Disciplinary Actions

The following orders have been edited. Administrative language has been removed to make the opinions more readable.

Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Oliver Stuart Chalifoux	Glen Allen	5 Year Suspension	December 19, 2004	21
Cary Powell Moseley	Lynchburg	1 Year Suspension	March 1, 2005	n/a
Disciplinary Board				
David H.N. Bean	Strasburg	2 Year Suspension	February 1, 2005	23
Michael J. Biddinger	Woodbridge	Public Reprimand, w/Terms	January 3, 2005	27
Oliver Stuart Chalifoux	Glen Allen	Summary Suspension	January 28, 2005	n/a
Walter Franklin Green IV*	Harrisonburg	60 Day Suspension	January 15, 2005	29
Robert Edmund LaSerte	Vienna	5 Year Suspension	July 26, 2005	30
Khalil Wali Latif	Farmville	2 Year Suspension	January 28, 2005	n/a
Jimmie Ray Lawson II	Collinsville	Summary Suspension	February 8, 2005	n/a
Robert Spencer Lewis	Martinsville	Revocation	January 12, 2005	n/a
Charles Evertt Malone	Norfolk	2 Year Suspension, w/Terms	December 10. 2004	32
Jamie Scott Osborne	Manassas	Revocation	January 28, 2005	n/a
Alice Kate Markle Twiford	Williamsburg	Revocation	February 2, 2005	n/a
District Committees				
Christopher Leon Anderson	Richmond	Public Admonition w/Terms	December 15, 2004	35
James Willis Hilldrup	Fredericksburg	Public Reprimand w/Terms	January 13, 2005	37
James Willis Hilldrup	Fredericksburg	Public Reprimand w/Terms	January 13, 2005	38
Kenneth Paul Mergenthal	Fredericksburg	Public Reprimand w/Terms	December 14, 2004	40

Other Actions

Impairment Suspensions

Respondent's Name	Address of Record	Jurisdiction	Effective Date	Page
Steven Edgar Bennett	Williamsburg	Disciplinary Board	November 19, 2004	n/a
David Michael Shapiro	Richmond	Disciplinary Board	October 22, 2004	n/a

Cost Suspensions

Robert Dean Eisen	Norfolk	Disciplinary Board	December 17, 2004	n/a
Leslie Wayne Lickstein	Farifax	Disciplinary Board	December 17, 2005	n/a
Charles Everett Malone	Norfolk	Disciplinary Board	February 9, 2005	n/a
Stephen John Perrella	Coronado, CA	Disciplinary Board	January 28, 2005	n/a
Richard A. Pizzi	Baskingridge, NJ	Disciplinary Board	December 16, 2005	n/a

Interim Suspensions

Oliver Stuart Chalifoux	Glen Allen	Failure to Comply w/Subpoena	January 4, 2005	n/a
Robert Spencer Lewis	Martinsville	Failure to Comply w/Subpoena	December 21, 2004	n/a
Robert Ray Stone Jr.	Arlington	Failure to Comply w/Subpoena	February 1, 2005	n/a
Alice Kate Markle Twiford	Williamsburg	Failure to Comply w/Subpoena	December 28, 2004	n/a

* *Respondent has noted an appeal to the Supreme Court of Virginia*

Circuit Court

VIRGINIA:

IN THE CIRCUIT COURT
OF THE COUNTY OF HENRICO

Virginia State Bar, ex rel
Seventh District Subcommittee
v.
Oliver Stuart Chalifoux
(Respondent)
Case No. CL04-1066

Memorandum Order

This cause came on for hearing on November 19, 2004 before a duly appointed Three-Judge Court consisting of the Honorable Joseph E. Spruill, the Honorable Frank A. Hoss and the Honorable Pamela S. Baskervill, Chief Judge Designate; upon the Rule to Show Cause of this Court; pursuant to Va. Code §§ 54.1-3935 and 8.01-261(17) and Rules of Court, Part Six, § IV, Paragraph 13. Respondent Oliver Stuart Chalifoux appeared in person, pro se. Linda Mallory Berry appeared on behalf of the Virginia State Bar (VSB).

Upon the evidence presented and arguments of counsel, the Court finds that the VSB has proved by clear and convincing evidence the following facts:

A. General Factual Findings

1. Oliver Stuart Chalifoux was licensed to practice law in the Commonwealth of Virginia on May 10, 1977.

2. On March 16, 1989, in Docket No. 88-031-0086, the Disciplinary Board of the Virginia State Bar (Disciplinary Board) issued a Private Reprimand for violation of Disciplinary Rule (DR) 6-101(B) and (C). The Disciplinary Board found that Mr. Chalifoux failed to attend promptly to matters for which he had been engaged until completed or until he had properly and completely withdrawn from representing his client. The Disciplinary Board issued a Private Reprimand to Mr. Chalifoux.

3. On March 16, 1989, the Disciplinary Board separately found, in Docket No. 87-031-0957, violations of Disciplinary Rules 6-101(C) and 7-101(A)(5) of the Code of Professional Responsibility. The Disciplinary Board determined that Mr. Chalifoux did not keep his client reasonably informed about matters in which his services were being rendered. In addition, Mr. Chalifoux made a false statement of fact when he wrote a letter informing the heirs of the estate that the Final Accounting had been filed with the Commissioner of Accounts, when, in fact, Mr. Chalifoux knew that such an accounting had not been filed. The Disciplinary Board issued a second Private Reprimand to Mr. Chalifoux.

4. The license of Oliver Stuart Chalifoux to practice law within the Commonwealth of Virginia was suspended administratively on October 16, 1991, for noncompliance with Mandatory Continuing Legal Education (MCLE), annual dues and professional liability requirements. Mr. Chalifoux complied with the MCLE requirements on November 12, 1991, and was reinstated on November 13, 1991.

5. The Disciplinary Board suspended the license of Oliver Stuart Chalifoux to practice law within the Commonwealth of Virginia for disciplinary reasons for thirteen months effective February 25, 1993. The Disciplinary Board determined that, during the period of his administrative suspension, Mr. Chalifoux held himself out as an attorney and engaged in the practice of law but neglected certain matters undertaken during the suspension period and failed to communicate with his clients. In two separate disciplinary matters (Docket Nos. 92-033-0771 and 92-033-0882, Mr. Chalifoux was found in violation of DR 1-102(A)(3 and 4); DR 6-101 (B, C and D); DR 7-101(A)(1-3); DR 9-102(A) (1 and 2) and (B)(1 and 2); DR 9-103(A)(1-3) and (B)(2-6). Mr. Chalifoux did not have a trust account, did not deposit client funds collected in a trust account, did not pay over collected funds as they were collected, and did not make regular accountings of rents received.

6. On May 3, 1993, Mr. Chalifoux's license was suspended administratively for failure to pay costs associated with the above-referenced disciplinary suspension. On September 26, 1994, a Subcommittee of the Third District Committee, Section III, issued a Dismissal for Exceptional Circumstances to Mr. Chalifoux. The Subcommittee cited as the exceptional circumstances the fact that Mr. Chalifoux had not sought reinstatement of his license to practice law since his disciplinary suspension in 1993, and the fact that Mr. Chalifoux was barred, at that time, from resuming his law practice until he complied with certain administrative requirements.

7. The administrative suspension was lifted by order of the Disciplinary Board on September 24, 1999. The thirteen-month disciplinary suspension was lifted upon the entry of an order of the Disciplinary Board on November 3, 1999, when Mr. Chalifoux finally took all necessary steps required by the Rules of the Supreme Court of Virginia to reinstate his license from the suspension. Those steps included but were not limited to completing MCLE requirements and passing with a score above 85, the Multi-state Professional Responsibility Examination.

8. On October 24, 2003, the Disciplinary Board suspended the license of Oliver Stuart Chalifoux to practice law within the Commonwealth of Virginia on an interim basis. The interim suspension was imposed as a result of Mr. Chalifoux's failure to comply with a subpoena duces tecum issued by the VSB and personally served on him on September 9, 2003. The interim suspension was lifted by order of the Disciplinary Board on November 6, 2003, after Mr. Chalifoux complied with the terms of the subpoena duces tecum.

B. VSB Docket No. 03-033-3680
Complainant: Roger and Deborah Socha

1. In the mid-1990s, Deborah and Roger Socha began using the services of Oliver Stuart Chalifoux for their business and personal tax work. Mr. Chalifoux was a close friend of Mrs. Socha's half-brother, Jerry Coyle.

2. The Sochas knew that Mr. Chalifoux was an attorney. They stated to a Virginia State Bar (VSB) investigator that they

used Mr. Chalifoux's services because they believed that he would be able to answer questions they might have about the filings with the State Corporation Commission. These questions concerned the start-up of Mr. Socha's new business, System Automation, Inc., a small business corporation (S-Corporation), which was incorporated on August 1, 1998, to do electrical engineering project solutions.

3. Deborah Socha knew that Mr. Chalifoux had been suspended for a period in early 1990 from the practice of law. Mr. Socha, however, stated that he was unaware of that information during much of the time that Mr. Chalifoux advised him on his business incorporation, contracts and tax matters.

4. In May 1999, Roger Socha received an invoice dated May 24, 1999, signed "O. Stuart Chalifoux," for services rendered by Mr. Chalifoux for the preparation of the Articles of Incorporation for System Automation, Inc., preparation of Form SS-4 (Application for Employer Identification Number) and preparation of Form 2553 (Election by a Small Business Corporation).

5. On March 15, 2001, Mr. Chalifoux filed Form 500E, Virginia Corporate Income Tax Extension Payment Voucher and Tentative Tax Return, for System Automation, Inc. and signed "O. Stuart Chalifoux, Esq.". On August 13, 2001, Mr. Chalifoux signed an Application for Additional Extension of Time to File U. S. Individual Income Tax Return for the Sochas in exactly the same way.

6. On July 25, 2002, the Sochas paid Mr. Chalifoux a $200.00 deposit by check and gave him, for the 2001 tax year, their personal invoices, receipts, and bank statements, as well as the invoices, receipts and bank statements for System Automation, Inc., Mr. Socha's business. The check was cashed out on July 26, 2002.

7. In September 2002, Mr. Chalifoux told the Sochas that their tax returns were completed, and yet, Mr. Chalifoux testified in an October 24, 2003 hearing before the Disciplinary Board that the tax returns "have essentially been finished since back in January and February," i.e., of 2003. (Tr. 10/24/2003, Docket No. 03-033-3680, at 35 ll. 8-11)

8. In previous years, the Sochas gave Mr. Chalifoux money to begin work on their taxes, and Mr. Chalifoux arranged to deliver the returns to the Sochas' home and to pick up the Sochas' check for the balance due him for preparation of the returns. An appointment was made for Mr. Chalifoux to come to the Sochas' home after his telephone call in September 2002. Mr. Chalifoux, however, broke the original appointment to deliver the Sochas' returns and missed several other appointments.

9. Mr. Chalifoux did not return the telephone messages left by the Sochas in their attempts to set up new appointments. The Sochas reported attempts to retrieve the returns from Mr. Chalifoux that including waiting for approximately three hours for Mr. Chalifoux to finish with a client, only to be told the tax returns they sought were at Mr. Chalifoux's home.

10. The Sochas finally asked that Mr. Chalifoux return the invoices, receipts and bank statements to them even if the tax returns were not completed. Mr. Chalifoux, however, did not contact the Sochas. Instead, Mr. Chalifoux spoke with Mr. Coyle telling him that the bill for the Sochas' taxes was the same as last year. When told this information, the Sochas left their check, dated March 13, 2003, for $500.00, with Mr. Coyle. Mr. Chalifoux did not take the Sochas tax returns and documents to the Coyles' home nor did he retrieve the check. Mrs. Socha took the check back from the Coyles' custody in July 2003.

