LEGAL ETHICS OPINION 1803

ETHICAL OBLIGATIONS THAT APPLY TO AN ATTORNEY WHO IS SERVING AS AN INSTUTIONAL ATTORNEY AT A STATE PRISON

I am writing in response to your request for an informal advisory opinion from the Virginia State Bar Standing Committee on Legal Ethics ("committee").

You have presented a hypothetical situation in which an attorney serves at a state prison, pursuant to §53.1-40. That statute calls for the judge of a county or city circuit court to appoint an attorney for a state correctional facility upon motion of the Commonwealth's attorney for that locality, "to counsel and assist indigent prisoners . . . regarding any legal matter relating to their incarceration." That attorney does not, as part of this position, represent the inmates as counsel of record in court. However, he does provide various levels of assistance to them regarding whether and what to file with the court. Depending on the needs and the request of an inmate, the attorney may type a draft provided orally or in writing by the inmate, may provide legal advice about the inmate's case, and may actually draft the documents needed by an inmate. Most of the work involves state or federal habeas relief, and there are usually appropriate form documents to complete. A narrative is often required for that completion. While some of the inmates are illiterate, others appear to be capable, but prefer the attorney to do the work.

Under the facts you have presented, you have asked the committee to opine on the following questions:

1) Does an attorney-client relationship exist between the attorney and a prisoner receiving services and consultation from that attorney, and, if so, when does it start and end?

When presented with this question in other requests, this committee has looked to the definition provided at the start of the Unauthorized Practice of Law Rules,[1] which states:

> Generally, the relation of attorney and client exists, and one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill.

Thus, in LEO 1592 this committee concluded that an attorney-client relationship had been established where the attorney hired to represent the uninsured motorist carrier had also provided legal advice and assistance to the *pro se* uninsured driver. *See also* LEO 1127 (finding an attorney-client relationship where attorney provided legal assistance on items such as discovery requests for *pro se* litigants). The "Scope" section introducing the Rules of Professional Conduct discusses the creation of an attorney-client relationship as follows:

> Furthermore, for the purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that may attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

In line with the LEOs and Rules provision cited above, the committee considers the attorney to be in an attorney-client relationship with at least some of the inmates receiving assistance, based on the legal advice or services provided in those instances. In any particular instance, the lawyer would have to make fact-specific determinations for each inmate, case-by-case, regarding whether such a relationship exists, and, if it does, when it concludes.

2) If there is an attorney-client relationship, what duties, other than that of the duty of confidentiality, apply to this attorney?

In recent LEO 1798, the committee answered whether Commonwealth's attorneys are held to the same ethical standards as other lawyers. In that opinion, the committee looked to the "Scope" section of the Rules of Professional Conduct to conclude that all attorneys licensed to practice law in Virginia, including Commonwealth's attorneys, were held to provisions in the Rules. The "Scope" section contains no exceptions, not for Commonwealth's attorneys and not for attorneys appointed pursuant to §54.1-30. Thus, whenever this attorney is in an attorney-client relationship with an inmate, the attorney must comply with all provisions in the Rules.

3) If the attorney is working solely as a scrivener for an inmate, with the actual text of a pleading having been decided upon by the prisoner, may the attorney produce a typed final draft for the prisoner without placing the attorney's name and identifying information on the pleading, or otherwise represent on the pleading that the attorney is the author?

The term "scrivener" is defined in *Black's Law Dictionary* as, "a writer. Especially, a professional drafter of contracts or other documents." Here, in question 3, the attorney is doing nothing more than typing the exact words presented handwritten or orally by the inmate. A typist is neither an attorney nor a scrivener. Where the only service provided to a particular inmate is typing, the attorney has done nothing to trigger an attorney-client relationship. The committee opines that where an individual types a pleading for another person, no disclosure is needed when that person files his pleading as a *pro se* litigant, even where the individual serving as typist is a licensed attorney and is employed pursuant to §53.1-40. However, the committee cautions that the attorney must be cognizant of the impression created for any inmate having an attorney type a document; absent some clarifying disclaimer to the inmate, the inmate may well assume that the lawyer has not only typed the document but also vouched for its legal soundness. If the attorney in any particular instance intends merely to type and not to review and approve the content of a document, the attorney should make sure the inmate has the same understanding as to the work to be done.

4) If the attorney may act as scrivener, can he go beyond mere typing of the pleading and actually affect the text, content or argument contained in the pleading

FOOTNOTE

1 *See* VA. Sup. CT. R. pt. 6, 31

itself, without having to represent himself as counsel of record on the document?

While the questions refer to the terms "typist" and "scrivener," the committee opines that in no instance does the title alone determine the character of the work and the corresponding ethical responsibilities. If the attorney is doing no more than typing the draft as developed by the inmate, the attorney is within the analysis presented above. However, if the attorney actually provides legal advice, such as the advisability of particular language, or if the attorney actually is the author of the language, then the attorney has left behind the role of mere typist and created an attorney-client relationship.[2] Thus, this attorney, appointed pursuant to § 53.1-40, will need to determine with each inmate just where on the spectrum of service delivery he is before he can determine whether he must disclose his role to the court.

In LEO 1592, this committee addresses the question of when an attorney needs to identify his work for a *pro se* litigant to the court.[3] In that opinion, the committee concluded:

> It would be improper for Attorney *A* to permit Defendant Motorist to continue to represent to the court that he is appearing *pro se* if Attorney *A* has advised Defendant Motorist about the issues in the case or matters which will be presented to the court.

The committee opines that in line with LEO 1592 and the authorities cited therein, whenever this attorney in the present situation is more than a mere typist, i.e., actual drafting and/or providing any legal advice, he must make sure that the inmate does not present himself to the court as having developed the pleading pro se. This is not to say the attorney must sign the pleading as attorney of record; such a requirement would far exceed the intended parameters of the job created by § 53.1-40. While the precise form or language of the notation need not be dictated by this opinion, the committee does conclude that the attorney must see to the inclusion of such a notation to avoid a misrepresentation to the court.

FOOTNOTES

2 The committee further notes that mere stylistic editorial language changes alone like typing, would not create an attorney–client relationship, so long as the language changes do not affect the meaning of the text.

3 In the discussion of this question, the committee is only addressing when the lawyer's work needs to be disclosed to the court; the committee is not questioning the propriety of the actual provision of these limited services. This committee consistently has approved the provision of limited legal services so long as the limitation was provided in compliance with Rule 1.2 ("Scope of Representation"). In those opinions, this committee focused on two necessary elements for permissible limitations: client consent after full disclosure as well as assurance that the restriction would not materially impair the client's rights. *See* LEO 1193 (allowing a legal aid office to limit divorce representation by delaying issues of support, custody, and marital property through reservation); LEO 1276 (allowing limitations on representation of students by university legal services program so long as only attorneys delineate the limitations with the clients); LEO 1523 (allowing attorney to abide by civil client's wish to negotiate with, but not sue, defendant where defendant was a friend of the client); LEO 1723 (disallowing plan of limitations by third party payor that precluded informing client of the litigation restrictions); LEO 1737 (requiring attorney to abide by competent client's choice to refrain from presenting mitigating evidence regarding the death penalty).

5) Do the answers to questions 3 and 4 depend on the situation of the inmate (i.e., whether he is illiterate, writes illegibly, etc.)?

The basis for the answers to questions 3 and 4, above, is the nature of the services provided, not the characteristics of the inmate to whom they are provided. Even if something about the abilities of the inmate placed the service delivery outside the scope of intended services under this assistance program, that would be an issue outside the purview of this committee and would not affect the answers or the conclusions drawn in this opinion.

To the extent that this opinion conflicts with prior LEO opinions 553, 824, 1126, 1352, 1368, 1464, 1726, and 1761 regarding the role of scrivener, those opinions are hereby superseded. This opinion is advisory only, based solely on the facts you presented, and is not binding on any court or tribunal.

Committee Opinion
March 16, 2005

LEGAL ETHICS OPINION 1813
LAWYER ADVERTISING—USE OF THE TERMS "AFFILIATED" OR "ASSOCIATED"

Inquiry:
Can two law firms use the terms "affiliated" or "associated" to describe the relationship between the firms on their letterhead?

Opinion:
The communication that one firm is "affiliated" or "associated" with another is not prohibited by the Rules of Professional Conduct, as long as the relationship between the firms is such that the communication is not false or misleading. The opinion also states that the "associated" or "affiliated" law firms must adhere to the applicable rules regulating disclosure of confidential information and conflicts of interest as if they were a single firm. *See* ABA Formal Op. 84-351. The questions in this opinion relating to lawyer advertising will be addressed by the Standing Committee on Lawyer Advertising and Solicitation ("SCOLAS"). The questions in this opinion relating to confidentiality and conflict will be addressed by the Standing Committee on Legal Ethics ("Ethics Committee"). This is a joint committee opinion.

Advertising

Rules 7.1 and 7.5 are the appropriate and controlling disciplinary rules. Rule 7.1 governs communications concerning a lawyer's services. It prohibits the communication if it contains false, fraudulent, misleading or deceptive statements or claims. Rule 7.5 deals with firm names and designations that must be truthful and accurate and not otherwise in violation of Rules 7.1 and 7.2.

RULE 7.1 Communications Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this

Rule if it:

(1) contains false or misleading information; or

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits; or

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(4) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law.

* * *

(b) Public communication means all communication other than "in-person" communication as defined by Rule 7.3.

RULE 7.5 Firm Names And Letterheads

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

(b) A law firm shall not be formed or continued between or among lawyers licensed in different jurisdictions unless all enumerations of the members and associates of the firm on its letterhead and in other permissible listings make clear the jurisdictional limitations of those members and associates of the firm not licensed to practice in all listed jurisdictions; however, the same firm name may be used in each jurisdiction.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

SCOLAS has observed a trend for more lawyers and firms to practice in multiple states. When lawyers or firms practice together regularly, particularly in the multistate practice, but not as a single firm, communications describing these firms as "affiliated" or "associated" can, in appropriate circumstances, provide useful information to clients and potential clients in selecting a law firm. An absolute prohibition of such a description is not justified. SCOLAS agrees with the analysis employed by the American Bar Association in ABA Formal Op. 84-351 and finds many of the examples from that opinion instructive. The following serves as guidelines to explain where the use of these terms is permissible.

First and foremost, the use of terms like "affiliated" or "associated" are permitted under Rule 7.1 because they accurately describe the relationship that exists. This opinion then discusses the application of the provisions on conflict of interest and confidentiality under the Rules of Professional Conduct.

The basic requirement regarding lawyer advertising under Rule 7.1(a) is that communications by a lawyer concerning legal services must not be false or misleading. Thus, designation by a lawyer or law firm of another law firm on a letterhead or in any other communication, including private communication with a client or other person, as "affiliated" or "associated" with the lawyer or law firm must be consistent with the actual relationship. Communication that another law firm is "affiliated" or "associated" is not misleading if the relationship comports with the plain meaning which persons receiving the communication would normally ascribe to those words or if used only with other information necessary to adequately describe the relationship and avoid confusion. An "affiliated" or "associated" law firm would normally mean a firm that is closely associated or connected with the other lawyer or firm in an ongoing and regular relationship.

Webster's Collegiate Dictionary (1997) defines "affiliate", a noun, as "an affiliated person or organization; specifically: a company effectively controlled by another or associated with others under common ownership or control." "Affiliated," an adjective, is defined as "closely associated with another typically in a dependent or subordinate position; closely connected (as in function or office) with another." The word "associate," a noun, is defined as "partner, colleague, friend."

The use of these terms currently in relation to the field of law seems quite clear. The term "associate" frequently is used to refer to an individual lawyer employee of a law firm. In another context, a lawyer or law firm is sometimes said to be "associated" with another lawyer or firm in a specific lawsuit or on a specific legal matter. In those instances, the meaning is clear. A different type of relationship is implied by the use of the term "affiliate" as a noun; therefore, SCOLAS believes that a lawyer or law firm must be mindful of this distinction. The proper use of the noun "affiliate" would only be in circumstances where organizations exist under common ownership and control but maintain separate identities, which is not common in the legal field.

The type of relationship that is implied in designating another firm as "affiliated" or "associated" is analogous to the ongoing relationship that is required by the designation of "Of Counsel," as clarified in LEO 1293. The relationship must be close and regular, continuing and semipermanent, and not merely that of forwarder-receiver of legal business. The "affiliated" or "associated" firm must be available to the other firm and its clients for consultation and advice.

Availability may be on a limited basis if, for instance, the "affiliated" or "associated" firm performs all of the tax, labor, patent or other specialized work for the firm. Availability may also be limited to performing legal services that have a relationship to, or must be performed in, another state. More descriptive language may be required to explain the precise relationship between the firms and to avoid misleading clients and others. For example, a firm might be described as "available for association on all tax matters," if that is true and tax work is the only work that its members will perform for clients of the other firm. An out-of-state firm might be described as "associated" or

"affiliated" on all matters in the particular state or pertaining to its law. Whether this further description is, itself, false or misleading depends on the actual relationship. Care must be used to describe the relationship precisely and with sufficient information that no material facts are omitted that are necessary, to keep the description of the relationship from being misleading.

Conflicts of Interest and Confidentiality

When a law firm lists another as "affiliated" or "associated," potential clients of the listing firm are led to believe that lawyers with the "affiliated" or "associated" firm are available to assist with representation, at least in matters that the designation may describe. The client ordinarily also expects that lawyers of the "affiliated" or "associated" firm will not simultaneously represent persons whose interests conflict with the client's interests, just as would be true of lawyers who occupy an "Of Counsel" relationship with the firm. *See* LEO 1467 (affirming "Of Counsel" relationship designations between two law firms, provided the requisite close, regular, personal relationship exists between the two firms). Also, Rule 1.10(a) provides:

> (a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.6, 1.7, 1.9, or 2.10(e).

Comment [1] to Rule 1.10 points out that what constitutes a firm can depend on the specific facts. Two practitioners that share office space and occasionally consult each other may not ordinarily be recognized as constituting a firm; however, if they present themselves to the public in such a way that they suggest they are a firm, then they should be regarded as a firm under the Rules. Important factors to consider are the terms of any formal agreement between the lawyers and the fact that they may have mutual access to client information.

Generally, lawyers in the same law firm may not simultaneously represent two clients whose interests are adverse even when the representation is in unrelated matters. Rule 1.7 provides that "[a] lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless . . . the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and . . . each client consents after consultation," or if the lawyer's "representation of that client may be materially limited by the lawyer's responsibilities to another client . . . unless . . . the lawyer reasonably believes the representation will not be adversely affected, and the client consents after consultation." Comment [1] to Rule 1.7 states further that a lawyer's duty of loyalty to the client generally prohibits the lawyer from accepting employment directly adverse to the client without the client's consent.

Rule 1.9 follows the vast majority of cases in creating an irrebuttable presumption that present affiliates will share a former client's confidences where the adverse representations are in substantially related matters. The use of the "Chinese wall" approach to screen confidential information is not accepted, as the basis of the Rules of Professional Conduct is centered principally on the need to protect client confidences even after the lawyer-client relationship ceases.

The Ethics Committee believes that the same rationale applies where law firms hold themselves out as "affiliated" or "associated" with one another, as applies under the Rules of Professional Conduct and the foregoing examples, where conflicts arise within law firms. When a firm elects to affiliate or associate another with it and to communicate that fact to the public and clients, there is no practical distinction between the relationship of affiliates under that arrangement and the relationship of separate offices in a law firm. The Ethics Committee is of the opinion that ordinarily the same analysis would apply to both arrangements to determine when the firms have a disqualifying conflict of interest, treating the "affiliated" or "associated" firms for this purpose as a single firm.[1]

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

Committee Opinion
Standing Committee on Lawyer Advertising and Solicitation
Standing Committee on Legal Ethics
March 16, 2005

FOOTNOTE

1 This opinion does not address the issues of liability exposure and insurance associated with firms who hold themselves out as "affiliated" or "associated."

In Memoriam

Robert R. Aldinger
Chesapeake
March 1932–January 2005

Richard G. Brydges
Virginia Beach
December 1921–March 2005

William Johnson Creech Jr.
Hilton Head Island, South Carolina
July 1949–February 2005

Robert William DeVos
Owings, Maryland
March 1946–January 2005

Judith Gerrein Ising
Pittsboro, North Carolina
May 1943–March 2005

Jerome F. Lieblich
Winchester
April 1916–October 2004

The Honorable Thomas R. McNamara
Blue Grass
February 1925–March 2005

Michael W. Moncure III
Richmond
March 1929–November 2004

Charles Anthony Moreau
Danville
December 1962–March 2005

Charles B. Sullivan Jr.
Arlington
August 1920–June 2004

John B. Trent Jr.
Roanoke
November 1917–December 2004

Fred Glover Wood Jr.
Charlottesville
July 1935–March 2005

Proposed MCLE Opinion 18—Law Firm-Sponsored Courses and Programs

The Virginia Mandatory Continuing Legal Education (MCLE) Board solicits comments from members regarding proposed MCLE Opinion #18 concerning approval standards for law firm–sponsored courses. The MCLE Board will receive input or comments at the following address through July 30, 2005, for consideration at its August meeting: MCLE Board, 707 East Main Street, Suite 1500, Richmond, VA 23219, or Cartwright@vsb.org.

The MCLE Board has observed an increasing trend in the number of courses and programs submitted for accreditation by law firms. Some of these courses and programs are directed to firm attorneys and some are directed at a client audience. Such courses and programs (hereinafter referred to as "Law Firm Programs") must have the primary objective of increasing an attendee's professional competence and skills as an attorney, rather than instructing the attendee in the internal policies and procedures of the law firm or to market the firm's capabilities to clients. The Board further will examine the attendee counts to determine whether the program is focused at an attorney or nonattorney audience. For all such Law Firm Programs, the sponsor must submit an accurate count of attorney attendees and nonattorney attendees.

In determining whether law firm-sponsored courses and programs will be accredited, consideration will be given to the following factors:

1. Where the Law Firm Program is taught in-house, whether the purpose of the course focuses on education of attorneys in an area of substantive law, professionalism or ethics, or whether the course focuses on teaching attendees the firm's particular internal policies and procedures.

