to be so authorized shall be deemed for the purposes of these Rules to be a non-licensed individual.

(iv) A trade name may be used by a limited liability entity if it does not imply a connection with a government agency or with a public or charitable organization and is not otherwise in violation of Virginia Rules of Professional Conduct 7.1(a). The name of a lawyer holding a public office shall not be used in the name of the entity, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the entity.

(v) The applicant has advised or intends to advise the clients of any predecessor organization, and the clients of any shareholder, director, officer, member, partner, manager, employee or agent of the applicant who will practice law, of the transfer of such organization's or lawyer's practice to a limited liability entity.

(d) Ownership.

An interest in or shares of a professional law corporation or professional limited liability company may be owned only in accordance with the provisions of Chapter 7 or Chapter 13 of Title 13.1. Ownership of shares of a professional law corporation or professional limited liability company for the purpose of construing this subparagraph (d) shall mean both legal and beneficial ownership. All the trustees of any voting trust which may be entered into by any shareholder shall be duly licensed or otherwise legally authorized to practice law in Virginia, and no proxy to vote any of such shares shall be valid unless granted to and voted by an individual or individuals duly licensed or otherwise legally authorized to practice law in Virginia.

(e) Control Over and Rendition of Legal Services; Letterhead.

No person not a member of the Virginia State Bar and duly licensed to practice law in Virginia shall have the right to direct or control the professional judgment of any employee of a limited liability entity or the conduct of employees of the entity with respect to the practice of law in Virginia. Any limited liability entity practicing law in a foreign jurisdiction and which enumerates its employees on its letterhead and in other permissible listings shall do so in a manner which will make clear the jurisdictional limitations on those employees and agents of the entity not licensed to practice in all listed jurisdictions.

(f) Correspondence, Pleadings and Documents.

Correspondence, pleadings and other documents, the execution of which constitutes the practice of law in Virginia, shall be executed on behalf of a limited liability entity by an employee who is an active member of the Virginia State Bar and duly licensed to practice law in Virginia. Corporate documents, the execution of which does not constitute the practice of law, may be executed on behalf of a limited liability entity by any authorized employee, whether or not licensed to practice law.

(g) Division of Fees.

It shall be lawful, ethical and proper for a lawyer employed by a limited liability entity, as part of the terms of his employment, to agree to turn over to the entity by which he is employed all fees, compensation or reimbursement which he may be entitled to receive for his professional services, regardless of where such professional services are rendered. No limited liability entity with a Certificate of Registration in effect shall be deemed a lay agency, nor shall any employee of such entity be deemed to be practicing law through an intermediary during any period for which such entity maintains a Certificate of Registration in effect.

(h) Professional Responsibility.

Nothing in this Paragraph 14 shall be deemed to diminish or change the obligation of any lawyer employed by a limited liability entity to conduct the practice of law in accordance with any specific standards promulgated by the Supreme Court of Virginia. Any lawyer who by act or omission causes the entity by which he is employed to act or fail to act in a manner which violates any applicable standard of professional conduct, including any of the provisions of this Paragraph 14, shall be personally responsible for such act or omission and subject to discipline therefor.

(i) Attorney-Client Privilege.

Nothing in this Paragraph 14 shall be deemed to modify, abrogate or reduce the attorney-client privilege or any comparable privilege or relationship, whether derived by statute or from common law.

(j) Discipline.

A Certificate of Registration shall continue in effect until it is suspended or revoked as provided herein. Such certificate may be suspended or revoked if a limited liability entity fails at any time to comply fully with the provisions of this Paragraph 14, the Rules of Professional Conduct, the Code of Professional Responsibility, the applicable Virginia Professional Corporation Act, the Virginia Professional Limited Liability Company Act, or the Virginia Registered Limited Liability Partnership Act, after notice and an opportunity to be heard as provided in 14(j)(ii) below;

provided that, if the violation be such as can be corrected upon notice to the entity of its violation, or if the violation be that of one or several persons only, suspension or revocation of the certificate need not be invoked if the interest of justice and the protection of the public can be fairly served by appropriate disciplinary proceedings against the individual(s) involved.

(i) Upon receipt of a resolution of the board of directors or the written statement of the manager(s) or partner(s) of a limited liability entity requesting the cancellation of the Certificate of Registration of that entity, such certificate shall be cancelled by the Executive Director of the Virginia State Bar, or by a person or persons designated by him. The cancellation of a Certificate of Registration at the request of a limited liability entity shall be effective as of the date such request is received at the office of the Virginia State Bar, except that a later effective date shall be granted upon request of the entity or, in the discretion of the Executive Director of the Virginia State Bar, an earlier effective date may be granted if good cause appears therefore.

(ii) Where a limited liability entity has violated or is about to violate any pertinent statute, rule or any provision of this Paragraph 14, the Executive Director of the Virginia State Bar, or a person or persons designated by him, may issue a notice directing Bar Counsel to investigate the alleged violation. Bar Counsel may issue such summons and subpoenas, and/or compel the production of such documents as he/she may reasonably deem necessary or material for the effective conduct of an investigation. Every Circuit Court shall have power to enforce any summons or subpoena issued by Bar Counsel and to adjudge disobedience thereof as contempt. If the report of Bar Counsel concludes either that the allegation is without merit or that specific corrective action has been or will be taken, the Executive Director shall dismiss the matter forthwith. If Bar Counsel concludes that the allegation has merit warranting court action, Bar Counsel shall file with the Circuit Court having jurisdiction in the premises a verified complaint. The court shall issue a rule against the limited liability entity concerned and conduct further proceedings in the matter in accordance with Section 54.1-3937 of the *Code of Virginia*, as amended, which is incorporated herein by reference. In addition to or in lieu of a Circuit Court complaint against the entity, Bar Counsel may refer the matter to the appropriate District Committee pursuant to Part 6, Section IV, Para. 13, B.(5)(a) et seq. of these Rules. After the court has held its hearing pursuant to its rule, it shall enter an order reprimanding the entity or revoking or suspending its Certificate of Registration if it finds that the circumstances of the violation warrant such action; otherwise the court shall dismiss the matter.

(k) Certificate Renewal.

On the date two years after the effective date of its initial Certificate of Registration and biennially thereafter, each limited liability entity shall pay a fee of $50 whereupon its Certificate of Registration shall be automatically renewed.

(l) Annual Report; Corporate or Partnership Changes.

Each limited liability entity shall file with the Virginia State Bar a copy of any document or report required to be filed with the State Corporation Commission. In addition, each such entity shall file a special report on a form provided by the Virginia State Bar within thirty days after any change in its shareholders, directors, officers, members, managers, partners, employees or agents duly licensed to practice law. Each such change in personnel of a limited liability entity shall be brought to the attention of each of its clients, so that such client may know by whom he is represented or may be represented and with whom his confidences may be shared, in the same manner as is customary with partnerships.

(m) Effective Dates.

This Paragraph 14 shall become effective on ~~July 1, 1995~~ [to be effective after the proposed statutory change goes into effect] and shall apply in like manner to professional corporations theretofore or thereafter organized under the provisions of Chapter 7 (Section 13.1-542 et seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to professional limited liability companies theretofore or thereafter organized under the provisions of Chapter 13 (Section 13.1-1100 et. seq.) of Title 13.1 of the *Code of Virginia* to practice law, and to registered limited liability partnerships theretofore or thereafter organized under the provisions of ~~Article 7 (Section 50-43.1 et seq.) of Chapter 1~~ Article 9 (Section 50-73.132 et seq.) of Chapter 2.2 of Title 50 of the *Code of Virginia* to practice law, except where inconsistent with the provisions of such laws.

§ 54.1-3902. Professional corporations; professional limited liability companies; and registered limited liability partnerships.—

A. No professional corporation organized or qualifying under the provisions of Chapter 7 (§ 13.1-542 et seq.) of Title 13.1, professional limited liability company organized or qualifying under the provisions of Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1, or registered limited liability partnership organized or qualifying under the provisions of Article

7 (§ 50-43.1 et seq.) of Chapter 1 of Title 50 shall render the professional services of attorneys in this Commonwealth unless the professional corporation, professional limited liability company, or registered limited liability partnership is registered under this section.

B. A professional corporation organized or qualifying under the provisions of Chapter 7 of Title 13.1, a professional limited liability company organized or qualifying under the provisions of Chapter 13 of Title 13.1, or a registered limited liability partnership organized or qualifying under the provisions of Article 7 (§ 50-43.1 et seq.) of Chapter 1 of Title 50 shall be issued a professional corporation, a professional limited liability company, or a registered limited liability partnership registration certificate by the Virginia State Bar upon application and payment of a registration fee of $100 provided that:

1. Each member, manager, partner, employee or agent of the professional corporation, the professional limited liability company, or the registered limited liability partnership who will practice law in Virginia is an active member of the Virginia State Bar, or otherwise legally authorized to practice law in Virginia, except that nothing herein shall prohibit a nonlicensed individual from serving as secretary, treasurer, office manager or business manager of any such corporation, limited liability company, or registered limited liability partnership; and

2. The name of the professional corporation, the professional limited liability company, or the registered limited liability partnership and the conduct of its practice conform with the ethical standards which the shareholders, members, managers, partners, employees and agents are required to observe in the practice of law or patent law as defined in § 54.1-3901 in this Commonwealth and that, in the case of a corporation, the corporate name complies with subsection A of § 13.1-630; in the case of a limited liability company, the limited liability company name complies with subsection A of § 13.1-1012; and, in the case of a registered limited liability partnership, the registered limited liability partnership name complies with § ~~50-43.2~~ - 73.2.

C. Professional corporation, professional limited liability company, and registered limited liability partnership registration certificates shall be renewed biennially for a fee of fifty dollars. (1962, c. 389, § 54-42.1; 1968, c. 10; 1973, c. 484, § 54-42.2; 1974, c. 597; 1981, cc. 103, 516; 1982, c. 633; 1988, c. 765; 1992, c. 574; 1995, c. 116; 2000, c. 355.)

Virginia Code § 54.1-3902

Inspection and Comment

The proposed amendments may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendments can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at **www.vsb.org**.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendments by filing nine copies with the Clerk of the Court and three copies with Thomas A. Edmonds, the Executive Director of

Virginia State Bar Council to Review Proposed Amendments to Rule 1:A5 of the Supreme Court of Virginia

RICHMOND—On October 21, 2005, at its meeting at the Boars Head Inn in Charlottesville, Virginia, the Virginia State Bar Council is expected to consider for approval, disapproval, or modification, additional proposed amendments to Virginia Supreme Court Rule 1A:5. These new amendments would permit lawyers certified as in-house counsel under Part I to provide pro bono legal services under the direct supervision of a Virginia-licensed attorney employed by a licensed legal aid society and increase the application fee from $50.00 to $150.00 under both Parts I and II. The full text of the rule, including the proposed revisions, is set out below:

Rule 1A:5. Virginia Corporate Counsel & Corporate Counsel Registrants

Introduction

Notwithstanding any rule of this Court to the contrary, after July 1, 2004, any person employed in Virginia as a lawyer exclusively for a for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provisions of legal services ("Employer"), for the primary

purpose of providing legal services to such Employer, including one who holds himself or herself out as "in-house counsel," "corporate counsel," "general counsel," or other similar title indicating that he or she is serving as legal counsel to such Employer, shall either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, shall be issued a Corporate Counsel Certificate or permitted to register under this Rule.

Part I
Virginia Corporate Counsel

(a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia State Bar for a certificate as a Virginia Corporate Counsel ("Corporate Counsel Certificate") to practice law as in house counsel in this state when he or she is employed by an Employer in Virginia.

(b) Each applicant for a Corporate Counsel Certificate shall:

(1) File with the Virginia State Bar an application, under oath, upon a form furnished by the Virginia State Bar.

(2) Furnish a certificate, signed by the presiding judge of the court of last resort of a jurisdiction in which the applicant is admitted to practice law, stating that the applicant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.

(3) File an affidavit, upon a form furnished by the Virginia State Bar, from an officer of the applicant's Employer attesting to the fact that the applicant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the applicant's employment conforms to the requirements of Part I of this rule; and that the Employer shall notify the Virginia State Bar immediately upon the termination of the applicant's employment.

(4) Certify that the applicant has read and is familiar with the Virginia Rules of Professional Conduct.

(5) Pay an application fee of one-hundred and fifty dollars.

(c) During the period in which an application for a Corporate Counsel Certificate is pending with the Virginia State Bar until the applicant is notified that either (i) his or her application is rejected; or (ii) he or she is eligible to practice pursuant to Part I of this rule, the applicant may be employed in Virginia as Certified Corporate Counsel on a provisional basis by an Employer furnishing the affidavit required by Part I (b)(3) of this rule.

(d) Upon a finding by the Virginia State Bar that the applicant has complied with the requirements of Part I(b) of this rule, the Virginia State Bar shall notify the applicant that he or she is eligible to be issued a Corporate Counsel Certificate. After the applicant has taken and subscribed to the oath required of attorneys at law, the applicant shall be issued a Corporate Counsel Certificate, which shall permit the applicant to practice law in Virginia solely as provided in Part I(f) of this rule.

(e) A lawyer issued a Corporate Counsel Certificate shall immediately become an active member of the Virginia State Bar, with his or her practice limited as provided in Part I(f) of this rule, and shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar.

(f) The practice of a lawyer certified pursuant to Part I of this rule shall be limited to practice exclusively for the Employer furnishing the affidavit required by Part I(b)(3) of this rule, including its subsidiaries and affiliates, and may include appearing before a Virginia court or tribunal as counsel for the Employer. Except as specifically authorized under Part I (g) below, ~~N~~ no lawyer certified pursuant to Part I of this rule shall (i) undertake to represent any person other than his or her Employer before a Virginia court or tribunal; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to any other person through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(g) Notwithstanding the foregoing restrictions set out in Part I (f) above on the scope of practice, a lawyer certified pursuant to Part I of this rule may participate, and is encouraged to participate, in pro bono programs operated and controlled by a legal aid society licensed by the Virginia State Bar and under the direction of a supervising attorney.

(1) "Supervising attorney," is an attorney who directs and supervises an attorney engaged in activities permitted by Part I (g). The supervising attorney must:

(i) Be an active member of the Virginia State Bar in good standing employed by or participating as a volunteer for the licensed legal aid society; and

(ii) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding, or other legal service in which the certified Part I attorney engages; and

(iii) Direct and assist the certified Part I attorney in his or her preparation to the extent the supervising attorney considers it necessary.

(2) A lawyer certified pursuant to Part I of this rule may, in association with a licensed legal aid society, and only under the supervision of a supervising attorney, perform only the following activities:

(i) appear in any court or before an administrative tribunal or arbitrator in the Commonwealth of Virginia on behalf of a client of a licensed legal aid society if the person on whose behalf the certified Part I lawyer is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of the presiding judge or presiding officer in any administrative or arbitration proceeding.

(ii) prepare and sign pleadings and other documents to be filed in any court or with any administrative tribunal or arbitrator in this state in any matter in which the certified Part I attorney is involved.

(iii) render legal advice and perform other appropriate legal services, but only with the express approval of the supervising attorney.

(iv) engage in such other preparatory activities as are necessary for any matter in which he or she is properly involved.

(3) The presiding judge, hearing officer, or arbitrator may, in his or her discretion, determine the extent of the certified Part I attorney's participation in any proceeding.

(4) Supervision and Limitations

(i) The certified Part I attorney must perform all activities authorized by this subparagraph under the direct supervision of a supervising attorney.

(ii) Certified Part I Attorneys permitted to perform services under this Part I (g) are not, and shall not represent themselves to be, active members of the Virginia State Bar licensed to practice law generally in the Commonwealth of Virginia.