11. On May 30, 2003, the Virginia State Bar received a complaint by the Sochas alleging violations of the Rules of Professional Conduct by Oliver Stuart Chalifoux. A disciplinary file was opened and assigned to the Office of Bar Counsel for preliminary investigation on or about June 3, 2003. Mr. Chalifoux made no response to the Office of Bar Counsel regarding this complaint. Accordingly, bar counsel requested a full investigation.

12. On September 9, 2003, Mr. Chalifoux was served personally with a subpoena duces tecum as part of the investigation of the complaint. Mr. Chalifoux did not comply with the subpoena, even after he was given an extension of time and he made several promises by telephone to take his response to the bar offices. Therefore, a Notice of Non-Compliance and Request for Interim Suspension was filed by bar counsel and a hearing was set for October 24, 2003.

13. During the hearing before the Disciplinary Board, Mr. Chalifoux offered into evidence a cover letter and an invoice, which he stated he was mailing to the Sochas on October 24, 2003. The cover letter and invoice concerned the preparation of 2001 Form 1120S, U.S. Income Tax Return for an S Corporation; Form 500S, Virginia Small Business Corporation Return of Income; 2001 Form 1040, U.S. Individual Income Tax Return; and Form 760, Virginia Individual Income Tax Return, and was dated October 24, 2003. The cover letter and invoice, offered as Defendant's Exhibit 6, was received as Respondent's Exhibit 6. (Tr. 10/24/2003, Docket No. 03-033-3680, at 29 ll. 22-25)

14. On October 28, 2003, Mr. Chalifoux complied with the terms of the subpoena duces tecum. On November 6, 2003, the interim suspension was lifted.

15. On November 17, 2003, the Sochas paid a total of $1,312.10 by check to Mr. Chalifoux and received their 2001 tax returns and all documentation formerly provided to Mr. Chalifoux.

C. VSB Docket No. 04-033-2472
Complainant: VSB/Anonymous

1. Mr. Chalifoux's signed billing for services rendered was admitted into evidence without objection as VSB Exhibit 7 at the October 24, 2003 Disciplinary Board hearing. Mr. Chalifoux testified under oath that VSB Exhibit 7 is a bill that he rendered and that the bill shows billing for the preparation of Articles of Incorporation.

2. Mr. Chalifoux denied preparation of the Articles of Incorporation for Mr. Socha's business despite claiming that he rendered a bill to the Sochas for preparation thereof. Mr. Chalifoux offered into evidence his own exhibit, Respondent Exhibit 2, which is an unsigned bill

also dated May 24, 1999. Mr. Chalifoux testified that he did not bill the Sochas for the preparation of the Articles of Incorporation. Instead, it was Mr. Chalifoux's testimony that he billed the Sochas for coming down to the State Corporation Commission and getting samples of articles of incorporation and taking the samples back to the Sochas.

3. During the Disciplinary Board hearing, Mr. Chalifoux testified that if he has any doubt in his mind, he regards anything that he is doing with respect to tax issues as falling under his law practice and not his tax practice. His law practice and his tax practice both are incorporated, with Mr. Chalifoux as their sole principal. Mr. Chalifoux also testified that he moves between his role as tax preparer and his role as lawyer. If a client is there to see him abut a tax return and they get into something legal, unless actual legal work is involved, he just roll[s] with the advice" but bills at tax accounting rates.

4. During the Disciplinary Board hearing, Mr. Chalifoux also testified that, as far as the Internal Revenue Service was concerned, the Sochas had a late return, a misdemeanor under the Internal Revenue Code, because he had not filed their tax return for 2001, based on non-payment to him by the Sochas for the preparation of their taxes. Mr. Chalifoux testified that the bar investigator and assigned bar counsel conspired to get the returns for the Sochas without paying Mr. Chalifoux for the preparation.

5. Mr. Chalifoux testified that he was suspended for a thirteen-month period simply because he lacked CLE credits. When actually confronted with his disciplinary record, he did not deny that he had a thirteen-month suspension because he practiced law during the CLE suspension of 60 days. He did not deny that he also received a thirteen-month suspension because he put money that should have gone in a trust account into his freezer, his drawer, the trunk of his car, and elsewhere.

6. On October 24, 2003, the Disciplinary Board, upon the pleadings, exhibits, and arguments presented, determined that Mr. Chalifoux was non-compliant with the subpoena duces tecum and that his testimony was "less than candid". The Disciplinary Board suspended Mr. Chalifoux's license to practice law in the Commonwealth of Virginia until he complied with the subpoena duces tecum and until he gave notices that are required by Section 13.M of the Rules of the Supreme Court. The interim suspension was lifted on November 6, 2003.

Upon the evidence presented and arguments of counsel, the Court finds that the Virginia State Bar has proved by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

(a) * * *

RULE 1.4 Communication

(a) * * *

RULE 1.15 Safekeeping Property

(c) (4) * * *

RULE 1.16 Declining Or Terminating Representation

(e) * * *

RULE 3.3 Candor Toward The Tribunal

(a) (1), (4) * * *

RULE 5.5 Unauthorized Practice Of Law

(a) (1) * * *

RULE 8.4 Misconduct

(b), (c) * * *

The Respondent made a motion to strike the bar's case after the bar rested and renewed the motion at the end of his case. In both instances, the motion to strike was denied. Evidence was presented and arguments by counsel were made on the issue of an appropriate sanction. The prior record of the respondent was presented by the bar. The Respondent's prior record consists of the following: one Dismissal for Exceptional Circumstances, two Private Reprimands, one Public Reprimand with Terms and one Thirteen-Month Suspension. These sanctions were issued in attorney disciplinary proceedings and include a thirteen-month suspension of Mr. Chalifoux's license to practice law in the Commonwealth of Virginia for lack of a trust account in which to deposit his clients' funds, failures to notify his clients of the receipt of funds and the failure to pay over collected funds as they were collected. The bar also presented relevant provisions of the most recent ABA Standards for Imposing Lawyer Sanctions. The Respondent presented two character witnesses.

The Court, based on the evidence presented, including the prior record, the credibility of the witnesses, the argument of counsel, the demeanor or the Respondent and what the Court felt to be the inability of the Respondent to recognize the consequences of his actions and to take appropriate responsibility, ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be SUSPENDED for a period of FIVE YEARS, effective December 19, 2004.

* * *

ENTERED THIS 24TH DAY OF JANUARY 2005.
Pamela S. Baskervill, Chief Judge Designate
Frank A. Hoss, Judge
Joseph E. Spruill, Jr., Judge

■■■

Disciplinary Board

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
DAVID H. N. BEAN
VSB DOCKET NO. 02-070-1395

ORDER OF SUSPENSION

This matter came on to be heard on December 10, 2004, before a panel of the Virginia State Bar Disciplinary Board (the "Board") composed of James L. Banks, Jr., Chair Designate, Bruce T. Clark, Glenn M. Hodge, Robert E. Eicher, and W. Jefferson O'Flaherty, lay member.

The Virginia State Bar ("VSB") was represented by Paul D. Georgiadis, Assistant Bar Counsel ("Bar Counsel"). David H. N. Bean (the "Respondent") appeared in person and represented himself.

* * *

The Chair Designate inquired of the members of the panel whether any of them had any personal or financial interest or any bias which would preclude any of them from hearing the matter fairly and impartially. Each member of the panel and the Chair Designate answered the inquiry in the negative.

The matter came before the Board on an Amended Certification from the Seventh District Committee of the VSB and the Respondent's answer. On November 30, 2004, the Respondent filed a motion for continuance of the hearing in this matter. The Chair Designate denied the motion for continuance on December 1, 2004. The Respondent stated at the hearing that he was ready to go forward. Following opening statements by Bar Counsel and the Respondent, Bar Counsel offered VSB Exhibits A and A-1 through A-14, VSB Exhibit B, and VSB Exhibits C and C-1 through C-10. The Respondent's pre-hearing objection to VSB Exhibit B and VSB Exhibits C and C-1 through C-10 was overruled by the Chair Designate in an order entered December 1, 2004. At the hearing the Respondent renewed his objection to VSB Exhibits C and C-1 through C-10. The Chair Designate overruled his objection, and all of the VSB Exhibits were admitted into evidence. Bar Counsel then called the following persons who testified as witnesses for the Bar: Ann G. Scher, Andrea H. Wynn, M.D., and William D. Cremmins. Bar Counsel rested the VSB's case-in-chief, and the Respondent then testified on his own behalf. The Respondent offered in evidence the transcripts of the deposition testimony of James R. Anderson and his wife, taken in the Anderson case, and audio tapes the Respondent represented to be a recording of his conversations with his client. Neither the transcripts nor the tapes had been pre-filed as exhibits as required by the Pre-Hearing Order entered on August 13, 2004. Bar Counsel objected, and the Chair Designate sustained the objection. The Respondent proffered the transcripts, which were then marked as Respondent's Proffered Exhibits 1 and 2, respectively, for the record in the proceeding. The Respondent then rested his defense, and Bar Counsel presented no rebuttal evidence. Bar Counsel and the Respondent presented closing argument.

I. FINDINGS OF FACT

Upon consideration of the foregoing, the Board finds that the following facts have been proved by clear and convincing evidence:

1. At all relevant times the Respondent has been a lawyer-duly licensed to practice law in the Commonwealth of Virginia and his address of record with the Bar has been 258 West King Street, Strasburg, Virginia 22657. The Respondent has been licensed since 1968.

2. The Respondent was properly served with notice of this proceeding in accordance with Part Six, § IV, ¶ 13(E) and (I)(a) of the Rules of the Supreme Court of Virginia.

Anderson v. Winchester Surgical Clinic, Ltd., et al.

3. The Respondent was counsel of record for James R. Anderson in a medical malpractice action brought against Westchester Surgical Clinic, Ltd., and Thomas W. Daugherty, M.D., in the Circuit Court of Warren County, Virginia, Case No. L216-00.

4. Orthopedist Andrea H. Wynn, M.D. saw the Respondent's client, James R. Anderson, on September 2, 1999. Mr. Anderson complained of right shoulder pain. After examining Mr. Anderson and reviewing x-rays he brought, Dr. Wynn recommended that he see Dr. Neviaser, who was a shoulder specialist, to do a specialized procedure to rebuild the musculature of the shoulder.

5. Dr. Wynn saw Mr. Anderson on September 1, 2000, regarding an injury to his hand. She inquired about his shoulder. He replied that Dr. Naviaser had performed surgery, and that it was helping him regain some function.

6. Dr. Wynn never spoke with the Respondent, or anyone in his office, about her findings or any opinion regarding his client's medical condition or the cause of or prognosis for the client's medical condition.

7. Dr. Wynn never spoke with the Respondent, or anyone in his office, about serving as an expert witness for Mr. Anderson in the case.

8. On August 29, 2001, Respondent served a Notice of Designation of Experts on counsel for the defendants in which he designated Dr. Wynn as an expert witness to testify on behalf of Mr. Anderson and summarized her expected testimony that Mr. Anderson's shoulder surgery preceding her examination of him was below the standard of care for such surgery and involved technical error, and that the surgeon who performed the surgery failed to elicit an informed consent from Mr. Anderson.

9. On October 4, 2001, before the commencement of her deposition, Dr. Wynn handed the Respondent a notarized writing in which she stated "I will not serve as an expert witness in this case."

10. The night before Dr. Wynn's deposition on October 4, 2001, the Respondent had his client's medical files delivered to Dr. Wynn with a request that she review them. Dr. Wynn testified that she did not review the files because she had not agreed to serve as an expert witness for Mr. Anderson.

11. Dr. Wynn's deposition on October 4, 2001, was the first occasion that she had seen or spoken with the Respondent.

12. At her deposition Dr. Wynn examined the portion of the Notice of Designation of Experts summarizing her expected testimony and testified that neither the Respondent nor anyone in his office spoke with her about the opinions summarized or whether she held those opin-

ions. In fact, Dr. Wynn did not hold the opinions summarized in her expected testimony, and she had never authorized her designation as an expert witness.