2. Where the Law Firm Program is taught in-house, whether the presentation is directed to an attorney audience or a nonattorney audience (i.e, paralegals, legal assistants, secretaries). The Board will examine the attendance count in evaluating this factor.

3. Where the Law Firm Program is taught by law firm attorneys and directed at a client audience, whether the purpose of the course focuses on education of attorneys in an area of substantive law, professionalism or ethics, or whether the course focuses on marketing the law firm and the firm's attorneys to clients.

4. Where the Law Firm Program is taught by law firm attorneys and directed at a client audience, whether the presentation is directed to an attorney audience or a nonattorney audience. For example, an annual law firm-sponsored employment law update seminar focused at an attorney-only audience, which otherwise meets the Board's regulations, would be approved.

5. Typically, teaching credit will not be given where the presentation is primarily directed to a client or potential client audience, or is done in the ordinary course of the practice of law.

The MCLE Board will weigh the factors above to determine whether the Law Firm Program should be accredited. Law Firm applications must accurately report the audience for each program, including the number of firm attorneys, attorney clients or potential clients and nonattorneys. The burden of demonstrating that a Law Firm Program qualifies for accreditation shall be upon the Law Firm Program sponsor or the individual attendee seeking accreditation.

[Paragraph 17(H)(1) of Section IV, Part 6, Rules of the Supreme Court of Virginia; MCLE Regulation 103(b),(i)]

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 27, 2005**. The Virginia State Bar Council will consider the proposed amendments when it meets on **June 16, 2005**, in Virginia Beach, Virginia.

LIMITED RIGHT OF APPEAL BY BAR COUNSEL; FILINGS TO THE CLERK OF THE DISCIPLINARY SYSTEM IN MATTERS BEFORE A THREE-JUDGE CIRCUIT COURT

On April 6, 2005, COLD approved a proposed amendment giving bar counsel a limited right of appeal and requiring that filings in matters before a three-judge circuit court be made to the Clerk of the Disciplinary System.

Part Six, Section IV, Paragraph 13 of the Rules of Court does not afford bar counsel the right to appeal any attorney disciplinary determination, even determinations that are plainly contrary to law. Respondents who believe that district committee, three-judge court or Disciplinary Board determinations are contrary to the law or evidence can, as a matter of right, appeal the determinations. These proposed rule changes would permit bar counsel to challenge the propriety of a procedural or substantive ruling allegedly leading to an erroneous determination but not whether a hearing panel imposed an appropriate disciplinary sanction based upon the evidence presented. The standard of review applicable to appeals by bar counsel would be whether the determination in question is plainly contrary to law. Under the proposed rules, only a respondent would have the right to challenge the sufficiency of the evidence supporting a sanction.

A proposed rule change also requires all three-judge court filings to be made with the Clerk of the Disciplinary System, who will be responsible for forwarding the record to the clerk of the court in which the three judges have been appointed to sit. This change addresses the failure of three-judge court members to receive motions, briefs and voluminous trial records before the judges convene to hear oral argument on outcome determinative motions and appeals on the record.

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

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

* * *

B. Authority of the Courts, Council, COLD, the Board, District Committees, Bar Counsel and the Clerk of the Disciplinary System

* * *

5. Authority and Duties of the Board

a. The Board shall have jurisdiction to consider:

* * *

(8) Violations of CRESPA or any regulations adopted pursuant thereto; and

(9) Failure of respondent to make a complete transcript part of the record or to file an opening brief in a timely manner, as provided in this Paragraph.;

(10) Failure of an Attorney to comply with an order, summons or subpoena issued in connection with a Disciplinary Proceeding~~.~~; and

* * *

8. Authority and Duties of the Clerk of the Disciplinary System:

* * *

b. Filings Required by This Paragraph

All filings required by this Paragraph in connection with Disciplinary Board or three-judge Circuit Court Proceedings shall be made with the Clerk of the Disciplinary System, who shall forward the filings to the appropriate tribunal.

c. Record on Appeal

The Clerk of the Disciplinary System shall assemble the record on appeal.

~~b.~~ d. Records Retention

* * *

~~c.~~ e. Costs

* * *

~~d.~~ f. Public Notification of Disciplinary Sanctions:

* * *

G. Subcommittee Action

1. Following receipt of the report of Investigation and Bar Counsel's recommendation, the Subcommittee may refer the matter to Bar Counsel for further Investigation. Once the Investigation is complete to the Subcommittee's satisfaction, it shall take one of the following actions.

a. Dismiss the Complaint when:

* * *

b. Certify the Complaint to the Disciplinary Board pursuant to this Paragraph or file a complaint in a three-judge Circuit Court, ~~pursuant to Va. Code § 54.1 3935~~ as authorized by the Code of Virginia. Certification shall be based on a reasonable belief that the Respondent has engaged or is engaging in Misconduct that, if

proved, would justify a Suspension or Revocation. In making this determination, the Subcommittee shall have access to Respondent's prior disciplinary record.

* * *

H. District Committee Proceedings

1. Pre-Hearing Matters

a. Charge of Misconduct

* * *

(2) After the Respondent has been served with the Charge of Misconduct, the Respondent shall, within 21 days after service of the Charge of Misconduct:

* * *

(b) file an answer to the Charge of Misconduct and a demand with the Clerk of the Disciplinary System that the ~~p~~Proceedings before the District Committee be terminated and that further ~~p~~Proceedings be conducted ~~pursuant to Va. Code § 54.1 3935~~ before a three-judge Circuit Court as authorized by the Code of Virginia; 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 demand and provision of available dates as specified above, further ~~p~~Proceedings before the District Committee shall terminate, and Bar Counsel shall file ~~with the Clerk of the Disciplinary System~~ the three-judge Circuit Court ~~C~~complaint required ~~by Va. Code § 54.1 3935~~ to initiate Proceedings before a three-judge Circuit Court. The Clerk of the Disciplinary System shall forward the complaint to the appropriate tribunal.

* * *

2. Hearing Procedure

* * *

l. Disposition

* * *

(2) Sanctions

If the District Committee finds that Misconduct has been shown by clear and convincing evidence, then the District Committee shall, prior to determining the appropriate sanction to be imposed, inquire whether the Respondent has been the subject of any Disciplinary Proceedings in this or any other jurisdiction and shall give Bar Counsel and the Respondent an opportunity to present material evidence in aggravation or mitigation, as well as argument. In determining what disposition of the Charge of Misconduct is warranted, the District Committee shall consider the Respondent's Disciplinary Record. A District Committee may:

* * *

(e) certify the Charges of Misconduct to the Board or file a three-judge Circuit Court complaint in a Circuit Court~~, pursuant to Va. Code § 54.1 3935~~ as authorized by the Code of Virginia.

* * *

~~4. Perfecting an Appeal from District Committee's Determination~~

~~a. By the Respondent~~

~~(1) Notice of Appeal. Within ten days after notice is mailed of a District Committee's issuance of an Admonition, with or with Terms, or a Public Reprimand, with or without Terms, a Respondent may file with the Clerk of the Disciplinary System either a notice of appeal to the Board or a written demand that further Proceedings be conducted in a Circuit Court pursuant to Va. Code § 54.1 3935. In either case, the Respondent shall send copies to the District Committee Chair and to Bar Counsel.~~

~~(2) Staying of Discipline. If the Clerk of the Disciplinary System receives a timely notice of appeal from a Public Reprimand, with or without Terms, or an Admonition, with or without Terms, the sanction shall be stayed during the pendency of the appeal.~~

~~(3) Filing the Transcript and Record on Appeal. The Respondent shall certify in the notice of appeal or written demand that he or she has ordered from the Court Reporter a complete transcript of the proceedings before the District Committee, at the Respondent's cost. Upon receipt of the notice of appeal or written demand, Bar Counsel shall forward those portions of the record in his or her possession to the Clerk of the Disciplinary System. The transcript is a part of the record when it is received in the office of the Clerk of the Disciplinary System within 40 days after filing of the notice of appeal or written demand. The Clerk of the Disciplinary System shall retain the records until the transcript has been received or for 40 days after the notice of appeal or written demand has been received, whichever occurs first, and shall then dispose of the record as prescribed in the records retention policy set forth in this Paragraph. Failure of the Respondent to make the complete transcript a part of the Record as specified herein shall result in Dismissal of the appeal by the Board, whether initiated by notice of appeal or written demand, and affirmance of the sanction imposed~~

~~by the District Committee. Bar Counsel shall initiate the three-judge Circuit Court process for the appeal only after receipt of the transcript by the Clerk of the Disciplinary System.~~

~~(4) Appeal to a Circuit Court. An appeal to a Circuit Court pursuant to Va. Code § 54.1-3935 shall be conducted before a duly convened three-judge Circuit Court as an appeal on the record using the same procedure prescribed for an appeal before the Board under this Paragraph. The Clerk of the Disciplinary System shall forward the record to the clerk of the designated Circuit Court only upon receipt of the transcript as provided in the preceding paragraph.~~

~~(5) Appeal from Agreed Sanction Prohibited. No appeal shall lie from any sanction to which the Respondent has agreed.~~

I. Procedure For Appealing a District Committee Determination

1. Agreed Disposition

No appeal shall be permitted from a determination based upon an Agreed Disposition.

2. Record on Appeal

The record shall consist of the notice of hearing, the complete transcript of the Proceeding, any exhibits received or refused by the District Committee, the District Committee Determination, and all briefs, memoranda or other papers filed with the District Committee by the Respondent or Bar Counsel.

3. By the Respondent

a. Notice of Appeal

Within ten days after notice is mailed of a District Committee Determination imposing discipline, a Respondent may file with the Clerk of the Disciplinary System a notice of appeal on the record specifying whether the appeal is to the Board or a three-judge Circuit Court as authorized by the Code of Virginia. In either case, the Respondent shall send a copy of the notice of appeal to Bar Counsel.

b. Staying of Discipline
If the Clerk of the Disciplinary System receives a timely notice of appeal from a District Committee Determination imposing discipline, the sanction shall be stayed during the pendency of the appeal.

c. Certification that Transcript has been Ordered

The Respondent shall certify in the notice of appeal that he or she has ordered from the Court Reporter a complete transcript of the District Committee Proceeding, at the Respondent's cost.

d. Upon receipt of the notice of appeal, Bar Counsel shall forward those portions of the record in his or her possession to the Clerk of the Disciplinary System. The transcript becomes part of the record if received by the Clerk of the Disciplinary System no later than 40 days after the notice of appeal is filed. Failure of the Respondent to make the complete transcript and opening brief a part of the record as specified herein shall result in Dismissal of the appeal by the Board, whether the appeal was to the Board or a three-judge Circuit Court, and affirmance of the District Committee Determination. If an appeal is dismissed, the Clerk of the Disciplinary System shall dispose of the record as prescribed in the records retention policy set forth in this Paragraph.

e. In an appeal to a three-judge Circuit Court, the Clerk of the Disciplinary System shall forward the notice of appeal, the record and the briefs to the clerk of the appropriate Circuit Court only upon timely filing of the notice of appeal, the transcript and the opening brief as provided in this Paragraph.

4. By Bar Counsel

a. Notice of Appeal

Within ten days after notice is mailed of a District Committee Determination, Bar Counsel may file with the Clerk of the Disciplinary System a notice of appeal on the record specifying whether the appeal is to the Board or a three-judge Circuit Court. In either case, Bar Counsel shall send a copy of the notice of appeal to the Respondent and Respondent's counsel, if any.

b. Staying of Determination

If the Clerk of the Disciplinary System receives a timely notice of appeal from a District Committee Determination, the determination shall be stayed during the pendency of the appeal.

c. Certification that Transcript has been Ordered

Bar Counsel shall certify in the notice of appeal that he or she has ordered from the Court Reporter a complete transcript of the District Committee Proceedings, at the Bar's cost, and Bar Counsel shall forward those portions of the record in his or her possession to the Clerk of the Disciplinary System.

d. Election of a Three-Judge Circuit Court

Within 10 days after service of a notice of appeal by Bar Counsel to the Board, the Respondent may file with the Clerk of the Disciplinary System a demand that the appeal be heard on the record by a three-judge Circuit Court. If such demand is made, the Respondent shall send a copy to Bar Counsel.

e. Record on Appeal

The transcript becomes part of the record if received by the Clerk of the Disciplinary System no later than 40 days after the notice of appeal is filed. Failure of Bar Counsel to make the complete transcript and opening brief a part of the record as specified herein shall result in Dismissal of the appeal by the Board, whether the appeal was to the Board or a three-judge Circuit Court, and affirmance of the District Committee Determination. If an appeal is dismissed, the Clerk of the Disciplinary System shall dispose of the record as prescribed in the records retention policy set forth in this Paragraph.

f. In an appeal to a three-judge Circuit Court, the Clerk of the Disciplinary System shall forward the notice of appeal, the record and the briefs to the clerk of the appropriate Circuit Court only upon timely filing of the notice of appeal, the transcript and the opening brief as provided in this Paragraph.

5. Briefing Schedule

Upon receipt of notice from the Clerk of the Disciplinary System that a Respondent or Bar Counsel has filed an appeal from a District Committee Determination, the Board shall place such matter on its docket for review. The Clerk of the Disciplinary System shall notify the appellant when the entire record of the District Committee Proceeding has been received or when the time for appeal has expired. Upon petition of the Respondent or Bar Counsel, for good cause shown, the Board may permit the record to be supplemented to prevent injustice. The supplement shall be in the form the Board deems appropriate. Thereafter, briefs shall be filed in the office of the Clerk of the Disciplinary System, as follows.

a. The appellant shall file an opening brief within 40 days after the Clerk of the Disciplinary System mails the notice to the appellant that the record is complete. Failure of the appellant to file an opening brief within the time specified herein shall result in the Dismissal of the appeal and affirmance of the District Committee Determination.

b. The deadline for the appellee to file an opposing brief is 25 days after the opening brief is filed.

c. The deadline for the appellant to file a reply brief is 14 days after the appellee's brief is filed.

6. Standard of Review

a. In reviewing the record of a District Committee Determination in an appeal by a Respondent, the Board or a three-judge Circuit Court shall ascertain whether there is substantial evidence in the record supporting the District Committee Determination and/or whether the District Committee Determination is plainly contrary to the law.

b. In reviewing the record of a District Committee Determination in an appeal by Bar Counsel, the Board or a three-judge Circuit Court shall ascertain whether the District Committee Determination is plainly contrary to the law.

7. Oral Argument

Oral argument shall be granted unless waived by the appellant.

8. Determination on Appeal

Upon review of the record in its entirety, the Board or three-judge Circuit Court may:

a. dismiss the Charges of Misconduct; or

b. affirm the District Committee Determination, in which instance the Board or a three-judge Circuit Court shall impose the same or any lesser sanction as that imposed by the District Committee; or

c. reverse in whole or in part the District Committee Determination and remand in whole or in part the Charges of Misconduct to the District Committee for further Proceedings.

~~I.~~J. Board Proceedings

1. Pre-Hearing Matters

a. Procedure on Certification to the Board

(1) After a Subcommittee or District Committee certifies a matter to the Board, and the Respondent has been served with the Certification, the Respondent shall, within 21 days after service of the Certification:

(a) file an answer with the Clerk of the Disciplinary System to the Certification, which answer shall be deemed consent to the jurisdiction of the Board; or

(b) file an answer with the Clerk of the Disciplinary System to the Certification and a demand that the ~~p~~Proceedings before the Board be terminated and that further ~~p~~Proceedings be conducted ~~pursuant to Va. Code § 54.1 3935~~ before a three-judge Circuit Court as authorized by the Code of Virginia; 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 demand and provision of available dates as specified above, further ~~p~~Proceedings before the Board shall terminate, and Bar Counsel shall file a three-judge Circuit Court ~~C~~complaint ~~required by Va. Code § 54.1 3935~~ with the

Clerk of the Disciplinary System, who shall forward the complaint to the clerk of the appropriate Circuit Court. Failure of the Respondent to provide available dates for a hearing, as specified above, shall result in the Board retaining jurisdiction.

* * *

b. Expedited Hearings

* * *

(5) ~~At least five days prior to the date set for hearing~~, Within 10 days of service of a petition for expedited hearing, the Respondent shall ~~either~~ file with the Clerk of the Disciplinary System ~~a formal~~ an answer to the petition, which shall be conclusively deemed to be a consent to the jurisdiction of the Board, or ~~file a~~ an answer and a demand that ~~p~~Proceedings before the Board be terminated and that further ~~p~~Proceedings be conducted before a three-judge Circuit Court ~~pursuant to Article 6 of Chapter 39 of Title 54.1 of the Code of Virginia~~, as authorized by the Code of Virginia, whereupon further ~~p~~Proceedings before the Board shall be terminated and Bar Counsel shall file a three-judge Circuit Court complaint with the Clerk of the Disciplinary System ~~under Va. Code § 54.1 3935~~. Failure to file ~~such~~ a timely demand ~~within the time prescribed herein~~ shall be a conclusive waiver of the right to ~~subsequently~~ file such demand and shall result in the Board retaining jurisdiction.

(6) ~~If proceedings continue before the Board, the conduct of the hearing shall be as provided herein~~. If ~~p~~Proceedings continue ~~pursuant to Va. Code § 54.1 3935~~ before a three-judge Circuit Court as authorized by the Code of Virginia, the court ~~designated pursuant to that section shall conduct the hearing provided for therein no more than 60 days from the date of filing of the complaint~~. shall issue an order requiring the Respondent to appear before the court not less than 30 or more than 60 days from the date the three-judge Circuit Court complaint was filed. If ~~any~~ an order of summary Suspension has been entered, ~~such~~ the Suspension shall remain in effect until the three-judge Circuit Court ~~designated under Va. Code § 54.1 3935~~ enters ~~a final~~ an order disposing of the ~~issue~~ complaint before it.