(iii) The licensed legal aid society shall be entitled to receive all court awarded attorney's fees for any representation rendered by a certified Part I attorney authorized under Part I (g).

~~(g)~~(h) The provision of legal services to his or her Employer by a lawyer certified pursuant to Part I of this rule shall be deemed the practice of law in Virginia and shall subject the lawyer to all rules governing the practice of law in Virginia, including the Virginia Rules of Professional Conduct and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer retains the Corporate Counsel Certificate and irrespective of the lawyer's presence in Virginia.

~~(h)~~ (i) A lawyer certified pursuant to Part I of this rule shall be subject to the same membership obligations as other active members of the Virginia State Bar, including Mandatory Continuing Legal Education requirements. A lawyer certified pursuant to Part I of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part I(b)(3) of this rule.

~~(i)~~ (j) A lawyer certified pursuant to Part I of this rule shall promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States or the District of Columbia in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice.

~~(j)~~ (k) A lawyer's authority to practice law which may be permitted pursuant to Part I of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part I(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provision of Part I of this rule, or (iii) when the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States or the District of Columbia or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part I of this rule, which shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated under (iii) above shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13 I.7. of the Rules of the Supreme Court of Virginia.

~~(k)~~ (l) The period of time a lawyer practices law is permitted by a Corporate Counsel Certificate issued pursuant to Part I of this rule shall be considered in determining whether the lawyer has fulfilled the requirements for admission to practice law in Virginia without examination pursuant to Rule 1A:1 and any guidelines approved by the Supreme

Court of Virginia for review of applications for admission without examination.

~~(l)~~(m) The Virginia State Bar may adopt regulations as needed to implement the requirements of Part I of this rule.

Part II
Corporate Counsel Registrants

(a) Notwithstanding the requirements of Part I of this rule, any lawyer as defined in the Introduction and Part I(a) of this rule may register with the Virginia State Bar as a "Corporate Counsel Registrant." A person admitted to the practice of law only in a country other than the United States, and who is a member in good standing of a recognized legal profession in that country, the members of which are admitted to practice law as lawyers, counselors at law, or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or public authority, may also register under Part II of this rule.

(b) A registrant shall:

(1) Register with the Virginia State Bar upon a form, under oath, furnished by the Virginia State Bar, which shall include affirmations that (i) he or she will at no time undertake to represent his or her Employer or any other person, organization or business entity before a Virginia court or tribunal except as permitted pursuant to Rule 1A:4 of this Court, (ii) his or her work is limited to business and legal services related to issues confronting his or her Employer at a regional, national or international level with no specific nexus to Virginia, and (iii) he or she will not provide legal advice or services to any person other than his or her Employer.

(2) Furnish a certificate, signed by the presiding judge of the court of last resort of a jurisdiction in which the registrant is admitted to practice law, stating that the registrant is licensed to practice law and is an active member in good standing of the bar of such jurisdiction.

(3) File an affidavit, upon a form furnished by the Virginia State Bar, from an officer of the registrant's Employer attesting to the fact that the registrant is employed as legal counsel to provide legal services exclusively to the Employer, including its subsidiaries and affiliates; that the nature of the registrant's employment conforms to the requirements of Part II of this rule; and that the Employer shall notify the Virginia State Bar immediately upon the termination of the registrant's employment.

(4) Certify that the registrant has read and is familiar with the Virginia Rules of Professional Conduct.

(5) Pay a registration fee of <u>one hundred and</u> fifty dollars.

(c) During the period in which a corporate counsel registration is pending with the Virginia State Bar until the registrant is notified that either (i) his or her registration is rejected; or (ii) he or she is eligible to practice pursuant to Part II of this rule, the registrant may be employed in Virginia as a Corporate Counsel Registrant on a provisional basis by the Employer furnishing the affidavit required by Part II(b)(3) of this rule.

(d) Upon completion of the requirements of Part II(b) of this rule, the registrant shall immediately be recorded by the Virginia State Bar as a Corporate Counsel Registrant. Each registrant shall pay to the Virginia State Bar the annual dues required of regularly admitted active members of the Virginia State Bar. No lawyer registered pursuant to Part II of this rule shall (i) undertake to represent his or her Employer or any other person or entity before a Virginia court or tribunal except as permitted for lawyers licensed and in good standing in another United States jurisdiction pursuant to Rule 1A:4 of this Court; (ii) offer or provide legal services to any person other than his or her Employer; (iii) undertake to provide legal services to another through his or her Employer; or (iv) hold himself or herself out to be authorized to provide legal services or advice to any person other than his or her Employer.

(e) The provision of legal services to his or her Employer by a lawyer registered pursuant to Part II of this rule shall be deemed the practice of law in Virginia only for purposes of subjecting the lawyer to the Virginia Rules of Professional Conduct; the jurisdiction of the disciplinary system of the Virginia State Bar; and Part 6, Section IV, Paragraph 13 of the Rules of the Supreme Court of Virginia. Jurisdiction of the Virginia State Bar shall continue whether or not the lawyer maintains the registration and irrespective of the lawyer's presence in Virginia.

(f) A lawyer registered pursuant to Part II of this rule shall use as his or her address of record with the Virginia State Bar a business address in Virginia of the Employer furnishing the affidavit required by Part II(b)(3) of this rule.

(g) A lawyer registered pursuant to Part II of this rule shall promptly report to the Virginia State Bar any change in employment, any change in bar membership status in any state, territory of the United States, the District of Columbia, or other country in which the lawyer has been admitted to the practice of law, or the imposition of any disciplinary sanction in a state, territory of the United States, the District of Columbia, or other country, or by any federal court or agency before which the lawyer has been admitted to practice.

(h) A lawyer's authority to provide legal services which may be permitted pursuant to Part II of this rule shall be automatically suspended when (i) employment by the Employer furnishing the affidavit required by Part II(b)(3) of this rule is terminated, (ii) the lawyer fails to comply with any provi-

sion of Part II of this rule, or (iii) the lawyer is suspended or disbarred for disciplinary reasons in any state, territory of the United States, the District of Columbia, other country, or by any federal court or agency before which the lawyer has been admitted to practice. Any lawyer whose authority to practice is suspended pursuant to (i) above shall be reinstated upon evidence satisfactory to the Virginia State Bar that the lawyer is in full compliance with the requirements of Part II of this rule, which shall include an affidavit furnished by the lawyer's new Employer. Any lawyer whose authority to practice is suspended pursuant to (ii) above may be reinstated by compliance with applicable provisions of Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. Any lawyer whose authority to practice is suspended or terminated pursuant to (iii) above, shall petition for reinstatement pursuant to Part 6, Section IV, Paragraph 13 I.7. of the Rules of the Supreme Court of Virginia.

(i) No time spent as Corporate Counsel Registrant shall be considered in determining eligibility for admission to the Virginia Bar without examination.

(j) The Virginia State Bar may adopt regulations as needed to implement the requirements of Part II of this rule.

Inspection and Comment

The proposed amendments may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendments can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at **www.vsb.org**.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendments by filing nine copies with the Clerk of the Court and three copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than ***October 3, 2005***.

Committee on Lawyer Discipline (COLD) Proposed Amendment to Paragraph 13

Respondent Required to Sign Responses

On June 1, 2005, COLD approved a proposed amendment that requires Respondents to sign written responses to complaints and disciplinary charges.

Part 6, Section IV, Paragraph 13 of the Rules of the Virginia Supreme Court

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS.

* * *

F. Participation and Disqualification of Counsel in Disciplinary Proceedings

1. Attorney for Respondent

a. A Respondent may be represented by an Attorney at any time with respect to a Complaint.

b. A Respondent must sign his or her written response to a Complaint, a Charge of Misconduct and a Certification.

* * *

Comments or questions about the rules should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than September 30, 2005. The Virginia State Bar Council will consider the proposed amendments when it meets on October 21, 2005, in Charlottesville, Virginia.

LEGAL ETHICS OPINION 1811
ATTORNEY'S OBLIGATION TO PROTECT CONFIDENCES AND SECRETS OF A FORMER CLIENT

You have presented a hypothetical situation in which Attorney A represented Co-executor #1 of an estate. Co-executor #2 has separate counsel. Attorney A's representation of Co-executor #1 has recently terminated, and that co-executor now has new counsel. Attorney A has transferred his file to the new attorney, but has retained a copy of the materials. During the course of Attorney A's representation of Co-executor #1, the two co-executors entered into an agreement that each would fully disclose financial information for purposes of administering the estate. Counsel for Co-executor #2 has now contacted Attorney A and asked for certain financial information from Attorney A's former client's file as a tax filing is due at the end of the month. The requested documents come within the terms of the agreement. Co-executor #1 will not consent to Attorney A's release of the documents. Attorney A declined to provide his copy of the documents and instead referred Co-executor #2's counsel to Co-executor #1's new counsel.

Under the facts you have presented, you have asked the committee to opine as to whether Attorney A is obligated to disclose the documents to the requesting attorney.

This committee has opined in numerous prior opinions that the contents of a client's file come under the confidentiality protections afforded under Rule 1.6. *See, e.g.*, LEOs 967, 1628, 1664. Rule 1.6 establishes an attorney's duty of confidentiality and outlines the parameters of that duty. Rule 1.6 states as follows:

(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

(b) To the extent a lawyer reasonably believes necessary, the lawyer may reveal:

(1) such information to comply with law or a court order;

(2) such information to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

3) such information which clearly establishes that the client has, in the course of the representation, perpetrated upon a third party a fraud related to the subject matter of the representation;

(4) such information reasonably necessary to protect a client's interests in the event of the representing lawyer's death, disability, incapacity or incompetence;

(5) such information sufficient to participate in a law office management assistance program approved by the Virginia State Bar or other similar private program; or

(6) information to an outside agency necessary for statistical, bookkeeping, accounting, data processing, printing, or other similar office management purposes, provided the lawyer exercises due care in the selection of the agency, advises the agency that the information must be kept confidential and reasonably believes that the information will be kept confidential.

(c) A lawyer shall promptly reveal:

(1) the intention of a client, as stated by the client, to commit a crime and the information necessary to prevent the crime, but before revealing such information, the attorney shall, where feasible, advise the client of the possible legal consequences of the action, urge the client not to commit the crime, and advise the client that the attorney must reveal the client's criminal intention unless thereupon abandoned, and, if the crime involves perjury by the client, that the attorney shall seek to withdraw as counsel;

(2) information which clearly establishes that the client has, in the course of the representation, perpetrated a fraud related to the subject matter of the representation upon a tribunal. Before revealing such information, however, the lawyer shall request that the client advise the tribunal of the fraud. For the purposes of this paragraph and paragraph (b)(3), information is clearly established when the client acknowledges to the attorney that the client has perpetrated a fraud; or

(3) information concerning the misconduct of another attorney to the appropriate professional authority under Rule 8.3. When the information necessary to report the misconduct is protected under this Rule, the attorney, after consultation, must obtain client consent. Consultation should include full disclosure of all reasonably foreseeable consequences of both disclosure and non-disclosure to the client.

Comment 22 to Rule 1.6 clarifies that the "duty of confidentiality continues after the client-lawyer relationship has terminated." *See also* LEOs 812, 1207, 1664. Thus, even though Attorney A no longer represents Co-executor #1, Attorney A must nevertheless maintain the confidentiality of his former client's information according to Rule 1.6.

If the disclosure of such information would be embarrassing or detrimental to the client, or if the client has requested that the information be kept confidential, Rule 1.6 prohibits a lawyer from disclosing the contents of a client's, or former client's, file unless one of the exceptions to Rule 1.6 applies. As the facts include that

the client has withheld consent to the disclosure, these materials do come within the Rule 1.6's protection.

The hypothetical as presented highlights the existence of an agreement between the executors as calling into question whether the attorney can respect the former client's request to protect the documents or whether the attorney must provide them to Co-executor #2. Interpretation of the contract language itself and of its application to Attorney A is outside the purview of this committee. However, this committee does not find that such interpretation is necessary to resolve this issue. While the attorney in this hypothetical appears to be weighing possible contractual obligations against the duty of confidentiality, the committee considers such a balance inappropriate.

The exception at issue here is Rule 1.6(b)(1), which permits an attorney to make a disclosure of confidential information in order to comply with "law or a court order."[1] In the present case, the counsel for Co-executor #2 has not obtained a court order; therefore, the committee turns next to whether the attorney may disclose the materials in order to comply with "law".

Rule 1.6(b)(1) carves out an exception to the general ethical duty of confidentiality when needed to comply with "law." This committee opines that a contract is not "law." *Black's Law Dictionary* provides an extensive discussion of the concept encompassed by that term, with suggested definitions including, "a body of rules of action or conduct prescribed by controlling authority, and having binding legal force," and "that which must be obeyed and followed by citizens subject to sanctions or legal consequences." The entry in Black's for "law" includes an extensive list of judicial authorities finding a laundry list of items within the reach of that term.[2] In sum, that list is limited to statutes, judicial rulings, and various types of administrative regulations and rulings. Contracts, such as the agreement in this hypothetical, are not within that list. Similarly, the committee agrees with the American Bar Association's discussion of the term, "law" in an ABA opinion regarding a different ethics rule. In ABA Formal Op. 95-396, the ABA shed light on what is meant by "law" for purposes of Model Rule 4.2, which states:

> In representing a client, a lawyer shall not communicate about the subject matter of the representation with a party[3] the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer *or is authorized by law to do so.*

(Emphasis added.) With respect to the term "law" in that rule, the ABA explains as follows:

> The "authorized by law" exception to the Rule is also satisfied by a constitutional provision, statute or court rule, having the force and effect of law . . .

The opinion goes on to include administrative agency positions where "adopted in accordance with the procedural requirements imposed by Congress." ABA Formal Op. 95-396. This committee adopts this construction of the term "law" as including statutory, judicial and administrative items, but not contracts or agreements between private parties for interpretation of Rule 1.6(b)(1)'s permissive disclosure for compliance with law.

According to the facts presented, Attorney A's former client has requested that the attorney not provide the tax materials to the other co-executor. The dispute between the co-executors regarding the agreement's application to the situation should be handled by Co-executor #1's current attorney, rather than for Attorney A to interpret the agreement and decide his former client's obligations deriving from that agreement. This approach is ethically permissible under Rule 1.6 as the exception for confidentiality found in (b)(1) is inapplicable here. In order to preserve his former client's confidentiality, the attorney must not disclose the documents requested by the co-executor, unless and until a court orders the attorney to do so.

In response to your inquiry, the committee notes another pertinent rule. Rule 1.15 addresses an attorney's handling of the property of others. Paragraph (c)(4) of that rule requires a lawyer to:

> Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

In applying this provision to the present situation, the committee distinguishes the situation in LEO 1747. The scenario in that opinion involved an attorney in receipt of settlement proceeds for his plaintiff client, who then requests the funds despite a lien in favor of the client's medical provider. The analysis in that LEO in no way involved the confidentiality issue underlying the present scenario. An application of Rule 1.15(c)(4) to Attorney A's handling of the financial information in his former client's file is tenuous at best. There remains the issue of whether Co-executor #2 is "entitled" to the very documents in Attorney A's possession, as opposed to other copies of the same documents in possession of the new attorney. That is a legal issue regarding contract interpretation and is, as such, outside the purview of this committee. However, the committee maintains it can nevertheless opine that the application of Rule 1.6 outlined above should prevail over this uncertain extension of Rule 1.15 because Comment 21 to Rule 1.6 establishes a presumption against any other provision superseding Rule 1.6. The committee sees no basis for a rebuttal of that presumption in the present instance. As the committee concludes that Rule 1.6 is the proper authority for resolving the present question, the committee opines that Attorney A properly declined to provide the requested documents and instead referred the requester to the former client's new attorney.

This opinion is advisory only, based only on the facts you presented and not binding on any court or tribunal.

