Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Alvin Lewis Lowery Jr.	Stafford, VA	Admonishment w/out Terms	May 5, 2006	2
Bradley Glenn Pollack	Woodstock, VA	Two Year Suspension	May 4, 2006	6
William P. Robinson Jr.	Norfolk, VA	90 Day Suspension	April 5, 2006	7
Disciplinary Board				
Timothy Martin Barrett	Yorktown, VA	Twenty-seven Month Suspension	May 23, 2006	8
Theresa Brumback Berry	Virginia Beach, VA	Fifteen Day Suspension	June 30, 2006	9
Patrick John Blackburn	Anchorage, AK	Revocation	May 19, 2006	12
John V. Buffington Jr.	Philadelphia, PA	Six Month Suspension	May 19, 2006	13
Serguei Danilov	McLean, VA	Consent to Revocation	June 20, 2006	n/a
Darren Scott Haley	Taylors, SC	Thirty Day Suspension	May 25, 2006	n/a
Dorothea Patricia Kraeger	Phoenix, AZ	Four Year Suspension	April 28, 2006	14
William Theodore Linka	Richmond, VA	Public Reprimand w/Terms	June 23, 2006	16
Charles Everett Malone	Norfolk, VA	Consent to Revocation	May 10, 2006	n/a
Denise Ann Maniscalco	Washington, D.C.	Consent to Revocation	June 1, 2006	n/a
David Ashley Grant Nelson	Arlington, VA	Revocation	April 28, 2006	23
Jeremy Clyde St. James Sharp	Lebanon, VA	Revocation	June 19, 2006	n/a
Dwayne Bernard Strothers	Suffolk, VA	Two Year Suspension	June 12, 2006	30
District Committees				
James Pearce Brice Jr.	Virginia Beach, VA	Public Admonition w/Terms	May 19, 2006	35
Del M. Mauhrine Brown	Prince George, VA	Public Admonition w/out Terms	April 12, 2006	39
Antonio Pierre Jackson	Farmville, VA	Public Admonition w/Terms	April 25, 2006	42
Aleasa Dawn Leonard	Virginia Beach, VA	Public Reprimand w/Terms	June 27, 2006	44
Conrad Charles Lewane	Richmond, VA	Public Admonition w/Terms	May 17, 2006	49
Jerry Carlos Lyell	Rockville, MD	Public Reprimand	May 23, 2006	51
Arlene Lavinia Pripeton	Fairfax, VA	Public Reprimand	June 27, 2006	53
John Wilkins Wescoat	Eastville, VA	Public Admonition w/out Terms	April 25, 2006	55
Cost Suspension				
Andrew Mark Steinberg	Woodbridge, VA	Suspended May 9, 2006		n/a
Reinstatement Petitions				
Charles Daugherty Fugate II	Bristol, VA		November 17, 2006	58
James E. Ghee	Farmville, VA		October 27, 2006	58
Virginia Supreme Court Opinion				
Nicholas Astor Pappas	Fredericksburg, VA	Reversed and Dismissed	April 21, 2006	59
Interim Suspensions—Failure to Comply w/Subpoena				
Dwayne Bernard Strothers	Suffolk, VA	Suspended April 10, 2006	Lifted April 28, 2006	n/a

**Respondent has noted an appeal with the Virginia Supreme Court.*
***Virginia Supreme Court granted stay of suspension pending appeal.*

VIRGINIA:

IN THE CIRCUIT COURT FOR STAFFORD COUNTY

VIRGINIA STATE BAR EX REL
SIXTH DISTRICT COMMITTEE
Case No. CL06000275-00

Complainant
v.
ALVIN LEWIS LOWERY, JR.
Respondent

MEMORANDUM OPINION AND ORDER

On the 5th day of May, 2006, this matter came before a three judge court on April 20, 2006 by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia 1950, as amended, consisting of the Honorable Frank A. Hoss, Jr., Retired Judge of the Thirty-first Judicial Circuit, the Honorable Paul F. Sheridan, Retired Judge of the Seventeenth Judicial Circuit, and the Honorable Randy I. Bellows, Judge of the Nineteenth Judicial Circuit, designated Chief Judge.

Richard E. Slaney, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and Michael L. Rigsby appeared on behalf of Alvin Lewis Lowery, Jr. (hereafter "Respondent"). The Respondent was present throughout the proceeding.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause entered on March 24, 2006 by the Honorable H. Harrison Braxton, Judge of the Stafford County Circuit Court, which directed the Respondent to appear before the Court on May 5, 2006 to show cause why his license to practice law should not be suspended, revoked or otherwise sanctioned in accordance with the Rules of Court, Part Six, Section IV, Paragraph 13. In that hearing, both the Bar and Respondent's counsel presented witnesses and exhibits in support of their position. After hearing the Bar's evidence, the Respondent moved to strike the bar's case in its entirety. After due deliberation, the Court granted in part and denied in part the Respondent's motion to strike, as explained below. The Respondent then presented evidence regarding the remaining matters before the Court. The Court deliberated and found by clear and convincing evidence that the Respondent did engage in misconduct, as explained below, and imposed the sanction herein described.