* * *

5. Proceedings upon First Offender Plea, Guilty Plea or Adjudication of a Crime

* * *

d. Procedure

The procedure applicable to Proceedings related to Misconduct shall apply to Proceedings relating to guilty pleas or Adjudication of a Crime, except that if the Respondent elects to have further Proceedings conducted ~~pursuant to Va. Code § 54.1 3935~~ before a three-judge Circuit Court as authorized by the Code of Virginia, the Respondent shall file the Respondent's demand therefor not later than ten days prior to the date set for the hearing before the Board. If the Respondent files a demand that the Proceedings before the Board be terminated, and that further Proceedings be conducted by a three-judge Circuit Court, the order of Suspension issued by the Board shall remain in effect until the three-judge Circuit Court issues its ruling, ~~subject, however, to the provisions of Va. Code § 54.1 3935~~.

* * *

~~J.~~K. ~~Appeal from~~ Procedure For Appealing a Board or Three-Judge Circuit Court Determination~~s~~

1. Agreed Disposition

No appeal shall be permitted from a determination based upon an Agreed Disposition.

~~1.~~2. ~~Right~~ By the Respondent

a. ~~As a matter of right any~~ A Respondent may appeal to this Court from

(1) an ~~order of~~ Admonition, Public Reprimand, Suspension, or ~~Disbarment~~ Revocation imposed by the Board or a three-judge Circuit Court. ~~An appeal shall lie once the Memorandum Order described in this Paragraph has been served on the Respondent. No appeal shall lie from a Summary Order.~~

(2) an order of the Board or a three-judge Circuit Court in an appeal affirming a District Committee Determination imposing discipline.

An appeal shall be permitted once the Memorandum Order described in this Paragraph has been served on the Respondent. No appeal shall be permitted from a Summary Order.

~~2. Notice of Appeal~~

~~The Respondent shall file with the Clerk of the Disciplinary System a notice of appeal and assignments of error within 30 days after the Memorandum Order of the Board is served on the Respondent. This action within the time prescribed is jurisdictional.~~

~~3. Further Proceedings~~

~~Further proceedings shall be as provided in this Court's procedure for filing an appeal from a trial court and procedure following perfection of appeal. For the purposes of determining dates of filing, the date of filing the record with the clerk of this Court shall be deemed to be the date of the issuance of the certificate of the clerk of this Court under Rule 5:23. The Clerk of the Disciplinary System shall immediately notify the Respondent and his counsel, if any, by certified mail, of the date on which the record is filed.~~

~~4. Determination~~

~~This Court shall hear the case and make such determination in connection therewith as it shall deem right and proper.~~

3. By Bar Counsel

Bar Counsel may appeal to this Court from a Memorandum Order issued by the Board or a three-judge Circuit Court. An appeal shall be permitted once the Memorandum Order described in this Paragraph has been served on Bar Counsel. No appeal shall be permitted from a Summary Order.

4. The appellant shall file with the Clerk of the Disciplinary System a notice of appeal and assignments of error within 30 days after the Memorandum Order of the Board or a three-judge Circuit Court is served. The transcript or a written statement of fact shall be filed with the Clerk of the Disciplinary System within 60 days of service of the Memorandum Order of the Board or the three-judge Circuit Court. An appeal shall be deemed granted by compliance with these filing requirements. Failure to comply with any of these filing requirements is jurisdictional and shall result in dismissal of the appeal.

5. Further Proceedings

The Clerk of the Disciplinary System shall assemble and file the record as provided in Part 5 of the Rules of this Court. The Clerk of the Disciplinary System shall immediately notify the Respondent, by certified mail, and Respondent's counsel, if any, and Bar Counsel, by first class mail, of the date on which the record is filed. Further Proceedings shall be as provided in the Rules of this Court for cases in which an appeal has been perfected. The date of filing the record with the clerk of this Court shall be deemed to be the date of the issuance of the certificate of the clerk of this Court under Rule 5:23.

6. Standard of Review

a. In reviewing the record of a Board or three-judge Circuit Court determination in an appeal by a Respondent, the Court shall ascertain whether there is substantial evidence in the record supporting the Board or three-judge Circuit Court determination and/or whether the Board or three-judge Circuit Court determination is plainly contrary to the law.

b. In reviewing the record of a Board or three-judge Circuit Court determination in an appeal by Bar Counsel, the Court shall ascertain whether the determination is plainly contrary to the law.

~~5.~~ 7. Office of the Attorney General

In all appeals to this Court, the Office of the Attorney General, or ~~the~~ Bar Counsel~~, if so requested by the Attorney General,~~ shall represent the interests of the Commonwealth and its citizens ~~as appellees~~.

~~6.~~8. Stay Pending Appeal

Upon the entry by the Board or a three-judge Circuit Court of either a Summary or Memorandum Order of Suspension, this Court may, upon petition of the Respondent, stay the effect of such an order of suspension prior to or during the pendency of the appeal. Any order of Admonition, Public Reprimand and any order in an appeal affirming a District Committee Determination of a *De Minimis* Dismissal or a Dismissal for Exceptional Circumstances shall be automatically stayed prior to or during the pendency of an appeal ~~therefrom~~. No stay shall be granted in cases where the Respondent's license to practice law has been revoked by either the Summary or Memorandum Order of the Board or a three-judge Circuit Court.

~~K.~~L. Resignation

* * *

~~L.~~ M. Consent to Revocation

* * *

~~M.~~ N. Duties of Disbarred or Suspended Respondent

* * *

~~N.~~ O. Confidentiality of Disciplinary Records and Proceedings:

* * *

2. Timing of Disclosure of Disciplinary Record in Sanctions Proceedings

If an Attorney has a Disciplinary Record and is subsequently found by a Subcommittee, a District Committee, the Board or a three-judge Circuit Court as authorized by the Code of Virginia ~~empaneled under Va. Code § 54.1-3935~~ to have engaged in Misconduct, the facts and circumstances giving rise to such Disciplinary Record may be disclosed (i) to the Subcommittee, District Committee, Board or three-judge Circuit Court prior to the imposition of any sanction and (ii) by the Subcommittee, District Committee, Board or three-judge Circuit Court in its findings of fact set forth in its order.

* * *

~~O.~~ P. * * *

REVISE DEFINITION OF "CERTIFICATION"

On April 6, 2005, COLD approved a proposed amendment revising the definition of "Certification." This amendment eliminates the reference to "charges of misconduct" since a subcommittee which elects to certify a case to the Board does not have before it "charges of misconduct." The defined term "Charges of Misconduct" refers to a notice of hearing. Such a notice is issued only after a subcommittee has elected to set a case for trial before a district committee.

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

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

* * *

A. Definitions

As used in this Paragraph, the following terms shall have the meaning herein stated unless the context clearly requires otherwise:

* * *

"Certification" means the document issued by a Subcommittee or a District Committee when it has elected to certify ~~the Charges of Misconduct~~ allegations of Misconduct to the Board for its consideration, which document shall include sufficient facts to reasonably notify Bar Counsel and Respondent of the basis for such Certification and the Disciplinary Rules alleged to have been violated.

* * *

license foreitures

The licenses of the following members of the Virginia State Bar are forfeited from the practice of law for failure to comply with Section 54.1-3914, Code of Virginia, Title 54.1, Professionals and Occupations, as indicated below. We have attempted to contact these members at their last address listed with the Virginia State Bar; however, in some instances, this has not been effective. In an effort both to advise the bench and bar of these forfeitures, and to establish contact with those persons to whom our notices may not have been delivered, the names of those whose licenses have been canceled are being published in this issue of the Virginia Lawyer Register. Any member knowing the present location and/or practice status of any person on the list should contact the Virginia State Bar as soon as possible. (These lists were submitted for publication on January 10, 2005, and are current as of that date.)

FORFEITURE OF LICENSE FOR FAILURE TO PAY ANNUAL MEMBERSHIP FEES
Section 54.1-3914, Code of Virginia, Title 54.1, Professions and Occupations

ACTIVE MEMBERS

William Brandon Baade, Quitman, TX
Joseph Anthony Becht, Jr., Arlington, VA
Michael John Bigg, Great Falls, VA
Dwayne Eric Black, Rochester, NY
George Edwin Bowden, III, Bethesda, MD
Barbara Lyn Brackett, Vienna, VA
William John Bridge, Mathews, VA
Timothy Duane Cass, Bristol, VA
Sharon Michele Chambers, Rockville, MD
Dennis Philip Clarke, McLean, VA
Curtis Lee Coates, Littleton, CO
Tamara LaVonne Crouch, Fairfax, VA
William Samuel Dawson, III, Potomac Falls, VA
Philip Anthony Gagner, Washington, DC
Gregory Fred Geary, Leesburg, VA
Thomas Avery Gustin, Norfolk, VA
Archie Lee Harris, Jr., Washington, DC
Kaprice Lynch Harris, Glen Allen, VA
Alberto Zulueta Herrero, Charlottesville, VA
Emmett Ashton Johnston, Falls Church, VA
Mark Dell Kielsgard, Fairfax, VA
Katherine Ann Levin, Baltimore, MD
Leslie Lynn Lipps, Arlington, VA
William Bynum Marshall, Sparta, NC
Frederick Arthur Reese, Farmington, NM
E. Martin Schara, Virginia Beach, VA
Roland Mark Schrebler, Baltimore, MD
Eric Michael Smith, Big Flats, NY
Thomas McQuade Terry, Mechanicsville, VA
Eric Wat Trucksess, Oakton, VA
Sharon Smith Van Pelt, Alexandria, VA
Victor M. Wigman, Washington, DC
John Peter Wolf, III, Berwyn, PA
Michael Edward Wood, Boca Raton, FL

FORFEITURE OF LICENSE FOR FAILURE TO PAY ANNUAL MEMBERSHIP FEES
Section 54.1-3914, Code of Virginia, Title 54.1, Professions and Occupations

ASSOCIATE MEMBERS

Wendy Lou Alfsen-Cleveland, Berkeley, CA
Kathryn Courtney Algozzine, Powell, OH
Pamela Jo Anselmo, Miami Beach, FL
Worth Durham Banner, Virginia Beach, VA
Michael John Bartlett, Washington, DC
William Stephen Bilenky, Brooksville, FL
Janet Lee Boyer, Delta Junction, AK
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Michael Dennis Breen, Silver Spring, MD
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Maurice Morton Carey , Jr., Richmond, CA
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Dorothy Julia Ethel Clarke, Madison, WI
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Corrin Merle Ferber, Rockville, MD
Marc Forino, Arlington, VA
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Michael Wayne Fowler, Shreveport, LA
Laurie Angela Brousseau Freeman, Scituate, MA
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John K. Haley, Charlottesville, VA
Kimberly Lane Hallman, Hilton Head Island, SC
Gregory Debell Hammond, Fairfax, VA
Carolyn Pierce Hanson, Burlington, VT
Robert Terrence Harders, San Diego, CA
Wendell Jaye Harms, Des Moines, IA
Gregg Alan Hawrylko, Oakton, VA

license foreitures

Virginia Ellen Hench, Honolulu, HI
Desiree Michele Herbert Lange, San Diego, CA
William A. Hill, Bethesda, MD
Sheryl Denise Hill, Sykesville, MD
John F. Jaeger, Merion Station, PA
Jerrold Snow Jensen, Salt Lake City, UT
Stevan Michael Jones, Jacksonville, FL
Jennifer Ann Jones, Franklin, IN
Susan Elizabeth Kestner, Arlington, VA
Steven John Killworth, Houston, TX
Steve Yoonsoo Kim, Central,
William Joseph Kopp, Brecksville, OH
Daniel Lacomis, Boulder, CO
Louise A. Lerner, Arlington, VA
Henry Levine, Westfield, NJ
David Bernard Levitt, New Orleans, LA
James Erwin Long, Lansing, MI
Louis Mackall, V, Prescott, AZ
Atticus Madison, 80670 Canaples,
Stephen Richard Magnuson, Huntington Beach, CA
Michael Joseph Marino, Jacksonville, FL
Angela Deese Marshall, Sparta, NC
Michele Ann Mathis, Reisterstown, MD
William Leo Mayers, Scott AFB, IL
Timothy Sherwood McAdam, Waiden, NY
Trist Bringier McConnell, Sterling, VA
Kathleen Taylor McCuistion, Purcellville, VA
Robert J. McDonnell, Havertown, PA
James Francis McGowan, III, Fairfax, VA
Paul Thomas Meiklejohn, Seattle, WA
Scott Arthur Milburn, Seattle, WA
Joseph V. Missett, III, New York, NY
Gregory O. Morgan, Bozeman, MT
Lauren Clineburg Mullen, Cos Cob, CT
Robert Byers Murray, Washington, DC
Judith Thomas Naef, Wilmington, NC
Mary Marshall Overstreet, Exeter, ME
Sandra Mary Pak, Palo Alto, CA
Edward A. Pilkington, Atlanta, GA
Stefani Westfall Podvin, Dallas, TX
Loretta Walker Prencipe, Alexandria, VA
Renee Ellen Rayfield, Los Angeles, CA
Sheila Reingold, Shaker Heights, OH
William R. Rimm, Potomac, MD
Linda Marie Robb, Indianapolis, IN
Elizabeth Susan Roese, Severna Park, MD
Christine Alexandra Ross, Reston, VA
John Benjamin Ruhl, Tallahassee, FL
Denise Margiotti Rutledge, Chantilly, VA
Erika Lynn Saylor, Louisville, KY
Elizabeth Venable Scott, Harrisonburg, VA
Robert Charles Seldon, Washington, DC
Margaret M'Liss Sheehan, Houston, TX
Tanja Karin Shipman, Los Angeles, CA
Tiffany Lane Shuster, Kildeer, IL
Norman Dale Shutler, Middleburg, VA
Taylor Simpson-Wood, Grundy, VA
Emily Lee Sisler, Arlington, VA
Sean Curtis Staples, Washington, DC
John Harman Sterne, Jr., Washington, DC
Susan Rachel Stiglitz, Bethesda, MD
Paul E. Sullivan, Salt Lake City, UT
Janice Elizabeth Sullivan, Townsend, TN
Bradley Lee Tharp, Zebulon, NC
Herbert Charles Thomas, Washington, DC
Cecilio Matawaran Tiburcio, Centreville, VA
John C. Towler, Kitty Hawk, NC
Frederick Wilmont B. Vogel, Washington, DC
Rose Russo Wells, McLean, VA
Octavia Bethea Wilkins, Louisville, KY
William Anthony Wilson, San Francisco, CA
Richard A. Winterbottom, Albuquerque, NM
Gordon Evans Wood, Sr., Ocean View, DE
Jayne Frances Young, Apex, NC
Michelle Znoy-Rapalski, Centreville, VA

trust account depositories

The following banks have received approval from the Virginia State Bar as depositories for attorney trust accounts:

Acacia Federal Savings Bank
Access National Bank
Albemarle First Bank
Alliance Bank
American National Bank & Trust Co.
AmSouth Bank
Bank of America
Bank of Botetourt
Bank of Charlotte County
Bank of Clarke County
Bank of the Commonwealth
Bank of Essex
The Bank of Fincastle
The Bank of Floyd
Bank of Goochland
Bank of Hampton Roads
Bank of the James
Bank of Lancaster
Bank of Louisa
The Bank of Marion
Bank of McKenney
Bank of Northumberland, Inc.
Bank of Powhatan
The Bank of Richmond
The Bank of Southside Virginia
Bank of Tazewell County
Bank of Virginia
The Bank of Williamsburg
Bedford Federal Savings Bank
Benchmark Community Bank
Black Diamond Bank
Blue Grass Valley Bank
Blue Ridge Bank
Branch Bank & Trust
Burke & Herbert Bank and Trust Co.
The Business Bank
Cardinal Bank, N.A.
Caroline Savings Bank
Central National Bank
Central Virginia Bank
Centura Bank
Chartway Federal C.U
Chesapeake Bank
Chevy Chase Bank, F.S.B.
CitiBank
Citizens & Commerce Bank
Citizens and Farmers Bank
Citizens Bank & Trust Company
Columbo Bank
The Commonwealth Bank
Community Bank
Community Bank of Northern Virginia
Community First Bank
Community Savings Bank
Community National Bank—South Boston
Consolidated Bank & Trust Company
EagleBank
FNB—Atlantic
FNB—Southeast
FNB—Southwest
Farmers & Merchants Bank of Craig County
Farmers and Merchants Bank
Farmers and Miners Bank—Clintwood
Farmers and Miners Bank—Wise
Farmers Bank
The Farmers Bank of Appomattox
The Fauquier Bank
Fidelity Bank
First and Citizens Bank
First Bank
First Bank of Virginia
First Bank and Trust Company
First Capital Bank
First Citizens Bank
First Community Bank, N.A.
First Market Bank, FSB
First National Bank—Christiansburg
First National Bank—Covington
First National Bank of Altavista
First National Bank of Rocky Mount
First National Exchange Bank
First Sentinel Bank
First Service Bank
First State Bank
Franklin Community Bank, N.A.
The Freedom Bank of VA
Gateway Bank & Trust Co.
Grand Bank
Grayson National Bank
Greater Atlantic Bank
Guaranty Bank
Harbor Bank
Heritage Bank & Trust
Highlands Community Bank
Highlands Union Bank
James Monroe Bank
James River Bank
Lee Bank & Trust Company
Manufacturer & Traders Trust Co. (M&T Bank)
The Marathon Bank
Marshall National Bank & Trust Co.
Mellon Bank
Mercantile Peninsula Bank
Mercantile Potomac Bank
Mercantile-Safe Deposit & Trust Company
The Middleburg Bank
Millennium Bank
Miners & Merchants Bank & Trust Co.
Miners Exchange Bank
Monarch Bank
Mountain National Bank
National Bank of Commerce
The National Bank of Blacksburg
The National Bank of Fredericksburg
Northern Neck State Bank
OBA Bank
Old Point National Bank
The Page Valley Bank
Patrick Henry National Bank
Patriot Bank
Peoples Bank of Virginia
Peoples Community Bank
Peoples National Bank
Planters Bank & Trust Company of Virginia
Potomac Bank of Virginia
Powell Valley National Bank
Presidential Savings Bank, F.S.B.
Prosperity Bank & Trust Co.
Provident Bank
Rappahannock National Bank
Resource Bank—Herndon
Resource Bank—Virginia Beach
The Riggs Bank, N.A.
Rockingham Heritage Bank
Salem Bank & Trust Company
Second Bank & Trust
Shenandoah National Bank
Shore Bank
Smith River Community Bank, N.A.
Southern Community Bank & Trust
Southern Financial Bank
Southside Bank
SouthTrust Bank
Suffolk First Bank
SunTrust Bank
Surrey Bank and Trust
Towne Bank
Union Bank and Trust Company
United Bank
Valley Bank
Virginia Bank & Trust Company
Virginia Commerce Bank
Virginia Community Bank
Virginia Heartland Bank
Virginia National Bank
Virginia Savings Bank
Wachovia Bank, N.A.
Worri America Bank