Committee Opinion
April 25, 2005

FOOTNOTES

1 While there are of course other exceptions to Rule 1.6, the facts as presented do not suggest the applicability of any of the other exceptions to the rule.

2 See Black's Law Dictionary, "law" and opinions cited therein.

3 Note that Virginia's Rule 4.2 substitutes the term "person" for "party"—a difference that does not affect the present discussion.

Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Bradley Glenn Pollack*	Woodstock	2 Year Suspension	May 27, 2005	2
William P. Robinson Jr.	Norfolk	Public Reprimand	April 18, 2005	n/a
Disciplinary Board				
Gerald Manly Bowen	Herndon	Suspension (until fully complied w/order of November 5, 2002)	May 20, 2005	5
Jeffrey Carl Constantz	Arlington	60 Day Suspension	April 15, 2005	7
David Charles Dickey	Standardsville	Public Reprimand w/Terms	May 13, 2005	9
Denny Pat Dobbins	Chesapeake	Public Reprimand	April 13, 2005	13
Jeffrey Ellis Gonzalez-Perez	Arlington	2 Year Suspension	May 20, 2005	13
James Anthony Granoski	Alexandria	10 Day Suspension	April 29, 2005	n/a
Jimmie Ray Lawson II	Collinsville	Revocation	June 24, 2005	n/a
Lawrence Raymond Morton	Dumfries	Public Reprimand w/Terms	April 6, 2005	18
Jeffrey Bourke Rice	Fairfax	1 Year Suspension	June 16, 2005	n/a
Paul Christian Stamm Jr.	Kilmarnock	Public Reprimand	June 27, 2005	21
James A. Winstead	Chesapeake	3 Year Suspension	June 22, 2005	25
District Committees				
Hunter B. Chapman	Culpeper	Public Reprimand w/Terms	May 12, 2005	30
Audrey Freeman Jacobs	Richmond	Public Admonition w/Terms	April 14, 2005	34
Dorathea J. Peters	Alexandria	Public Reprimand w/Terms	June 13, 2005	37
Dion Francis Richardson	Lynchburg	Public Reprimand	May 31, 2005	46
James Bell Thomas	Hampton	Public Admonition w/Terms	July 12, 2005	48

Reinstatement Petition			
Bruce Wilson McLaughlin	Leesburg	May 13, 2005	50
Cost Suspensions			
Kahlil Wali Latif	Midlothian	May 19, 2005	n/a
Lawrence Raymond Morton	Dumfries	April 15, 2005	n/a
Jamie Scott Osborne	Manassas	April 25, 2005	n/a
James Bryan Pattison	Sterling	May 5, 2005	n/a
Dominick Anthony Pilli	Fairfax	June 23, 2005	n/a
Interim Suspensions—Failure to Comply w/Subpoena			
Todd Jay French	Richmond	April 18, 2005	n/a
Wade Anthony Jacobson	Richmond	July 12, 2005	n/a
David Ashley Grant Nelson	Charlotte Court House	June 24–June 27, 2005	n/a

*(*Respondent has noted an appeal with the Virginia Supreme Court.)*

(**Editor's Note:** *Respondent has noted an appeal with the Virginia Supreme Court.*)
VIRGINIA:
IN THE CIRCUIT COURT OF SHENANDOAH COUNTY

VIRGINIA STATE BAR EX REL.
SEVENTH DISTRICT COMMITTEE
Complainant
v.
BRADLEY GLENN POLLACK
Respondent
CL 04-189

ORDER OF TWO-YEAR SUSPENSION

Having been set for hearing by the Seventh District Committee of the Virginia State Bar, and the Respondent, Bradley Glenn Pollack, by counsel, having requested a hearing before a three-judge court pursuant to Virginia Code Section 54.1-3935, this cause came to be heard on March 9, 10, 11, and 14, 2005, by a duly convened, three-judge court consisting of the Honorable Rosemarie Annunziata, Senior Judge, the Honorable John F. Daffron, Jr, Retired, and the Honorable Benjamin N.A. Kendrick, Chief Judge.

By Order dated December 28, 2004, this matter was previously set for hearing in Shenandoah Circuit Court to commence on March 7, 2005. On February 22, 2005, Respondent moved to continue the hearing of this matter in order to retain counsel. Over the bar's objection, the Court granted said Motion, continuing the matter to commence at 10:00 A.M. on March 9, 2005, and re-setting the matter for hearing in Arlington Circuit Court.

On March 9, 2005, the Court convened at 10:00 A.M. Present were the Virginia State Bar, by Assistant Bar Counsel Paul D. Georgiadis, and the Respondent, Bradley G. Pollack. Respondent's co-counsel, Alan Cilman, was not present, having notified the Court that he was delayed by an on-going trial in Fairfax Circuit Court. The Court recessed until 12:17 PM, whereupon Respondent, in his capacity as co-counsel, argued his previously filed Corrected Motion to Withdraw the Rule for Show Cause. Upon consideration of the briefs and argument of counsel, the motion was DENIED.

Thereafter, the Court recessed until 3:57 PM, when Mr. Cilman appeared. Thereafter, the parties, by counsel, argued Respondent's Motion to Dismiss. Upon consideration of the briefs and arguments of counsel, the motion was DENIED.

Thereafter, the Court proceeded in this matter, which consisted of three cases, VSB Docket Nos. 02-070-1010, 02-070-3767, and 02-070-3093. In each case the Court received evidence, including the testimony of the Respondent, and heard the arguments of counsel. At the conclusion of the bar's evidence in each case, Respondent moved to strike the bar's evidence, which was denied in all three cases. At the conclusion of the three cases, the Court heard closing arguments from counsel.

After due deliberation, it was the unanimous decision of the Court that the bar had proven by clear and convincing evidence, evidence the Court found overwhelming, the following rule violations as noticed by the bar:

VSB Docket No. 02-070-3093

The Court found the Respondent violated Rule 1.3(a), Diligence, when as Substitute Trustee conducting foreclosure sales, he failed to file the reports and necessary papers with the Commissioner of Accounts as required by statute. The Court found that the failure to comply with the rules, specifically the requirement to file certain routine, administrative matters within the required six months, was a lack of diligence. The Court noted that there remained sales conducted in 2001 that still had not been confirmed as a result of Respondent's continued lack of diligence.

VSB Docket No. 02-070-1010

The Court found that the bar proved all but one Rule violation in Respondent's actions and statements made in the course of multiple, but related Lloyd Brothers lawsuits.

The Court found that Respondent violated Rule 3.1, Meritorious Claims and Contentions, in filing the third of three conservatorship petitions for Tommy Lloyd, *Betty Jo Lloyd v. Thomas Lloyd*, CH 00-160. In so finding, the Court took notice of Judge Haley's findings that Respondent had violated Virginia Code Sec. 8.01-271.1 and considered other, unrebutted evidence before it.

Based upon the bar's essentially unrebutted evidence, the Court found other frivolous and baseless conduct and positions in violation of DR 7-102(A)(1)and DR 7-102(A)(2), Representing a Client Within the Bounds of the Law, in related litigation. This included filing a Motion for Appointment of GAL for Thomas M. Lloyd, Jr. in *Lonnie L. Lloyd v. David Hovatter and Maycel Hovatter & Thomas M. Lloyd*, Jr., CH 96-116; and Respondent's claim of prejudice of delay caused by local judges recusing themselves, when Respondent himself had continued the matter and later admitted to purposefully delaying proceedings.

The Court found that Respondent violated DR 1-102(A)(3), Misconduct, DR 1-102(A)(4), Misconduct, and DR 7-102(A)(2), Representing a Client Within the Bounds of the Law, in filing *Lonnie Luther Lloyd v. David and Maycel Hovatter and William H. Logan, Jr.*, CH 99-35. While Respondent knew of Mr. Logan's quality of representation in 1996, his February 19, 1999 filing was frivolous and filed for personal and political gains. The Court found that Respondent filed it to gain a platform to oppose Mr. Logan's candidacy as a judge, when the candidacy was before the General Assembly.

The Court found that Respondent violated DR 1-102(A)(3), Misconduct, DR 1-102(A)(4), Misconduct, and DR 7-102(A)(1) Representing a Client Within the Bounds of the Law, in writing a letter dated December 31, 1998, to Supreme Court Assistant Executive Secretary Frederick Hodnett, Jr. regarding Judge Designate McNamara. The Court found that Respondent's allegations impugned Judge McNamara's integrity and qualifications, which allegations Respondent later admitted were "baseless".

The bar failed to meet its burden of proof in alleging that Respondent violated Rule 8.2, Judicial Officials, in his alleged statements to a newspaper regarding a ruling of Judge Haley.

VSB Docket No. 02-070-3767

The Court considered evidence of Respondent's conduct in unrelated criminal defense representation and found that the bar proved all alleged Rule violations.

Respondent violated Rule 3.4(d) Fairness to Opposing Party and Counsel, in walking out of Judge Logan's courtroom during the trial of a matter in which he was counsel for the accused. The Court found that in the face of the trial court's order to remain in court, Respondent nonetheless walked out of court.

Respondent violated Rule 3.4(a), Fairness to Opposing Party and Counsel, in communicating threats to the Connors, prosecution complainants and the parents of the victim. Respondent's telephone call to the Connors led to their dropping their criminal complaint against Respondent's client.

Respondent violated Rules 3.4(a) and 3.4(g), Fairness to Opposing Party and Counsel, and Rule 4.3(a) and 4.3(b), Dealing with Unrepresented Persons, in his contacts with two prosecution witnesses Grandstaff and Higgins. The Court found that Respondent gave these witnesses legal advice regarding their taking the Fifth Amendment, when the individuals did not have counsel and had interests potentially adverse to his own client's interests.

Respondent violated Rules 4.3(b), Dealing with Unrepresented Persons, and 4.4, Respect for Rights of Third Persons when as defense counsel Respondent gave advice to the criminal complainant Lu and prepared an affidavit for her signature. The affidavit exculpated the defendant while it placed Lu in jeopardy for having filed a false police report.

The Court noted the objections and exceptions of Respondent's counsel.

The Court then heard argument concerning an appropriate disposition, and recessed to determine what sanctions, if any, to impose. The Court noted that even after rendering its findings before the Respondent, the Respondent thereafter still did not understand or appreciate the gravity of the unprofessional nature of his conduct.

Accordingly, by unanimous decision, it is ORDERED that the license of Bradley Glenn Pollack to practice law in the Commonwealth of Virginia be, and the same is, hereby SUSPENDED FOR A PERIOD OF TWO YEARS.

The Court noted the objections and exceptions of Respondent to this ruling.

On March 14, 2005, the Court entered a summary order in these proceedings in accordance with Part 6, Section IV, Paragraph 13(I)(2)(g) of the Rules of the Supreme Court. A copy of the summary order is attached hereto and incorporated herein.

It is further ORDERED, pursuant to the provisions of Part Six, Section IV, Paragraph 13 M of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of this Order, and make such arrangements as are required herein within 45 days of the effective date of this Order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of this Order that such notices have been timely given and such arrangements made for the disposition of matters.

Issues concerning the adequacy of the notice and the arrangement required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

The court reporter who transcribed these proceedings is Shannon Hopschas-Latham, of Casamo & Associates, 1010 Cameron Street, Alexandria, Virginia 22314, (703) 837-0076.

A copy *teste* of this order shall be served by the Clerk of this Court by certified mail, return receipt requested upon the Respondent, Bradley Glenn Pollock, 148 North Main Street, Woodstock, Virginia 22664, his address of record with the Virginia State Bar; by First Class U.S. Mail, postage pre-paid to Respondent's counsel, Alan J. Cilman, Esquire, 4160 Chain Bridge Road, Fairfax, Virginia 22030; and by First Class U.S. Mail, postage pre-paid to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

ENTER: May 27, 2005
Benjamin N.A. Kendrick, Chief Judge
Three-Judge Court
Rosemarie Annunziata, Senior Judge
John F. Daffron, Jr., Judge (Retired)

I ASK FOR THIS:
Paul D. Georgiadis, VSB #26340
Assistant Bar Counsel
Virginia State Bar
707 East Main St., #1500
Richmond, VA 23219
Phone: (804) 775-0520
Fax: (804) 775-0597

SEEN AND OBJECTED TO:
Alan J. Cilman
4160 Chain Bridge Rd.
Fairfax, VA 22030

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
GERALD MANLY BOWEN
VSB Docket No. 05-000-3792

ORDER

On May 20, 2005 this matter came on for a show cause hearing why Gerald Manly Bowen's license to practice law should not be suspended for failure to comply with an order of the Virginia State Bar Disciplinary Board. A hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of James L. Banks, Jr., Chair, W. Jefferson O'Flaherty, lay member, Glenn M. Hodge, Ann N. Kathan and H. Taylor Williams, IV.

All notices required by law were sent by the Clerk of the Disciplinary System.

Gerald Manly Bowen (Respondent) failed to appear. His guardian *ad litem*, Alan Bruce Plevy, appeared and participated in the proceeding

Noel D. Sengel appeared as counsel for the Virginia State Bar.

Donna T. Chandler, RPR, RMP, of Chandler & Halasz, Registered Professional Reporters, P. O. Box 9349, Richmond, Va., 23227, (804) 730 1222, having been duly sworn reported the hearing.

The Chair opened the hearing by polling all members of the panel as to whether there existed any conflict or other reason why any member should not sit on the panel. Each, including the Chair, responded in the negative.

Thereafter, Bar Counsel presented the Order of November 2, 2002 requiring the Respondent to undergo a psychiatric examination (VSB Ex. 1) and evidence of the Bar's unsuccessful attempts to obtain compliance with the order by the Respondent (VSB Ex. 1A & 2-7). No evidence was presented on behalf of the Respondent to show that he had complied with the order.

Findings of Fact

The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. Gerald Manly Bowen, Esquire is an attorney licensed to practice law in the Commonwealth of Virginia.

2. By Order entered on November 5, 2002, the Virginia State Bar Disciplinary Board ordered the Respondent to undergo a psychiatric evaluation to be conducted by Dr. Richard H. Ratner (see VSB Exhibit #1). The Order was properly served upon the Respondent at his last address of record with the Virginia State Bar (see VSB Exhibit #1.).

3. Since the entry of the November 5, 2002 Order, the Virginia State Bar has attempted to schedule an appointment for the Respondent with Dr. Ratner through the Respondent's guardian *ad litem*, Alan Bruce Plevy, Esquire.

4. Mr. Bowen refused to talk with his guardian *ad litem* unless all conversations with Mr. Plevy were transcribed by a court reporter. By letter dated February 21, 2003, Mr. Plevy sought permission from the Bar to hire a court reporter to transcribe his conversations with the Respondent at Bar expense (see VSB Exhibit #2). The Bar agreed to pay for a court reporter to transcribe conversations between the Respondent and Mr. Plevy, and the

Respondent was so informed. The Respondent still refused to cooperate with his guardian *ad litem* in scheduling an appointment with Dr. Ratner.

5. In an effort to advise the Respondent of his need to heed the Board's Order and facilitate the scheduling of the appointment with Dr. Ratner, the Virginia State Bar had Dr. Ratner and Mr. Plevy appear at the Virginia State Bar Office on February 3, 2005 at 11:00 a.m. The Bar subpoenaed the Respondent to appear at the same time and place to meet with Mr. Plevy and Dr. Ratner.

6. The Respondent appeared on February 3, 2005 pursuant to the subpoena but still refused to schedule an appointment with Dr. Ratner or to discuss his case in private with Mr. Plevy (see VSB Exhibit #3).

7. The Respondent's license to practice has been administratively suspended since October of 2000 (see VSB Exhibit #4).

8. The Bar is concerned that if the Respondent were reinstated by meeting his financial and Mandatory Continuing Legal Education obligations, the Respondent would again engage in the practice of law while he suffers from a probable impairment.