13. At the deposition of Dr. Wynn, the Respondent said to her "Doctor, I realize that you were not apprized [sic.] of the fact that you were designated as an expert, . . . Sometimes the designation is done with or without permission. Usually you like to get permission."

14. The Respondent states that he designated Dr. Wynn as an expert witness based on what his client told him Dr. Wynn had said during his client's office visits with her. For her part, Dr. Wynn denies expressing any medical opinion to the Andersons regarding his prior surgery, a deviation from the standard of care, or informed consent. Indeed, Dr. Wynn states that she could not form an opinion because she had not seen the medical records of the prior surgery.

15. The Respondent designated two other physicians as experts on behalf of Mr. Anderson in the Notice of Designation of Experts, David G. Urquia, M.D., and Thomas Neviaser, M.D., and included a summary of their expected testimony.

16. Dr. Urquia's deposition was taken on October 9, 2001. Dr. Urquia had agreed with the Respondent to review medical records that the Respondent was to send to him. Dr. Urquia received incomplete medical records and informed the Respondent that no review would be made until all of the medical records were received. Dr. Urquia did not receive any further medical records and never made a review.

17. Dr. Urquia never formed any medical opinions regarding Mr. Anderson and never agreed to serve as an expert witness or to be designated as an expert witness.

18. Dr. Neviaser's deposition was taken on October 18, 2001. He had not agreed to serve as an expert witness for Mr. Anderson. He did not know that the Respondent had designated him as an expert in the Notice of Designation of Experts until he received the portion of it pertinent to himself after it had been served on August 29, 2001. Contrary to the summary of Dr. Neviaser's expected testimony in the Notice of Designation of Experts, Dr. Neviaser testified that he would not give testimony regarding the prior surgeon's standard of care.

Mary Ann Carroll v. Winchester Regional Health Systems, Inc., et al.

19. The Respondent was counsel of record for Mary Ann Carroll in a medical malpractice action brought against Winchester Regional Health Systems, Inc., *et al.*, in the Circuit Court of Warren County, Virginia, Case No. 00-134.00.

20. On November 8, 2001, the Respondent served a detailed, ten-page expert witness designation in which he identified five physicians as standard of care witnesses and set forth the substance of their expected testimony that the defendant radiologist had violated the standard of care.

21. On December 17, 2001, the Court ordered the Respondent to require each of his designated expert witnesses to sign an endorsement of the expert witness designation stating "I have reviewed the Plaintiff's designation of my testimony, and I hereby affirm that the contents are true and correct to the best of my knowledge and belief, and that I hold the opinions therein expressed."

22. On January 17, 2002, the Respondent withdrew his previous designation of experts and filed a supplemental expert witness designation in which only two of the originally designated five physicians were named. None of the new designations contained any reference to any deviation from the standard of care by the radiologist-defendant. The Respondent non-suited Mr. Carroll's case.

23. The Honorable John E. Wetzel, Jr., was the presiding judge in both the Anderson case and the *Carroll* case and imposed sanctions on the Respondent in each case.

24. In *Anderson*, on November 20, 2001, Judge Wetzel ordered the Respondent to pay $11,192 to Winchester Surgical Clinic and Thomas W. Daugherty, M.D., and $11,192 to Warren Memorial Hospital in attorneys' fees. In addition, Judge Wetzel barred the Respondent and his firm from representing Mr. Anderson if the nonsuited case were to be re-filed. Judge Wetzel also ordered that any designated expert witness must endorse all of the Respondent's expert witness designations and interrogatories.

25. In *Carroll*, on April 3, 2002, Judge Wetzel ordered the Respondent to pay $7,165 in attorney's fees and costs to defendant-Dr. Miller. Judge Wetzel also ordered that the Respondent may not file a medical malpractice action in the Commonwealth of Virginia "unless prior to the filing of the action, he has retained an expert witness who has stated in writing that the health care provider has violated the standard of care."

Atkins v. John A. Spratt, M.D.

26. The Respondent was counsel of record for Ronnie Ray Atkins in a medical malpractice action brought against John A. Spratt, M.D., in the Circuit Court of the City of Richmond, Virginia, Case No. LX-1789.

27. On December 6, 1995, the Respondent served his Second Supplemental Designation of Expert and therein identified A. Robert Tucker, M.D., as an expert witness for Mr. Atkins and summarized Dr. Tucker's expected testimony. Dr. Tucker's counsel, Ann G. Scher, inquired of the Respondent for the specifics of any deviation from the standard of care on Dr. Tucker's part. The Respondent informed her that he could not give specifics because he had not yet talked with Dr. Tucker.

28. Dr. Tucker's deposition was taken on January 5, 1996. Dr. Tucker had agreed with the Respondent that he would review Mr. Atkins' medical records but informed the Respondent that because he did not consider himself an expert in Mr. Atkins' particular condition, he would not testify as an expert witness for Mr. Atkins. Contrary to the Respondent's summary of the expected testimony of Dr. Tucker, Dr. Tucker believed Mr. Atkins' surgical procedure was excellent, and that there was no malpractice on Dr. Spratt's part.

29. In the *Atkins* case the Respondent was sanctioned $4,010.80 for designating Dr. Tucker as an expert witness when the Respondent knew that Dr. Tucker had refused to testify as an expert witness for Mr. Atkins.

30. The Respondent has paid the monetary sanctions, imposed on him in *Anderson*, *Carroll*, and *Atkins*.

31. Rule 4:1(b)(4)(A)(i) of the Rules of the Supreme court of Virginia provides, as follows:

    A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. . . .

32. Rule 4:1(e) of the Rules of the Supreme Court of Virginia provides, as follows:

    A party who has responded to a request for discovery is under a duty to supplement or correct the response to include information thereafter acquired in the following circumstances.

    (1) A party is under a duty promptly to amend and/or supplement all responses to discovery requests directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony, when additional or corrective information becomes available.

33. Code of Virginia § 8.01-271.1 (1950), as amended, provides as follows, in pertinent part.

    The signature of an attorney or party constitutes a certificate by him that (i) he has read the pleading, motion, or other paper, (ii) to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, written motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

34. *Bradley v. Poole*, 187 Va. 432, 439, 47 S.E.2d 341, 344 (1948), states the following with respect to the relationship with an expert witness:

    When a litigant seeks the opinion and aid of an expert in a trial the relationship between the parties is different from that of an ordinary witness summoned to testify to some pertinent fact known to him. *In the former case the duty of the witness to attend the trial and give testimony, or otherwise aid the litigant, is created by contract*. In the latter case the duty of the witness to attend the trial and testify is a duty created by law and arises out of necessity in the administration of justice. . . .

    (italics supplied.)

35. The Respondent's explanation of his conduct is that the "rules" did not require him to have personal communication with the physicians before his expert witness designations of them, that personal communication was prudent but not required, and that it was proper for him to rely on his clients, his examination of their medical records, and the texts he examined in serving his expert witness designations on opposing counsel.

II. DISPOSITION

The Board retired to a closed session to deliberate. Following its deliberation, the Board reconvened in open session and the Chair Designate announced it had unanimously found by clear and convincing evidence that the Respondent's conduct constitutes a violation of the following Virginia Rules of Professional Conduct, effective January 1, 2000, in the *Anderson* and *Carroll* matters, and the Disciplinary Rules of the Virginia Code of Professional Responsibility, effective before January 1, 2000, in the *Atkins* matter, to wit:

RULE 3.1 Meritorious Claims And Contentions

* * *

RULE 3.3 Candor Toward The Tribunal

(a) (1) * * *

RULE 3.4 Fairness To Opposing Party And Counsel

(e) * * *

RULE 4.1 Truthfulness In Statements To Others

(a) * * *

RULE 8.4 Misconduct

(c) * * *

DR 1-102. Misconduct.

(A) (4) * * *

DR 7-102. Representing a Client Within the Bounds of the Law.

(A) (2), (5) * * *

DR 7-105. Trial Conduct.

(A) * * *

(C) (1) * * *

The Chair Designate then announced that the board had unanimously found that the VSB had failed to prove by clear

and convincing evidence a violation of the following: Rule 3.3(a)(4), Rule 3.4(c), Rule 3.4(i), Rule 4.4, DR 7-102(A) (3), (4), or (6), and DR 7-105(C) (5) and (6).

III. SANCTION

Thereupon, the Board called for evidence in mitigation or in aggravation. Bar Counsel stated that the Respondent had no prior disciplinary record. Bar Counsel presented the testimony of Andrea H. Wynn, M.D. The Respondent presented his own testimony.

Thereupon the Board heard argument from Bar Counsel and the Respondent and retired to a closed session for deliberation of sanctions. Following its deliberation, the Board reconvened in open session and announced it had unanimously determined that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of two years, effective February 1, 2005.

Accordingly it is ORDERED that the license of the Respondent, David H. N. Bean, to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of two years, effective February 1, 2005.

The Board notes that the Respondent's misconduct implicated and adversely affected innocent people, particularly Dr. Wynn who testified to her embarrassment and the strain on her professional relationships in her medical practice. The Board also notes that, but for the absence of a prior disciplinary record, the monetary sanctions previously imposed in Richmond Circuit Court and Warren County Circuit Court, and the Respondent's professed acceptance of the lesson from those courts, the sanction imposed would be more severe. The Board observes that a lack of candor and trustworthiness between opposing counsel, as well as with witnesses, ill-serves the profession and the adversary system of justice. The Board also observes that zealous representation of clients is inexorably circumscribed by the Virginia Rules of Professional Conduct.

* * *

Enter this Order this 20th day of December, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., Chair Designate

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VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
VSB Docket No. 03-060-1348
MICHAEL J. BIDDINGER

ORDER

This matter came before the Virginia State Bar Disciplinary Board upon certification from the Sixth District Committee. On December 16, 2004, a proposed Agreed Disposition was presented by telephone conference call to a duly convened Disciplinary Board panel consisting of Thaddeus T. Crump, lay member, and attorneys Robert E. Eicher, Joseph R. Lassiter, Jr., William H. Monroe, Jr. and James L. Banks, Jr., presiding. Michael J. Biddinger, participated pro se, and Barbara Ann Williams, Bar Counsel, represented the Virginia State Bar.

Mr. Banks 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 Mr. Banks, 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. Biddinger was admitted to the practice of law in the Commonwealth of Virginia on October 11, 1995, and is currently active and in good standing to practice law in Virginia.

2. On or about September 23, 2002, Mr. Biddinger served as settlement agent in a residential refinancing for Marcus N. and Kathleen V. Pomeroy.

3. Mr. Biddinger conducted the Pomeroy closing, and Jeanette C. Battenfield, his nonlawyer assistant, was responsible for the paperwork associated with the closing.

4. The settlement statement specified that Mr. Biddinger was to disburse the refinancing proceeds by September 27, 2002.

5. Mr. Biddinger was to use the refinancing proceeds to pay-off a loan from the Virginia Housing and Development Authority ("VHDA") in the amount of $155,952 and an equity line of credit from National Bank of Fredericksburg in the amount of $35,924.

6. Mr. Biddinger was to pay State Farm $566.00 for a hazard insurance policy.

7. Mr. Biddinger failed to disburse the refinancing proceeds in a timely manner.

8. On October 7, 2002, Mrs. Pomeroy contacted Mr. Biddinger's office after receiving a notice from VHDA requiring proof of payment of homeowners insurance; Ms. Battenfield advised her to disregard it.

9. On October 21, 2002, Mrs. Pomeroy contacted Mr. Biddinger's office after receiving a late payment notice from VHDA; Ms. Battenfield told her that the loan pay-off checks must have been lost.

10. Ms. Battenfield subsequently mailed checks to the Virginia Housing and Development Authority and the National Bank of Fredericksburg, but she misdirected the two checks, so that each entity received a check made payable to the other entity.