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				
Randolph Lawrence Carl	Richmond	Public Reprimand w/Terms	December 23, 2004	25
Bradley R. Coury	Mclean	Public Reprimand w/Terms	March 10, 2005	26
Cary Powell Moseley	Lynchburg	One-Year Suspension	March 1, 2005	28
Bradley Glenn Pollack	Woodstock	Two-Year Suspension	March 15, 2005	n/a
Disciplinary Board				
George Albert Bates	Keswick	Revocation	March 25, 2005	30
Oliver Stuart Chalifoux	Richmond	Revocation	March 10, 2005	n/a
Khalil Wali Latif	Midlothian	Two-Year Suspension	January 28, 2005	31
David Nash Payne	Hampton	Revocation	March 25, 2005	33
Cara Lynn Romanzo	Chantilly	30-Day Suspension	February 2, 2005	34
District Committees				
Donald Arnold Denton	Richmond	Public Reprimand w/Terms	March 30, 2005	36
John E. Hamilton Jr.	Reedvile	Public Reprimand	March 15, 2005	37
Arnold Reginald Henderson V	Richmond	Public Reprimand w/Terms	March 18, 2005	38
David Mayer Hill	Fredericksburg	Public Reprimand w/Terms	March 15, 2005	41
John Frederick McGarvey	Richmond	Public Reprimand w/Terms	March 17, 2005	42
Neil Edward Motter	Brandy Station	Public Reprimand	March 11, 2005	45
Joseph Albert Christian Synan	Fredericksburg	Public Admonition	March 15, 2005	46

Other Actions

Impairment Suspensions

Respondent's Name	Address of Record	Jurisdiction	Effective Date	Page
Gary Blane Vanover	Clintwood	Disciplinary Board	March 25, 2005	35

Cost Suspensions

Eli S. Chovitz	Norfolk	Disciplinary Board	February 15, 2005	n/a
Robert Spencer Lewis	Martinsville	Disciplinary Board	March 30, 2005	n/a

Circuit Court

VIRGINIA:

IN THE CIRCUIT COURT
OF THE CITY OF RICHMOND

VIRGINIA STATE BAR, EX REL[.]
THIRD DISTRICT, SECTION III, SUBCOMMITTEE
v.
RANDOLPH LAWRENCE CARL
(RESPONDENT)

CASE NO. LS-2513-3

MEMORANDUM ORDER

This cause came on for hearing on December 7, 2004, 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. This cause was heard by a duly appointed Three-Judge Court consisting of the Honorable George F. Tidey, the Honorable Barnard F. Jennings and the Honorable Rodham T. Delk, Jr., Chief Judge Designate; Respondent Randolph Lawrence Carl appeared by counsel, Michael L. Rigsby. Linda Mallory Berry appeared on behalf of the Virginia State Bar.

Upon the stipulated facts presented by the Virginia State Bar and Respondent, by counsel, the Court found that the Virginia State Bar proved by clear and convincing evidence the following facts:

1. On April 12, 1993, Randolph Lawrence Carl (hereinafter "Mr. Carl" or "Respondent") was licensed to practice law in the Commonwealth of Virginia. At all times relevant hereto, Mr. Carl has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Mr. Carl has maintained an active practice in the Juvenile and Domestic Relations District Court ("J&DRDC") of the City of Richmond for approximately seven (7) years. Mr. Carl developed his practice performing services as court[-]appointed counsel and guardian ad litem, to the point that the court-appointed work in the J&DRDC of Richmond has generated greater than ninety percent (90%) of Mr. Carl's legal fees.

3. Mr. Carl was appointed as a guardian ad litem for an incarcerated person in a support matter[in]the Richmond J&DRDC heard on June 17, 2003. According to the judge's in-court clerk, Mr. Carl came into court when the case was called, stated that he did not know that he was appointed on the matter, and spent about five (5) minutes talking with the client before the case was heard. The hearing lasted approximately five (5) minutes. Mr. Carl, however, submitted an invoice indicating he spent two (2) hours out-of-court on the case and one (1) hour in court. Mr. Carl claimed a total reimbursement in the amount of $185.00. The invoice form requires the attorney to certify the accuracy of the bill, and Mr. Carl did so certify on the invoice for this matter. Mr. Carl believed that he was allowed to bill for time he spent in the courthouse waiting for his case to be called.

   According to Mr. Carl, two months prior to the hearing, he sent the client a paternity package, including a letter of representation, a child support form and an affidavit for his client to describe the length of his incarceration, among other things. The client did not respond to Mr. Carl's letter, so Mr. Carl tried to interview his client on the hearing date in "lockup" before the case was called. After some delay, Mr. Carl was allowed to interview his client, and the case was subsequently tried.

4. Mr. Carl was asked by the sitting judge in whose court the matter had been heard by a substitute judge to submit a detailed written itemization of the time spent on the matter. Mr. Carl met with the Chief Judge of the J&DRDC of Richmond to explain how he spent three (3) hours on the case, but he did not have detailed billing records to verify his work. The court denied all compensation claimed by Mr. Carl for this representation.

5. In light of the discrepancy between the clerk's observation and the documents submitted, on July 9, 2003, Mr. Carl was informed that he would need to submit itemized billings with all invoices.

6. On September 10, 2003, a hearing was held in a child custody matter for which Mr. Carl had been appointed guardian *ad litem*. Mr. Carl was not present when the matter was called nor did he appear during the next twenty (20) or more minutes. Therefore, the judge ruled on the matter without the input of the guardian ad litem. Mr. Carl was in the courthouse but in another courtroom that was running late with its docket. Later that afternoon, Mr. Carl submitted an invoice with an itemized time sheet. The invoice included a claim for in-court time with compensation for a 20-minute hearing on 9/30/03. The invoice form requires the attorney to certify the accuracy of the bill, and Mr. Carl did so certify on the invoice for this matter. Mr. Carl's fee request for in-court and out-of-court compensation was denied.

7. On October 9, 2003, Mr. Carl asked the judge on whose docket he had several matters to hold those matters until Mr. Carl appeared briefly in Henrico County and returned to the courtroom at 11:00 a[.]m. At 11:45 a.m., seven (7) support matters for which Mr. Carl was appointed were heard, ending at 12:20 p.m. Copies of Mr. Carl's invoices for October 9, 2003, indicated he was in court for a total of one hour and fifty-five minutes. The invoice form requires the attorney to certify the accuracy of the bill, and Mr. Carl did so certify on the invoice for this matter. The court did not approve Mr. Carl's fee request in any of the seven (7) matters.

The Court found that the foregoing stipulated facts supported findings that the Respondent engaged in misconduct that violated the following Rules of Professional Conduct:

RULE 8.4. Misconduct.

* * *

(b)

The Virginia State Bar presented Mr. Carl's lack of a prior disciplinary record. The Virginia State Bar and the Respondent, by counsel, agreed that the Agreed Disposition of a Public Reprimand with Terms represented an appropriate sanction if this matter had been resolved via an evidentiary hearing before a Three[-]Judge Court.

Accordingly, IT IS ORDERED that Randolph Lawrence Carl shall be publicly reprimanded with terms and the Respondent is herewith so PUBLICLY REPRIMANDED WITH TERMS. The terms, which the Respondent must fulfill by the dates indicated as a condition for the issuance of a public reprimand with terms, are the following:

1. Mr. Carl shall arrange for the services of a consultant to conduct a risk management assessment of practice of law. The cost of such an assessment shall be borne completely by Mr. Carl. The credentials and the identity of the proposed risk management consultant(s) shall be presented for approval to the Office of Bar Counsel **prior to** the decision by Mr. Carl to engage a specific consultant. The consultant shall review and make recommendations concerning proposed changes in and improvements to the everyday operation of Mr. Carl's law practice. The report and recommendations made by the consultant shall be provided to the Office of Bar Counsel **on or before March 1, 2005**. The consultation shall include a follow-up and a final report of compliance to the Office of Bar Counsel **on or before May 1, 2005**.

2. **On or before December 31, 2004**, the Respondent shall complete four (4) hours of continuing legal education (CLE) credits by taking in-person courses that have been approved by the Virginia State Bar in the areas of ethics which may NOT be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdiction in which he may be licensed to practice law. The Respondent shall certify his compliance with this term by delivering a fully executed Virginia MCLE Board Certification of Attendance Forms to the Office of Bar Counsel, VSB, 707 East Main Street, Richmond, VA 23219.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. Mr. Carl's failure to comply with any one or more other agreed terms and conditions will result in the imposition by this Court of an *Alternative Sanction of a Six-Month Suspension of his license to practice law in the Commonwealth of Virginia.* The imposition of the alternative sanction shall not require any hearing on the underlying charges of Misconduct, if the Virginia State Bar discovers that Mr. Carl had failed to comply with any of the agreed terms or conditions. In that event, the Virginia State Bar shall issue and serve upon Mr. Carl, a Notice of Hearing to Show Cause why the alternative sanction[s] should not be imposed. The sole factual issue will be whether Mr. Carl has violated one or more of the terms of the Public Reprimand with Terms without legal justification or excuse.

* * *

ENTERED THIS 23rd DAY OF DECEMBER 2004.
Rodham T. Delk, Chief Judge Designate
George T. Tidey, Judge
Barnard F. Jennings, Jr., Judge

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VIRGINIA:

BEFORE THE THREE-JUDGE COURT PRESIDING IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

VIRGINIA STATE BAR, EX REL.
FIFTH DISTRICT B SECTION III COMMITTEE,
COMPLAINANT/PETITIONER,
CHANCERY NO. 191542
v.
BRADLEY R. COURY, ESQ.
RESPONDENT
[VSB DOCKET NO.: 03-053-1165]

ORDER

This matter came before the Three-Judge Court empaneled on December 13, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §§ 54.1-3935 of the 1950 Code of Virginia, as amended. A fully endorsed Agreed Disposition, dated the 10th day of February 2005, was tendered by the parties, and was considered by the Three-Judge Court, consisting of the Honorable Marc Jacobson and Alfred D. Swersky, retired Judges of the Fourth and Eighteenth Judicial Circuits, respectively, and by the Honorable James F. Almand, Judge of the Seventeenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Having considered the Agreed Disposition, it is the decision of the Three-Judge Court that the Agreed Disposition be accepted, and said Court finds by clear and convincing evidence as follows:

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

2. On or about November 3, 1999, Ms. Delmy I. Lemus (hereafter "Complainant") executed a "Retainer Agreement" furnished by the Respondent for legal services pertaining to "Labor Certification/Permanent Residency."

3. The Retainer Agreement contained ethically impermissible provisions calling for all or a portion of advanced fees being nonrefundable in the event the Complainant were to terminate the Respondent's services, under certain circumstances, prior to the time that all such fees were earned.

4. The Retainer Agreement called for payment of a "retainer" of $4,000.00, with "$1,000.00 upon signing on 11/03/99 and $150.00 monthly payments commencing on 12/03/99 and thereafter." The Respondent collected the initial payment of $1,000.00 from the Complainant, but failed to deposit such payment into an attorney trust account, as required, pending the performance of legal services. The Respondent also collected installment payments from the Complainant between December 13, 1999, and April 3, 2001, inclusive, none of which was deposited into an attorney trust account.

5. The Respondent filed an "Application for Alien Employment Certification" with the Virginia Employment Commission on June 28, 2000, approximately eight months after having been retained.

6. By letter dated July 31, 2000, an Alien Labor Certification Specialist notified the Respondent of approximately twenty "deficiencies" in the application, which required correction before the application could be further processed.

7. By letter dated September 12, 2000, the Alien Labor Certification Specialist notified the Respondent of "defi-

ciencies" in the resubmitted application, some of which pertained to subject areas earlier deemed deficient by the same Alien Labor Certification Specialist.

8. By letter dated October 30, 2000, the Alien Labor Certification Specialist notified the Respondent of "deficiencies" in the newly resubmitted application. The deficiency noted pertained to Complainant's employer's job training and experience requirements, a subject covered in the Alien Labor Certification Specialist's earlier letters to the Respondent.

9. By letter dated February 2, 2001, the Alien Labor Certification Specialist informed the Respondent that the Application for Alien Employment Certification was being returned to Respondent and that such Application was canceled because all advertisements for Complainant's job position were not published within the required time period. The letter further informed the Respondent that a subsequent resubmission of the Application would be treated as a new application. The investigation of this matter conducted by the Virginia State Bar suggests that the Complainant's proposed employer failed to place the required advertisements in a timely manner.

10. In April of 2001, the Respondent resubmitted the Application, commencing the process anew. By letter dated February 20, 2002, the Complainant informed the Respondent that she had engaged other counsel, and requested that Respondent forward her file to her new counsel.

11. During the period that Respondent was representing the Complainant, he sent her letter reminders concerning her installment payment obligations. One such letter, dated June 30, 2001, stated:

    Until we receive payment, nothing further will be done on your case which is now pending before the Department of Labor. You have an obligation to us, pursuant to your promissory note ands [*sic*] Retainer Agreement. We have been, and are, doing work for you and expect to be paid.

    When questioned by a Virginia State Bar investigator concerning his letter, the Respondent stated, *inter alia*, that the purpose of the letter was to stimulate the Complainant to pay her bill, that he never withdrew from, or stopped working on, her case, and that had he received anything from the Department of Labor, he would have acted.

12. During the course of the representation, the Complainant paid to the Respondent at least the sum of $3,250.00, *excluding* a fee of $750.00 which she paid to the Respondent to "study" her employment status before she retained him, as aforesaid. The Respondent failed to account to the Complainant as to how sums paid to him as fees had been applied to charges for legal services rendered, and the Respondent made no refund of unearned fees at the conclusion of his representation.

13. Subsequent to the filing of this complaint, an audit was conducted of randomly selected open and closed files of Respondent by an attorney engaged by the Respondent. The attorney so engaged is experienced in the field of immigration law, and he reported to the Virginia State Bar that each of the matters reviewed disclosed that Respondent was conducting his law practice with that degree of skill, care, and diligence required of a practitioner undertaking representation of clients in the area of immigration law.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Bradley R. COURY, Esquire, constitutes a violation of the following provisions of the revised Virginia Code of Professional Responsibility and the Rules of Professional Conduct:

DR 2-105. Fees.

(A) * * *

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

(A) (2) * * *
(B) (3) * * *

RULE 1.1. Competence.

* * *

RULE 1.15. Safekeeping Property.

(a) (2) * * *
(c) (3) * * *

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a **PUBLIC REPRIMAND, WITH TERMS**, subject to the imposition of the sanction referred to below as an alternative disposition of this matter should Respondent fail to comply with the Terms referred to herein. The Terms which shall be met in accordance with the deadlines set forth below are:

1. The Respondent shall, within thirty (30) days following entry of an Order approving the Agreed Disposition, engage the services of

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

   or other law office management consultant acceptable to the Virginia State Bar, to review samples of all of Respondent's fee agreements and current attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the consultant determines that Respondent is in compliance with the said Rule, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent is not in compliance with Rule 1.15, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the said Rule.

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

3. In the event the Respondent is determined by the consultant to be not in compliance with Rule 1.15, he shall have sixty (60) days following the date the consultant issues its written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring himself into compliance. The consultant shall be granted access to Respondent's trust account books and records, and sample fee agreements following the passage of the sixty (60) day period to determine whether Respondent has brought himself into compliance, as required. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought himself into compliance with the said Rule within the sixty day (60) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

4. The Respondent shall read *Lawyers and Other People's Money* by Frank A. Thomas, III, (Third Edition, Virginia CLE Publications), and he shall certify to Bar Counsel in writing that he has done so. Respondent's written certification shall be delivered, within thirty (30) days following issuance of the Order approving the Agreed Disposition, to: Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

5. Respondent shall pay, via a check drawn on the attorney trust account of his counsel, made payable to the order of Delmy I. Lemus, the sum of $2,000.00, representing a partial refund of legal fees charged by the Respondent in this matter. The payment that is due hereunder shall be made by delivery of the check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133, no later than March 15, 2005.

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a **PUBLIC REPRIMAND, WITH TERMS,** shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the Virginia State Bar Disciplinary Board shall be authorized, by agreement of the parties, to conduct a show cause hearing to determine if a sixty (60) day suspension of Respondent's license to practice law in the Commonwealth of Virginia should be imposed as an alternative disposition to the Public Reprimand, with Terms, provided for herein; and it is further

* * *

ENTERED this 10th day of March, 2005.
JAMES F. ALMAND
Chief Judge of Three-Judge Court

MARC JACOBSON
Judge of Three-Judge Court

ALFRED D. SWERSKY
Judge of Three-Judge Court

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VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF LYNCHBURG

VIRGINIA STATE BAR, EX REL.
NINTH DISTRICT COMMITTEE
V.
CARY POWELL MOSELEY
COMPLAINANT
CASE NO. CL04024761

THIS CAUSE came on to be heard on the 26th day of January, 2005, for a hearing in this matter, before a Three-Judge Court empaneled on December 28, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the 1950 Code of Virginia, as amended, consisting of the Honorable Kenneth M. Covington, and the Honorable Herman A. Whisenant, Jr., retired Judge[s] of the Twenty-First and Thirty-First Judicial Circuits, respectively, and by the Honorable Colin R. Gibb, Judge of the Twenty-Seventh Judicial Circuit, designated Chief Judge.

Ms. Kathryn A. Ramey, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and respondent appeared in person and by counsel, Michael L. Rigsby.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Cary Powell Moseley, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Ninth District Committee of the Virginia State Bar.