Disposition

Following closing argument by Bar Counsel and the guardian *ad litem* at the conclusion of the evidence regarding the Motion to Show Cause, the Board recessed to consider the matter. The Board reviewed the foregoing findings of fact and the exhibits presented by Bar Counsel on behalf of the VSB. After due deliberation the Board reconvened and stated its finings as follows:

The Board determined that the Bar had proven by clear and convincing evidence that the Respondent had failed to comply with the terms of the November 5, 2002 order. It further appears that the Bar's concern that if the Respondent were reinstated by meeting his financial and Mandatory Continuing Legal Education obligations, the Respondent would again engage in the practice of law while he suffers from a probable impairment is well founded and that the public should be protected from that happening.

Accordingly, it is ordered that the Respondent's license to practice law is suspended, effective May 20, 2005, until such time as he has complied with the Order of November 5, 2002 and the results of the examination have been reported to the Bar.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.M. shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being 3174 Kirkwell Place, Herndon Virginia, 22071-3309, by certified mail, return receipt requested, and by regular mail to Alan Bruce Plevy, Respondent's Guardian ad Litem, 5th Floor, 8045 Leesburg Pike, Vienna, Virginia, 22182 and to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314.

ENTERED this 15th day of June, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: James L. Banks, Jr., Chair

V I R G I N I A :
BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JEFFREY CARL CONSTANTZ
VSB Docket Number 02-041-1804

O R D E R

This matter came on April 12, 2005, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Jeffrey Carl Constantz, Esquire, based upon the Certification of a Fourth District—Section I Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of the Rev. Dr. Theodore Smith, lay member, Ann N. Kathan, Esquire, Robert E. Eicher, Esquire, William H. Monroe, Jr., Esquire, and Karen A. Gould, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and Michael L. Rigsby, Esquire, representing the Respondent, Jeffrey Carl Constantz, Esquire, presented an endorsed Agreed Disposition, dated April 6, 2005, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Tracey J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Jeffrey Carl Constantz, Esquire, (hereafter the Respondent or Mr. Constantz), has been an attorney licensed to practice law in the Commonwealth of Virginia. Although licensed to practice law, Mr. Constantz maintains an Associate membership in the Virginia State Bar. The status of Associate member does not permit Mr. Constantz to practice law.

2. At all times relevant hereto, the Respondent was the President and Chief Executive Officer of First Savings Bank of Virginia, (hereafter "FSB"). He was also a member of FSB's Board of Directors. Mr. Constantz was never employed by FSB to provide it with legal counsel and throughout his employment with FSB, Mr. Constantz never offered FSB legal counsel or acted as its attorney.

3. The Respondent was offered the position of President of FSB in 1993. At that time the Bank was close to failure and was under the control of the Department of the Treasury's Office of Thrift Supervision. Over the next four years FSB's financial stability improved, and the bank achieved a much more favorable position for a prospective

merger, which was one of FSB's goals. In 1996, the Board of Directors offered an incentive to the Respondent in the form of a $75,000 bonus in the event that FSB were sold or merged in a transaction approved by its Board and ratified by its stockholders.

4. On March 31, 2000, FSB signed a merger agreement with Southern Financial Bank, (hereafter "SFB"), with September 1, 2000, as the planned date of the merger. It was understood that if and when the merger were accomplished, the Respondent would no longer hold the position of President of FSB and would, in fact, not be employed. FSB felt it was necessary, however, for him to remain in his position with that bank between the signing of the merger agreement in March and the completion of the merger in September. An agreement was therefore made that in addition to the $75,000 bonus for the accomplishment of the merger, the Respondent would receive $100,000 as a "pay-to-stay" incentive until the merger took place. Mr. Constantz was entitled to another $50,000 pursuant to his 1993 contract of employment with FSB. On or about April 15, 2000, the sum of $225,000.00 was set aside for Mr. Constantz's benefit and was held by a law firm acting as escrow agent.

5. FSB initiated suit in the Fairfax County Circuit Court against the Respondent shortly before the September 1, 2000, merger. After a six-day trial in the Circuit Court, a decree was entered against the Respondent holding that the Complainant had proven "by clear, cogent and convincing evidence" that the Respondent committed actual fraud against FSB, and that his fraud, *inter alia*, induced FSB to enter into an Escrow Agreement and Addendum with the Respondent, pursuant to which $225,000 of the bank's funds was paid into escrow on behalf of the Respondent. The Escrow Agreement and Addendum at issue were ordered rescinded due to the Respondent's actual fraud, and the $225,000 in question, which had been transferred to the control of the Court, was ordered to be released in full to SFB upon entry of the Final Decree.

6. The Court further found that the Respondent breached his fiduciary duties owed to FSB by, *inter alia*, knowingly and repeatedly concealing material information from FSB's Board of Directors, permitting loans, overdrafts and other extensions of credit to be made that were without proper authority, contrary to FSB's written policies, and which were beyond FSB's legal lending limit and were in violation of federal banking regulations. The Court also found that the Respondent had engaged in a pattern of self-dealing and committed other acts of willful misconduct. The damages resulting from the Respondent's breach of fiduciary duties were proven to be in the amount of $398,919.72. The Respondent was granted an offset in the amount of $75,000, representing a severance benefit which was in existence prior to the Respondent's misconduct. The Court also assessed punitive damages against the Respondent in the amount of $30,000.00.

7. Mr. Constantz maintained that he had not committed the civil offenses found by the Court and otherwise set forth in the Court's decree. He noted an appeal of the decree entered by the Court to the Supreme Court of Virginia. Before adjudication of any issues on appeal the parties settled the matter between themselves via a written settlement agreement, pursuant to which the Respondent and his wife paid substantial sums of money and conveyed valuable real property to others.

8. Mitigating factors recognized by the American Bar Association applicable to this matter include absence of a prior disciplinary record; cooperative attitude toward the Bar proceedings; and imposition of other penalties or sanctions.

The Board finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provisions of the revised Virginia Code of Professional Responsibility and of the Rules of Professional Conduct:

DR 1 102 Misconduct

(A) A lawyer shall not:

(3) Commit a . . . deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a . . . deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer[.]

Upon consideration whereof, it is ORDERED as follows:

1. The Respondent shall receive a sixty (60) day suspension of his license to practice law in the Commonwealth of Virginia, to commence immediately upon entry of this Order, as representing an appropriate sanction if this matter were to be heard.

2. Pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

3. The provisions of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia are inapplicable in this matter because the Respondent is not engaged in the practice of law as of the time of entry of this Order.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his address of record with the Virginia State Bar, 2020 N. Roosevelt Street, Arlington, Virginia 22205, and by first class, regular mail, to Michael L. Rigsby, Respondent's Counsel, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226, and to Seth M. Guggenheim, Assistant Bar Counsel, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED this 15th day of April, 2005.
Karen A. Gould, Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DAVID CHARLES DICKEY, ESQUIRE
VSB Docket # 04-070-2582

ORDER

This matter came on the 12th day of May, 2005, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Seventh District Committee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Ann N. Kathan, Esquire, William C. Boyce, Jr., Esquire, Dr. Theodore Smith, Lay Member, Janipher W. Robinson, Esquire, and Peter A. Dingman, Esquire, presiding.

Alfred L. Carr, Esquire, representing the Bar, and the Respondent, David Charles Dickey, Esquire, presented an endorsed Agreed Disposition. The hearing was transcribed by Donna Chandler, Court Reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, the Respondent, David Charles Dickey, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On March 4, 2004, Cynthia W. Brown (hereinafter "Complainant") complained to the Virginia State Bar (hereinafter "VSB") about Respondent's actions. Respondent did not respond to the Bar's written demand for a response to the bar complaint.

3. Complainant retained Respondent to represent her in the purchase of a tract of raw land described as Lot 9, Daniel's Mountain Subdivision, Greene County, VA. Complainant paid Respondent a $300.00 advance fee. On May 29, 2003, Respondent's secretary ordered a title search and title policies for Complainant. On June 4, 2003, Southern Title Insurance Company (hereinafter "Southern Title") issued a title commitment. Southern Title's title search revealed the seller's unpaid delinquent real estate taxes plus applicable penalties and interest and an unpaid judgment lien against the seller on Schedule B—Section 1—Requirements section of the title commitment documents mailed and received by Respondent.

4. On June 13, 2003, the date of Complainant's real estate closing, Respondent was in the courts of Albemarle and Greene County. Respondent told the VSB Investigator that he had reviewed the entire real estate settlement package prior to settlement and allowed his secretary to handle Complainant's settlement without his presence in the office. Pursuant to the settlement Respondent paid $217.00 for the title examination and title insurance with Southern Title Insurance Company, circuit court fees of $58.00 and Complainant's *pro rata* share of the 2003 real estate taxes. Respondent did not pay off the seller's delinquent real estate taxes or the judgment lien against the seller at settlement nor did Respondent inform Complainant of the title encumbrances on the subject property she was purchasing.

5. After settlement, Complainant discovered that there were unpaid real estate taxes owed by the seller and an unpaid lien against the seller, thus, clouding her ownership in the property. Complainant made numerous unsuccessful attempts to reach Respondent by telephone and by mail concerning the unpaid taxes and unpaid judgment lien. Respondent did not return Complainant's telephone calls to discuss the status of the unpaid real estate taxes or the unpaid judgment lien against the seller.

6. In February of 2004, Complainant contacted the Co-Manager of the Charlottesville Branch of Southern Title Southern Title to inquire as to the whereabouts of her Owner's Title Insurance Policy. The Co-Manager informed Complainant "her attorney has not delivered all the needed information we require to issue the policy." The Co-Manager explained that Southern Title could issue her an owner's title insurance policy; however, under the Schedule B—Exceptions From Coverage section, the policy would exclude the unpaid taxes and unpaid lien as exceptions not covered by the policy.

7. The Co-Manager contacted Respondent to inquire whether he had taken care of the unpaid lien. Respondent told the Co-Manager that he would look into it; however, Respondent never contacted Southern Title regarding the status of the unpaid lien on Complainant's property.

8. On May 12, 2004, Complainant contacted Southern Title and directed them to issue the owner's title insurance policy with the exceptions for the judgment and delinquent taxes. Before issuing the owner's title policy, Southern

Title further researched the title and discovered that only the seller's unpaid judgment lien remained as an encumbrance on the title.

9. In April of 2004, the seller paid all delinquent taxes on the subject property. Southern Title's title research reveals the release of the judgment lien against the seller in September of 2004; some fifteen (15) months after the settlement.

10. The VSB Investigator examined Respondent's trust account for April 2003 through May 2004. During the course of the trust account review, Respondent stated that he does reconciliations on his trust account only every eight or nine months.

The Board finds by clear and convincing evidence that such conduct on the part of David Charles Dickey, Esquire constitutes a violation of the following Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

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.

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(5) Reconciliations.

(i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6;

It is hereby ORDERED that the Respondent shall receive a Public Reprimand with Terms effective upon entry of this order as representing an appropriate sanction if this matter were to be heard. The terms and conditions shall be met by October 1, 2005 and are as follows:

1. Respondent shall complete 12 hours of continuing legal education in the areas of Real Estate Title Examinations and 4 hours of continuing legal education in the area of ethics. His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

If the terms and conditions have not been met by October 1, 2005, the alternative sanction shall be a thirty-day (30) suspension of the Respondent's license to practice law in the Commonwealth of Virginia.

It is further ORDERED that, pursuant to the Rules of the Supreme Court of Virginia, Pt. 6, § IV, ¶ 13(B)(8)(c)(1), the Respondent shall be assessed an administrative fee and costs for this Agreed Disposition proceeding.

It is further ORDERED that this matter be removed from the Board's docket and placed among the closed files, since there is no further action to be taken unless the Respondent fails to comply with the terms imposed by the Disciplinary Board, in which case a show-cause proceeding will be initiated.

It is further ORDERED that upon representation by the Assistant Bar Counsel to the Virginia State Bar Disciplinary Board that the Respondent has failed to comply with the terms and conditions as set forth above, a show-cause proceeding will be initiated before the Disciplinary Board seeking imposition of the alternative sanction. Any show-cause proceeding will be considered a new matter, and under Pt. 6, § IV, ¶ 13(B)(8)(c)(1) of the *Rules of the Supreme Court of Virginia*, the Respondent will be assessed an administrative fee and costs of such show-cause proceeding.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, David Charles Dickey, Esq., at P.O. Box 218, Stanardsville, VA 22873, his last address of record with the Virginia State Bar, and by regular first-class mail to Assistant Bar Counsel Alfred L. Carr, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, VA 22314.

Enter this Order this 13th day of May, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Peter A. Dingman, 2nd Vice Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DENNY PAT DOBBINS
VSB Docket No. 04-010-1580

ORDER OF DISMISSAL

On the 12th day of April, 2005, the Virginia State Bar Disciplinary Board convened a telephone conference to consider whether the Notice of Appeal by the Respondent, Denny Pat Dobbins (Mr. Dobbins), was timely filed, as well as other issues raised by Bar Counsel in the Bar's Motion to Dismiss Appeal. Karen A. Gould, Chair of the Disciplinary Board, presided. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel. Mr. Dobbins appeared *pro se*, and the matter was argued.

It appears to the Board the District Committee Determination was mailed to Mr. Dobbins by certified mail on March 14, 2005. Mr. Dobbins then sent his Notice of Appeal by certified mail on March 24, 2005, which was received in the Clerk's Office on March 28, 2005.

As in the Curtis Tyrone Brown case (Docket No. 00-010-2346), the Board finds that the postmark on Mr. Dobbins' Notice of Appeal is irrelevant, and that Paragraph 13.E.4(a)(2) of Part Six of the Rules of Court provides that the appeal must be filed with the Clerk, which means that filing is achieved when a pleading or other document is received by the Clerk, not when mailed. The Board also finds that the ten day time period for filing a Notice of Appeal is jurisdictional under Paragraphs 13.E.1 and 13.H.4 of the Rules of the Supreme Court of Virginia, Part Six, and the Board has no authority under the Rules to waive the jurisdictional requirement. As such, the Notice of Appeal filed by Mr. Dobbins was not timely filed, and the appeal is dismissed, and the First District Committee's imposition of a Public Reprimand is AFFIRMED, effective upon entry of this Order. The Board did not consider or rule upon the remaining issues raised by the Bar's Motion to Dismiss Appeal.

An attested copy of this Order will be sent by Certified Mail, Return Receipt Requested, to the Respondent, Denny Pat Dobbins, Esq., at his address of record with the Virginia State Bar, P.O. Box 9249, Richmond, Virginia 23227, (804) 730-1222.

In accordance with Part Six, Section IV, ¶ 13.B.8.c of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

THE VIRGINIA STATE BAR DISCIPLINARY BOARD
Enter this the 13th day of April, 2005
Karen A. Gould, Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JEFFREY ELLIS GONZALEZ-PEREZ
VSB DOCKET NO. 04-041-1164

ORDER OF SUSPENSION

THIS MATTER came on to be heard on May 20, 2005, before a duly convened panel of the Disciplinary Board consisting of James L. Banks, Jr., Acting Chair, Glenn M. Hodge, Ann N. Kathan, H. Taylor Williams, IV, and W.

Jefferson O'Flaherty, Lay Member. The Virginia State Bar was represented by Seth Guggenheim, Assistant Bar Counsel. The Respondent, Jeffrey Ellis Gonzalez-Perez (the "Respondent") did not appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The Acting Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

Donna T. Chandler, court reporter, of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings. All required notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

This matter came before the Board on the Subcommittee Determination (Certification) issued on September 8, 2004 by a duly convened subcommittee of the Fourth District Section I Committee.