11. The two loans were not paid-off until November 1, 2002.

12. The premium for the Pomeroys' hazard insurance policy, which State Farm was to issue, was due on October 19, 2002.

13. On November 1, 2002, Ms. Battenfield issued a check for $566.00 to State Farm, which had billed the Pomeroys for the hazard insurance policy.

14. After Mrs. Pomeroy filed a bar complaint, Mr. Biddinger discovered that the Pomeroys' deed of trust had never been recorded.

15. By letter dated February 24, 2003, Mr. Biddinger provided the Pomeroys a replacement copy of the deed of trust.

16. Mr. Biddinger told the bar investigator that because UPS has no tracking information on the two, original loan payoff checks, the checks must have been stolen from an unsecured UPS box near Mr. Biddinger's office where Ms. Battentfield had deposited them.

17. Mr. Biddinger maintains that State Farm might have lost the check for the Pomeroys' homeowners insurance policy.

18. Mr. Biddinger contends that Ms. Battenfield assured him that the Pomeroys' deed of trust had been recorded when in fact it had not.

19. Mr. Biddinger claims that he cannot produce the trust account records he maintained when the Pomeroy closing took place because an electrical problem caused his computer to crash and new computers he acquired were not compatible with the software his office previously used, thereby rendering it impossible to retrieve the old data.

20. Theresa A. Ramond, Mr. Biddinger's friend and business partner in Virginia Title & Escrow, helped Mr. Biddinger reconstruct his trust account records by reviewing his real estate files so the data could be re-entered.

21. Ms. Raymond discovered some mortgages that had never been recorded and found some unfiled, original deeds of trust in Mr. Biddinger's office.

22. Title searchers commissioned by Ms. Raymond discovered five to ten instances in Spotsylvania and Caroline counties where deeds of trust in closings handled by Mr. Biddinger had been submitted but never recorded.

23. A partial review of Mr. Biddinger's closing files revealed 25 instances in which deeds of trust were recorded more than one month after closing and three cases in which deeds of trust had never been recorded.

24. According to Mr. Biddinger, Ms. Battenfield reconciled his trust accounts.

25. Mr. Biddinger admits that following the computer malfunction, Ms. Battenfield's termination in December 2002, and his efforts to follow up on delayed recordings, there was a three month period where he did not reconcile his trust account records.

B. Findings of Misconduct

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

RULE 1.3 Diligence

(a) * * *

RULE 1.15 Safekeeping Property

(c) (4) * * *

(e) (1) (i), (ii), (iii), (iv) and (v) * * *

(f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.5(a) and (c) by lawyers practicing in Virginia.

(4) (i), (ii) * * *

(5) (i), (ii), (iii) * * *

(6) * * *

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a), (b), (c) (2) * * *

III. Disposition

The Disciplinary Board, Respondent and Bar Counsel agree that a Public Reprimand with Terms is an appropriate disposition of this matter. Mr. Biddinger's full compliance with the following terms and conditions is the predicate for this agreed disposition:

1. For a period of five years ending on December 31, 2009, Mr. Biddinger shall not register himself as an attorney settlement agent under the Consumer Real Estate Settlement Protection Act or represent any client in connection with the sale, lease, exchange or purchase of real estate.

2. By December 31, 2004, Mr. Biddinger shall arrange for Virginia State Bar investigator Oren M. Powell to conduct a random audit of Mr. Biddinger's non-CRESPA trust account records and to present a written report of his findings with respect to whether Mr. Biddinger's non-CRESPA trust account procedures and records comply with Rule of Professional Conduct 1.15 to Bar Counsel no later than March 31, 2005.

3. By December 31, 2004, Mr. Biddinger shall formulate and submit to BarCounsel a written office policy providing for supervision of non-lawyerassistants in his law office in a manner that complies with Rule of Professional Conduct 5.3.

Mr. Biddinger's failure to comply with any one or more of the agreed terms and conditions, including a finding by the Virginia State Bar investigator that his non-CRESPA trust account record keeping procedures or records do not comply with the Rule of Professional Conduct 1:15, will result in the imposition of the alternate sanction of an eighteen month suspension.

If the Virginia State Bar discovers that Mr. Biddinger has failed to comply with any of the agreed terms or conditions, imposition of the alternate sanction shall not require a hearing on the underlying charges of Misconduct. In that event, the Virginia State Bar shall issue and serve upon Mr. Biddinger a Notice of Hearing to Show Cause why the alternative sanction

should not be imposed. The sole factual issue will be whether Mr. Biddinger has violated one or more of the terms of the Public Reprimand without legal justification or excuse.

* * *

Enter this Order this 3rd day of January, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: James L. Banks, Jr., Chair Designate

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
WALTER FRANKLIN GREEN, IV
VSB Docket No. 03-070-3720

[Editor's Note: Respondent has noted an appeal to the Virginia Supreme Court.]

ORDER OF SUSPENSION

This matter came to be heard on November 19, 2004, before a panel of the Disciplinary Board (the "Board") consisting of Robert L. Freed, Chair (the "Chair"), Bruce T. Clark, Russell W. Updike, Ann N. Kathan, and V. Max Beard, Lay Member. Edward L. Davis, Assistant Bar Counsel ("Bar Counsel"), represented The Virginia State Bar (the "VSB"). The Respondent, Walter Franklin Green, IV (the "Respondent"), appeared in person and represented himself.

* * *

The Chair polled the members of the Board panel as to whether any of them were 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.

This matter arose from a complaint issued against the Respondent by the Honorable John J. McGrath, Jr., a Judge for the 26th Judicial Circuit, who regularly presides over cases in the Circuit Court of Rockingham County. The Respondent regularly appears before Judge McGrath in both civil and criminal matters. Judge McGrath filed the complaint after sanctioning the Respondent on multiple occasions for failing to appear in court and for being late to court.

This matter came before the Board on the Subcommittee Determination issued on June 21, 2004 by a Subcommittee of the Seventh District Committee. Subsequently, on November 12, 2004, the Subcommittee issued its First Amended Subcommittee Determination in order to address typographical errors that appear in the original Certification. At the beginning of the hearing, Bar Counsel represented that the Amended Certification makes no substantive changes to the original Certification. The Respondent, relying upon the VSB's representation, stated that he accepted the Amended Certification.

On November 10, 2004, the Board convened a pre-hearing telephone conferencein which the Respondent participated *pro se*, Mr. Davis appeared on behalf of the VSB, and Robert L. Freed, First Vice Chair, presided.

VSB's Exhibits 1 through 19 were admitted over the various objections of the Respondent. Respondent's Exhibits 1 through 3 and 7 through 36 were admitted. VSB's objections to Respondent's Exhibits 4 and 5, and Exhibit 6 and its first attachment were sustained because these exhibits relate to a complaint that the Respondent made to the Virginia Judicial Inquiry and Review Commission ("JIRC"). Pursuant to Virginia Code § 17.1-913 (1950), as Amended, such papers are confidential and shall not be divulged. Attachments two through eight of Respondent's Exhibit 6 were admitted as these papers had been filed or were available from sources other than the JIRC filing.

The Chair quashed the Respondent's subpoenas issued to Barbara Ann Williams, Bar Counsel, based on Part Six, § IV, ¶13.N.8 of the Rules of the Supreme Court and Kenneth Montero, Esquire, counsel to the Virginia Judicial Inquiry and Review Commission based on Virginia Code §17.1-913 (1950), as Amended.

Without objection from Bar Counsel, the Chair allowed the Respondent to amend his witness list to add Judge McGrath to Respondent's witness list.

By Order dated November 12, 2004, the Chair memorialized the foregoing rulings made at the pre-hearing conference. ***No challenges to the pre-hearing conference rulings were made by any party at the November 19th hearing. Furthermore, no challenges were made by any party to any rulings issued by the Chair at the November 19th hearing.***

I. FINDINGS OF FACT

The Board heard testimony from the witnesses for more than eleven hours and reviewed more than fifty-six exhibits. Taking all of the evidence together and apportioning the appropriate weight to each piece of evidence and testimony, the Board finds, *inter alia*, by clear and convincing evidence that:

1. At all times relevant to this matter, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the VSB is 77 North Liberty Street, P.O. Box 512, Harrisonburg, Virginia 22803-0512.

2. The Respondent received proper notice of these proceedings, as well as the proceedings relating to as required by Part Six, § IV, 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

3. The Respondent accepted the First Amended Subcommittee Determination.

4. The Respondent, by his own admission, had been late for court appearances in the Rockingham Circuit Court, and Judge McGrath and Judge Lane entered orders imposing sanctions against the Respondent for missing court appearances or being late to court.

5. Since 1997, Judge McGrath and Judge Lane issued at least seven sanction orders against the Respondent for failing to appear in court and failure to appear on time.

6. The Respondent exhibited a pattern of failing to act with reasonable diligence and promptness in representing his clients.

7. In the *Armando Diaz* matter, Respondent: failed to appear at proffer sessions; failed to reasonably communicate with the Assistant Commonwealth's Attorney; failed to take appropriate actions to represent Mr. Diaz; and failed (after several requests by the Assistant Commonwealth's Attorney) to obtain a reduction of a sentence of 40 years with 20 years suspended imposed on Mr. Diaz by Judge McGrath. The evidence clearly and convincingly demonstrated that another attorney who replaced the Respondent in the *Diaz* matter was able to quickly obtain a reduction of the sentence to 20 years with 13 years suspended.

8. In the *Vernon Hensley* matter, the Respondent failed to appear at two reinstatement hearings, and as a result Judge Lane fined the Respondent $100.00. According to the Respondent, he did not appear at a license reinstatement hearing because his client had been convicted of a DUI, and the Respondent believed that his client would lie to the Court about the DUI conviction. According to the Respondent, he saw no purpose for attending the hearing.

II. MISCONDUCT

Based, *inter alia*, upon the foregoing findings of facts, the Board unanimously determined that the VSB proved by clear and convincing evidence that the Respondent violated Rule 1.3(a) and Rule 8.4(b) of the Rules of Professional Conduct. Rule 1.3(a) provides in part as follows:

RULE 1.3 Diligence

(a) * * *

The Respondent's conduct, by his own admission and Judge McGrath's testimony, left no doubt that the Respondent engaged in a pattern of activities that evidenced Respondent's repeated failures to act with reasonable diligence and promptness while representing his clients.

In particular, the Respondent's lack of diligence in the *Diaz* matter considering the fact that it was the Assistant Commonwealth's Attorney who requested the reduction in sentence and that the Respondent's successor obtained a reduction of more than two-thirds of the original sentence with relative ease, can only lead to a conclusion that the Respondent totally failed to "act with reasonable diligence and promptness in representing" Mr. Diaz and that such failure was egregious.

Rule 8.4(b) provides in part as follows:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) and (b) * * *

With respect to the *Hensley* matter, the Board concluded that not only did the Respondent fail to request that his client disclose the DUI to the court considering the client's drivers license reinstatement, but that the Respondent absented himself from the hearing to allow his client to perpetrate a fraud on the court. Both of these failures support a finding of a Rule 1.6(c) violation which in turn supports the conclusion that the Respondent's actions in the *Hensley* matter violated Rule 8.4(b).

All other Charges of Misconduct were either withdrawn by the VSB or were not proved by clear and convincing evidence, and, accordingly, were dismissed.

III. SANCTIONS

After determining that the Respondent engaged in Misconduct, the Board received further evidence in aggravation and mitigation of sanctions from the VSB, which included Respondent's prior disciplinary record. The Respondent's disciplinary record contains seven matters consisting of three public reprimands, two admonitions (with one having terms), and two private reprimands with terms. Based on this evidence, the Board unanimously imposed a suspension of the Respondent's license to practice law in the Commonwealth of Virginia for sixty (60) days with said suspension to begin on January 15, 2005.