A. Findings of Fact

The Three-Judge Court finds by clear and convincing evidence the following:

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

2. On April 17, 2001, Malcolm Macleay and Sarah Elizabeth Macleay, husband and wife, entered into a Property Settlement Agreement (hereafter "PSA"). That Property Settlement Agreement was affirmed, ratified and incorporated into a Final Decree of Divorce, signed by a Circuit Court Judge, on June 28, 2002. Mr. Macleay was represented by the Respondent. Ms. Macleay was represented by Gregory M. Wade.

3. The pertinent portion of the PSA reads as follows:

Prior to the marriage, the husband acquired property known as 1406 Littlepage Street, Fredericksburg, Virginia (hereafter "the property"). The wife shall enjoy the right to remain resident in the property, and shall enjoy exclusive use and possession thereof, until the child of the parties reaches the age of nineteen, graduates from high school, or is no longer resident in the property, or until the wife remarries, whichever comes first. At that time, the parties agree that the property shall then be sold, and the proceeds, after any and all costs relating to the property have been paid and any and all indebtedness relating the property has been satisfied, shall be divided equally between the parties.

(Emphasis Added).

4. On or about January 7, 2004, Mr. Macleay sold the house and received as proceeds $62,064.79. The Respondent did not represent Mr. Macleay at the settlement and was not otherwise involved in the sale of the house. Approximately a week later, Mr. Macleay delivered to the Respondent a check for $31,032.40, representing one half of the total proceeds he had received. On or about

January 15, 2004, the Respondent caused Mr. Macleay's check to be deposited in the Respondent's trust account. At the time that Mr. Macleay delivered the check for $31,032.40 to the Respondent, he also gave the Respondent a statement listing a number of deductions, which he characterized as "Indebtedness to the property," which he believed should reduce the money ultimately paid to Ms. Macleay pursuant to the PSA. Those deductions included rent charges, forfeited security deposits, and mortgage payments made by Mr. Macleay. After subtracting these deductions from the $31,032.40 check, this left a total of $19,332.42 which Mr. Macleay believed should be paid to Ms. Macleay.

5. On January 23, 2004, the Respondent wrote Mr. Wade and Ms. Catherine Saller (an attorney retained by Ms. Macleay in connection with another matter) in order to describe his client's plans for distributing the proceeds of the house sale. The Respondent identified each of the deductions his client believed should be taken from the $31,032.40 corpus, and offered immediately to release the balance of $19,332.42.

6. That same day, Mr. Wade wrote the Respondent and disputed "each and every" deduction which the Respondent proposed to make. Mr. Wade further asserted that the deductions were "blatantly contrary to the court order and are in contempt of that court order." He demanded that the Respondent immediately forward to him an amount equal to the proposed deductions and if he did not do so Mr. Wade would file a Rule to Show Cause with the Alexandria Circuit Court. He also insisted on immediate payment of the amount that was not in dispute.

7. On January 28, 2004, the Respondent caused a check to be issued for $19,332.42 from his law firm's trust account to Ms. Macleay. The next day, the Respondent wrote Mr. Wade and Ms. Saller again, and offered to pay an additional $10,000 to Ms. Macleay as a final settlement of all outstanding financial issues, including child support arrearages. [1]

8. On January 30, 2004, the Respondent withdrew $2,960.02 from the trust account for the payment of legal fees and costs.

9. On February 17, 2004, the Virginia State Bar received a complaint against the Respondent filed by Ms. Macleay in connection with the disposition of the house sale proceeds.

10. On February 19, 2004, the Respondent withdrew $100 from the trust account for the payment of Mr. Macleay's past due child support.

11. On February 20, 2004, Mr. Wade wrote the Respondent, rejecting the settlement offer and demanding that the Respondent pay to Ms. Macleay "all funds of hers that you are holding with interest at the judgment rate from the day of settlement…." Mr. Wade also reiterated his view that it was improper of the Respondent to take possession of Ms. Macleay's half of the house settlement proceeds and place them in trust.

12. On February 24, 2004, the Respondent wrote Mr. Wade and reiterated his client's view that he was entitled to reimbursement of certain costs relating to the property.

13. Also on February 24, 2004, the Respondent withdrew $400 from the trust account for the payment of Mr. Macleay's past due child support.

14. On February 25, 2004, a deposit of $2,500 was made to the trust account.

15. On February 27, 2004 and March 9, 2004, a total of $815.87 was withdrawn from the trust account for the payment of the Respondent's legal fees and costs.

16. On March 26, 2004, Mr. Rigsby filed a response with the Virginia State Bar regarding the complaint made by Ms. Macleay.

17. On March 30, 2004, the Respondent withdrew $1400 from the trust account for the payment of legal fees and costs. On April 2, 2004, the Respondent withdrew $100 from the account for the payment of Mr. Macleay's past due child support. On April 30, 2004, the Respondent withdrew $2,100 from the trust account for the payment of legal fees and costs. On May 3, 2004, the Respondent withdrew $100 from the account for the payment of Mr. Macleay's past due child support. As of that date, the balance of funds remaining in the trust account was $6,224.11.