I. FINDINGS OF FACT

On January 26, 2005, the Board entered a Pre-Hearing Order, which among other things, set deadlines for filing witness lists and exhibits. The Pre-Hearing Order was served on the Respondent by the Clerk of the Disciplinary System. The Respondent did not file any exhibits or witness lists. Furthermore, as set forth in the Certification Regarding Stipulations filed by Bar Counsel, the VSB, despite the exercise of due diligence and the making of a good faith effort to secure the Respondent's cooperation in entering into stipulations, was unsuccessful in procuring any stipulations. The VSB's exhibits, designated as Exhibits 1 through 5, were admitted without objection during the pre-hearing conference conducted by telephone on May 11, 2005. The Respondent failed to attend the pre-hearing conference. The VSB's exhibits, designated as Exhibits 6 through 7, were admitted without objection by the Board at the hearing on this matter.

The Board makes the following findings of fact regarding on the basis of clear and convincing evidence:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar is Suite 700, 2111 Wilson Boulevard, Arlington, Virginia 22201. The respondent received proper notice of these proceedings, as well as the related proceedings relating to as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

2. The Respondent's license to practice law in the Commonwealth was suspended on October 15, 2001, for non-payment of annual dues and for noncompliance with the mandatory filing requirements regarding professional liability insurance certification.

3. The Respondent's license to practice law in the Commonwealth was suspended on June 5, 2003, for his failure to comply with the Mandatory Continuing Legal Education requirements.

4. The Respondent's license to practice law in the Commonwealth was forfeited on March 29, 2004, for non-payment of annual dues and for noncompliance with the mandatory filing requirements regarding professional liability insurance certification.

5. As certified by the Office of Bar Counsel for the District of Columbia on April 15, 2004, the Respondent was admitted to practice law in the District of Columbia on March 9, 1998. His license to practice law in the District of Columbia was suspended on September 30, 2003, for nonpayment of dues.

6. On October 21, 2003, the Virginia State Bar received a Complaint from Nirmal R. Kumar (hereafter "Complainant"), respecting an immigration matter handled by the Respondent on behalf of the Complainant and the company which had formerly employed the Complainant.

7. On November 6, 2003, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, inter alia, in bold and underlined text, the following: "Please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

8. On January 21 and 27, 2004, a Virginia State Bar investigator left telephone messages for the Respondent. On February 2, 2004, the investigator sent the Respondent a letter, requesting that he contact the investigator and that he respond to the Bar Complaint. On February 11, 2004, the investigator again wrote to the Respondent requesting that he contact the investigator.

9. Having received no reply from the Respondent to any of the telephone messages and letters left for and sent to the Respondent, the investigator caused a subpoena to be issued to the Respondent. The Respondent appeared pursuant to the subpoena on March 31, 2004, and acknowledged to the investigator that he had received the phone messages and letters from the investigator.

10. During the interview conducted on March 31, 2004, the Respondent stated to the investigator that he maintains his license to practice law in the District of Columbia for purposes of practicing immigration law. The Respondent's statement was false at the time it was made inasmuch as his license to practice law in the District of Columbia was suspended on September 30, 2003, for nonpayment of dues, as aforesaid.

11. During the time when his licenses to practice law in both Virginia and the District of Columbia were suspended, the Respondent nonetheless held himself out as an attorney authorized to practice law by, among other things,

    a. listing himself as an attorney upon a building directory where he was maintaining office space at 2111 Wilson Boulevard, Suite 700, Arlington, Virginia 22201; and

    b. causing receptionist(s) to answer his phone with the greeting "Law Offices of Jeffrey Gonzalez-Perez."

12. During the time when his licenses to practice law in both Virginia and the District of Columbia were suspended, the Respondent nonetheless practiced law by performing immigration law services on behalf of one or more employees of Optimos, Inc., of Chantilly, Virginia.

13. During the Respondent's interview conducted on March 31, 2004, by the Virginia State Bar investigator, it was revealed that Respondent had retained in trust the sum of $238.24 since May 9, 2001, with regard to Complainant's immigration matter. The Respondent had not refunded that sum to the Complainant, despite Respondent's having stopped performing services on behalf of the Complainant in or around March of 2003.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

(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).

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

RULE 7.5 Firm Names And Letterheads

(a) A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, website, or a similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1 and 7.2.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact;

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.15, 1.16, 7.5, 8.1(a), 8.1(c), 8.4(b), and 8.4(c). However, the Bar did not prove by clear and convincing evidence that Respondent had violated Rule 5.5.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar, including Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as a two (2) year suspension of the Respondent's license to practice law in the Commonwealth of Virginia with such suspension effective immediately.

The Board's unanimous sanction decision is based upon the totality of the circumstances. First, the Board finds that the VSB has gone to great lengths to try and communicate with the Respondent and to make sure that he had every opportunity to appear at and participate in these proceedings. In fact, the VSB even attempted to serve the Respondent with a subpoena for the hearing and on May 13, 2005, after making several service attempts, the Arlington County Sheriff posted the subpoena at the Respondent's apartment complex. From the Respondent's utter lack of participation and communication in this matter it appears to the Board that the VSB is more concerned about the Respondent's law license than the Respondent is. Also, the Board took into consideration the fact that the Respondent has no previous disciplinary record and that the evidence shows that the Respondent took a high degree of care in representing the client referenced above.

Accordingly, it is ORDERED that the license of Respondent, Jeffrey Ellis Gonzalez-Perez, to practice law in the Commonwealth of Virginia is hereby suspended for two (2) years effective May 20, 2005.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to respondent at his address of record with the Virginia State Bar, being 2111 Wilson Boulevard, Suite 700, Arlington, Virginia 22201, by certified mail, return receipt requested, and by regular mail to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

ENTERED this 20th day of June 2005
VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., Acting Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISIPLINARY BOARD

IN THE MATTER OF
LAWRENCE RAYMOND MORTON
VSB Docket No. 04-053-1980

ORDER

This matter came before the Virginia State Bar Disciplinary Board on March 25, 2005 upon certification from the Fifth District—Section III Committee. The panel was chaired by Peter A. Dingman, 2nd Vice Chair. The other panel members were Glen M. Hodge, Ann N. Kathan, Bruce T. Clark and W. Jefferson O'Flaherty, lay member. The Virginia State Bar was represented by Seth M. Guggenheim, Assistant Bar Counsel. The Respondent, Lawrence Raymond Morton, appeared at the hearing acting *pro se*. The reporter for this hearing who transcribed the proceedings was Jennifer L. Hairfield, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, phone (804) 730-1222.

The Chair polled the panel members to determine whether any member had a personal or financial interest in the matter which might effect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, verified that they had no such conflicts.

I. STIPULATED STATEMENT OF FACTS

At the commencement of the hearing, the Respondent and Bar stipulated to the following facts:

1. At all times relevant to the matters set forth herein, Lawrence Raymond Morton, Esquire (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or around February of 1995, the Respondent was contacted by Mr. Tennie L. Kennedy (hereafter "Complainant") with respect to an injury the Complainant had sustained at his place of employment. On or about March 6, 1995, the Respondent accepted the Complainant as a client, and opened a case file in the matter. On April 3, 1995, the Respondent filed a claim on behalf of the Complainant with the Workers' Compensation Commission.

3. On April 21, 1995, the opposing parties (the employer and its insurer), through their counsel, propounded interrogatories to the Complainant which were served upon the Respondent. The Respondent failed to respond to the interrogatories. On May 19, 1995, opposing counsel sent a letter to the Respondent stating that the answers to interrogatories were overdue, and asking when he could expect to receive answers to the Interrogatories he had served. The Respondent failed to react or respond to this letter.

4. On May 25, 1995, the Worker's Compensation Commission ordered the Complainant, through notice sent to Respondent, to respond to the interrogatories within ten days, "or face possible sanctions, including dismissal of the claim." The Complainant was also "instructed to provide copies of all medical records, within his possession, to the employer and the Commission."

5. The Respondent did not respond to the Commission's May 25, 1995 directives.

   As a result, on June 13, 1995, the Commission dismissed the Complainant's claim, with prejudice. The Commission's Order dismissing the claim contained a provision permitting an appeal of its ruling within twenty days following issuance of the Order. The Respondent took no action to appeal the Order.

6. At some point during the representation, the Respondent told the Complainant that a hearing in the matter had been postponed, and that he, the Respondent, would get back in touch with the Complainant regarding a new hearing date.

7. After the Complainant heard nothing further from the Respondent, the Complainant contacted the Commission and was told by a clerk that the Complainant's case had been closed.

8. The Respondent did not accurately and adequately inform the Complainant of the status of his legal matter as the claim progressed, did not inform him that the claim had been dismissed, did not advise him of the basis for such dismissal, and did not review with the Complainant his options regarding appeal of the Commission's Order dismissing the matter.

II. NATURE OF MISCONDUCT

The Panel finds from the stipulated evidence presented that the actions of the Respondent constitute misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility:

DR 6 101. Competence and Promptness.

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

(D) A lawyer shall inform his client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

DR 7 101. Representing a Client Zealously.

(A) A lawyer shall not intentionally:

(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2 108, DR 5 102, and DR 5 105.

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 4 101(D).

III. SANCTION

Following the finding of misconduct, the Bar presented the panel with a copy of the Respondent's disciplinary record. It was at this point that the Panel learned that the Respondent's license to practice was currently suspended and that over the past several years, the Respondent had received several sanctions from the bar, the general theme of such sanctions centering on the Respondent's apparent inability to adequately follow up on matters he undertakes.

Normally the evidence in the matter before the Panel in this hearing, when considered in conjunction with the Respondent's prior record, would place the Panel in the position of having to take extreme measures to assure the protection of the public. However, in this particular case, the occurrences being considered by the Panel in this hearing predate those for which the Respondent has previously been sanctioned. In addition, the Bar in its presentation acknowledged that the Respondent is an intelligent man possessing a high level of legal skills. It also acknowledged

that the failures of the Respondent were in no manner motivated by his desire for personal gain. For these reasons, the Panel is unwilling to find that the Respondent's behavior in this matter demonstrates a continuing disregard for his obligations. It is instead hoped that the sanctions currently in place against the Respondent will have their desired effect and will dissuade the Respondent from future repetitions of his past unacceptable behavior.

Having determined the above, the Panel was nevertheless troubled by several statements made by the Respondent during the hearing, which statements raised concerns over whether the Respondent has yet to fully understand the nature of his problems and whether he is yet ready and able to accept his responsibilities in the matters which have brought him before the Bar.

In his presentation, the Respondent attempted to attribute his failure to adequately perform his duties upon situations involving the loss of his secretary and a failure in his office's computer systems caused in part by his personal lack of technical skills in this area. The Panel believes that such excuses are unacceptable. Problems with personnel and office system failures are not unique to the Respondent. They are the ongoing fact of life every practitioner faces at one time or another. When such situations arise, it is incumbent upon that practitioner to take whatever measures are needed to protect his client's interest, no matter how extreme.

It is the Panel's collective belief that the Respondent's actual problem stems from a lack of organization brought on by his failure to put into position the office procedures needed to assure his client's matters are properly tracked and managed. It is likewise the belief of the Panel that unless it imposes such practices upon the Respondent, it is highly likely that he will repeat his prior failures at some future date. Such an occurrence could not be tolerated.

It is for this reason that the Panel has decided to be proactive in this matter in order to aggressively address the problem at hand.

It is therefore ORDERED as follows:

1. The Respondent, Lawrence Raymond Morton, is hereby given a PUBLIC REPRIMAND.

2. Should the Respondent at any future time return to the practice of law, he will employ, at his sole expense, the services of a law office management consultant acceptable to the Virginia State Bar to assist him in organizing and structuring his practice. Thereafter, he shall fully follow such recommendations as he receives from his consultant and shall place into operation within his office all systems and procedures recommended by his consultant.

3. For a period of twelve months following the Respondent's return to practice, he shall permit the Bar to monitor his practice to assure that he is operating his office in full compliance with the recommendations he has received. This monitoring process shall include the submission to the Bar of review reports to be prepared by the Respondent's consultant. Such reports, which shall be made quarterly or more often as may be required by the Bar, shall be prepared at the Respondent's sole expense. In addition, if desired, the Respondent shall within the twelve month period, at any time and without notice, allow the Bar to examine his office procedures to assure ongoing compliance with this Order.

4. Should the Respondent fail to comply with the terms set forth herein, the Bar shall have the right to issue a show cause against him. Should such show cause be issued and should the Respondent thereafter not be able to prove to this Board by clear and convincing evidence that he has in fact complied with the terms set forth herein, his license to practice law within the Commonwealth of Virginia shall be revoked.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent, by certified mail, return receipt requested, to his address of record with the Virginia State Bar, 17850

Curtis Drive, Dumfries, Virginia and shall deliver a copy of this to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

It is further ORDERED that the costs of this matter shall be assessed against the Respondent in accordance with the Rules of the Supreme Court of Virginia, Part Six, and Section IV Paragraph 13.B.8.c.

ENTERED this 6th day of April, 2005.
Peter A. Dingman, Second Vice Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
PAUL CHRISTIAN STAMM JR.
VSB Docket No. 04-060-3232

ORDER

This matter came before the Virginia State Bar Disciplinary Board upon certification from the Sixth District Committee. On June 14, 2005, a proposed Agreed Disposition was presented via telephone conference call to a duly convened panel consisting of Werner H. Quasebarth, lay member, and attorneys Robert E. Eicher, Joseph R. Lassiter, Jr., Janipher W. Robinson, and Robert L. Freed, presiding chair. The Respondent, Paul Christian Stamm, Jr., was present, and Barbara Ann Williams, Bar Counsel, represented the Virginia State Bar.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

Having considered the proposed Agreed Disposition and the representations of counsel, the Disciplinary Board accepted the Agreed Disposition and finds by clear and convincing evidence as follows:

I. Findings of Fact

1. Mr. Stamm was admitted to the practice of law in the Commonwealth of Virginia on May 23, 1978, and at all times relevant to these proceedings was active and in good standing to practice law in Virginia.

2. On January 29, 1997, Latane Haydon Stevens executed a will and trust agreement that Mr. Stamm prepared.

3. The trust agreement established an inter vivos irrevocable trust ("the Trust"), of which Mr. Stevens was the trustor, and named Barbara Allison Stevens, Mr. Stevens' wife, as lifetime income beneficiary and Mr. Stamm as trustee of the Trust.

4. Schedule A to the Trust agreement indicates that at its inception the Trust held the following assets: a USG annuity valued at $80,000, an Advest money market account valued at $40,866.59 and a premium in the amount of $1,400 for an Occidential Life Insurance policy.

5. As trustee, Mr. Stamm had a non-delegable duty to manage the Trust and administer its assets according to the terms and provisions of the Trust agreement.

6. In November 1997, Mr. Stamm executed a promissory note for the original principal amount of $27,000.00 with interest at 8% on behalf of American Title of Lancaster as borrower of Trust funds.

7. American Title of Lancaster is a title insurance company owned by Mr. Stamm and his secretary, Rosie Jones.

8. American Title of Lancaster made payments on the note directly to the Trust, beginning on December 10, 1997.

10. Mr. Stamm did not deposit the payments American Title of Lancaster made on the note held by the Trust in a fiduciary account.

11. The Trust agreement contains no provision for the distribution of principal during Mt. Stevens' lifetime.

12. Mr. Stamm distributed principal from the Trust at Mr. Stevens' direction during his lifetime but in derogation of the terms of the Trust, including the proceeds from the surrender of USG Annuity Contracts #488125 and 532036.

13. Mr. Stamm failed to prepare annual written accountings required by Article XV of the Trust and his obligations as a fiduciary.

14. During Mr. Stevens' lifetime, Mr. Stamm did not file federal and state fiduciary income tax returns for the Trust annually as required by the Trust agreement.