IV. ORDERS

Accordingly, it is **ORDERED** that the license of Respondent, Walter Franklin Green, IV, to practice law in the Commonwealth of Virginia is hereby suspended for sixty (60) days with said suspension to begin on January 15, 2005.

* * *

ENTERED this 21st day of December 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, First Vice Chair

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VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT EDMUND LA SERTE, ESQUIRE
VSB Docket Numbers 03-053-0359
and 03-053-0942

ORDER

This matter came on to be heard on January 20, 2005, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District, Section III Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of William C. Boyce, Jr., Esquire, Joseph R. Lassiter, Jr., Esquire, David R. Schultz, Esquire, Dr. Theodore Smith, lay member, and Karen A. Gould, Chair, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Robert Edmund La Serte, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated January 11, 2005, reflecting the terms of the Agreed Disposition.

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, Robert Edmund LaSerte, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 03-053-0359:

2. The Respondent was licensed to practice law in Virginia on October 9, 1997. At times between the date of his licensure and May of 2002, the Respondent used and participated in the use of professional letterheads, pleadings, and/or other forms of communication to the public, the courts, other attorneys, and the Virginia State Bar, bearing the following names as limited liability companies engaged in, or authorized to engage in, the practice of law in Virginia:

   a. Robert E. La Serte & Associates, LLC
   b. Robert Edmund La Serte and Associates, LLC
   c. La Serte & Associates, LLC
   d. La Serte and Associates, LLC
   e. La Serte, Reaves & Associates, LLC
   f. La Serte Legal Group, LLC

3. Not one of the purported limited liability companies identified in the foregoing paragraph was registered pursuant to Part 6, § IV, ¶ 14 of the Rules of the Supreme Court of Virginia as a professional limited liability company, as required.

4. The only purported limited liability companies identified above which were registered with the Virginia State Corporation Commission were Robert Edmund La Serte and Associates, LLC, and LaSerte Legal Group, LLC.

5. In his response to the Bar Complaint filed in this matter with respect to the status of La Serte Legal Group, LLC, Robert E. La Serte & Associates, LLC, La Serte & Associates, LLC, and La Serte and Associates, LLC, the Respondent falsely stated on August 27, 2002, as follows:

   3) All the various La Serte entities were duly formed corporate entities, registered with the State Corporation Commission, and assigned Tax Identification Numbers by the Internal Revenue Service. This information is a matter of public record.

6. On or about February 2, 1998, Robert Edmund La Serte and Associates, LLC, was organized under the laws of the Commonwealth of Virginia as a limited liability company. The said limited liability company was organized by the Respondent for the purpose of practicing law, and the Respondent and others in fact practiced law through that entity or "Robert E. La Serte & Associates, LLC, a variant of the official name. A nonlawyer "member" of the limited liability company having an ownership interest therein, and rights and duties with respect thereto, was the "La Serte Family Limited Liability Company," which, in turn, was owned in whole or in part by the Respondent's parents, Charles Wilson La Serte and Dorothy Davis La Serte.

   The La Serte Family Limited Liability Company was neither registered with, nor eligible for registration by, the Virginia State Bar as a professional limited liability company authorized to practice law pursuant to Part 6, § IV, & ¶ 14 of the Rules of the Supreme Court of Virginia.

As to VSB Docket No. 03-053-0359:

7. In or around August, 2002, the Respondent was sued by his mother and sister for breach of fiduciary duties and tortious conversion and misappropriation of funds.

8. The suit was subsequently amended to include allegations that Respondent's father's signature on a will had been forged.

9. In the course of investigating these matters, a Virginia State Bar investigator determined from Virginia attorney Dena M. Roudybush that on or about October 28, 1998, Ms. Roudybush notarized the signature on the Respondent's father's purported will at the Respondent's request after the Respondent and another individual appeared in Ms. Roudybush's office with the will and stated that the signature appearing thereon was genuine. Ms. Roudybush notarized the document without having witnessed its purported execution or having had the Respondent's father appear before her to acknowledge the signature thereon as being his own.

The Board finds by clear and convincing evidence that such conduct on the part of Robert Edmund La Serte, Esquire, constitutes a violation of the following provisions of the revised Virginia Code of Professional Responsibility and Rules of Professional Conduct:

DR 1-102. Misconduct.

(A) (1), (2), (3), (4) * * *

DR 2-102. Professional Notices, Letterheads, Offices and Law Lists.

(A) * * *

DR 3-103. Forming a Partnership with a Nonlawyer.

(A) * * *

DR 5-106. Avoiding Influence by Others Than the Client.

(C) (1), (2), (3) * * *

RULE 7.5 Firm Names And Letterheads

(a) * * *

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) * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a), (b), (c) * * *

Upon consideration whereof, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of five (5) years, to commence on the 26th day July, 2005. (The commencement date for the suspension provided for herein is the date upon which the Respondent would otherwise be eligible for reinstatement of his license to practice law in Virginia following a license suspension that was imposed for another disciplinary matter.); and it is further

ENTERED this 24th day of January, 2005.
Karen A. Gould, Chair
Virginia State Bar Disciplinary Board

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
CHARLES EVERETT MALONE
VSB DOCKET NO. 04-010-0765
04-010-1444

ORDER OF SUSPENSION WITH TERMS

This matter came to be heard on December 7, 2004, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Charles Everett Malone.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Janipher W. Robinson, Esquire, Robert E. Eicher, Esquire, Glen M. Hodge, Esquire, Werner Quasebarth, Lay Member, and James L. Banks, Jr., Esquire, Acting Chair, considered the matter by telephone conference. The Respondent, Charles Everett Malone, Esquire, appeared *pro se*. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Upon due deliberation, it is the decision of the board to accept the Agreed Disposition, subject to an amendment to the term as set forth herein. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar and the Respondent, as modified, are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Charles Everett Malone (hereinafter Respondent or Mr. Malone) was an attorney licensed to practice law in the Commonwealth of Virginia.

04-010-0765
Complainant: VSB/Trust Account

2. On June 10, 2003, Zack Pippins sold a parcel of property to Arnold L. Shands and Eldret Watson. The settlement agent was Home Title & Escrow of Virginia Beach, Virginia. Mr. Malone received $267.50 in attorney's fees from each of the parties, according to line 1107 of the settlement statement.

3. The settlement statement indicates on line 603 that cash to the seller (Mr. Pippins) was $31,702.58.

4. Among the settlement documents was an escrow agreement between the buyers, sellers, and Mr. Malone as escrow agent containing the following paragraph:

    1. **Escrow Agent and Account:** Charles E. Malone will serve as Escrow Agent to whom Buyers shall deposit, at settlement of the transfer in accordance with the Contract, the balance of the sale price of $32,000.00. Charles E. Malone shall deposit and hold in his non-interest-bearing Trust Account the $32,000.00 until June 29, 2003 on which date Escrow agent shall deliver a check to the seller for $32,000.00

5. On July 3, 2003, check number 3-19992 in the amount of $31,702.58, drawn upon the account of Home Title & Escrow Insurance Agency, Inc., was paid "To the order of Charles Malone, in Trust for Zack Pippins."

6. On July 7, 2003, Mr. Malone deposited the check into his attorney trust account. Prior to the deposit, his trust account had a balance of one dollar.

7. On July 12, 2003, Mr. Malone disbursed check number 101, drawn on the same trust account, and payable to himself in the amount of $5,000. He annotated "Pippins fee" on the check.

8. On July 15, 2003, the check cleared, resulting in a balance of $26,702.58 in Mr. Malone's trust account. The balance remained under $31,702.58 until August 6, 2003.

9. On August 6, 2003, Mr. Malone's trust account balance was $195,707.58, resulting from a deposit on that day of $169,005.00 in an unrelated matter. By August 8, 2003, the balance was $170,525.08. On August 19, 2003, the balance was $26,702.58.

10. On August 25, 2003, Mr. Malone wrote check number 1008 in the amount of $31,702.58 from his trust account to Zack Pippins, despite the fact that his trust account ledger showed only $26,702.58 on account for Zack Pippins.

11. Mr. Pippins negotiated the check; however, when the check was presented to Mr. Malone's bank, there were insufficient funds to pay it. The bank paid the check nonetheless, causing a negative balance of $1,374.80 in the trust account.

12. The bank reported the overdraft to the Virginia State Bar. Mr. Malone failed to respond to the bar's inquiry about the overdraft.

13. Mr. Malone advised the Virginia State Bar investigator that he recognized a possibility that there would not be enough funds in the account to cover the check when he presented the check to Mr. Pippins, but that he was hopeful some checks he had previously disbursed had not yet

cleared, so there might be sufficient funds for Mr. Pippins' check to clear.

14. Mr. Malone's trust account continued to carry a negative balance until September 3, 2003, when he deposited $1,060.

15. Zack Pippins advised the Virginia State Bar investigator that he never authorized Mr. Malone to disburse $5,000 from the funds he held in trust, and never agreed to pay any legal fees to Mr. Malone above the $267.50 he paid to him at the closing.

16. Mr. Malone explained that the $5,000 represented fees for assisting Rev. Pippins in a dispute that developed with the sellers after closing over the grading of land. He said that he did not obtain Rev. Pippins' authorization to take the $5,000, and did not discuss a fee with him.

17. Rev. Pippins said that Mr. Malone did not negotiate any settlement in the dispute, that the negotiations took place between him and the buyers, and that Mr. Malone played no part.

18. Rev. Pippins said that in July 2003, realizing that he had not received his money, he contacted Mr. Malone's office, but was told that he had to talk to Malone after he returned from out of town. He did not receive his funds until the end of the following month.

II. NATURE OF MISCONDUCT *(04-010-0765)*

The parties agree that the foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.1 Competence

* * *.

RULE 1.3 Diligence

(a) * * *

RULE 1.5 Fees

(a) (1), (2), (3), (4), (5), (6), (7), (8) * * *

RULE 1.5 Fees

(b) * * *

RULE 1.15 Safekeeping Property

(a) (1), (2) * * *

RULE 1.15 Safekeeping Property

(c) (3), (4) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

(c) * * *

RULE 8.4 Misconduct

(b), (c) * * *

I. STIPULATIONS OF FACT (Continued)
04-010-1444
Complainant: Mrs. Vivian L. Warren

19. On February 26, 2002, the Circuit Court for Southampton County sentenced Elijah M. Warren to several years of incarceration on his convictions of burglary, grand larceny, armed robbery and use of a firearm during the commission of a robbery.

20. On March 18, 2002, Mr. Warren noted an appeal through his hired attorney, Dwayne B. Strothers.

21. On May 20, 2002, the court appointed Mr. Strothers to prosecute the appeal, Mr. Warren being unable to pay Mr. Strothers.

22. Mr. Strothers perfected the appeal, and the Court of Appeals denied it on August 21. 2002.

23. Meanwhile, during May 2002, Mr. Warren's Aunt, Vivian Warren, consulted with Mr. Malone about prosecuting her son's appeal in place of Mr. Strothers, and Mr. Malone agreed to do so.

24. On May 6, 2002, Mrs. Warren paid Mr. Malone $560 for the purpose of reviewing the trial transcript and file. On June 3, 2002, she paid him $1,500 cash as partial payment for the appeal. On June 21, 2002, she paid him an additional $500 in cash and $500 by check for the balance of the appeal fee.

25. On June 28, 2002, Mr. Malone filed a "Motion for Extension to File Petition for Appeal" with the Court of Appeals of Virginia.

26. In the motion, Mr. Malone acknowledged that the Court had already appointed Mr. Strothers for the appeal, but said that the Petitioner was not satisfied with Mr. Strothers' representation at trial and sentencing, and desired to have another lawyer represent him. He said further that the Petitioner's family, "after much solicitation," raised and delivered the necessary funds to Mr. Malone on June 21, 2002. He said that he did not have time to prepare, complete and file a petition for appeal by June 24, 2002. Finally, he said that the Petitioner's aunt had advised Mr. Strothers that he did not desire Mr. Strothers' services as they had hired Mr. Malone.