The Complainant presented evidence in open court and the Respondent presented his evidence.

Following closing arguments by the parties, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found, unanimously, and by clear and convincing evidence, the following:

1. At all times material to this Certification, the Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about August 28, 2002, Complainant Barbara Wilborn ("Complainant") retained Respondent to represent her and her husband in a breach of warranty case against Clayton Manufactured Homes ("Clayton") involving their mobile home. Complainant paid Respondent $100 initial consultant fee and signed an hourly fee agreement that required a $1,000 retainer, which Complainant paid, and provided for a billable rate of $250 per hour. Respondent gave Complainant a copy of the fee agreement to take home.

3. Respondent sent Complainant a bill dated November 7, 2002, in the amount of $2,550.00 in fees and $48.40 in costs. Respondent applied the $1,000 retainer Complainant had previously paid, leaving the balance due as $1,598.40. Complainant did not immediately pay Respondent's bill.

4. Throughout the fist part of November 2002, Respondent engaged in settlement negotiations with Clayton. On

November 11, 2002, Clayton made a written offer to Respondent to settle the case on terms nearly identical to what Respondent finally accepted. The November 11, 2002, offer was for a lump sum payment to Complainant and her husband of $10,000, payment of $1,000 in attorney's fees and buyback of Complainant's mobile home. On or about November 20, 2002, Respondent e-mailed Stephanie Fagan of Clayton Homes advising they had reached a settlement and that the matter would be wrapped up soon.

5. On or about November 23, 2002, Complainant met with Respondent at his office to sign a settlement agreement/release. At or about this time, Respondent told Complainant not to worry about paying the November 7, 2002, bill, as he would deduct his fee from the settlement proceeds. At no time did Complainant agree to pay Respondent a contingency fee.

6. Respondent failed to explain the settlement with Clayton to Complainant. Respondent presented Complainant with the settlement papers/release, styled "CM Homes, Inc., GENERAL RELEASE FOR CANCELLATION/REPURCHASE." The release did not contain the terms of the settlement agreement, but instead had blanks where the amount of consideration and terms of the settlement should have been specified. Respondent told Complainant to take the blank release home and sign it along with her husband. Complainant lost the release on the way home, and on or about December 2, 2002, Respondent sent her two more copies and instructed her to sign and return them to him. These releases were also blank. Complainant and her husband signed the blank releases and returned them to Respondent.

7. On or about November 23, 2002, during the same meeting, Respondent presented the settlement statement to Complainant. The statement indicated that the total recovery would be $63,000, $52,000 of which would be paid to lienholder as part of the buyback of the mobile home. The statement further provided that Respondent would be paid a 1/3 contingency fee from the total recovery of $63,000, or $21,000, less the $1,000 retainer already paid by the Complainant. Complainant signed the statement, although she had not agreed to pay Respondent a contingency fee. Complainant was under the impression that Respondent's fees were hourly, as specified in the hourly fee agreement she signed when she retained Respondent as counsel.

8. Respondent failed to explain terms of the settlement agreement to Complainant and failed to obtain her consent for the settlement. Under the terms of the agreement, Clayton would buy back the mobile home for $63,000, pay off the $52,000 lien, and [the] remaining lump sum of $11,000 would be paid to Complainant and her husband in exchange for their agreement to drop certain insurance claims and release possession of the mobile home. Respondent's fees were to be paid by the Complainant, presumably from the $11,000 lump sum. However, given that Respondent claimed a 1/3 contingency fee on the total recovery of $63,000, or $20,000 once Complainant's $1,000 paid retainer was credited, the net effect of the settlement, as contemplated by Respondent, would be as follows: 1) Complainant and her husband would receive no cash from the settlement and the[n] would be required to vacate their home without funds to obtain new housing, 2) they would pay Respondent $11,000 in attorney's fees, and 3) they would owe Respondent an additional $9,000 in attorney's fees.

9. On or about December 17, 2002, Clayton sent Respondent the settlement check for $11,000 for full and final settlement of Complainant's claims against Clayton. Respondent did not release any part of the settlement funds to Complainant until just prior to the December 28, 2004, hearing (at which time the entire sum was paid to the Complainant by the Respondent.)

10. On or about January 14, 2003, Respondent sent Complainant a memorandum advising that she and her husband would not net any money from the settlement with Clayton. He further advised that he would accept as full payment of his attorney's fees the cash lump sum of $11,000, and that he would likely write off the balance of his fees ($9,000) out of consideration to Complainant.

11. On or about January 30, 2003, Respondent received for the first time the fully completed settlement agreement/release from Clayton. The blanks were filled in by Clayton and indicated the amount of consideration ($11,000) and terms of the settlement ("Seller, CM Homes, Inc., also agrees to payoff the loan referenced above when possession of the home is obtained. The payoff amount is approximately $53,000.00.")[.]

12. On or about February 29, 2003, the Bar received Complainant's complaint, and on or about March 6, 2003, Complainant discharged Respondent by letter and demanded her file.

13. On or about March 11, 2003, Respondent sent Complainant an itemized hourly bill for his services from August 26, 2002, to March 5, 2003, totaling $14,375.00. The March 11, 2003, bill indicates Respondent's rate as $250 per hour, and contains substantially higher fees tha[n] what Respondent billed on November 7, 2002, for the same time period. Moreover, Respondent included improper charges for his time including preparing a fee agreement for which he already had a form, receiving and responding to Complainant's bar complaint, and copying Complainant's file himself at the rate of $250 per hour.

14. On or about March 11, 2003, Respondent answered the bar complaint. In his response, he said Complainant was "absolutely correct" that his fee agreement with Complainant was hourly. He said that he had been under the mistaken impression that there was a contingency fee agreement because the majority of his cases are on a contingency fee basis. Respondent also said that his secretary must have given Complainant a copy of the wrong fee agreement to take home. Respondent enclosed copies of what he called "pertinent documents" from his file, which did not include a contingency fee agreement with Complainant.

15. On or about November 6, 2003, Virginia State Bar Investigator Clyde K. Venable interviewed Respondent in person. Also present was Respondent's counsel, Michael L. Rigsby, Esquire. During the interview, Respondent pre-

sented a copy of a fee agreement dated August 28, 2002. The fee agreement provides for a contingency fee and the third page contains Complainant's signature. The contingency fee agreement, like the hourly agreement Complainant signed, has three pages and contains the Complainant's signature on the third page.

16. Pursuant to a subpoena issued by the Bar, Respondent made available the original of Complainant's entire file. The file did not contain either the original or a copy of the hourly fee agreement. The file did not contain a contingency fee agreement with Complainant's original signature on the third page.

17. On or about May 12, 2004, VSB Investigator Clyde K. Venable again interviewed Respondent in the presence of his counsel. During the interview, Respondent stated that he assumed the contingency fee agreement was signed by Complainant on August 28, 2002, and that he was not with Complainant when she signed the agreement. Respondent also said he had no recollection of discussing a contingency fee with Complainant.

18. The contingency fee agreement Respondent presented to the Bar on or about November 7, 2003, is not genuine. Instead, the third page of the hourly fee agreement, which contains Complainant's signature, was attached to the first two pages of a contingency fee agreement, creating what purports to be a complete contingency fee agreement signed by Complainant. The "August 28" was added after Complainant signed the hourly fee agreement.

UPON CONSIDERATION WHEREOF, the Three-Judge Court found by clear and convincing evidence that the Respondent has violated the following provisions of the revised Virginia Code of Professional Responsibility and Rules of Professional Conduct:

RULE 8.1. Bar Admissions And Disciplinary Matters.

(a) and (d) * * *

RULE 8.4 Misconduct.

(c) * * *

The court is further of the opinion that this is a matter of professional misconduct involving dishonesty, fraud, deceit and misrepresentation, and any additional violations of the Code or rules by the Respondent are included within our finding of the Respondent's violation of Rule 8.4. Therefore, we would dismiss the remaining counts.

THEREAFTER, the Virginia State Bar and the Respondent presented argument regarding the sanction to be imposed upon the Respondent for the misconduct.

AFTER DUE CONSIDERATION of the evidence and the nature of the ethical misconduct committed by the Respondent, the Three-Judge Court reached the unanimous decision that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of one (1) year effective March 1, 2005. In electing to suspend rather than to revoke the Respondent's license to practice law in the Commonwealth of Virginia, the Three-Judge Court gave due consideration to the absence of any prior record of disciplinary matters for the thirteen (13) years the Respondent had been engaged in the practice of law.

ORDERED that the license of the Respondent, Cary Powell Moseley, to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED for a period of one (1) year, effective March 1, 2005.

ENTERED this 4th day of February, 2005.
Colin R. Gibb,
Chief Judge of the Three-Judge Court

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Disciplinary Board

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GEORGE ALBERT BATES
VSB DOCKET NO. 04-000-3675

ORDER OF REVOCATION

This matter came to be heard on March 25, 2005, before a panel of the Disciplinary Board (the "Board") consisting of Peter A. Dingman, 2nd Vice-Chair (the "Chair"); Bruce T. Clark, Ann N. Kathan; Glenn M. Hodge; and W. Jefferson O'Flaherty, lay member. The Virginia State Bar ("VSB" or "Bar") was represented by Seth M. Guggenheim. The Respondent, George Albert Bates, presently incarcerated in the Virginia Department of Corrections Augusta Correctional Center, appeared by telephone conference and by his *Guardian ad Litem*, Denise Y. Lunsford, who appeared in person.

The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

The matter came before the Board on a Rule to Show Cause and Order of Suspension and Hearing entered on June 25, 2004, by the Virginia State Bar Disciplinary Board, suspending the license of the Respondent pursuant to Rules of Court, Part 6, §IV, ¶13.I.5.(b.), upon the Respondent's felony conviction and ordering the Respondent to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked. Denise Y. Lunsford was appointed *Guardian ad Litem* for the Respondent by order of the Virginia State Bar Disciplinary Board entered September 30, 2004.

Before proceeding further with the hearing, the Chair confirmed with the Respondent that he was proceeding *pro se*, that his *Guardian ad Litem* was present in the hearing room to facilitate presentation of the Respondent's case, and that arrangement would be made, upon request, for the Respondent and his *Guardian ad Litem* to consult by telephone outside the Board's presence upon the Respondent's request.

After the opening statement by Bar Counsel, the Respondent and his *Guardian ad Litem*, both stating that they were appearing "specially" for that limited purpose, renewed

the Respondent's motion that this matter be tried before a three-judge panel pursuant to Virginia Code § 54.1-3935, which motion had previously been denied by the Board's Chair. The Respondent also renewed his motion for a continuance of the hearing and his motion for an order directing that he be transported to the hearing from the Augusta Correctional Center. The Board then retired to consider the Respondent's motions. After reconvening the Board announced that the Chair's prior ruling on the Respondent's motion to be tried before a three-judge panel was affirmed for the reason set forth in the Board's orders of September 30, 2004, and October 25, 2004, and the renewed motion was denied. The Respondent's motion for a continuance was denied because the matter had been continued on two prior occasions and no persuasive reason was advanced to believe that a continuance was necessary to prevent injustice. The Respondent's motion to be transported to the hearing was also denied because he was able to participate by telephone conference, and the Bar has no authority to require the Department of Corrections to transport him to a civil proceeding. The Respondent then elected not to participate in the hearing and terminated the telephone conference. The *Guardian ad Litem* then asked that she be permitted to withdraw as *Guardian ad Litem*, which request was denied. Notwithstanding that ruling, she announced her decision not to participate further in the hearing and left the hearing room.

Thereafter, Bar Counsel presented evidence of the Respondent's status as an attorney (VSB Ex. 1) and the Respondent's felony conviction (VSB Ex. 2). Upon this evidence, the Board found that the Bar had satisfactorily established the predicate fact that the Respondent had been convicted of a crime. The Bar then presented evidence of the nature of the crime the Respondent committed through testimony of the Albemarle County Assistant Commonwealth's Attorney who prosecuted the case.

I. FINDINGS OF FACT

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

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia, with his license having been suspended by order of the Virginia State Bar Disciplinary Board entered on June 25, 2004. The Respondent's address of record with the Virginia State Bar is P.O. Box 562, Keswick, Virginia, 22974. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and (I)(a) of the Rules of Virginia Supreme Court.

2. On April 10, 2002, the Respondent was convicted by a jury of malicious wounding, a felony under Virginia Code § 18.2-51.

II. DISPOSITION

Upon review of the foregoing findings of fact, upon review of the VSB and the Board Exhibits and upon evidence from the witness presented on behalf of the VSB regarding the nature of the conviction, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

The Board determined that the Bar did prove by clear and convincing evidence that on April 10, 2002, the Respondent was convicted of a crime, as defined by the Rules of Supreme Court of Virginia, Part 6, § IV, § 13(A)

The Board received further evidence of aggravation from the Bar in the form of the Respondent's prior disciplinary record which consists of one Private Reprimand with terms, two Public Reprimands, two Public Reprimands with Terms, and one 90-Day Suspension. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by the Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as revocation of the Respondent's license to practice law in the Commonwealth of Virginia. In light of the nature of the conviction (an assault with a baseball bat by the Respondent on his brother over a property dispute) and the Respondent's prior disciplinary record which includes mishandling of client funds, comingling client funds with his personal funds, failure to comply with a court order while abandoning a client, and threatening criminal charges to gain an advantage in a civil matter, the Board considers the Respondent to be unfit to practice law and that the public should be protected from a lawyer who engages in such conduct.

Accordingly, it is ORDERED that the respondent, George Albert Bates' license to practice law in the Commonwealth of Virginia is revoked effective March 25, 2005.

In view of the fact that the Respondent has previously complied with the notice requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia as a result of his suspension by order of July 25, 2004, nothing further is required of him in that regard.

* * *

ENTERED this 11th day of April, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Peter A. Dingman, 2nd Vice-Chair

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VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
KHALIL WALI LATIF
DOCKET NO. 05-000-2308

ORDER OF SUSPENSION

THIS MATTER came before the Virginia State Bar Disciplinary Board on a Motion to Show Cause why the alternative sanction of licensure suspension of two years should not be entered for failure of Khalil Wali Latif to comply with the terms of the Agreed Disposition Order entered May 23, 2003. This matter was heard on January 28, 2005, by a duly convened panel of the Disciplinary Board consisting of Karen A. Gould, Chair; H. Taylor Williams, IV; Glenn M. Hodge; Nancy Dickenson; and Dr. Theodore Smith, Lay Member.

The Respondent, Khalil Wali Latif and his counsel, Andrew W. Wood, appeared and participated in the hearing. Barbara Williams, Bar Counsel, appeared as counsel for the Virginia State Bar (hereafter "VSB").

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

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, responded in the negative.

VSB Exhibits 1 through 18, although never offered by either party, were used extensively without objection throughout the hearing and shall be deemed to have been admitted without objection.

I. The Terms of the Agreed Disposition Order

In response to charges that were brought against him in eight different matters, Mr. Latif agreed in May 2003 to a four-month suspension of his license to practice law and terms that he had to follow. These matters involved embezzlement of monies from Mr. Latif's practice by his secretary, Latrice Maddox, as well as other issues. Along with other disciplinary charges levied against Mr. Latif in those matters were allegations that he had failed to properly maintain his trust account records in that there were no client subsidiary ledgers and that he did not reconcile his trust account records. Mr. Latif agreed that these charges were true in the Agreed Disposition.

As part of the Agreed Disposition Order, entered by the Disciplinary Board on May 23, 2003, Mr. Latif agreed to the following terms:

1. Mr. Latif shall obtain an agreement in writing from an attorney acceptable to Bar Counsel whereby that attorney shall agree to serve as a practice mentor for Mr. Latif for a period of two years. The practice mentor shall assist Mr. Latif in organizing his law practice and managing it in accordance with the Rules of Professional Conduct, and regularly consult with Mr. Latif about any problems that may arise in his law practice, including supervision of nonlawyer personnel, communications with clients, and case management.

2. Mr. Latif shall employ a part-time bookkeeper approved by his practice mentor, certify in writing to Bar Counsel that he has done so before the end of his four-month suspension, and provide Bar Counsel the part-time bookkeeper's name and home address. If the part-time bookkeeper should leave Mr. Latif's employ before the end of Mr. Latif's two year consultation with his practice mentor, Mr. Latif shall promptly inform the bar in writing when and why the bookkeeper left his employ, employ another part-time bookkeeper approved by his practice mentor, certify in writing to the bar that he has complied with this term within thirty days of the date the original bookkeeper left his employ, and provide Bar Counsel the new bookkeeper's name and home address.

3. Mr. Latif shall retain, before his four-month suspension ends, a certified public accountant approved by his practice mentor to review his trust and operating account records no less than every three months to ensure that Mr. Latif's handling of client funds complies with the Rules of Professional Conduct; Mr. Latif shall certify in writing to Bar Counsel that he has retained a certified public accountant and provide Bar Counsel the accountant's name and address.

4. If the certified public accountant ends his engagement with Mr. Latif before the end of Mr. Latif's two-year consultation with his practice mentor, Mr. Latif shall promptly inform the bar in writing when and why the engagement ended, retain another certified public accountant approved by his practice mentor, certify in writing to the bar that he has retained another accountant within thirty days of termination of the original accountant's services, and provide Bar Counsel the name and address of the new accountant.

5. It shall be Mr. Latif's responsibility to provide the bookkeeper and certified public accountant all the financial information they need, including original trust account records and supporting documentation, including, but not limited to, original receipts, checks, ledgers, and bank statements. Mr. Latif's failure to provide complete financial information will constitute a breach of the terms of the agreed disposition.

6. Mr. Latif shall not accept any new clients or client matters of any nature between May 21, 2003, and September 1, 2003, when the four-month suspension takes effect.

Mr. Latif further agreed that, if he did not comply with any one or more of the agreed terms and conditions, then the alternate sanction of a two-year suspension would be imposed.