15. Mr. Stevens died suddenly on March 7, 2003; Mrs. Stevens survived him.

16. After Mr. Stevens died, Mr. Stamm executed a deed of gift transferring title to real property held by the Trust to Mrs. Stevens so she could sell it.

17. Mrs. Stevens filed a bar complaint against Mr. Stamm on or about March 30, 2004, alleging that Mr. Stamm had not responded to her requests for an inventory of Trust assets and an accounting of Trust income and expenses.

18. There is no evidence that Mr. Stamm arranged the loan from the Trust to American Title of Lancaster without Mr. Stevens' knowledge or consent, or that Mr. Stamm failed to repay the loan in a timely manner.

19. There is no evidence that Mr. Stamm distributed principal from the Trust without Mr. Stevens' consent during his lifetime or without Mrs. Stevens' consent after her husband's death.

20. Although Mr. Stamm breached his fiduciary duties as trustee of the Trust by failing to prepare annual accountings and file income tax returns, there is no evidence of misappropriation of Trust assets or of any adverse tax consequences.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct.

The following findings relate to Mr. Stamm's conduct before January 1, 2000:

DR 6-101. Competence and Promptness.

(A) A lawyer shall undertake representation only in matters in which:

(1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

(2) The lawyer has associated with another lawyer who is competent in those matters.

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

* * * *

DR 9-102. Preserving Identity of Funds and Property of a Client.

* * *

(B) A lawyer shall:

* * *

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

* * *

The following findings relate to Mr. Stamm's conduct after January 1, 2000:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(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 1.4 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.

* * *

RULE 1.15 Safekeeping Property

* * *

(c) A lawyer shall:

* * *

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

* * *

(d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book entry custody account), except in the following cases:

* * *

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney in fact.

(e) Record Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

* * *

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;

(iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

III. Disposition

The Disciplinary Board usually takes a very strict approach to the mishandling and misuse of a client's property by an attorney, and the Virginia Rules of Professional Conduct apply to the actions of an attorney acting as a fiduciary. However, the consent of Mr. Stevens during his lifetime and the consent of Mrs. Stevens after Mr. Stevens' death of the Respondent's Misconduct mitigate what normally would have been a much more draconian sanction. Accordingly, the Disciplinary Board, Respondent and Bar Counsel agree that a public reprimand is an appropriate disposition of this matter. Therefore, it is **ORDERED** that a public reprimand shall be issued to the Respondent in this matter.

This Agreed Disposition is limited to the particular facts of this matter.

The court reporter for this hearing on the Agreed Disposition was Donna Chandler of Chandler and Halasz Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

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

It is **ORDERED** that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, at his last address of record with the Virginia State Bar, Post Office Box 2015, Kilmarnock, Virginia 22482-2015, and hand delivered to Bar Counsel at the Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

Enter this Order this 27th day of June, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, Presiding Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
JAMES A. WINSTEAD
VSB Docket Nos. 04-010-0286; 04-010-2139; 04-010-2475 and 04-010-1781

SUSPENSION ORDER

This matter came on June 21, 2005 to be heard on the Agreed Disposition between the Respondent, James A. Winstead, Esq. and the Virginia State Bar, based on a Certification by the First District Committee. The Agreed Disposition was considered by a duly convened panel of the Disciplinary Board consisting of Werner Quasebarth, lay member, Joseph R. Lassiter, Jr., Esq., Ann N. Kathan, Esq., Robert E. Eicher, Esq., and James L. Banks, Jr., Esq., Chair Presiding.

Richard E. Slaney, Assistant Bar Counsel, and James A. Winstead, Esq., the Respondent, pro se, presented an endorsed Agreed Disposition signed by the parties. The court reporter for the hearing was Donna Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it was the unanimous decision of the Board to accept the Agreed Disposition, and as such the Virginia State Bar Disciplinary Board finds the following by clear and convincing evidence:

I. FINDINGS OF FACT

1. At all times material to these matters, the Respondent, James A. Winstead (Winstead), was an attorney licensed to practice law in the Commonwealth of Virginia.

Williams 04-010-0286

2. One Novella Williams (Williams) hired Winstead in early 2003 to represent her in a discrimination and civil rights suit against her employer, the U. S. Postal Service.

3. Williams paid Winstead $3,000. Winstead acknowledges those funds were not deposited into his trust account.

4. Winstead filed suit for Williams in U. S. District Court. That Court dismissed the suit in an order dated October 20, 2003.

5. Williams would testify Winstead didn't inform her of the dismissal until a February 4, 2004 court date in a suit by Williams against Winstead for return of the $3,000 she paid him. Winstead believes he informed her sooner of the dismissal but can offer no documentation in support of his belief. Williams filed her suit against Winstead in September of 2003, effectively ending the attorney-client relationship.

6. Williams would testify Winstead failed to return phone calls or respond to letters from mid-July of 2003 to September of 2003.

[Rules applicable: 1.4(a) and 1.15(a), (c)(3), (e) and(f)]

Turner 04-010-2139

7. In December of 2001, one Michael Turner (Turner) hired Winstead to file a habeas corpus petition.

8. Winstead was paid a total of $3,600 for the habeas petition by Turner or by others on his behalf. Winstead acknowledges those funds were not deposited into his trust account.

9. Turner would testify that after the filing of the petition, in February of 2002, Winstead failed to return phone calls or respond to letters until February of 2004; however, Winstead would testify he communicated with Turner and others on his behalf during that time frame as appropriate.

[Rules applicable: 1.4(a) and 1.15(a), (c)(3), (e) and (f)]

Dolberry/Joe 04-010-2475

10. Winstead was requested by one Dr. Morgan Joe (Joe) to negotiate a settlement of a debt Joe owed to Damsey and Associates (Damsey). Winstead agreed to place $1,200 in his trust account as a fund with which to negotiate the settlement with Damsey.

11. Although Winstead's trust account carried a balance of over $1,200 during the relevant time frame, he has no periodic trial balance reconciliation to prove Joe's $1,200 was maintained intact in the trust account; however, the Bar has no evidence of any misappropriation of those funds by Winstead.

12. Winstead also agreed to file an objection for Joe to a bankruptcy discharge in regard to one of Joe's clients. The objection was dismissed due to Winstead's failure to file witness and exhibit lists.

[Rules applicable: 1.3(a) and 1.15(f)(4)]

Rohan 04-010-1781

13. Winstead represented one Simone Rohan (Rohan) in regard to an automobile collision. Rohan's claim was settled in 2000 for $4,000.

14. Rohan recently discovered a judgment against her for a medical bill arising from the collision. She attempted to meet with Winstead about the matter, without success. She then filed a Bar complaint against Winstead.

15. Winstead responded to the complaint and met with Rohan, convincing her that he paid all medical bills related to the collision at the time of the settlement, with the exception of a bill Rohan agreed to pay directly to the medical care provider. Rohan told the Bar's investigator she was satisfied with Winstead's explanation. Rohan has not responded to several recent messages left for her by the Bar's investigator.

16. Winstead would testify Rohan's settlement funds were deposited into his trust account; however, he has no trial reconciliations or quarterly reconciliations reflecting those funds.

[Rules applicable: 1.4(a) and 1.15(a), (c)(3), (e) and(f)]

II. RULE VIOLATIONS

The Board finds by clear and convincing evidence that the conduct of the Respondent, as set forth above, constitutes a violation of the following 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.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:….

(c) A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

(e) Record Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non escrow disbursements;

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting records required under this Rule;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship….

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non escrow funds other than fees and retainers. Mixed escrow and non escrow funds shall be deposited intact to the escrow account. The non escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.

(4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.

(i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and

(ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(5) Reconciliations.

(i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

III. DISPOSITION

Accordingly, it is hereby

ORDERED that the law license of the Respondent, James A. Winstead, Esq., be and hereby is **SUSPENDED** for a period of three (3) years from the date of this order, and further that, pursuant to his agreement, Mr. Winstead shall not thereafter practice law in the Commonwealth of Virginia.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(B)(8)(c).

It is further **ORDERED** that pursuant to the provisions of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, as amended, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Respondent shall give such notice within fourteen (14) days of the date of this order, and shall make such arrangements as are required herein within forty-five (45) days of the date of this order. Respondent shall also furnish proof to the Clerk of the Virginia State Bar Disciplinary System within sixty (60) days of the date of this order that such notices have been timely given and such arrangements for the disposition of matters have been made. Issues concerning the adequacy of the notice and arrangements required shall be determined by the Disciplinary Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph.

It is further ORDERED that the Clerk shall mail a copy teste of this Order by Certified Mail, Return Receipt Requested, to the Respondent, James A. Winstead, Esq., at 308 Mapleshore Drive, Chesapeake, Virginia 23320-6920, his last address of record with the Virginia State Bar, and by hand delivery to Richard E. Slaney, Assistant Bar Counsel, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this the 22nd day of June, 2005.
James L. Banks, Jr., Esq., Chair Presiding
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
HUNTER B. CHAPMAN
VSB DOCKET NO. 03-070-2631

SUBCOMMITTEE DETERMINATION
PUBLIC ADMONITION WITH TERMS

On the 3rd day of May, 2005, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of John G. Berry, Esq., Lawrence Lambert, lay member, and Grant A Richardson, Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the Rules of Virginia Supreme Court, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC ADMONITION WITH TERMS:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Hunter B. Chapman, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about November 11, 2000, the Complainants, Mr. William R. Green ("Mr. Green") and Ms. Romaine Minifield ("Ms. Minifield") signed a contract with Mitchell Homes for the construction of a new home for a contract price of $235,000.00. Pursuant to terms of contract, construction could be completed within one hundred eighty days, approximately six months, after completion of certain lot modifications. Between November 11, 2000 and December 31, 2000, Mr. Green and Ms. Minifield contacted Respondent as suggested by Cedar Creek Mortgage Company. Cedar Creek recommended that Mr. Green and Ms. Minifield use private financing underwritten by a private financier, Ronald Frazier. On December 27, 2000, the proposed two-story stick frame home and land appraised for $450,000.00.[1] Respondent informed Mr. Green and Ms. Minifield of the terms and conditions of the lender's financing.

3. On or about March 12, 2001, Mr. Green and Ms. Minifield closed on the construction loan in Respondent's office. They signed the Note and Credit Line Deed of Trust to secure the construction loan for $235,000.00. The lender's closing documents included a disbursement schedule for the construction of a two-story stick frame home. At the time of settlement, Ronald Frazier provided only $150,000.00 to Mr. Green and Ms. Minifield. There was an agreement to fund the remaining $85,000.00 in 30 days. Mr. Green and Ms. Minifield's closing costs totaled $31,459.50, of which Respondent received a fee of $1,500.00 to handle the entire construction loan process. Respondent deposited $118,540.50 into a trust account for Ms. Minifield. However, the depository that Respondent used for the trust account, Edward Jones and Company Money Market Account, was not on the Virginia State Bar's list of approved trust account depositories.

4. Between March 12, 2001 and April 17, 2001, Mr. Green discovered that the Mitchell Home could not be built within six months of closing and/or they could not afford the mortgage payments on the $235,000.00 construction loan. In any event, construction could not be completed within six months of settlement because none of the required lot improvements, pursuant to the Mitchell Homes' contract, had been started or were anywhere near completion.

FOOTNOTE

1 The $450,000.00 appraised value of the home in the Mitchell Homes' contract served as the basis of the loan to Mr. Green and Ms. Minifield from the lender, Ronald Frazier, private financier. Cedar Creek felt that Mr. Green and Ms. Minifield would be able to refinance in six months because the loan-to-value was greater than 70%. Cedar Creek states that a loan-to-value ratio of greater than 60% was the most important factor in Mr. Green and Ms. Minifield's ability to qualify for refinancing in six months.

5. On or before April 18, 2001, Mr. Green and Ms. Minifield signed a contract with Clayton Homes to purchase a mobile home and informed Respondent of their decision to purchase a mobile home. However, Respondent, Mr. Green, and Ms. Minifield all failed to informed Cedar Creek Mortgage or Ronald Frazier of the switch to purchasing the Clayton Mobile Home with the loan proceeds intended to purchase a two-story stick frame home until April 27, 2001.

6. In violation of his fiduciary duties, Respondent made disbursements from the escrow account to Mr. Green and Ms. Minifield. The Respondent disbursed construction loan proceeds pursuant to facsimiled handwritten invoices from Mr. Green and Ms. Minifield, as opposed to following the lender's disbursement schedule. The disbursements were for lot modifications, and the purchasing, hauling, and installing of the mobile home. However, Lender ultimately suffered no financial loss as a result.

7. On or about April 6, 2001, Respondent acting as Mr. Green and Ms. Minifield's legal counsel, advanced Mr. Green's legal fees. Respondent negotiated a Mitchell Homes' release in exchange for a $3,400.00 payment. The source of the $3,400.00 payment was Respondent's personal bank account. Respondent states that he did not have the escrow account checkbook on his person as the reason for the use of his personal funds to advance legal fees to his client. Thus, a compelling argument can be made that Respondent further violated his fiduciary duties because he would have otherwise used the loan proceeds to pay off Mitchell Homes to release Mr. Green from the Mitchell Homes' contract.

8. On or about April 27, 2001, in exchange for a $6,800.00 payment from Mr. Green and Ms. Minifield, Robert Frazier released them from liability of the Construction Agreement and the Credit Line Deed of Trust in the amount of $235,000.00, but not the underlying $150,000.00 note.

9. On or about May 14, 2001, Loudoun County issued an Occupancy Permit to Romaine Minifield.

10. In June 2001, Mr. Green and Ms. Minifield constructed a well on Mr. Green's Uncle's property instead of their property. Respondent assisted Mr. Green by drafting an easement burdening his Uncle's property to gain access to the well for Mr. Green's benefit. However, Mr. Green's Uncle declined to grant him the easement and a new well had to be constructed. In October 2001, the new well permit issued and it was constructed in the same month.

11. In August 2001, the construction loan due date was extended to September 2001. Respondent negotiated with Ronald Frazier to extend the due date one month in exchange for a payment of $1,500.00. Thereafter, for each additional month the due date was extended, and additional $1,500.00 payment was made to Ronald Frazier.

12. In January 2002, Cedar Creek instructed Mr. Green and Ms. Minifield to add a concrete foundation/barrier around the mobile home to assist in their quest for conventional lender financing to pay off Ronald Frazier.[2] Mr. Frazier initiated foreclosure procedures against Mr. Green and Ms. Minifield.

13. On or about August 24, 2004, Mr. Green and Ms. Minifield retained Mr. Robert Gants, Esquire to assist them with the pending foreclosure. Respondent paid $19,912.50 to Mr. Green and Ms. Minifield for a release.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct/Disciplinary Rules have been violated:

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

FOOTNOTE

2 Robert Kearns of Cedar Creek Mortgage alleges that Mr. Green and Ms. Minifield's decision to purchase a doublewide mobile home decreased their loan-to-value ratio below the 60%-65% range because the doublewide mobile home was approximately $177,000.00 less than the two-story stick frame home as originally proposed. He also states that conventional lenders do not consider mobile homes as good investments because of their mobility, i.e., it easily be relocated to another jurisdiction. Adding the concrete foundation to the mobile home was an attempt to transform it into a dwelling suitable for conventional financing, that is, it cannot be driven away. All of the above was the proximate cause of Mr. Green and Ms. Minifield's failure to secure refinancing. The basis for the original transaction is the two-story stick framed house that appraised for $450,000.00.

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

(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.

RULE 1.15 Safekeeping Property

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and"publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution, which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent a PUBLIC ADMONITION WITH TERMS. Disposition of this complaint is predicated upon Respondent's compliance with the terms set forth below by September 30, 2005.