27. Despite the fact that he knew Mr. Strothers was counsel of record, Mr. Malone never filed a motion or order allowing him to substitute himself as counsel or allowing Mr. Strothers to withdraw.

28. By letter, dated June 28, 2002, the Court of Appeals responded to Mr. Malone's motion, stating that Mr. Malone had no standing to file his motion because Mr. Strothers was counsel of record, that Mr. Strothers had already timely filed a petition for appeal, and that the Court, accordingly, would take no action on Mr. Malone's motion.

29. Thereafter, Mr. Malone never entered the case, and never took any further action in the matter, although it was eventually concluded at the Supreme Court of Virginia.

30. Mr. Malone never advised Ms. Warren about the letter from the Court of Appeals, and Mrs. Warren never learned the outcome of the appeal until she wrote to the Court of Appeals herself.

31. Mr. Malone never refunded any of the $3,060 advanced to him by Mrs. Warren, despite repeated requests by her, including a letter, dated March 1, 2004, and his advice to the Virginia State Bar investigator that he would do so.

32. A review of Mr. Malone's trust account records revealed that he never deposited Mrs. Warren's advanced fees into his attorney trust account, except possibly the $560 in May 2002, and possibly a $500 portion of the $1,500 cash payment on June 10, 2002. Due to lack of records, however, he could not confirm if Ms. Warren's funds were the source of these deposits.

33. Mr. Malone acknowledged that he may not have deposited any of the funds into his attorney trust account, saying that there were problems with his trust account during that time period.

34. Further investigation revealed that he endorsed Ms. Warren's $500 check to Arlene Malone, who deposited it into a non-trust account at the Chartway Federal Credit Union on June 22, 2002.

35. Mr. Malone did not respond to the bar complaint.

II. NATURE OF MISCONDUCT *(04-010-1444)*

RULE 1.1 Competence

* * *

RULE 1.3 Diligence

(a), (b) * * *

RULE 1.4 Communication

(a), (b), (c) * * *

RULE 1.15 Safekeeping Property

(a) (1), (2) * * *

RULE 1.15 Safekeeping Property

(c) (3), (4) * * *

RULE 1.16 Declining Or Terminating Representation

(d) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

(c) * * *

RULE 8.4 Misconduct

(b) * * *

III. DISPOSITION

In accordance with the Agreed Disposition, Charles Everett Malone's license to practice law in the Commonwealth of Virginia is hereby Suspended for a period of two (2) years, effective December 10, 2004, subject to the following terms and conditions:

1. By June 10, 2005, The Respondent, Charles Everett Malone, will issue a refund in the amount of $3,060 (three thousand and sixty dollars) to Vivian L. Warren. (The Respondent and the bar agreed during the telephone conference to amend the amount owed to $3,060.)

Failure to comply with the foregoing term will result in the imposition of the alternate sanction, the Suspension of the Respondent's license to practice law in the Commonwealth of Virginia for an additional two-year period (an aggregate suspension of four years).

The imposition of the alternate sanction will not require a hearing before the Three-Judge Court or the Virginia State Bar Disciplinary Board on the underlying charges of misconduct stipulated to in this Agreed Disposition if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. The imposition of the alternate sanction shall be in addition to any other sanctions imposed for misconduct during the probationary period. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

Upon the suspension of his license, the Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the suspension of his license if he is handling any client matters at the time. If the Respondent is not handling any client matters on the effective date of his license 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.

* * *

ENTERED THIS 7TH DAY OF DECEMBER, 2004
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., Esquire
Acting Chair

■■■

District Committees

VIRGINIA:

BEFORE THE THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
CHRISTOPHER LEON ANDERSON
VSB DOCKET NO. 04-032-0873

SUBCOMMITTEE DETERMINATION (PUBLIC ADMONITION WITH TERMS)

On December 7, 2004, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of John B. Daly, Lay Member; Mary Kathryn Burkey Owens, Esq.; and Richard K. Newman, Esq., Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c.(1) of the Rules of the Supreme Court, the Third District, Section Two, 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 relevant hereto the Respondent, Christopher Leon Anderson [Anderson], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about November 5, 2002, Complainant Paul Simon, II [Paul] was struck by a vehicle in Hampton, Virginia while he was walking along the side of a street. As a result Paul was personally injured.

3. On November 13, 2002, The McEachin Law Firm was retained by Paul's mother, Brenda, on Paul's behalf. Brenda asserted that she had a power of attorney to act on behalf of Paul. On November 21, 2002, Brenda signed a retainer agreement on behalf of Paul to retain The McEachin Law Firm. In this notice of hearing, Brenda and Paul are used interchangeably unless otherwise noted. Anderson was the responsible attorney in the firm for the case.

4. By letter dated December 4, 2002, Anderson wrote to Earl Sanders [Sanders], an adjustor with Victoria Insurance Company, noting his representation and asserting "an attorney's lien, pursuant to Virginia Law [sic], as to any payments and/or recovery herein."

5. Sanders acknowledged Anderson's letter on December 6, 2002 and noted, *inter alia*, that the vehicle driver was a policyholder and the policy limit was $25,000.00 per person.

6. By letter dated December 13, 2002, Anderson wrote to Kelly Fulk, an adjustor with Progressive Insurance Company, noting, inter alia, his representation; the possibility of a claim against the underinsured motorist coverage of the policy for which Brenda was the insured and asserting an attorney's lien "pursuant to Virginia Law [sic], as to any payments and /or recovery herein."

7. On January 27, 2003, Paul wrote a letter by facsimile transmission terminating Anderson immediately.

8. On January 31, 2003, Sanders sent Anderson a letter enclosing a draft for $25,000.00 "as we discussed" along with a release.

9. On February 3, 2003, Anderson wrote a letter to Paul indicating that he had received the termination letter after he had negotiated the case with Victoria Insurance Company and asking Paul to let Anderson know whether or not the check should be returned to Victoria Insurance Company. Anderson also asserted a "lien for our fee in the amount of $8,333.33, which is representative of the offer tendered by Victoria Insurance only" and asked Paul to convey the lien information to his new attorney.

10. On or about February 4, 2003, Paul instructed Anderson to return the draft to Victoria Insurance Company.

11. By letter to Saunders [sic] dated February 7, 2003, Anderson returned the draft to Victoria Insurance Company, asserted a lien in the amount of $8,333.33 and provided the name and address of a Washington, D.C. attorney, Ponds, whom Anderson thought Paul had retained.

12. By letter to Ponds dated February 7, 2003, Anderson, *inter alia*, asserted a lien in the amount of $8,333.33. Ponds responded by letter dated February 13, 2003, indicating that he could not represent Paul in light of the lien asserted by Anderson.

13. By letter to Paul dated February 24, 2003, Anderson indicated that there seemed to have been some miscommunications that led to a "breakdown between [Paul] and our firm . . ." and he asked for the opportunity to finish the case, citing that the firm had "won half of the battle when we persuaded Progressive Insurance Company [sic] to offer its . . . policy limits."

14. Paul then wrote a letter to Anderson detailing the problems which Paul had with Anderson's representation.

15. Paul met Anderson for the first time in or about April 4, 2003.

16. By letter dated July 31, 2003, Paul informed Anderson that he had chosen not to continue with Anderson's representation but instead had retained G. Anthony Yancey, Esq. [Yancey]. Paul also asked Anderson to forward his case file to Yancey.

17. By letter dated August 29, 2003 to Paul, Anderson, *inter alia*, asserted the "lien for our fee in the amount of $8,333.33, which is representative of the offer tendered by Victoria Insurance only."

18. By letter dated August 29, 2003 to Yancey, Anderson indicated he was enclosing a copy of Paul's file and asserted a lien in the amount of $8,333.33.

19. By letter dated August 29, 2003 to Saunders [sic], Anderson indicated, inter alia, that the letter was to advise that, "I have not nor do I intend to release [the $8,333.33] lien."

20. By letter dated September 2, 2003 to Yancey, Anderson stated he was enclosing a copy of Paul's file, again stated the existence of the $8,333.33 lien, and listed expenses due in the amount of $286.47.

21. By letter dated November 24, 2003 to Yancey and copied to Anderson, Sanders sent a draft to Yancey in the amount of $16,666.67 and sent a draft to Anderson in the amount of $8,333.33. Anderson's file provided to the bar did not contain the letter with a date of November 24, 2003 but instead contained the identical letter from Sanders but with a date of November 5, 2003.

22. Yancey entered into a contingency fee agreement with Paul and Brenda dated December 5, 2003 in which Paul agreed to a one-third contingency fee for Yancey's firm. The agreement also recited:

> It is understood by me that the McEachin Law Firm will retain $8,333.33 by a lien filed directly with Victoria Insurance Company. I am currently disputing the McEachin Law Firm lien with the Virginia State Bar.

Paul filed a bar complaint with the Virginia State Bar dated September 5, 2003.

23. On December 5, 2003, Paul executed a Statement of Settlement provided by Yancey. The statement indicates that Paul received $8,333.34 out of a settlement amount of $16,666.67.

24. As a result of the lien asserted by Anderson in the amount of $8,333.33 against the settlement with Victoria Insurance Company, Anderson, Yancey and Paul each received one-third of the gross settlement amount prior to the application of the lien.

25. During the investigation of the bar complaint, the bar requested that Anderson provide an itemization of the services provided for Paul and the value of those services. Anderson provided that information in his letter to Investigator Abrams dated September 10, 2004. The itemized breakdown of services provided by Anderson included the following:

Accident investigation	3.0 hrs
Correspondence	2.0 hrs
Telephone conferences with client (and mother)	2.0 hrs
Telephone conferences with insurance representatives	2.5 hrs
Conference with client in Hampton, VA	3.5 hrs
UIM coverage research and investigation	2.0 hrs
Medical malpractice research	4.0 hrs
Miscellaneous (gathering medical records, reports, etc.)	7.0 hrs

According to Anderson, the firm's "hourly fee for this matter would have been $250.00 per hour had our (contracted) contingency fee not been for one-third of the recovery." In providing the above information, Anderson also noted that the information was "my best approximation of the services we provided to Mr. Simon."

26. On information and belief, Anderson had not determined the services rendered or the value of the services which he had rendered to Paul prior to asserting an attorney's lien. Nor had Anderson made those determinations prior to doing so at the request of the Virginia State Bar.

27. Assuming that the itemized breakdown of services provided by Anderson is correct for purposes of this paragraph, the services provided by Anderson to Paul amounted to a total of 26 hours at an hourly rate of $250.00 per hour which equals a total amount for services rendered of $6,500.00 which is $1,833.33 less than the $8,333.33 amount received by Anderson and his firm.

28. The breakdown of services provided by Anderson includes entries which do not indicate services rendered, i.e., "miscellaneous."

29. On information and belief, the conference with Paul in Hampton referred to in the breakdown of services was Anderson's attempt to get Paul to allow Anderson to complete the representation.

30. When an attorney who has a contingent fee agreement with his client is terminated, the attorney is entitled to a fee based upon quantum meruit, i.e., the reasonable value of the actual services rendered. The attorney is not entitled to a fee based upon the benefit received by the client. Legal Ethics Opinion 1606 issued November 22, 1994; Va. Code Section 54.1-3932.

31. Paul is entitled to a refund of that sum of money which constitutes the difference between the reasonable value of the services rendered by Anderson for Paul and $8,333.33. Said sum of money constitutes unreasonable fees received by Anderson.

32. There was a lack of communication between Paul, and/or his mother on his behalf, and Anderson during the representation.

33. The retainer agreement which was utilized in Paul's representation by Anderson contained, inter alia, the following language:

> 4. *Withdrawal or Discharge from Representation*
>
> In the event of our withdrawal or discharge, we will be entitled to retain any fees earned on recoveries obtained before the date of our withdrawal or discharge, and to additional compensation, consisting of the reasonable value of any services we have rendered after the initial recovery, with such payment being made only out of future recoveries . . . .