II. The Evidence Relative to Mr. Latif's Compliance with the Order

Pursuant to Part Six, § IV, Paragraph 13.I.2(g) of the Rules of the Supreme Court, the burden was placed on Mr. Latif to show that he had complied with the terms of the May 23, 2003, Order. The evidence presented at the hearing proved that Mr. Latif had failed to comply with certain terms of the May 23, 2003, Order.[1]

One of the terms of the May 23, 2003, Order was that Mr. Latif was to employ a part-time bookkeeper approved by his practice mentor. After his four-month suspension, Mr. Latif started practicing again in January 2004. The evidence showed that Mr. Latif talked in November and December 2003 with Angela Morton, a bookkeeper, about reconciling his bank statements and subsidiary ledgers one time per month. Mr. Latif testified that he hired Ms. Morton to perform the bookkeeping services in March 2004. Ms. Morton testified that she got some information from Mr. Latif in February 2004 and April 2004. She was delayed in working on Mr. Latif's books until May 2004 because of tax season. She then requested additional information in May 2004 that she needed to reconcile the bank statements. She had several discussions with Mr. and Mrs. Latif regarding what information was needed. Mrs. Latif was serving

FOOTNOTE

1 One of the terms of the May 23, 2003 Order at issue was wherther Mr. Latif had worked with his practice mentor to assist him in organizing his law practice and managing it in accordance with the Rules of Professional Conduct and to regularly consult with the practice mentor for a period of two years. Because the Board granted the bar's motion to strike evidence of the Respondent, the practice mentor, Joe Teefey, did not testify. Therefore, whether mr. Latif complied with that term was not an issue on which the Board based its decision. Hence, a discussion of the facts are revealed by Mr. Latif during his testimony on this issue will not be discussed

as Mr. Latif's office manager at this time. It was her perception that Mr. and Mrs. Latif failed to understand what was needed to reconcile the bank accounts. She never received the trust account's client subsidiary ledgers or disbursement journal from Mr. Latif. She was unable to complete a reconciliation of the bank statements. (VSB Exhibit 12). Due to a conflict between the Latifs and Ms. Morton, Ms. Morton was terminated from the bookkeeping position in June 2004. (VSB Exhibit 14). Mr. Latif did not notify the bar that he had terminated the services of Ms. Morton, as required by the terms of the Agreed Disposition Order.

Mr. Latif testified that he hired Ralph Puccinelli, a CPA, and his son, Matt, an accountant, to perform the bookkeeping function in lieu of Ms. Morton.[2] Ralph and Matt Puccinelli testified, however, that they were not performing the bookkeeping function on a monthly or quarterly basis throughout 2004 for Mr. Latif. Matt Puccinelli testified that Mr. Latif provided him with some accounting records in October and November 2004, but that the client subsidiary ledgers were not provided until January 2005. As of the time of the hearing, January 28, 2005, the Puccinelli's had only completed a review of the first quarter of 2004. Ralph Puccinelli, CPA, testified that there was no evidence of any impropriety in Mr. Latif's handling of the trust account during that first quarter.

Mr. Latif further testified that he put into place the Safeguard system of bookkeeping in his office in order to have the necessary accounting records. Mr. Maher, manager of the Safeguard office in Richmond, testified that Mr. Latif did purchase the complete Safeguard system in early December 2004, but that it apparently had not been implemented until after Mr. Latif came to Mr. Maher's office for instruction in how to use the system on December 23, 2004.

Based upon the evidence presented at the hearing, the Disciplinary Board finds that Mr. Latif failed to comply with the term of the Agreed Disposition Order requiring him to employ a part-time bookkeeper, to hire a CPA to review his trust and operating account records no less than every three months, and to provide the bookkeeper and CPA all information they needed, including original trust account records and supporting documentation. The May 23, 2003, Order required that these terms be implemented once Mr. Latif resumed practice. While the evidence showed that Mr. Latif did make some effort to comply with the terms of the Order, those efforts were inadequate and, for the most part, untimely. One of the primary concerns manifested by the May 23, 2003, Order was that Mr. Latif put into place appropriate bookkeeping measures in order to prevent the kind of defalcation that had occurred in his office with the embezzlement of money by Ms. Maddox. While there was no evidence of any impropriety in that regard by Mr. Latif or any member of his staff at the hearing,[3] the evidence was clear that Mr. Latif had failed to comply not only with the strict terms of the Order, but also that he had not come close to complying with its intent.

Accordingly, pursuant to the terms of the Agreed Disposition Order entered on May 23, 2003, it is ORDERED that the license of the Respondent, Khalil Wali Latif, to practice law in the Commonwealth of Virginia be, and the same hereby is, suspended, effective January 28, 2005, for a period of two (2) years.

* * *

ENTERED this 28th day of February, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Chair

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
DAVID NASH PAYNE, ESQUIRE
VSB DOCKET NO. 05-000-2817

ORDER OF REVOCATION

THIS MATTER came before the Virginia State Bar Disciplinary Board on March 25, 2005, upon a *Motion and Notice of Show Cause Hearing to Revoke Respondent's License to Practice Law for Failure to Comply with the Rules of Court.* The Motion was filed by the Virginia State Bar on or about February 2, 2005, and was mailed to the Respondent, David Nash Payne, via certified mail, return receipt requested, and by regular mail to the Respondent's last address of record with the Virginia State Bar. The Motion was heard by a duly convened panel of the Disciplinary Board consisting of Karen A. Gould, Chair; Russell W. Updike; David R. Schultz; V. Max Beard, Lay Member; and William H. Monroe, Jr. The Respondent did not appear before the Board. Kathryn A. Ramey, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar (the Bar).

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

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, responded in the negative.

FINDINGS OF FACT

Having considered the exhibits entered into evidence and having heard argument of Bar Counsel, the Board unanimously found by clear and convincing evidence as follows:

1. On April 28, 2004, the Disciplinary Board of the Virginia State Bar (the Board) entered an Order requiring Mr. Payne to do several things and provide the Bar with certain information (the First Order). The First Order stated that Mr. Payne's failure to timely comply with its terms would result in a Summary Suspension under Paragraph 13(I)6(i) of the Rules of the Supreme Court of Virginia

FOOTNOTES

2 Paul and Matt Puccinelli are both employees of Financial Accounting Services. Ltd./ Farmville t/a R.A. Wilmoth, Inc. Matt Puccinelli works in Farmville as an acountant helpig businesses with bookkeeping issues. Ralph Puccinelli works in a different office than Matt as a CPA. He overses Matt Puccinelli's work

3 Bar Counsel had requested copies of Mr. Latif's trust account records for 2004, and some of those records were not forthcoming until they were produced at the hearing. Therefore, it would not have been possible for the bar to evaluate the trust account records and raise any such allegations at the hearing.

(the Rules). A copy of the First Order was received into evidence and marked as VSB Exhibit 2a.

2. Mr. Payne failed to fully comply with the First Order, and as a result the Board suspended his license to practice law in an Order dated October 1, 2004 (the Second Order). By letter dated October 1, 2004, the Clerk's Office wrote to Mr. Payne at his address of record, enclosing a copy of the Second Order and advising him of his duties under the Rules, Part Six, Section IV, Paragraph 13(M). A copy of the Second Order was received into evidence and marked as VSB Exhibit 2b.

3. The requirements of Rule 13(M) are as follows:

> 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. Unless the matter is being considered by a three-judge panel, a sanction of Revocation or additional Suspension may be imposed for the failure to comply with the requirements of this subparagraph.

4. The Clerk's office sent another letter to Mr. Payne on December 9, 2004, urging his compliance with Paragraph 13(M). A copy of the December 9, 2004, correspondence was received into evidence and marked as VSB Exhibit 2c.

5. Mr. Payne continues to ignore all attempts from the Bar seeking his attention to these issues and has failed to respond to either the Clerk's Office or to Bar Counsel. To date, he has yet to comply with the requirements of Rule 13(M).

DISPOSITION

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

The Board determined that the VSB had proven by clear and convincing evidence that the Respondent had failed to comply with the terms of Orders previously issued by the Disciplinary Board on April 28, 2004, and October 1, 2004. The Respondent had additionally failed to comply with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(M). In light of the fact that the Respondent has continued to ignore the numerous attempts of the Bar to obtain his response and/or explanation of his actions, and given that there has been no presentation of evidence showing any disability on the part of the Respondent, the Board must consider the matter based upon the facts placed before it in this proceeding.

Accordingly, it is ORDERED that the license of the Respondent, David Nash Payne, to practice law in the Commonwealth of Virginia be, and the same hereby is, REVOKED, effective March 25, 2005.

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VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Chair

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VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
CARA LYNN ROMANZO, ESQUIRE
VSB Docket # 04-052-2544

ORDER

This matter came on the 23rd day of February, 2005, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Fifth District Committee Section II. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of James L. Banks, Jr., Esquire; Dr. Theodore Smith, lay member; John A. Dezio, Esquire; Bruce T. Clark, Esquire; and Karen A. Gould, Esquire, presiding.

Noel D. Sengel, Esquire, representing the Bar, and the Respondent, Cara Lynn Romanzo, Esquire, presented an endorsed 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, the Respondent, Cara Lynn Romanzo, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. From July 8 until November 15, 2002, the Respondent was employed at the law firm of Feldsman, Tucker, Leifer & Fidell, LLP. Her address of record with the Virginia State Bar was the firm's address, 5661 Columbia Pike, Suite 200, Falls Church, VA 22041. In August of 2003, the Respondent formed her own law practice, as a sole practitioner, and opened a trust account with Branch Banking and Trust (BB&T).

3. On October 22, 2003, the Respondent was administratively suspended by the Virginia State Bar for nonpayment of Bar dues. She was again administratively suspended on March 30, 2004, for failure to complete the required number of mandatory continuing legal education credits. Both notices from the Bar's Membership Section were sent to the Respondent at the firm of Feldsman, Tucker, Leifer & Fidell because the Respondent had never changed her address of record with the Bar, even though she had left the firm over a year before. The Virginia State Bar's records do not reflect a change of the Respondent's address of record with the Virginia State Bar until July of 2004. The Respondent's license to practice law in the Commonwealth of Virginia was reinstated on February 2, 2005.

4. On February 13, 2004, BB&T informed the Virginia State Bar that it had sent the Respondent a Notice of Insufficient Funds. The Respondent had written three checks, two in December of 2003 and one in January of 2004, while she was administratively suspended from her law office trust account which contained insufficient funds to cover the checks. Two of the checks were written as advances for costs to the State Corporation Commission to incorporate various entities the Respondent represented. The Respondent was engaged in the practice of law while she was suspended. When questioned about the checks, the Respondent informed Virginia State Bar Investigator James W. Henderson that when she wrote the checks, she mistakenly thought that she was writing checks from her operating account checkbook, when in fact she was writing checks from her trust account checkbook.

The Board finds by clear and convincing evidence that such conduct on the part of Cara Lynn Romanzo, Esquire, constitutes a violation of the following Rule(s) of Professional Conduct:

RULE 5.5. Unauthorized Practice of Law.

(a)(1) * * *

It is hereby ORDERED *nunc pro tunc* that the Respondent shall receive a thirty-day suspension of her license to practice law, commencing on February 2, 2005, as representing an appropriate sanction if this matter were to be heard.

* * *

Enter this Order this 25th day of February, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Chair

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VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GARY BLANE VANOVER
VSB DOCKET NO. 05-000-0450

ORDER

THIS MATTER came to be heard on March 25, 2005, before a panel of the Disciplinary Board consisting of Karen A. Gould, Chair; David R. Schultz; Russell W. Updike; William H. Monroe, Jr.; and V. Max Beard, Lay Member. The Virginia State Bar was represented by Kathryn A. Ramey, Assistant Bar Counsel. The Respondent, Gary Blane Vanover, after proper notice by certified mailing to the last known address provided to the State Bar, failed to appear. Respondent's interests were represented by John A. Gibney, Esq., as Guardian Ad Litem, appointed by Order of the Board dated March 1, 2005.

* * *

The Chair called the matter in the hearing room as well as having the clerk call the matter in the hallway without response from the Respondent. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

The matter came before the Board on a Petition for Impairment Hearing, pursuant to Part Six, Section IV, Paragraph 13(I)6(e)(i) of the Rules of Court. More particularly the Bar believes the Respondent is suffering from an alcohol-related disability that impairs his ability to practice law and that his license should be suspended.

To support its Petition the Bar presented the testimony of Ken Venable, an investigator with the Virginia State Bar, such testimony being in the form of a sworn deposition given on September 24, 2004. Additionally the Bar presented testimony from Dr. James L. Levenson, Vice-Chairman of Psychiatry, VCU Medical Center, who qualified as an expert on the subject of alcoholism. Dr. Levenson gave his professional opinion regarding the Respondent's alcohol dependence based upon his review of several of the Respondent's medical records as well as the facts contained in investigator Venable's report.

FINDINGS OF FACT

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

1. Respondent was convicted of a DUI and referred to VASAP on April 26, 2002. VASAP eventually filed a show cause action due to Respondent's failure to comply with its terms and conditions.

2. On April 2, 2004, Judge Vanover of the Dickenson County General District Court found Respondent in violation of the terms and conditions of VASAP and revoked his restricted driver's license.

3. On January 23, 2003, and on March 5, 2003, according to Deputy Dwight Farley, Respondent appeared in Washington County General District Court smelling of alcohol.

4. Judge Joseph Tate of the Washington County General District Court recalled Respondent appearing in court smelling of alcohol and refused to hear his scheduled cases.

5. On July 30, 2003, Respondent appeared before Judge Combs in Russell County General District Court for a VASAP hearing smelling of alcohol. Trooper J.D. Anderson administered an Alco sensor test which indicated a reading of .02 blood alcohol level. Judge Coombs found Respondent guilty of summary contempt and ordered [that] he serve five days in jail, suspended upon completion of terms, including completing VASAP and meeting with Lawyers Helping Lawyers.

6. On October 17, 2003, Respondent appeared in the Wise County General District Court allegedly smelling of alcohol and was given an Alco sensor test by Bailiff Ernie Caldwell on the order of Judge Larry Lewis. Respondent blew a .13 or .18, and his car keys were taken away.

7. On January 28, 2005, Dr. James L. Levenson, Vice-Chairman of the Department of Psychiatry, VCU Medical Center opined in a written report to Assistant Bar Counsel Kathryn A. Ramey that Respondent suffers from severe chronic alcohol dependence, which could preclude him from being able to competently practice law. In forming this opinion, Dr. Levenson relied upon Respondent's medical records obtained by the Bar pursuant to a Board order and the above-referenced report of Clyde K. Venable. Dr. Levenson had scheduled an independent medical examination of Respondent on January 14, 2005; however, Respondent cancelled.

DISPOSITION

It is therefore ORDERED that Gary Blane Vanover is suspended from the practice of law in the Commonwealth of Virginia pursuant to Part Six, Section IV, Paragraph 13(I)6(e)(i) of the Rules of Court. Such suspension shall be indefinite and shall be terminated only upon determination by the Board that Respondent no longer suffers from such impairment.

* * *

ENTERED this 5th day of April, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Chair

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District Committees

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

IN THE MATTER OF
DONALD ARNOLD DENTON
VSB DOCKET NO. 05-032-0997

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On March 18, 2005, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of Coral Coleman Gills, 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)(3) 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 Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Donald Arnold Denton ("Denton"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or about 2004, Denton agreed to represent Ms. Thorn in seeking custody of her daughter in the Chesterfield County Juvenile and Domestic Relations District Court ("the Court"). A verbal agreement was reached between Ms. Thorn and Denton for the representation.

3. On or about May 18, 2004, Denton met with Ms. Thorn in preparation for the upcoming first court date for the case. Denton informed Ms. Thorn that he did not expect the Court to hear the case on the first court date. Ms. Thorn paid Denton $500.00 as a partial payment of fees. According to Denton he cashed the check and deposited the $500.00 into his trust account.

4. On the May 24, 2004, first court date for the case, Denton appeared with Ms. Thorn. The Court heard limited testimony and awarded temporary custody to Ms. Thorn to begin at the end of the current school year.

5. The Court entered an order on May 24, 2004, continuing the case to July 12, 2004, noting that "Ms. Thorn remains on the stand," "Denton has not yet rested [Ms. Thorn's case]," and "the court needs more time to finish the case."

6. Sometime between the first and second court dates, the child was left with Ms. Thorn by Ms. Thorn's ex-husband, who previously had custody of the child. Ms. Thorn then asked Denton whether there was some way she could get the child's clothing and personal belongings from her ex-husband. Denton advised that was a subject which could be brought up at the next hearing date.

7. Prior to the next hearing date, Denton contacted Ms. Thorn and discussed the need for remaining fees to be paid prior to the next hearing date. Ms. Thorn informed Denton she could not pay him all of the fees. Denton informed Ms. Thorn that he would not appear at the next hearing date unless she paid him the remaining fees.

8. On July 12, 2004, Denton did not appear at the hearing, made no motion to withdraw, and made no motion to continue the hearing. Ms. Thorn and her ex-husband both appeared *pro se*. According to Ms. Thorn, the Court was about to dismiss the case when her ex-husband told the Court he wanted Ms. Thorn to have custody of the child and the Court so ordered. The Court's order granting custody was entered July 12, 2004, and noted that Denton was "absent." The Court also issued an order entered the same date in which it stated its findings. That order also noted that Denton was "absent."

9. On July 23, 2004, the Court issued a show cause summons (criminal) against Denton for his failure to appear on July 12, 2004. The show cause was served personally on Denton on August 30, 2004.

10. The show cause came for trial on September 9, 2004. Denton waived his right to counsel and tendered a not guilty plea. During the show cause trial, Denton stated essentially the following in response to the show cause:

    a. He did not file a motion to withdraw or provide other notice to the Court of his withdrawal because the proceeding was not in a court of record;

    b. Ms. Thorn had not paid him, and it was not fair to his clients who pay him in full to appear on Ms. Thorn's behalf; and

    c. Ms. Thorn did not pay him, and, therefore, he did not appear.

11. The Court found Denton guilty of criminal contempt for his failure to appear on July 12, 2004, imposed a fine, and set bail on appeal conditions. Denton did not note an appeal.