TERMS

1. The Respondent shall complete twenty-four (24) hours of continuing legal education in the areas of Real Estate Settlements and/or Consumer Real Estate Protection Act. His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

2. The Respondent shall complete four (4) hours of continuing legal education in the areas of Ethics. His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

3. The terms and conditions shall be met and made known to the Bar by September 30, 2005.

4. Upon satisfactory proof that the above noted terms and conditions have been met, a PUBLIC ADMONITION WITH TERMS shall then be imposed.

ALTERNATE DISPOSITION

If, however, the terms and conditions have not been met by the 30th day of September, 2005, and in such event, the Committee shall, as an alternative disposition to a PUBLIC ADMONITION WITH TERMS, certify this matter to the Virginia State Bar Disciplinary Board. Upon certification, the parties shall be deemed to have stipulated to the admissibility into evidence by the Board of the "Findings of Fact" appearing above, and the Respondent shall be deemed to have admitted before the Board to a violation of the provisions of the Professional Rules of Conduct as set forth under the above "Nature of Misconduct" section.

COSTS

Pursuant to Part Six, § IV, ¶ 13(B) (8) (c) (1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR
By Grant A. Richardson
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 12th day of May, 2005, mailed a true and correct copy of the Subcommittee Determination (Public Admonition with Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Hunter B. Chapman, Esq., at 14115 Lover's Lane, Suite 110, Culpeper, VA 22701, his last address of record with the Virginia State Bar, and by regular mail, postage prepaid to the Respondent's Counsel, Thomas M. Purcell, Esq., 165 West Main St., P.O. Box 1290, Orange, VA 22960-1547.

Alfred L. Carr
Assistant Bar Counsel

VIRGINIA:
BEFORE THE THIRD DISTRICT COMMITTEE, SECTION TWO
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
AUDREY FREEMAN JACOBS
VSB Docket No. 05-032-0961

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On April 8, 2005, a hearing in this matter was held before a duly convened Third District Committee, Section Two, panel consisting of Coral C. Gills, Lay Member; Mary K. Owens, Esq.; John D. Sharer, Esq.; J. Tracy Walker, IV, Esq. and William J. Viverette, Esq., Vice Chair, presiding. Mr. Sharer is a member of the Third District Committee, Section III, and participated pursuant to Rule of Court, Part Six, Section IV, Paragraph 13.B.6.i.

Aubrey Freeman Jacobs appeared in person *pro se*. Deputy Bar Counsel Harry M. Hirsch appeared as counsel for the Virginia State Bar.

Pursuant to Rule of Court, Part 6, Section IV, Paragraph 13.H.2.c. of the Rules of the Virginia Supreme Court, the Third District Committee, Section Two, of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition with Terms:

I. FINDINGS OF FACT:

1. At all times relevant hereto the Respondent, Audrey Freeman Jacobs [Jacobs], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Jacobs qualified as the administrator of an estate on March 5, 1999. Jacobs is a daughter of the deceased.

3. An inventory of the estate was due on July 5, 1999.

4. On August 6, 1999, the commissioner of accounts in Henrico County, John Page Rawlings [Rawlings], issued a letter to Jacobs indicating the inventory was delinquent and requesting an inventory be filed within thirty days of the date of the letter.

5. On November 11, 1999, Rawlings issued a summons to Jacobs for the filing of an inventory within thirty days of service. The summons was served personally on Jacobs on November 18, 1999.

6. Jacobs filed an inventory for the estate on December 17, 1999.

7. A first accounting was due for the estate on July 5, 2000.

8. On August 30, 2000, Rawlings sent Jacobs a letter indicating the first accounting was delinquent and requesting that it be filed within thirty days of the date of the letter.

9. On October 9, 2000, Rawlings issued a summons to Jacobs for the filing of a first accounting within thirty days of service. The summons was served by posted service on October 13, 2000.

10. On November 17, 2000, Rawlings called Jacobs and left a message indicating he was going to prepare a show cause and report Jacobs to the Virginia State Bar as required by statute. Jacobs called Rawlings' office the same day and indicated she would file the accounting by November 21, 2000.

11. On November 24, 2000, Jacobs filed a first accounting.

12. A second accounting was due for the estate on August 30, 2001.

13. On September 12, 2001, Rawlings sent Jacobs a letter indicating the second accounting was delinquent and requesting that it be filed within thirty days of the date of the letter.

14. On October 16, 2001, Jacobs called Rawlings' office indicating she had completed the accounting and would mail it that date.

15. A second accounting was received by Rawlings' office on October 24, 2001.

16. A third accounting was due for the estate on December 31, 2002.

17. On January 10, 2003, Rawlings sent Jacobs a letter indicating the third accounting was delinquent and requesting that it be filed within thirty days of the letter.

18. Rawlings gave Jacobs an additional thirty days within which to file the third accounting.

19. On February 25, 2003, Rawlings issued a summons for a third accounting to be filed within thirty days of service. The summons was personally served on Jacobs on March 3, 2003.

20. Jacobs filed a third accounting on April 3, 2003.

21. By letter dated June 24, 2003, Rawlings wrote Jacobs indicating that he expected the next accounting to be a final accounting, enclosing a statement for audit fees on the last accounting and enclosing an invoice for personal delinquent fees totaling $300.00.

22. A fourth accounting was due for the estate on May 1, 2004.

23. Rawlings wrote Jacobs a letter dated May 13, 2004, indicating that the accounting due on May 1, 2004 was past due and requesting that it be filed within thirty days of the date of the letter.

24. On June 7, 2004, Jacobs wrote to Rawlings and requested a forty-five day filing extension which was granted.

25. On August 2, 2004, Rawlings issued a summons for a fourth and final accounting to be filed within thirty days of service. The summons was personally served on August 6, 2004.

26. On September 13, 2004, a show cause order was entered in the Circuit Court of Henrico County stating a hearing date of October 29, 2004.

27. Jacobs filed a fourth accounting on September 15, 2004.

28. On October 26, 2004, Rawlings' office sent Jacobs a letter indicating the last accounting was ready for approval but payment was needed of the commissioner of accounts' fees, Clerk of Court fees, and all delinquent charges and court costs.

29. The show cause was dismissed on November 5, 2004.

30. On November 9, 2004, Rawlings sent Jacobs an invoice for $232.00 in fees due from the estate and $485.00 in costs due from Jacobs personally. A second invoice notice was sent to Jacobs on December 16, 2004.

31. On December 22, 2004, Rawlings wrote Jacobs indicating, *inter alia*, that he approved the latest accounting, that the latest accounting was not a final accounting, that a final accounting was due to be filed by February 22, 2005 unless Jacobs can explain why she cannot close the estate.

II. NATURE OF MISCONDUCT:

The Third District Committee, Section Two, determined that the bar proved by clear and convincing evidence that Audrey Freeman Jacobs violated the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

The Third District Committee, Section Two, determined that the bar did not prove by clear and convincing evidence violations of DR 6-101(A) and DR 6-101(B) of the Virginia Code of Professional Responsibility.

III. PUBLIC ADMONITION WITH TERMS:

Accordingly, it is the decision of the Third District Committee, Section Two, to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Admonition with Terms of this complaint. The terms and conditions, which shall be met by the dates stated are the following:

1. By August 1, 2005, the Respondent shall complete and close the administration of the estate with the approval of the Commissioner of Accounts and provide bar counsel with written evidence of said approval.

2. By May 2, 2005, the Respondent shall institute and maintain a calendar or docket control system which shall insure that she reviews the status of all pending matters periodically, and remind her in advance of key deadlines and other obligations; and Respondent shall provide bar counsel with a detailed written description of the docket control system, and shall certify in writing that she is using said system in her office.

3. By October 3, 2005, the Respondent shall complete six (6) hours of mandatory continuing legal education on the subject of estates administration. Said hours may be counted for purposes of mandatory continuing legal education requirements.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as stated the Third District Committee, Section Two, shall impose a Public Reprimand.

Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.B.8.c., the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT COMMITTEE, SECTION TWO, OF THE VIRGINIA STATE BAR
By William J. Viverette
Vice Chair

CERTIFICATE OF SERVICE

I certify that on APRIL 14, 2005, I caused to be mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Public Admonition with Terms) to the Respondent, Audrey Freeman Jacobs, 2214 East Marshall Street, Richmond, VA 23223-7059, her last address of record with the Virginia State Bar.

Harry M. Hirsch

VIRGINIA:
BEFORE THE FOURTH DISTRICT SECTION II SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DORATHEA J. PETERS
VSB Docket No. 04-042-1688

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On the 27th day of May, 2005, a meeting in this matter was held before a duly convened a subcommittee of the Fourth District, Section II, Committee consisting of J. Casey Forrester, Esquire, William P. Bock, and Robert K. Coulter, Esquire, presiding.

Pursuant to Part 6, § IV, & 13(G)(1)(c) of the Rules of Virginia Supreme Court, a subcommittee of the Fourth District Committee, Section II, of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Dorathea J. Peters, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In August of 2003, the Complainant, Edward E. Bailey, hired the Respondent to assist him in obtaining child visitation. At the time of the onset of the representation the Complainant was a North Carolina resident whose children were living in Virginia. The Complainant explained to the Respondent that he had not seen his children in a significant period of time, that one of his children suffered from a chronic disease, and that he wished the matter to be attended to promptly. The Respondent assured the Complainant that she would address the matter.

3. The Complainant paid the Respondent $2,000.00 in advance fees as requested.

4. The Complainant alleges that after hiring the Respondent, the Complainant had great difficulty in communicating with Ms. Peters. Repeated telephone calls to the Respondent's office were not returned. On November 3, 2003, the Complainant sent correspondence to the Respondent via Certified mail. The Respondent failed to respond to three postal attempts at delivery. In early December of 2003, having hired the Respondent four months prior and having received no indication that any work had been performed on his case, Mr. Bailey discharged the Respondent from further representation and requested a refund of unearned fees. Ms. Peters neither acknowledged Mr. Bailey's letter nor did she return any funds to him at that time.

5. Mr. Bailey subsequently filed a complaint with the Virginia State Bar on December 12, 2003. The complaint was forwarded to the Respondent on January 6, 2004. Correspondence accompanying the complaint included the following language, set forth in bold type, **" . . . please review the complaint and provide this office with a written answer . . . within twenty-one (21) days of the date of this letter."** The Bar's January 6th correspondence also informed Ms. Peters that if no response was received pursuant to the twenty-one day deadline, that the matter would be filed with the district committee for further action.

6. The Respondent failed to respond to Mr. Bailey's complaint. On February 23, 2004 the matter was referred for further investigation and assigned to Virginia State Bar investigator Earl Walts.

7. For three months, Mr. Walts attempted to obtain information from the Respondent. On March 9, 2004, Investigator Walts sent Ms. Peters a written request for documents; the Respondent failed to reply. On March 26, 2004, Investigator Walts left a telephone message for the Respondent on her office line to which she did not reply. On April 5, 2004, Mr. Walts again left a telephone message for the Respondent on her office line to which she did not reply. On April 9, 2004, Investigator Walts left a message on Ms. Peters' office line, requesting a response and informing her that if no return contact was made that he would secure her appearance by subpoena for an interview regarding the Bar complaint. Mr. Walts attempted telephone contact again on April 16, 2004. The Respondent failed to respond to his telephone voice mail.

8. On May 12, 2004, the Bar issued a Subpoena and a Subpoena Duces Tecum with a return date of May 27, 2004. Personal service of the subpoena was accomplished on May 18, 2004. With the Bar's consent, the interview date was changed at the request of the Respondent to June 4, 2004.

9. During the June 4th interview, the Respondent admitted to Mr. Walts that she had failed to communicate with Mr. Bailey and done very little work on his case. A review of the Complainant's client file on June 4th revealed a four paragraph Petition for Change in Visitation that had been prepared by the Respondent but never filed. The Respondent also admitted at that time that she did not have an explanation for failing to communicate with the Complainant, although she knew that she should have done so, nor did she have any explanation for failing to return the unearned portion of the fees when it was requested by the Complainant in December of 2003.

10. The Respondent further informed Investigator Walts that she had not placed the fees received from the Complainant in her trust account, but rather in her operating account. She also stated that she had not used her trust account, or reconciled it, for over a year, and had been depositing fees, which she claimed were not advance fees, directly into her operating account.

11. During the June 4th interview, the Respondent also informed Investigator Walts that she had no reason or explanation for failing to respond to the Bar complaint.

12. By check dated May 29, 2004, nine months following initiation of the attorney-client relationship, the Respondent reimbursed Mr. Bailey $1,850.00 of the advance fee he paid her.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

RULE 1.3 Diligence

(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.

(c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(c) A lawyer shall:

(1) promptly notify a client of the receipt of the client's funds, securities, or other properties;

(2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

(d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book entry custody account), except in the following cases:

(1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:

(i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;

(ii) funds of $5,000.00 or less with respect to each trust or other fiduciary relationship;

(iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or

(iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia §§ 55-58 through 55-67 are applicable;

(2) funds, securities, or other properties may be maintained in a common account:

(i) where a common account is authorized by a will or trust instrument;

(ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or

(iii) where (a) a computerized or manual accounting system is established with record keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term “fiduciary” includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney in fact.

(e) Record Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called “lawyer,” shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a

journal for this purpose. If separate cash receipts journals are not maintained for escrow and non escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non escrow disbursements;

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise early identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting record required under this Rule;

(v) the records required under this subsection shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under subsection (i), above

(iii) the records required under this subsection shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds,

irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

(iii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

(iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefor. A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;

(vi) Definitions. "Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, *pro hac vice* or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full time employee;

"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to escrow accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3 508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under Uniform Commercial Code Section 4 104, if sufficient funds were available.

(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non escrow funds other than fees and retainers. Mixed escrow and non escrow funds shall be deposited intact to the escrow account. The non escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

(4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.

(i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and

(ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(5) Reconciliations.

(i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;

(ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 1.16 Declining Or Terminating Representation

(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).

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

(b) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6[.]

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by the deadlines set forth below, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand With Terms. The terms and conditions which shall be met by the deadlines as set forth are:

1. On or before July 1, 2005, the Respondent shall submit to a psychiatric evaluation to be conducted by a psychiatrist of her selection licensed to practice as such in the Commonwealth of Virginia, the District of Columbia, and/or the State of Maryland. With due regard to the confidentiality of client matters, the Respondent shall acquaint the psychiatrist with Respondent's conduct which gave rise to the instant complaint made to the Virginia State Bar, as referred to in the Statement of Facts set forth *supra*.

2. The Respondent shall cooperate fully with the psychiatrist during the course of the evaluation, and shall thereafter comply with the recommendations, if any, made by the psychiatrist as a result of the evaluation performed. Such compliance shall include, but not be limited to, attending all further therapy and counseling sessions with the psychiatrist and/or other health care providers as may be recommended by the psychiatrist; and submitting to all such further testing and evaluation as may be recommended by the psychiatrist during the course of Respondent's treatment and care by the psychiatrist. The Respondent's obligation to comply with any and all recommendations of the psychiatrist shall be in force and effect until July 1, 2006, notwithstanding anything to the contrary set forth herein.

3. The Respondent shall provide the psychiatrist with a copy of this Agreed Disposition of a Public Reprimand With Terms bearing the endorsement of the Respondent.

4. The Respondent shall provide the psychiatrist with a release which authorizes and directs the psychiatrist to promptly furnish the Virginia State Bar, c/o Marian L. Beckett, Assistant Bar Counsel, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314, with a written report which summarizes the findings made as a result of the psychiatric

evaluation, and which sets forth a treatment plan for the Respondent, if any, as a result thereof. The Respondent shall also authorize and direct the psychiatrist to furnish the Virginia State Bar with regular periodic status reports, at quarterly intervals at a minimum, respecting the treatment, care and progress of the Respondent following the initial psychiatric evaluation.