Such language may be an attempt to obtain unreasonable attorney's fees from a client who has entered into the retainer agreement. Said language as applied by Anderson to the instant case, resulted in the receipt by Anderson of unreasonable attorney's fees.

II. NATURE OF MISCONDUCT:

Such conduct on the part of the Respondent constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.4 Communication

(a) * * *.

RULE 1.5 Fees

(a) (1), (2), (3), (4), (5), (6), (7), (8) * * *

RULE 1.15 Safekeeping Property

(c) (4) * * *

RULE 8.4 Misconduct

(a) * * *

III. PUBLIC ADMONITION 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 will be a predicate for the disposition of a Public Admonition With Terms of this complaint. The terms and conditions shall be met by the dates indicated below. The terms with which the Respondent must comply are as follows:

1. **By December 31, 2004**, the Respondent shall refund the amount of $3,583.33 to Paul Simon, II [said amount equals $8,333.33 minus $4750.00; $4750.00 equals 19 hours times $250.00 per hour] and shall certify in writing to Deputy Bar Counsel that he has done so.

2. **By December 15, 2004**, Respondent shall certify in writing to Deputy Bar Counsel that:

   (1) in any pending or future contingent fee case in which he or his firm is terminated by the client, or in which he or his firm terminates the representation, he and his firm shall waive all attorney's fees unless he or his firm is able to produce sufficient documentation to support an attorney's fee based upon quantum meruit; and

   (2) in no such case, shall the Respondent or his firm assert an attorney's lien based upon the incorrect theory of the benefit received by the client.

3. **By December 31, 2004**, the Respondent shall read Rules 1.4, 1.5, 1.15, 1.16 and 8.4 of the Virginia Rules of Professional Conduct and the corresponding comments to each rule; and Respondent shall certify in writing to Deputy Bar Counsel his completion of this term.

4. **By December 31, 2004**, the Respondent shall read all legal ethics opinions cited with respect to the rules recited in Term 3 and their predecessors; said opinions may be found in the two 2002 Replacement Volumes of the Michie Code of Virginia containing legal ethics opinions and any pocket parts; and Respondent shall certify in writing to Deputy Bar Counsel his completion of this term. Particular attention is directed to Legal Ethics Opinion 1606.

5. (a) **By December 31, 2004**, the Respondent shall have developed, and implemented the exclusive use of, a retainer agreement consistent with the Virginia Rules of Professional Conduct and the Virginia State Bar legal ethics opinions.

   (b) **By December 31, 2004**, the Respondent shall have provided to Deputy Bar Counsel the new retainer agreement for review and comment.

   (c) **Within 30 days after the date of any letter from the bar to the Respondent in which the bar makes suggestions for changes** to the new retainer agreement, the Respondent shall effect the suggested changes to the agreement and provide the bar with a copy of the newly revised retainer agreement consistent with the suggested changes. The new retainer agreement may be submitted by Deputy Bar Counsel to the Subcommittee for review and comment.

   (d) **By December 31, 2004**, Respondent shall certify in writing to Deputy Bar Counsel his agreement that he will exclusively use the newly revised retainer agreement in his practice.

   (e) **By December 31, 2004**, Respondent shall agree in writing that in exclusively using the newly revised retainer agreement in his practice, he shall fully set forth the nature and extent of the representation for which he has been retained.

6. Respondent shall, **immediately upon his execution of this Agreed Disposition**, only assert an attorney's lien, when appropriate, based upon the reasonable value of his actual services rendered; and Respondent shall immediately cease asserting any attorney's lien based upon the benefit received by any client. Respondent shall certify in writing to Deputy Bar Counsel by D**ecember 15, 2004**, that he has implemented this term 6.

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 herein, the Third District Committee, Section Two, shall impose a Public Reprimand.

Third District, Section Two, Subcommittee
Of The Virginia State Bar
By Richard K. Newman
Chair

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VIRGINIA:

BEFORE THE SIXTH DISTRICT
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES WILLIS HILLDRUP
VSB Docket No. 04-060-2594

SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)

On January 6, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher, William E. Glover, Esquire, and Christopher A. Abel,

Esquire, Chair and presiding officer, met to consider an agreed disposition of the above-referenced matter.

Pursuant to Part Six, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the respondent James Williams Hilldrup this Public Reprimand with Terms:

I. Findings of Fact

1. The respondent, James Willis Hilldrup, was admitted to the practice of law in the Commonwealth of Virginia on May 13, 1980.

2. During all times relevant to this proceeding, Mr. Hilldrup was an attorney in good standing to practice law in the Commonwealth of Virginia.

3. Mr. Hilldrup represented Myrtle Carr, who died on December 28, 1999.

4. After Ms. Carr's death, Mr. Hilldrup agreed to serve as co-executor of her estate.

5. Barbara C. Birney, the complainant, is Ms. Carr's daughter and one of two beneficiaries under Ms. Carr's will.

6. Mr. Hilldrup failed to respond to reasonable requests for information about the status of the estate from his co-executor, the other beneficiary, the complainant and her counsel.

7. Mr. Hilldrup did not file an accounting due in July 2001 until October 2001, and did so only after the Commissioner of Accounts issued a show cause order.

8. Mr. Hilldrup did not respond to rulings the Commissioner of Accounts made on two issues in June 2003, until April 2004, and did so only after the complainant filed a bar complaint.

9. In a letter to the complainant's attorney dated December 30, 2003, Mr. Hilldrup promised that he would finalize Ms. Carr's estate within a week but failed to do so.

10. Almost five years after her death, Ms. Carr's estate has not been settled.

11. Mr. Hilldrup did not respond to two proactive letters from intake counsel, file a written response to the bar complaint, comply with the bar's subpoena for his file in a timely manner or respond promptly to the bar investigator's request for an interview.

II. Findings of Misconduct

The foregoing findings of fact, which are supported by clear and convincing evidence, give rise to findings that Mr. Hilldrup violated the following Rule of Professional Conduct:

RULE 1.3 Diligence

(a) * * *

* * *

III. Imposition of Sanction

Accordingly, it is the decision of the Sixth District Committee to impose a Public Reprimand with Terms, and Mr. Hilldrup is hereby so reprimanded and the following terms imposed.

1. By February 28, 2005, Mr. Hilldrup shall refund all payments received for legal services he rendered as co-executor of Myrtle Carr's estate and certify in writing to Bar Counsel no later than February 28, 2005, that he has done so.

2. Mr. Hilldrup shall retain at his own expense counsel to assist him in withdrawing as co-executor of Myrtle Carr's estate and refunding all payments received for legal services he rendered as co-executor of Myrtle Carr's estate.

If Mr. Hilldrup fails to comply with one or both of the foregoing terms, Bar Counsel may notice a show cause hearing before the Sixth District Committee. The only issue to be decided at that hearing will be the sufficiency of his compliance with the agreed upon terms. If the Sixth District Committee finds that Mr. Hilldrup has not complied with one or more of the agreed upon terms, Mr. Hilldrup agrees that the case shall be certified to the Disciplinary Board pursuant to Paragraph 13.I. of the Rules of Court for imposition of an appropriate sanction. Mr. Hilldrup agrees that a 60 day suspension would be an appropriate sanction should he fail to comply with any of the terms of this Agreed Disposition.

* * *

SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By Christopher A. Abel, Chair

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VIRGINIA:

BEFORE THE SIXTH DISTRICT
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES WILLIS HILLDRUP
VSB DOCKET NO. 04-060-2595

SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)

On January 6, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher, William E. Glover, Esquire, and Christopher A. Abel, Esquire, Chair and presiding officer, met to consider an agreed disposition of the above-referenced matter.

Pursuant to Part Six, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the respondent James Willis Hilldrup this Public Reprimand with Terms.

I. Findings of Fact

1. The respondent, James Willis Hilldrup, was admitted to the practice of law in the Commonwealth of Virginia on May 13, 1980.

2. During all times relevant to this proceeding, Mr. Hilldrup was an attorney in good standing to practice law in the Commonwealth of Virginia.

3. In June 2001, Mr. Hilldrup prepared a will and power of attorney for Margaret A. Spencer, for whom he had drafted a will and power of attorney in 1994.

4. He subsequently prepared new powers of attorney for Mrs. Spencer.

5. Mrs. Spencer moved to a nursing home after she was incapacitated by Alzheimer's disease.

6. On September 11, 2003, Brenda S. Sullivan, one of Mrs. Spencer's nieces, met with Mr. Hilldrup and informed him that Deborah D. Lemons-Daff, a granddaughter of Mrs. Spencer who allegedly held a power of attorney for Mrs. Spencer, was embezzling funds from Mrs. Spencer's estate.

7. Mr. Hilldrup contends that he told Ms. Sullivan that he could not represent her because he had drafted documents for Mrs. Spencer and could be called upon to testify in a court proceeding.

8. Mr. Hilldrup set up an appointment for Ms. Sullivan to see attorney Walter J. Sheffield, who she met and retained on September 11, 2003.

9. Mr. Sheffield maintains that he conferred with Mr. Hilldrup on several occasions about what action should be taken to protect Mrs. Spencer's interests.

10. Pursuant to Mr. Sheffield's advice, Ms. Sullivan withdrew all the funds remaining in Mrs. Spencer's bank account and delivered two checks, both dated September 23, 2003, to Mr. Hilldrup's office.

11. Both checks were payable to Mr. Hilldrup—one for $108,301.66 and the other for $242.75.

12. A letter from Mr. Sheffield to Mr. Hilldrup dated September 22, 2003, accompanied the checks and stated that Mr. Sheffield assumed Mr. Hilldrup would hold the money for Mrs. Spencer's use.

13. Mr. Hilldrup did not respond to Mr. Sheffield's letter and did not deposit the two checks in a fiduciary account.

14. Mr. Hilldrup claims he advised Ms. Sullivan by letter dated September 23, 2003, that he could not accept any funds from Mrs. Spencer's bank account.

15. Mr. Sheffield is not copied on Mr. Hilldrup's September 23rd letter to Ms. Sullivan, and she denies ever receiving Mr. Hilldrup's letter.

16. Mr. Hilldrup never informed Mr. Sheffield that he had declined to accept the funds that Ms. Sullivan had delivered to his office.

17. According to Mr. Hilldrup, two or three days after he received the checks and allegedly wrote Ms. Sullivan, his secretary called Mrs. Spencer's bank at his direction and was told that Ms. Lemons-Daff had withdrawn all the funds remaining in Mrs. Spencer's account.

18. Mr. Hilldrup did not tell either Mr. Sheffield or Ms. Sullivan that Ms. Lemons-Daff had withdrawn the funds.

19. Not knowing that Mr. Hilldrup had failed to deposit the two checks she had delivered to his office, Ms. Sullivan brought Mrs. Spencer's nursing home bills to Mr. Hilldrup each month, assuming he would pay the bills; he did not.

20. Mr. Hilldrup did not return telephone calls or respond to letters from the nursing home, Ms. Sullivan or Mrs. Spencer's daughter, Sylvia J. Spencer.

21. In December 2003 or January 2004, Ms. Sullivan finally reached Mr. Hilldrup by telephone, and he told her that before he "could do anything with the checks," Ms. Lemons-Daff had withdrawn the money.

22. On August 13, 2004, Ms. Lemons-Daff pled guilty to one count of embezzling $108,301 from Mrs. Spencer's estate.

23. Ms. Lemons-Daff admitted that on October 6, 2003, she transferred $108,474, the entire balance of Mrs. Spencer's account, into another account, then transferred the funds into her own account and thereafter made almost daily cash withdrawals until February 2004, when she overdrew the account.

24. On February 13, 2004, Sylvia Spencer filed a bar complaint against Mr. Hilldrup alleging that he failed to protect her mother's interests.