12. In his letter to undersigned counsel dated September 28, 2004, Denton stated, *inter alia*, the following:

    The week preceding the Court date of July 12, 2004, I called Ms. Thorn because I had not heard from her . . . . I asked Ms. Thorn if she wanted me to go to court with her on Monday, the 12th. She stated that she did.

13. Pursuant to Rules of Court, Part Eight, Rule 8:2(2), "counsel of record" in a pending case before a juvenile and domestic relations district court includes, *inter alia*, an attorney who has notified the judge that the attorney appears in the case. Furthermore, "except as provided by statute, counsel of record shall not withdraw from a case except by leave of court with such notice as the court may require to the client of the time and place of a motion to withdraw." *Id.*

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 1.3. Diligence.

(a) (b) * * *

RULE 1.15. Safekeeping Property.

(f) (2), (3) * * *

RULE 1.16. Declining or Terminating Representation.

(c) * * *

RULE 3.4. Fairness to Opposing Party and Counsel.

(d) * * *

RULE 8.4. Misconduct.

(b) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer Denton an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand With Terms of this complaint. The terms and conditions shall be met by the dates indicated below. The terms with which Denton must comply are as follows:

1. By April 15, 2005, Denton shall refund $500.00 to Ms. Thorn.

2. By April 22, 2005, Denton shall certify to Deputy Bar Counsel in writing that he has completed the refund and provide proof of same.

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 Certification for Sanction Determination.

* * *

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

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

IN THE MATTER OF
JOHN E. HAMILTON, JR.
VSB Docket No. 04-060-3379

Subcommittee Determination
(Public Reprimand)

On March 7, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher and attorneys William E. Glover and Christopher A. Abel, 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 John E. Hamilton, Jr., this Public Reprimand.

I. FINDINGS OF FACT

1. Mr. Hamilton was admitted to the practice of law in the Commonwealth of Virginia on September 21, 1973.

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

3. The Circuit Court of Lancaster County appointed Mr. Hamilton to represent Ronald B. Hickman on assault and battery charges.

4. A trial court, sitting without a jury, convicted Mr. Hickman on September 20, 2002.

5. Mr. Hamilton failed to advise Mr. Hickman that he could appeal his criminal conviction to the Virginia Court of Appeals.

6. After Mr. Hickman attempted to appeal the conviction pro se, Mr. Hamilton represented Mr. Hickman on appeal.

7. After he was transferred to Nottoway Correctional Center, where he is currently incarcerated, Mr. Hickman wrote Mr. Hamilton three times, inquiring about the status of his appeal.

8. The Court of Appeals denied Mr. Hickman's appeal on August 8, 2003.

9. Mr. Hamilton failed to advise Mr. Hickman that his appeal had been denied, allegedly because he did not know where Mr. Hickman was incarcerated.

10. Mr. Hickman did not learn that his appeal had been denied until February 9, 2004, when in response to a letter from him inquiring about the status of his appeal, he received a letter from the Court of Appeals advising him the appeal had been denied.

II. FINDINGS OF MISCONDUCT

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

RULE 1.3. Diligence.

(a) * * *

RULE 1.4. Communication.

(a), (c) * * *

RULE 1.16. Declining Or Terminating Representation.

(c) * * *

III. IMPOSITION OF SANCTION.

Accordingly, it is the decision of the Sixth District Committee to accept the Agreed Disposition and impose a Public Reprimand, and Mr. Hamilton is hereby so reprimanded.

This Public Reprimand shall be made part of Mr. Hamilton's disciplinary record.

* * *

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

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VIRGINIA:
BEFORE THE THIRD DISTRICT, SECTION TWO,
SUBCOMMITTEE OF THE VIRGINIA STATE BAR
IN THE MATTER OF
ARNOLD REGINALD HENDERSON, V
VSB DOCKET NO. 04-032-2883

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 11, 2005, 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)(3) 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 Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Arnold Reginald Henderson, V, ("Henderson") has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or about September of 2002, Reginald Hayspell retained Henderson regarding a criminal investigation involving Reginald and any charges against Reginald which might result from the investigation ("representation"). Complainant Alvin Hayspell, Reginald's father, paid Henderson $5,000.00 on September 23, 2002, on behalf of Reginald for the representation.

3. By letter to Reginald dated September 26, 2002, Henderson confirmed the representation and enclosed a retainer agreement for signature. Reginald signed the retainer agreement on September 29, 2002. The agreement specifically stated that the $5,000.00 sum might not be the entire fee.

4. In August of 2003, Reginald was arrested on a federal criminal complaint alleging conspiracy to distribute and to possess with the intent to distribute crack cocaine.

5. By letter dated August 25, 2003, to Reginald, Henderson summarized the situation and indicated that he would require a fee of $17,000.00 for the representation, of which $5,000.00 had already been paid, leaving a balance owed of $12,000.00.

6. On August 27, 2003, and September 3, 2003, Alvin paid Henderson the respective amounts of $6,000.00 and $2,000.00. As of September 3, 2003, Alvin had paid Henderson a total of $13,000.00 for the representation.

7. In September of 2003, Reginald was indicted on charges of conspiracy to distribute cocaine and possession of marijuana with intent to distribute. Arraignment was set for September 25, 2003. A trial date was set for December 1, 2003.

8. At some point prior to October 13, 2003, Reginald fired Henderson.

9. On or about October 13, 2003, Alvin retained Steve Benjamin ("Benjamin") for the representation.

10. Benjamin wrote Henderson a letter dated October 15, 2003, in which, *inter alia*, he enclosed a motion for substitution of counsel for Henderson's endorsement and return, and he asked Henderson for any file materials Henderson had regarding Reginald's case.

11. Henderson wrote Reginald a letter dated October 16, 2003, stating, *inter alia*, that he had forwarded an endorsed motion for substitution of counsel to Benjamin, and that the file materials were available for pickup at the convenience of Reginald's family and a statement of the costs of copying would be enclosed with the file.

12. On October 20, 2003, Alvin wrote Henderson stating, i*nter alia*, it was the understanding of Reginald and his family that Henderson was forwarding Reginald's files to Benjamin. Alvin also requested Henderson to provide an account for his time and expenses, and to return any "unused" money. The letter was sent to Henderson by certified mail, return receipt requested.

13. On October 21, 2003, Benjamin wrote a letter to Henderson thanking him for sending the endorsed substitution of counsel order which had been filed with the court, and indicating that he would appreciate Henderson's assistance in providing Reginald's case file. Benjamin received no response to the letter.

14. Benjamin also left telephone messages for Henderson about Reginald's case but received no response to those messages.

15. Reginald's girlfriend, Ericka Saunders, delivered Alvin's October 20, 2003, letter to Henderson's office on or about December 15, 2003.

16. Sometime in or about the last week of December 2003, Alvin called Henderson and spoke with him. Henderson agreed he would respond to Alvin's October 20, 2003, letter. Alvin received no response to his October 20, 2003, letter from Henderson.

17. Neither Reginald, Alvin nor Benjamin received Reginald's file from Henderson. Neither Reginald nor Alvin received an accounting from Henderson of his use of the funds paid to Henderson by Alvin on Reginald's behalf. Neither Reginald nor Alvin received a refund of unearned fees.

18. Alvin filed a bar complaint with the Virginia State Bar dated March 14, 2004.

19. On April 8, 2004, a letter was sent to Henderson from Assistant Bar Counsel Linda Mallory Berry ("Berry") along with a copy of the bar complaint as part of the bar's preliminary investigation of the bar complaint. In the letter Berry, *inter alia*, demanded that Henderson provide a written response to the bar complaint within 21 days of the date of the letter. Henderson did not respond to the letter.

20. On May 6, 2004, a subpoena duces tecum was issued to Henderson by Berry, by certified mail, return receipt requested, on behalf of the Third District Committee. The subpoena required the production on or before May 20, 2004, of all bank records, cancelled checks, bank statements and deposit tickets for any and all trust accounts and all files, records, reports and correspondence in Henderson's possession, custody or control, relating to Henderson's representation of Reginald. The U.S. Postal Service domestic return receipt for the mailing shows that Mr. Henderson's office staff received the mailing on May 7, 2004.

21. On May 18, 2004, Investigator Cam Moffatt met with Henderson, having previously asked him to bring Reginald's file to the meeting. At the meeting Henderson indicated that he had not received a copy of the bar complaint or the subpoena duces tecum. Moffatt provided Henderson with a copy of the bar complaint and agreed with Henderson that he could produce Reginald's file by May 24, 2004.

22. In response to the subpoena duces tecum, Henderson partially complied by producing a copy of his file, as well as a subsidiary ledger.

23. Upon being assigned to this case, undersigned counsel sent Henderson a letter dated July 29, 2004, pertaining to the partial compliance with the subpoena duces tecum. In the letter Henderson was given until August 16, 2004, to produce:

    (1) the monthly bank statements and deposit tickets which reflect the deposits made to Henderson's trust account(s) of the funds paid to him by or on behalf of Reginald, i.e., the payments of $5,000.00, $6,000.00, and $2,000.00 by Alvin;

    (2) the monthly statements of the trust account(s) in which said funds were deposited from the dates of deposit to date; and, alternatively, as applicable;

    (3) if one or more of the three payments were deposited into an account other than a trust account, then so state in writing which payment(s) were deposited into an account other than a trust account.

The letter included the language stating, "Your failure to comply with this letter shall be considered further noncompliance with the originally issued subpoena duces tecum."

24. The July 29, 2004, letter was sent to Henderson by certified mail, return receipt requested. The envelope with the July 29, 2004, letter was returned to the bar stamped, "Unclaimed."

25. On August 27, 2004, undersigned counsel filed with the Virginia State Bar Clerk of the Disciplinary System a Notice of Noncompliance and Request for Interim Suspension, and served Henderson the notice by certified mail, return receipt requested.

26. On September 10, 2004, an interim order of suspension was entered by the Virginia State Bar Disciplinary Board upon Henderson's failure either to complete production

pursuant to the subpoena duces tecum and the bar's July 29, 2004 letter, or to petition the Board to withhold entry of a suspension order and hold a hearing to give Henderson the opportunity to show good cause for the noncompliance. The order was served by certified mail, return receipt requested, to Henderson by the Clerk of the Disciplinary System.

27. On September 14, 2004, Henderson appeared in the Circuit Court of Henrico County in representation of Deborah Mae Hatcher in case numbers CR04003251-00 and CR04003252-00. Henderson's license to practice law in the Commonwealth of Virginia was suspended at the time he made these appearances as Hatcher's attorney. If this matter were to be tried before the District Committee, Mr. Henderson would testify that on September 14, 2004, he was unaware that his license to practice law had been suspended on September 10, 2004.

28. On September 15, 2004, Henderson met with undersigned counsel about the interim suspension. On that date Henderson completed production in accordance with the subpoena duces tecum.

29. On September 15, 2004, the Board entered an order terminating the interim suspension.

30. The U.S. Postal Service domestic return receipt corresponding to the certified mailing to Henderson of the interim suspension order by the Clerk of the Disciplinary System reflects receipt by Mr. Henderson's office staff on September 22, 2004.

31. The trust account subsidiary ledger provided by Henderson to the bar in response to the subpoena duces tecum does reflect entries for Alvin's first two payments of $5,000.00 and $6,000.00. The ledger does not reflect an entry for Alvin's last payment of $2,000.00 made on September 3, 2003, for which Henderson provided Alvin with a handwritten receipt. The balance shown on the subsidiary ledger is $3,500.00, which does not include the additional $2,000.00 payment.

32. According to Henderson, as stated in his September 15, 2004, letter to undersigned counsel, the $2,000.00 payment was not deposited into the trust account because he considered the payment as earned fees.

33. By letter dated September 29, 2004, to Reginald, Alvin, and Benjamin, counsel for Henderson stated that Henderson holds funds in his escrow account for the benefit of Reginald, and Henderson wishes to disburse the funds to the rightful owner. Alvin responded on behalf of Reginald by letter to the law firm of Henderson's counsel dated October 6, 2004, asking for an itemized statement to be sent to Alvin before the disbursement of any funds.

34. The trust account deposit slips presented by Henderson to the bar as evidence of deposits of the $5,000.00 and $6,000.00 payments are not sufficiently detailed to show the identity of each item.

35. Upon termination of the representation of Reginald, Henderson failed to provide Reginald with his file upon request, failed to refund unearned advance fees, and failed to account for his use of the funds paid by Alvin on behalf of Reginald.

36. During the bar investigation of the instant bar complaint, Investigator Cam Moffatt left telephone messages for Henderson on June 4, 2004; June 14, 2004; June 17, 2004; June 21, 2004; June 28, 2004; and June 29, 2004. In response Moffatt received one return call from a secretary indicating that Henderson would be out of the office until June 25, 2004. Moffatt sent Henderson a letter dated June 30, 2004, indicating her efforts to contact him, seeking to talk with Henderson about the instant bar complaint, and indicating if she did not hear from Henderson by July 9, she would turn in her report, noting that Henderson declined to be interviewed. Moffatt did not hear from Henderson by July 9, 2004.

37. Moffatt's June 30, 2004, letter; Berry's April 8, 2004, letter to Henderson; and the bar's subpoena duces tecum each constituted a lawful demand for information from a disciplinary authority in connection with a disciplinary matter. Henderson failed to answer either letter and timely failed to comply fully with the subpoena duces tecum.

38. Henderson's appearances on September 14, 2004, in the Henrico Circuit Court on behalf of Deborah Mae Hatcher while his license to practice law in the Commonwealth of Virginia was suspended constituted the unauthorized practice of law.

39. In these facts, all mailings by the bar to Henderson by certified mail, return receipt requested, were mailed to his last address on record for membership purposes with the bar, and such mailings constituted effective service when mailed, pursuant to Rule of Court, Part Six, Section IV, Paragraph 13(E)(2) Service of the subpoena duces tecum to Henderson by certified mail, return receipt requested, at Henderson's last address of record for membership purposes with the bar was also made pursuant to Paragraph 13(B)(7)(a)(5) and Paragraph 13(B)(6)(a)(4).

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 1.15. Safekeeping Property.

(c) (3) and (4) * * *

(f) (2) * * *

RULE 1.16. Declining or Terminating Representation.

(d) and (e) * * *

RULE 5.5. Unauthorized Practice of Law.

(a) (1) * * *

RULE 8.1. Bar Admission and Disciplinary Matters.

(c) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand 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 May 15, 2005, Respondent shall obtain from Virginia CLE, at his own expense, a copy of *Lawyers And Other People's Money* by Frank A. Thomas, III, read same, and certify in writing to the Virginia State Bar that he has done so.

2. By March 15, 2005, Respondent shall certify in writing to the Virginia State Bar that as of March 15, 2005, he, and any of his office staff under his supervision and control, (a) shall accept all mailings from the Virginia State Bar sent by certified mail, return receipt requested, and (b) shall no longer refuse mailings from the bar sent by certified mail, return receipt requested.

3. By May 15, 2005, Respondent shall:

   (a) provide to Deputy Bar Counsel an accounting of the funds paid to Respondent by Alvin or Reginald Hayspell;

   (b) after contacting Reginald Hayspell and determining to whom to pay any funds remaining, pay to said person any of said funds which the accounting reflects as being unearned fees and unexpended costs.

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 Certification for Sanction Determination.

* * *

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

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

IN THE MATTER OF
DAVID MAYER HILL
DOCKET NO. 04-060-3188

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On March 7, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher and attorneys William E. Glover and Christopher A. Abel, 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, David Mayer Hill this Public Reprimand with Terms:

I. FINDINGS OF FACT

1. The Respondent, David Mayer Hill, was admitted to the practice of law in the Commonwealth of Virginia on June 10, 1974.

2. Mr. Hill was an attorney in good standing to practice law in the Commonwealth of Virginia until October 7, 2004, when the Disciplinary Board administratively suspended his license to practice law in Virginia after he failed to comply with a subpoena duces tecum the bar issued in this matter.
3. Joan Schroyer, a Colorado resident, paid Mr. Hill $1,000.00 by check dated August 29, 1998, to represent her son in Maryland on a traffic charge.

4. Although Mr. Hill deposited the check, there is no evidence he did any work on the case.

5. Mr. Hill did not respond to Ms. Schroyer's inquiries about the case or refund her money.

6. Ms. Schroyer filed a bar complaint against Mr. Hill on or about April 30, 2004.

7. Mr. Hill did not make any response to the bar complaint or a bar subpoena requiring him to produce his client file and trust account records.

II. FINDINGS OF MISCONDUCT

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

RULE 1.3. Diligence.

(a) * * *

RULE 1.4. Communication.

(a) * * *

RULE 1.5. Fees.

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

RULE 1.16. Declining or Terminating Representation.

(d) * * *

RULE 8.1. Bar Admission and Disciplinary Matter.

(c) and (d) * * *

III. IMPOSITION OF SANCTION

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

1. Mr. Hill shall, within ten days of the approval of this agreed disposition, submit a written request to the executive director of the Virginia State Bar to be transferred to the disabled and retired class of membership, with medical documentation supporting his request, and copy Bar Counsel on his request. Mr. Hill understands that members qualifying for transfer to the disabled and retired class of membership are not eligible to practice law.

2. If Mr. Hill's request to be transferred to the disabled and retired class is denied for any reason, or if he fails to submit the request in a timely manner or to supply adequate medical documentation, he agrees to consent to the revocation of his law license based upon the findings of fact and misconduct set out in this agreed disposition.

3. Mr. Hill shall reimburse Ms. Schroyer the $1,000 fee she paid no later than March 31, 2005.

If Mr. Hill 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. Hill has not complied with one or more of the agreed-upon terms, Mr. Hill 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.

This Public Reprimand with Terms shall be made part of Mr. Hill's disciplinary record.