5. The Respondent shall be obligated to pay when due the psychiatrist's fees and costs for services (including provision to the Bar and to Respondent of information concerning this matter).

6. On or before June 15, 2005, the Respondent shall review in full Rule 1.15 of the Virginia Rules of Professional Conduct. The Respondent shall present proof of compliance with this term by certifying in writing her review of such rule by the date specified. Such proof shall be provided in correspondence to Marian L. Beckett, Esquire, Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314. Documentation of compliance shall be mailed timely in order to be received by Ms. Beckett on or before June 15, 2005.

7. On or before June 15, 2005, the Respondent shall review in full Virginia Legal Ethics Opinion No. 999. The Respondent shall present proof of compliance with this term by certifying in writing her review of such opinion by the date specified. Such proof shall be provided in correspondence to Marian L. Beckett, Esquire, Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314. Documentation of compliance shall be mailed timely in order to be received by Ms. Beckett on or before March 15, 2005.

8. On or before the July 1, 2005, the Respondent shall engage the services of one of the following law office management consultants to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct:

Janean S. Johnston, Esquire
250 South Reynolds Street, #710
Alexandria, Virginia 22304-4421
Phone: (703) 567-0088

Kathleen Uston, Esquire
127 South Fairfax Street, #152
Alexandria, VA 22314
Phone: (703) 683-0440

In the event the consultant determines that Respondent is in compliance with said Rule, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with Rule 1.15, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that the Respondent must take to bring herself into compliance with said Rule.

9. The Respondent shall be obligated to pay when due the law office management consultant's fees and costs for services (including provision to the Bar and to Respondent of information concerning this matter).

10. In the event the Respondent is determined by the consultant to be not in compliance with Rule 1.15, she shall have sixty (60) days following the date the consultant issues its written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring herself into compliance. The consultant shall be granted access to Respondent's office, books, and records, following the passage of the sixty (60) day period to determine whether Respondent has brought herself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought herself into compliance with the said Rule within the sixty day (60) period, or that she has failed to do so. Respondent's failure to

bring herself into compliance with Rule 1.15 as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

11. Unless an extension is granted by the Bar for good cause shown to accommodate the law office management consultant's schedule, the terms specified in paragraphs 8, and 10, *supra*, shall be completed no later than November 1, 2005.

Upon satisfactory proof that the above noted terms and conditions have been complied with, in full, a PUBLIC REPRIMAND WITH TERMS shall then be imposed, and this matter shall be closed. If, however, the Respondent fails to comply with any of the terms set forth herein, as and when her obligation with respect to any such Term has accrued, then, and in such event, the alternative disposition of CERTIFICATION TO THE VIRGINIA STATE BAR DISCIPLINARY BOARD shall be imposed, upon an agreed stipulation of facts and misconduct as the facts and misconduct are set forth herein for the sole purpose of the imposition of a sanction deemed appropriate by the Virginia State Bar Disciplinary Board.

IV. COSTS

Pursuant to Part Six, § IV, ¶ 13 (B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

FOURTH DISTRICT SECTION II SUBCOMMITTEE OF THE VIRGINIA STATE BAR
By Robert Kirk Coulter, Esquire
Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 13th day of June, 2005, mailed a true and correct copy of the Subcommittee Determination (Public Reprimand With Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Dorathea J. Peters, Esquire, at 1427 Powhatan St., Alexandria, VA 22314-1343, her last address of record with the Virginia State Bar, and by first class mail, postage prepaid, to counsel for the Respondent, David G. Barger, Esquire, Williams Mullin, P.C., 8270 Greensboro Drive, Suite 700, McLean, VA 22102.

Marian L. Beckett

VIRGINIA:
BEFORE THE NINTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DION FRANCIS RICHARDSON
VSB Docket No.: 05-090-1878

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Reprimand without Terms)

On April 12, 2005, a duly convened Ninth District Subcommittee consisting of Joy Lee Price, Esquire (Chair presiding), Phillip D. Payne, IV, Esquire, and Theodore Bruning, Jr., lay member, met and considered these matters.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.c(3) of the Rules of the Supreme Court of Virginia, the Ninth District Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Dion Francis Richardson ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Reprimand without Terms:

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. Respondent agreed to represent Grace W. Nichols ("Ms. Nichols") in connection with a personal injury claim. An April 18, 2001 Fee Agreement memorialized the representation.

3. Respondent filed a lawsuit on Ms. Nichols' behalf on February 21, 2002 in the Circuit Court for the City of Roanoke, Case No. CL03-205, but Respondent did not serve the lawsuit on the defendants.

4. Having failed to serve the lawsuit upon the defendants within 1 year after it was filed in accordance with Rule 3:3 of the Rules of the Supreme Court of Virginia, Respondent took a voluntary nonsuit of Ms. Nichols' personal injury claim without first consulting with Ms. Nichols.

5. By March 19, 2004 correspondence with counsel for Verizon Communications, Inc.—a party intervening in the case seeking subrogation for workers' compensation benefits paid to Ms. Nichols—Respondent stated, in part, "[u]pon entry of the nonsuit Order, the motion for judgment will be re-filed and served upon the defendants."

6. The Nonsuit Order was entered by the circuit court on April 4, 2004; however, Respondent did not re-file and serve the motion for judgment within the longer of 6 months or within the remaining time under the original statute of limitations pursuant to Va. Code § 8.01-299.

7. Respondent's file contains correspondence from Ms. Nichols stating, in part, that she had not heard from Respondent for 14 months and that she contacted the Court to discover that the case was closed as of April 2004. The correspondence further states that "[p]lease let me know what is going on. I put trust in you. It's been 2 months since it was closed out."

8. Respondent neither informed Ms. Nichols of the reasons for the nonsuit nor protected Ms. Nichols by informing her of her obligations to re-file the motion for judgment.

NATURE OF MISCONDUCT

The foregoing findings of fact give rise to the following violations 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.

RULE 1.16 Declining or Terminating Representation

(c) 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).

SUBCOMMITTEE DETERMINATION

It is the decision of the Ninth District 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.c(3) of the Rules of the Supreme Court of Virginia. WHEREFORE, the Respondent is hereby issued a Public Reprimand without Terms.

The Clerk of the Disciplinary System is directed to assess the appropriate administrative fees.

NINTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR
By: Joy Lee Price, Esquire
Subcommittee Chair Presiding

CERTIFICATE OF SERVICE

I certify I have, this the 31st day of May, 2005, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand without Terms) to Respondent Dion Francis Richardson, at his last address of record with the Virginia State Bar, Allied Arts Building, Ste. 15B, 725 Church Street, Lynchburg, VA 24505.

Scott Kulp
Assistant Bar Counsel

VIRGINIA:
BEFORE THE FIRST DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
JAMES BELL THOMAS
VSB Docket Nos. 05-010-1103, 05-010-1521 and 05-010-1522

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On May 6, 2005 a meeting in this matter was held before a duly convened First District Subcommittee consisting of Tyrone J. Melvin, Sr., Whitney G. Saunders, Esq., and Robert W. Jones, Jr., Esq., Chair Presiding. At that time, the Subcommittee voted to set these matters for a hearing before the District Committee but also authorized Assistant Bar Counsel to agree to a Public Admonition with Terms should the Respondent be so inclined. The Respondent, with the advice of counsel, did enter into a written agreement for a Public Admonition with Terms of the type authorized by the Subcommittee. As such, pursuant to Part 6, Section IV, Paragraph 13(G)(1)(c)(1) of the Rules of the Virginia Supreme Court, the First District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition With Terms:

I. FINDINGS OF FACT

1. At all times material to these matters, the Respondent, James Bell Thomas (Thomas), was an attorney licensed to practice law in the Commonwealth of Virginia.

The Graves Appeal 05-010-1103

2. Thomas represented one Graves in an appeal of criminal convictions to the Court of Appeals of Virginia (the Court of Appeals).

3. Although Thomas states he mailed the Petition for Appeal to the Court of Appeals several days before the due date, the Petition for Appeal was not received by that Court until after the due date and was not mailed by certified mail. As a result, on June 9, 2004, the Court of Appeals entered an order dismissing Graves' appeal.

4. Thomas did not advise Graves of the dismissal until a letter dated August 30, 2004, after Graves filed his complaint with the Bar. He said at that time he did not know the reason for the dismissal but would check. Thomas later wrote Graves on October 6, 2004, indicating the reason for the dismissal and suggesting a habeas corpus proceeding to secure a delayed appeal.

[Rules applicable: 1.3(a) and 1.4(a)]

The Richardson Appeal 05-010-1521

5. Thomas represented one Richardson in an appeal of criminal convictions to the Court of Appeals.

6. Although Thomas states he mailed the Notice of Appeal to the Hampton Circuit Court several days before the due date, the Notice of Appeal was not received by that Court until after the due date and was not mailed by certified mail. As a result, on April 29, 2004, the Court of Appeals entered an order dismissing Richardson's appeal.

7. Thomas did not advise Richardson of the dismissal until a letter dated November 11, 2004, after the Bar received a copy of the dismissal order and opened a complaint file against Thomas. Thomas recommended a habeas corpus proceeding to secure a delayed appeal.

[Rules applicable: 1.3(a) and 1.4(a)]

The Crews Appeal 05-010-1522

8. Thomas represented one Crews in an appeal of criminal convictions to the Court of Appeals.

9. Although Thomas states he mailed the Notice of Appeal to the Hampton Circuit Court several days before the due date, the Notice of Appeal was not received by that Court until after the due date and was not mailed by certified mail. As a result, on August 11, 2003, the Court of Appeals entered an order dismissing Crews' appeal.

10. By the time the appeal was dismissed, Crews had served his jail time and been released. Thomas was unable to locate him to advise him of the dismissal.

[Rule applicable: 1.3(a)]

II. NATURE OF MISCONDUCT

The following Disciplinary Rules are deemed to have been violated:

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.

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Subcommittee that Respondent receive a Public Admonition With Terms pursuant to Part Six, Section IV, Paragraph 13(G)(1)(c)(1) of the Rules of the Supreme Court of Virginia, and the Respondent is herewith Admonished. The Term shall be that, within six months of the date of this Determination, Respondent must take four (4) hours of Continuing Legal Education courses addressing appeallate procedure, which hours shall not be counted towards his yearly mandatory CLE requirement, and shall so certify in writing to Assistant Bar Counsel. If, however, the Respondent fails to meet this Term within the time specified, the Respondent shall be given a Public Reprimand by the First District Committee as an alternative sanction.

FIRST DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR
By: Robert W. Jones Jr.
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on the 12th day of July, 2005, I mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the Subcommittee Determination (Public Admonition With Terms) to James Bell Thomas, Esq., Respondent, at 241 South Armistead Avenue, Hampton, Virginia 23669, his last address of record with the Virginia State Bar, with a copy by regular mail to his counsel, Russell V. Palmore, Jr., Esq., P.O. Box 1122, Richmond, Virginia 23218-1122.

Richard E. Slaney

Notice of Petition for Reinstatement

Pursuant to Part 6, Section IV, Paragraph 13.I. of the Rules of the Supreme Court of Virginia, ***Bruce Wilson McLaughlin*** *petitioned the Court on May 13, 2005, for reinstatement of his license to practice law. A hearing will be held before the Virginia State Bar Disciplinary Board on Friday, August 26, 2005, at 9:00 a.m. in State Corporation Commission Courtroom A, located at the Tyler Building, 1300 East Main Street, Second Floor, Richmond. After hearing evidence and oral argument, the board will make factual findings and recommend to the Court whether the petition should be granted or denied. The board seeks information about Mr. McLaughlin's fitness to practice law. Written comments or requests to testify at the hearing may be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, or by email to* **clerk@vsb.org**, *by Wednesday, August 17, 2005. Letters will become a matter of public record.*

BRUCE WILSON MCLAUGHLIN
Address: Apartment 202, 1110 Huntmaster Terrace, Leesburg, VA 20176
License Date: August 26, 1980
Revocation Date: January 26, 2001

On January 25, 2001, Mr. McLaughlin surrendered his license based upon his July, 2000, plea of guilty to, and conviction of, the offense of escape, a felony. His attempt to escape from custody was followed by a reversal of the criminal convictions for sexual offenses that led him to be incarcerated. He states in his petition that the escape was spontaneous, unplanned, nonviolent and short-lived; that he has fully served his sentence and successfully completed his probation on the escape conviction; that his ability to complete his military career is seriously jeopardized by the loss of his law license; and that he has been a positive role model for his children, a valuable employee, and a productive citizen. Mr. McLaughlin states that he has satisfied all conditions required for reinstatement and that he is fit to practice law.

Clients' Protection Fund Board Petitions Paid

On April 8, 2005, the Clients' Protection Fund Board approved payments to twenty-six clients. The matters involved fourteen attorneys.

Attorney/Location	Amount Paid	Type of Case
John W. Acree, Virginia Beach	$25,000.00	Embezzlement/Real estate refinance
Robert D. Eisen, Norfolk	$1,000.00	Unearned Retainer/Criminal representation
Arthur C. Ermlich, Sr., Deceased	$4,000.00	Embezzlement/Personal injury settlement
Arthur C. Ermlich, Sr., Deceased	$2,401.15	Embezzlement/Personal injury settlement
Arthur C. Ermlich, Sr., Deceased	$3,101.06	Embezzlement/Personal injury settlement
Sam Garrison, Roanoke	$1,250.00	Unearned Retainer/Driving violation
Roger Cory Hinde, Richmond	$800.00	Unearned Retainer/Driving violation
Margaret E. Hyland, Fredericksburg	$500.00	Unearned Retainer/Divorce
Jeffrey Paul Kantor, Arlington	$645.00	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$4,394.60	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$1,000.00	Unearned Retainer/Civil suit
Steven Y. Lee, Fairfax	$4,521.14	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$3,617.99	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$2,514.84	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$2,714.84	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$4,521.14	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$12,834.14	Unearned Retainer/Immigration matter
Steven Y. Lee, Fairfax	$11,294.98	Unearned Retainer/Immigration matter
George E. Leedom, Richmond	$2,500.00	Unearned Retainer/Divorce
George E. Leedom, Richmond	$2,100.00	Unearned Retainer/Divorce
Beverly M. Murray, Petersburg	$1,750.00	Unearned Retainer/Employment matter
Beverly M. Murray, Petersburg	$1,750.00	Unearned Retainer/Divorce
Patrick R. Owen, Arlington	$2,634.82	Unearned Retainer/Immigration matter
John H. Partridge, Herndon	$3,000.00	Unearned Retainer/Employment matter
James F. Pascal, Richmond	$4,750.00	Unearned Retainer/Securities arbitration
Eric Chong Yim, Annandale	$2,351.80	Unearned Retainer/Immigration matter
Total	**$106,947.50**	

Clients' Protection Fund Board Petitions Paid

On June 10, 2005, the Clients' Protection Fund Board approved payments to seven clients. The matters involved five attorneys.

Attorney/Location	Amount Paid	Type of Case
Clifford K. Allison, Virginia Beach	$3,200.00	Embezzlement/Escrow funds
Clifford K. Allison, Virginia Beach	$10,488.62	Embezzlement/Mortgage refinance transaction
Dianne Theresa Carter, Newport News	$600.00	Unearned retainer/Divorce
Arthur C. Ermlich, Sr., Deceased	$6,545.85	Embezzlement/Personal injury settlement
Samuel G. Kooritzky, Vienna	$3,400.00	Unearned retainer/Immigration matter
Samuel G. Kooritzky, Vienna	$150.00	Unearned retainer/Employment discrimination case
Charles Everett Malone, Norfolk	$725.00	Unearned retainer/Divorce
Total	**$25,109.47**	