25. Mr. Hilldrup did not respond to two proactive letters from intake counsel, file a written response to the bar complaint, comply with the bar's subpoena for his file in a timely manner or respond promptly to the bar investigator's request for an interview.

II. Findings of Misconduct

The foregoing findings of fact, which are supported by clear and convincing evidence, give rise to findings that Mr. Hilldrup violated the following Rule of Professional Conduct:

RULE 1.15 Safekeeping Property

(a) (1), (2) * * *

* * *

(c) (1), (2), (3), (4) * * *

* * *

(f) * * *

* * *

(iv) * * *

* * *

III. Imposition of Sanction

Accordingly, it is the decision of the Sixth District Committee to impose a Public Reprimand with Terms. Mr. Hilldrup is hereby so reprimanded and the following terms imposed.

1. Mr. Hilldrup shall reimburse the sum of $108,301.00, embezzled from Margaret A. Spencer, plus 5% interest from September 23, 2003 to January 11, 2005, in quarterly installment payments of $15,000.00 on March 15, June 15, September 15 and December 15, beginning on March 15, 2005, until the money has been paid in full.

2. Mr. Hilldrup shall make each payment by cashier's check or money order payable to Margaret A. Spencer and tender each payment to the Victim Witness Assistance Program for the Spotsylvania Commonwealth Attorney's Office.

3. Any advance payments made by Mr. Hilldrup will be credited toward the next quarterly payment(s).

4. Mr. Hilldrup shall certify in writing to Bar Counsel no later than three days after each payment is due that he has made the requisite payment.

5. Mr. Hilldrup shall contact Susan D. Pauley, Executive Director of Lawyers Helping Lawyers, 707 E. Main Street, Suite 1501, Richmond, Virginia 23219, (804) 644-3212, susan@valhl.org, no later than January 31, 2005, request an evaluation and execute whatever releases are necessary for Lawyers Helping Lawyers to obtain his medical and other records, then certify in writing to Bar Counsel no later than February 4, 2005, that he has done so.

6. If requested to do so by Lawyers Helping Lawyers, Mr. Hilldrup shall submit to a physical and or/mental examination by one or more medical care providers selected by Lawyers Helping Lawyers.

7. Based upon the results of the examination(s), if recommended by Lawyers Helping Lawyers, no later than April 15, 2005, Mr. Hilldrup shall enter

   into a Rehabilitation/Monitoring Agreement with Lawyers Helping Lawyers for the period of time suggested by Lawyers Helping Lawyers.

8. Mr. Hilldrup shall deliver to Bar Counsel an executed copy of the Rehabilitation/Monitoring Agreement, within one week of executing it.

9. If Mr. Hilldrup enters into a Rehabilitation/Monitoring Agreement, within one week of doing so, he shall execute and deliver to Bar Counsel the releases necessary for Lawyers Helping Lawyers to communicate with the Virginia State Bar on a quarterly basis for the duration of the Rehabilitation/Monitoring Agreement, and for any therapists, counselors or medical providers with whom he consults or by whom he is treated to, upon request, produce his records and communicate with the Virginia State Bar.

If Mr. Hilldrup fails to comply with one or more of the foregoing terms, Bar Counsel may notice a show cause hearing before the Sixth District Committee. The only issue to be decided at that hearing will be the sufficiency of his compliance with the agreed upon terms. If the Sixth District Committee finds that Mr. Hilldrup has not complied with one or more of the agreed upon terms, Mr. Hilldrup has agreed that the case shall be certified to the Disciplinary Board pursuant to Paragraph 13.I. of the Rules of Court for imposition of an appropriate sanction. Mr. Hilldrup has also agreed that a 120 day suspension would be an appropriate sanction should he fail to comply with any of the terms of this Agreed Disposition.

This Public with Reprimand with Terms shall be made part of Mr. Hilldrup's disciplinary record. Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess the appropriate administrative fees and costs.

SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By Christopher A. Abel, Chair

■■■

VIRGINIA:

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KENNETH PAUL MERGENTHAL
VSB Docket No. 04-060-3404

SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)

On December 7, 2004, a duly convened subcommittee of the Sixth District Committee, consisting of lay member John E. Graham, Jennifer L. Parrish, Esquire, and Christopher A. Abel, Esquire, Chair and presiding officer, met to consider an agreed disposition of the above-referenced matter.

Pursuant to the Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13.G.4., the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the respondent, Kenneth P. Mergenthal, the following Public Reprimand with Terms:

I. Findings of Fact

1. Mr. Mergenthal was admitted to the practice of law in the Commonwealth of Virginia on September 24, 1976.

2. During all times relevant to this proceeding, Mr. Mergenthal was an attorney in good standing to practice law in the Commonwealth of Virginia.

3. On or about November 4, 2002, Mr. Mergenthal was appointed to represent Joe Lewis Johnson on an appeal of a criminal conviction.

4. Mr. Mergenthal pursued the appeal, which the Court of Appeals denied on April 30, 2003.

5. While the appeal was pending, Mr. Lewis repeatedly requested Mr. Mergenthal in writing to provide him information about the status of the appeal.

6. Mr. Mergenthal never responded in writing to any of Mr. Lewis' repeated requests for information about the status of the appeal.

6. Mr. Lewis advised Mr. Mergenthal in writing that, if the Court of Appeals denied the appeal, he wanted to appeal to the Supreme Court of Virginia.

7. Nonetheless, Mr. Mergenthal did not notify Mr. Lewis that the Court of Appeals had denied his appeal until May 18, 2004, more than a year after the Court of Appeals rejected the appeal and long after the deadline for noting an appeal to the Supreme Court of Virginia had expired.

8. Mr. Mergenthal failed to submit a written response to Mr. Lewis' bar complaint, notwithstanding two letters from the bar demanding that he do so.

II. Findings of Misconduct

The foregoing findings of fact, which are supported by clear and convincing evidence, give rise to findings that Mr. Mergenthal violated the following Rules of Professional Conduct:

RULE 1.3 Diligence

(a) * * *

RULE 1.4 Communication

(a) * * *

(c) * * *

III. Imposition of Sanction

Accordingly, it is the decision of the Sixth District Committee to impose a Public Reprimand with Terms and Mr. Mergenthal is hereby so reprimanded and the following terms imposed.

1. Mr. Mergenthal shall withdraw as counsel from all criminal matters in which he serves as court appointed counsel.

2. Mr. Mergenthal shall not accept any new court appointments to serve as counsel in criminal matters for a period of not less than three years from the issuance of the determination in this matter

3. Mr. Mergenthal shall certify in writing to Bar Counsel no later than thirty days after issuance of the determination in this matter that he has complied with the two foregoing terms.

If Mr. Mergenthal fails to comply with one or more of the foregoing terms, Bar Counsel may notice a show cause hearing before the Sixth District Committee. The only issue to be decided at that hearing will be the sufficiency of Mr. Mergenthal's compliance with the agreed upon terms. If the Sixth District Committee finds that Mr. Mergenthal has not complied with one or more of the agreed upon terms, Mr. Mergenthal agrees that the case shall be certified to the Disciplinary Board pursuant to Pargraph 13.I. of the Rules of Court for imposition of an appropriate sanction.

If the subcommittee approves the proposed Agreed Disposition, it shall become part of Mr. Mergenthal's disciplinary record, and the Clerk of the Disciplinary System shall assess the appropriate administrative fees.

* * *

SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By Christopher A. Abel, Chair

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COLD Proposed Amendments to Part Six, Section IV, Paragraph 13

The Virginia State Bar's Committee on Lawyer Malpractice Insurance is proposing the following amendments to Part 6, Section IV, Paragraph 13 of the *Rules of the Supreme Court of Virginia*.

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 May 15, 2005. The Virginia State Bar Council will consider the proposed amendments when it meets on **June 17, 2005**, in Virginia Beach, Virginia.

Notification to Clients

On February 2, 2005, COLD approved a proposed amendment requiring disbarred and suspended attorneys to notify the Clerk of the Disciplinary System when they have no clients to notify of their revocations or suspension pursuant to Paragraph 13.M. The subparagraph has also been reformatted.

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

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

* * *

M.Duties of Disbarred or Suspended Respondent

~~After a Suspension against a Respondent is imposed by either a Summary or Memorandum Order and no stay of the Suspension has been granted by this Court, or after a Revocation against a Respondent is imposed by either a Summary Order or Memorandum Order, that Respondent shall forthwith give notice, by certified mail, of his or her Revocation or Suspension to all clients for whom he or she is currently handling matters and to all opposing Attorneys and the presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters. The Board shall decide all issues concerning the adequacy of the notice and arrangements required herein, and the Board may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.~~

1. A Respondent whose License has been suspended or revoked shall within:

   a. 14 days after the effective date of such Suspension or Revocation give written notice of his or her Suspension or Revocation to:

      (1) all clients for whom he or she was handling legal matters and all attorneys and the presiding Judge or Judges or third party neutral in any pending legal matter in which the Respondent was counsel for a party on the effective date of the Suspension or Revocation; or

      (2) advise the Clerk of the Disciplinary System in writing that the Respondent had no clients for whom he or she was handling legal matters on the effective date of the Suspension or Revocation;

   b. 45 days after the effective date of such Suspension or Revocation make appropriate arrangements for the disposition of legal matters then in his or her care in conformity with the wishes of his or her clients; and,

   c. 60 days after the effective date of such Suspension or Revocation file with the Clerk of the Disciplinary System proof that such notices have been timely given, and such arrangements have been timely made for the disposition of matters.

2. For purposes of applying or interpreting this subparagraph M, the following rules apply:

   a. Unless a stay of a Suspension is granted by this Court, the effective date of a Suspension or Revocation shall be the effective date of the order.

   b. If a stay of a Suspension is granted by this Court the effective date of the Suspension shall be as finally determined upon termination of the appeal.

   c. Only for purposes of this subparagraph M, the term "order" means the Summary Order or Memorandum Order imposing the Revocation or Suspension issued by the Board or a three-Judge Circuit Court pursuant to Va. Code Section 54.1-3935.

3. The Board or a three-judge Circuit Court shall decide all issues concerning the adequacy and timeliness of the notices and arrangements required by subparagraph M and may impose a Revocation or additional Suspension for failure to comply with the requirements of subparagraph M.

4. Procedure to Show Cause Upon Alleged Failure to Comply

   a. Whenever it appears that the Respondent has failed to comply with the requirements of subparagraph M, Bar Counsel shall serve notice requiring the Respondent to show cause why the Board should not impose a Revocation or additional Suspension for said alleged failure.

   b. Within 15 days after service of the notice to show cause, the Respondent shall:

(1) file an answer that shall be conclusively deemed to be a consent to the jurisdiction of the Board; or

(2) file an answer and a demand that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code §54.1-3935; and simultaneously provide available dates for a hearing to be scheduled not less than 30 nor more than 120 days from the demand.

Upon such answer, demand and provision of available dates as specified above, further proceedings before the Board shall terminate, and Bar Counsel shall file the Complaint required by Va. Code §54.1-3935.

c. If the Respondent fails to file an answer, or file an answer, a demand and available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

d. The Board shall set a date, time, and place for the hearing, and the Clerk of the Disciplinary System shall serve notice of such hearing upon the Respondent at least 21 days prior to the date fixed for the hearing.

Motion to Dismiss Improper During Investigation

On February 2, 2005, COLD approved a proposed amendment describing when a Respondent can present a motion to dismiss.

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

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

* * *

E.Substantial Compliance, Notice, Evidentiary Rulings, Certain Motions to Dismiss Not Permitted

* * *

6. A motion to dismiss a Complaint or Investigation by a Respondent shall not be permitted. Except for a motion to strike at the conclusion of the Bar's evidence or at the conclusion of all of the evidence in a hearing, a motion to dismiss Charges of Misconduct by a Respondent shall not be permitted.

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