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

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VIRGINIA:
BEFORE THE THIRD DISTRICT, SECTION THREE,
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
JOHN FREDRICK MCGARVEY
VSB DOCKET NOS.
04-033-2735 [VSB/ANONYMOUS]
04-033-2736 [BROOKS]
05-033-2297 [VSB/VA. CT. APP.]
05-033-3134 [VSB/ANONYMOUS]

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 4, 2005, a meeting in these matters was held before a duly convened Third District, Section Two, Subcommittee consisting of Coral C. Gills, Lay Member; Cullen D. Seltzer, Esq.; and John D. Sharer, Esq., Vice Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13(G)(1)(c)(3) of the Rules of the Supreme Court, the Third District, Section Three, Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

1. At all times relevant hereto the Respondent, John Fredrick McGarvey ("McGarvey") has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket No. 04-033-2735 [VSB/Anonymous]:

I. FINDINGS OF FACT

2. McGarvey was retained to represent Allen and Lloyd on the appeals of criminal cases to the Supreme Court of Virginia ("the Court"). McGarvey was court-appointed to represent Leigh and Patton on the appeals of criminal cases to the Court.

3. By orders entered on the dates set forth herein the Court dismissed the Allen, Lloyd, Leigh and Patton appeals because the petitions for appeal did not contain assignments of error as required by Rule 5:17(c). The dates of entry of the dismissal orders were as follows:

Leigh	January 9, 2004
Patton	January 12, 2004
Allen	February 10, 2004
Lloyd	February 11, 2004

4. McGarvey prepared and filed for Allen, Leigh and Lloyd petitions for writ of habeas corpus, based solely on his failure to include assignments of error in each respective petition for appeal.

5. On the dates set forth herein, McGarvey sent Allen, Leigh and Lloyd each a letter in which, *inter alia*, McGarvey enclosed the Court's respective dismissal order and offered to file "for a delayed appeal and get it back in front of the Court." The dates of the letters were as follows:

Leigh	January 23, 2004
Allen	February 25, 2004
Lloyd	February 27, 2004

6. Leigh sent McGarvey a letter dated February 3, 2004, in which, *inter alia*, Leigh asked whether McGarvey was familiar with Va. Code Section 8.01-654, and if the delayed appeal was unsuccessful, his chances for filing an additional habeas corpus to challenge his conviction would be destroyed by filing a petition for writ of habeas corpus, based solely on McGarvey's failure to include assignments of error in his petition for appeal.

7. On the dates set forth herein, McGarvey sent Allen, Leigh and Lloyd, respectively, a letter enclosing a petition for writ of habeas corpus for signature. In each letter, McGarvey discussed the import of Va. Code Section 8.01-654 and his conclusion that he could assist each respective client in seeking a writ of habeas corpus if the client did not choose to add grounds in addition to the failure to include assignments of error in each client's petition for appeal. In the letter, McGarvey also discussed the question whether such a limited filing would eliminate the ability of each client to file another petition for a writ of habeas corpus on different grounds, noting that most lawyers believed it did; but McGarvey thought there was an argument to be made for additional filings of petitions for writs of habeas corpus in each respective client's case once the

instant petitions had been filed. The dates of the letters were as follows:

Allen	April 14, 2004
Lloyd	April 14, 2004
Leigh	April 15, 2004

8. Allen, Leigh and Lloyd, respectively, signed the petitions for writ of habeas corpus which McGarvey had prepared and sent to them. On the dates set forth herein, McGarvey filed each petition with the Court. In each petition, McGarvey showed himself as counsel for the petitioner. The dates of the filings were as follows:

Allen	May 14, 2004
Leigh	May 14, 2004
Lloyd	May 14, 2004

9. McGarvey admitted that, with respect to the failure to include assignments of error in the petitions for appeal, he failed to take note that his secretary had not included in the petitions for appeal to the Court all of his handwritten notations on the respective Court of Appeals petitions. McGarvey failed properly to supervise his nonlawyer assistant(s).

10. McGarvey did not represent Allen, Lloyd, Leigh and Patton with reasonable diligence and competence in their appeals to the Court.

11. By representing Allen, Leigh and Lloyd in the pursuit of writs of habeas corpus, based solely on McGarvey's failure to include assignments of error in their respective petitions for appeal to the Court, McGarvey engaged in a conflict of interest and a lack of competence.

II. NATURE OF MISCONDUCT

* * *

RULE 1.1. Competence.

* * *

RULE 1.3. Diligence.

(a) * * *

RULE 1.7. Conflict of Interest: General Rule.

(b) (1) and (2) * * *

RULE 5.3. Responsibilities Regarding Nonlawyer Assistants.

(a), (b) and (c) (1) and (2) * * *

VSB Docket No. 04-033-2736 [Brooks]:

I. FINDINGS OF FACT

12. McGarvey was court-appointed to represent Steven Lamont Brooks ("Brooks") on his appeal of a criminal case to the Supreme Court of Virginia ("the Court").

13. By order entered February 10, 2004, the Court dismissed Brooks' appeal because the petition for appeal did not contain assignments of error as required by Rule 5:17(c).

14. McGarvey prepared and filed for Brooks a petition for writ of habeas corpus based solely on his failure to include assignments of error in the petition for appeal.

15. On February 27, 2004, McGarvey sent Brooks a letter in which, *inter alia*, McGarvey enclosed the Court's dismissal order and offered to file "for a delayed appeal and get it back in front of the Court."

16. On April 13, 2004, McGarvey sent Brooks a letter enclosing a petition for writ of habeas corpus for signature. In the letter, McGarvey discussed the import of Va. Code Section 8.01-654 and his conclusion that he could assist Brooks in seeking a writ of habeas corpus if Brooks did not choose to add grounds in addition to the failure to include assignments of error in Brooks' petition for appeal. In the letter McGarvey also discussed the question whether such a limited filing would eliminate the ability of Brooks to file another petition for a writ of habeas corpus on different grounds, noting that most lawyers believed it did; but McGarvey thought there was an argument to be made for additional filings of petitions for writs of habeas corpus in Brooks' case once the instant petition had been filed.

17. Brooks signed the petition for writ of habeas corpus which McGarvey had prepared and sent to him. On May 14, 2004, McGarvey filed the petition with the Court. In the petition McGarvey showed himself as counsel for Brooks.

18. On September 2, 2004, Brooks filed a letter dated August 11, 2004, with the Court addressed to, "To Whom It May Concern," asking for termination of the habeas corpus proceeding filed by McGarvey, his "former counsel," and stating, *inter alia*, that Brooks had spoken with another attorney and learned that "a habeas corpus should only be filed one time, and it needs to contain all issues being raised by the appellant."

19. The Clerk of the Court responded to Brooks' letter on September 3, 2004.

20. On October 1, 2004, McGarvey filed a motion to withdraw as counsel.

21. On October 19, 2004, the Court entered an order granting the withdrawal motion in the habeas corpus case.

22. McGarvey admitted that, with respect to the failure to include assignments of error in the petition for appeal, he failed to take note that his secretary had not included in the petition for appeal to the Court all of his handwritten notations on the Brooks Court of Appeals petition. McGarvey failed properly to supervise his nonlawyer assistant(s).

23. McGarvey did not represent Brooks with reasonable diligence and competence in the appeal to the Court.

24. By representing Brooks in the pursuit of a writ of habeas corpus, based solely on McGarvey's failure to include assignments of error in Brooks' petition for appeal to the Court, McGarvey engaged in a conflict of interest and a lack of competence.

II. NATURE OF MISCONDUCT

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

RULE 1.1. Competence.

* * *

RULE 1.3. Diligence.

(a) * * *

RULE 1.7. Conflict of Interest: General Rule.

(b) (1) and (2) * * *

RULE 5.3. Responsibilities Regarding Nonlawyer Assistants.

(a), (b) and (c) (1) and (2) * * *

VSB Docket No. 05-033-2297 [VSB/Va. Ct. App]:

I. FINDINGS OF FACT

25. McGarvey was court-appointed to represent Jackson on an appeal of a criminal conviction to the Court of Appeals.

26. Final judgment in Jackson's case was entered in the trial court on October 1, 2002. The transcript of the trial was due to be filed by December 1, 2002, in the office of the clerk of the trial court. The transcript was not filed by December 1, 2002. The Court of Appeals dismissed the appeal on June 12, 2003, upon the failure of McGarvey to file the transcript timely.

27. McGarvey then filed a Motion to Reconsider the Dismissal on June 20, 2003, which the Court of Appeals denied on August 1, 2003.

28. Upon notification from McGarvey of the dismissal and that Jackson could file a petition for writ of habeas corpus seeking a delayed appeal, Jackson requested that McGarvey do so.

29. On November 4, 2003, McGarvey filed a motion to allow Jackson to remain on bond pending a habeas corpus petition and subsequent appeal. The motion was granted. Before McGarvey filed a petition for habeas corpus, Jackson signed a statement stating that he wished to withdraw his appeal in the Court of Appeals.

30. McGarvey filed a motion to withdraw the appeal in the Circuit Court of the City of Richmond. The motion was granted on February 9, 2004.

31. McGarvey did not represent Jackson with reasonable diligence and competence in his appeal to the Court of Appeals.

II. NATURE OF MISCONDUCT

RULE 1.1. Competence.

* * *

RULE 1.3. Diligence.

(a) * * *

VSB Docket No. 05-033-3134 [VSB/Anonymous]:

I. FINDINGS OF FACTS

32. McGarvey was retained to represent McCullough in an appeal of a March 9, 2004, final judgment in a criminal case.

33. The Court of Appeals denied the petition for appeal on October 18, 2004, and upon a demand for reconsideration, denied the petition again on December 13, 2004.

34. McGarvey filed a notice of appeal to the Court on December 20, 2004.

35. McGarvey failed to file a timely petition for appeal in the Court. According to McGarvey, he assumed that a prepared petition had been mailed when it had not; his tickler systems reflected that the appeal had been filed.

36. McGarvey represented McCullough in the preparation, filing, and pursuit of a petition for writ of habeas corpus, seeking a delayed appeal on the basis of McGarvey's failure to file a petition for appeal in the Court.

37. McGarvey did not represent McCullough with reasonable diligence and competence in his appeal to the Court.

38. By representing McCullough in the pursuit of a writ of habeas corpus, based solely on McGarvey's failure to file a petition for appeal in the Court timely, McGarvey engaged in a conflict of interest and a lack of competence.

II. NATURE OF MISCONDUCT

* * *

RULE 1.1. Competence.

* * *

RULE 1.3. Diligence.

(a) * * *

RULE 1.7. Conflict of Interest: General Rule.

(b) (1) and (2) * * *

RULE 5.3. Responsibilities Regarding Nonlawyer Assistants.

(a), (b) and (c) (1) and (2) * * *

* * *

RULE 1.15. Safekeeping Property.

(c) (3) and (4) * * *
(f) (2) * * *

RULE 1.16. Declining or Terminating Representation.

(d) and (e) * * *

RULE 5.5. Unauthorized Practice Of Law.

(a) (1) * * *

RULE 8.1. Bar Admission And Disciplinary Matters.

(c) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer McGarvey an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand With Terms of these complaints. The terms and conditions shall be met by the dates indicated below. The terms with which McGarvey must comply are as follows:

1. **Immediately**, with the consent of McCullough and without causing any harm to McCullough's delayed appeal, the Respondent shall withdraw from representing McCullough and arrange, with the consent of McCullough, for another competent attorney to represent McCullough on his delayed appeal at McGarvey's cost. Any unearned funds paid by or on behalf of McCullough for the appeal shall be returned to McCullough unless McCullough consents to the use of said funds for the services of the attorney taking over his appeal.

2. By **March 15, 2005**, McGarvey shall certify in writing to Deputy Bar Counsel that he has accomplished the requirements of Term 1.

3. By **June 1, 2005**, the McGarvey shall attend six (6) hours of continuing legal education on the subject of the appeal of criminal cases in Virginia. McGarvey shall not receive any mandatory continuing legal education credit for said hours.

4. By **June 8, 2005**, McGarvey shall certify in writing to Deputy Bar Counsel that he has attended said continuing legal education hours.

Upon satisfactory proof that such terms and conditions have been met, these matters shall be closed. If, however, the terms and conditions are not met as stated herein, the Third District Committee, Section Three, shall impose a Certification for Sanction Determination.

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THIRD DISTRICT, SECTION THREE, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
John D. Sharer, Vice Chair

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

IN THE MATTER OF
NEIL EDWARD MOTTER, ESQUIRE
VSB Docket No. 01-070-2416

DISTRICT COMMITTEE DETERMINATION
PUBLIC REPRIMAND

On the 18th day of March 2004, a meeting in this matter was held before a duly convened Seventh District Committee panel consisting of Thomas J. Chasler, Esquire; Anne C. Hall; Peter C. Burnett, Esquire; John G. Berry, Esquire; and Frederick Warren Payne, Esquire, presiding.

Previously, on March 30, 2004, a subcommittee imposed an Admonition with Terms in accordance with an agreed disposition reached between Respondent and Bar Counsel. Pursuant to Part 6, ¶ IV, §13(G)(5)(a) of the Rules of Virginia Supreme Court, this hearing was held to require Respondent to show cause why the alternative disposition should not be imposed for his failure to comply with the terms imposed by the aforesaid subcommittee. Upon evidence and argument presented, the Seventh District Committee finds that Respondent was duly noticed of this hearing by a certified mailing, return receipt requested, to his address of record with the Virginia State Bar, and that he failed to comply with the terms of the subcommittee determination. Accordingly, the Committee hereby issues the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times relevant hereto, the Respondent, Neil Edward Motter [hereinafter the Respondent], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In July of 1998, the Respondent represented Trevor Cooper in a criminal matter in Fauquier County. Mr. Cooper was convicted on or about July 7, 1998. Since his conviction, Mr. Cooper has made numerous requests to the Respondent that the Respondent send him his file and trial records, but the Respondent has not complied with Mr. Cooper's requests.

3. In February of 2001, Mr. Cooper sent a complaint to the Virginia State Bar regarding the Respondent's failure to comply with his request that the Respondent send him his file and records. On March 14, 2001, Mary Martelino, Assistant Intake Counsel at the Virginia State Bar, sent the Respondent a letter advising him of the complaint and explained that Mr. Cooper's file should be returned to Mr. Cooper within ten days. The Respondent did not respond to Ms. Martelino's letter. On April 2, 2001, Ms. Martelino sent the Respondent another letter requesting a response in five days.

4. The Respondent's reply to Ms. Martelino's letter was received on or about April 5, 2001. The Respondent apologized for the delay and attached a copy of his cover letter to Mr. Cooper. The Respondent claimed that the file was in storage and that he would forward copies "in the next several days." Ms. Martelino did not open a case file.

5. Mr. Cooper sent another complaint to the Bar, dated July 13, 2001, and informed the Bar that he had not received his file from the Respondent. The file on this complaint was open shortly after the complaint was received. Bar Investigator Robert K. Smith investigated this matter. The Respondent advised Mr. Smith that he was unaware that Mr. Cooper needed his files until he received the complaint from the Bar. The Respondent claimed that he thought he had sent three sets of documents to Mr. Cooper, but not a transcript of the trial because it had not been transcribed. The Respondent told Mr. Smith that he would check his files and provide the Bar with a copy of the documents he sent to Mr. Cooper, along with copies of

any correspondence he had sent. As of April 8, 2003, the date of Mr. Smith's report, Mr. Smith had not received any documents from the Respondent.

6. On June 10, 2003, Bar Counsel sent this matter for further investigation, instructing Investigator Smith to obtain information from the mailrooms of the prison where Mr. Cooper was incarcerated. James Bruce of the Buckingham Correctional Center in Dilwyn, Virginia, and Brenda Delbridge of the Greenville Correctional Facility, in Jarrett, Virginia, reviewed their respective records. Each found that Mr. Cooper received no mail from Mr. Motter.

7. Mr. Cooper advised the Bar that he wanted a copy of his file because his codefendant received a much shorter sentence, and Mr. Cooper thought that an appeal or a motion to reconsider might have been appropriate in his case. However, he could not file an appeal or motion to reconsider because he did not have the information he needed from his file.

II. NATURE OF MISCONDUCT

RULE 1.3. Diligence.

(a) and (c) * * *

RULE 1.4. Communication.

(a) * * *

RULE 1.16. Declining or Terminating Representation.

(e) * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand, and Respondent is hereby so reprimanded.

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SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
Frederick Warren Payne, Chair

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VIRGINIA:
BEFORE THE SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JOSEPH ALBERT CHRISTIAN SYNAN
VSB DOCKET NO. 04-060-3682

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION)

On March 3, 2005, a duly convened subcommittee of the Sixth District Committee, consisting of lay member Andrew C. Gallagher; Russell E. Allen, 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)(1)(c)(1) of the Rules of the Virginia Supreme Court, the Sixth District Committee accepts the proposed agreed disposition and hereby serves upon the Respondent, Joseph Albert Christian Synan, the following Public Admonition.

I. AGREED FINDINGS OF FACT

1. Mr. Synan was admitted to the practice of law in the Commonwealth of Virginia on October 14, 1988.

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

3. On or about March 10, 2003, Ricky Donnell Nelson was convicted in the Circuit Court of the City of Fredericksburg of distributing cocaine.

4. On or about May 27, 2003, the Fredericksburg Circuit Court appointed Mr. Synan to represent Mr. Nelson on appeal.

5. Mr. Synan timely filed a notice of appeal to the Court of Appeals of Virginia and a petition for appeal with the Court of Appeals.

6. After the Court of Appeals denied Mr. Nelson's appeal, Mr. Synan timely filed a notice of appeal to the Supreme Court of Virginia.

7. The Supreme Court denied the appeal on February 6, 2004, because Mr. Synan failed to file the petition for appeal in a timely manner.

8. Mr. Nelson's appeal was the first appeal Mr. Synan had made to the Supreme Court, and he failed to file the petition for appeal in a timely manner because he was waiting for the Supreme Court to acknowledge that it had received the record from the Court of Appeals.

9. Mr. Nelson filed a bar complaint against Mr. Synan on or about June 24, 2004.

II. AGREED FINDINGS OF MISCONDUCT

Mr. Synan and the Virginia State Bar, by Bar Counsel, agree that the foregoing findings of fact support a finding that his conduct violated the following Rule of Professional Conduct:

RULE 1.1. Competence.

* * *

III. IMPOSITION OF SANCTION

Accordingly, it is the decision of the Sixth District Committee to impose a Public Admonition, which shall become part of Mr. Synan's disciplinary record.

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SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
Christopher A. Abel, Chair and Presiding Officer

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