FOOTNOTES

1 At the time he made this offer, Mr. Macleay was alleged to owe $7,200 in past due child support.

18. On May 3, 2004, the Respondent sent a letter to Mr. Wade and Ms. Saller, indicating that he was responding to a voice mail message from Ms. Saller's office indicating that Sarah Macleay wanted to know if the Respondent still had the house sale proceeds. The Respondent posed a series of questions suggesting that he was not sure whether he should respond to the inquiry and expressing his confusion as to why Ms. Saller was asking him about the house sale proceeds, rather than Mr. Wade. Then he stated: "Based on the foregoing, I have discussed the inquiry with my client and received his authorization to advise that I do NOT have any proceeds from the house sale." (Emphasis in Original) At the time he wrote this letter, there was at least $3,724.11 in the Respondent's trust account derived from the proceeds of the house sale.

B. Allegations of Misconduct

This case arises out of a Direct Certification based on a determination made by a subcommittee of the Sixth District Disciplinary Committee. In that certification, the Respondent was charged with violations of Rule 1.15 and Rule 8.4 of the Disciplinary Rules of the Virginia Code of Professional Responsibility. Specifically, the Respondent was charged with violating the following provisions:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

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

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honest, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

C. Discussion

Based on the arguments of counsel, it is apparent to the Court that the Bar's position is that the Respondent violated Rule 1.15(c)(1-4) by failing either to preserve (pending further litigation) or to turn over to Ms. Macleay the entire sum of $31,032.40, representing one-half of the proceeds of the house sale. In support of its position, the Bar relies principally on Rule 1.15(c)(4) and the Commentary to Rule 1.15. That Commentary states in part as follows:

> Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

This Court concludes that the evidence fails to prove by clear and convincing evidence a violation of Rule 1.15(c) (1–4). First, as to Rule 1.15(c)(1–3), there is no support in the record to indicate a violation, particularly given the fact that Ms. Macleay—unlike Mr. Macleay—was never the Respondent's client. Rule 1.15(c)(4) presents a more difficult situation for the following reasons. An appropriate choice for the Respondent would have been to preserve the entire $31,032.40 in his trust account and present the matter to the Alexandria Circuit Court for final resolution.[2]

FOOTNOTES

2 The Respondent was under no obligation to wait for Mr. Wade to file a Rule to Show Cause. There were a variety of ways in which the Respondent could have brought the matter to the attention of the Circuit Court.

This is particularly true once the Respondent was put on notice by Mr. Wade that he contested all deductions from the proceeds of the house sale. Instead, the Respondent began to draw his legal fees and to make Mr. Macleay's child support arrearage payments out of the house proceeds.

But this Court's sole function is to determine whether the Respondent violated the Disciplinary Rules and we cannot make that finding based on conduct that, while it may be unwise or inappropriate, is not in actual violation of a Disciplinary Rule. Here, the Disciplinary Rule is limited to requiring an attorney to turn over funds to another person which that person is "entitled to receive." The Bar never proved—indeed, never even attempted to prove—that Ms. Macleay was "entitled to receive" the entire $31,032.40, rather than the $19,332.42 which the Respondent actually paid to Ms. Macleay. Significantly, the PSA states that each party is entitled to half the proceeds of the house sale only after costs and indebtedness is satisfied. Mr. Macleay's position was that the costs and indebtedness amounted to $11,700 and that Ms. Macleay was only entitled to the remaining funds. Ms. Macleay's position was that there were no costs and indebtedness that should be deducted from the sum she was due. This Court lacks evidence to decide whose position is correct and that is precisely why the Bar's case fails. In order for the Court to find a violation of this Disciplinary Rule, it would have to conclude that Ms. Macleay was "entitled to receive" the $31,032.40. On this record, the Court cannot make such a finding.

The Bar argues that even though Disciplinary Rule 1.15(c)(4) does not explicitly require preservation of funds in dispute, the Commentary suggests that there is such an obligation on the part of an attorney in possession of disputed funds. That may well be a fair reading of the Commentary but, as is made clear in the Preamble to the Rules, "comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules." For this Court to conclude that Disciplinary Rule 1.15(c)(4) required the Respondent to preserve or turn over not only funds which another person was "entitled to receive" but also funds that were "in dispute" would be to graft an additional requirement onto the Rule. This we cannot do.[3]

Upon this basis, the Court grants the Motion to Strike in connection with the alleged violations of Rule 1.15. As to the alleged violations of Rule 8.4, Bar counsel advised the Court that the Rule 8.4(b) assertion was predicated upon the alleged violations of Rule 1.15. Since the Rule 1.15 alleged violations have been struck, the alleged Rule 8.4(b) violation must be dismissed as well. The alleged violation of Rule 8.4(b), therefore, is hereby dismissed.

That leaves the Court with the alleged violation of Rule 8.4(c), which charges the Respondent with engaging in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on his fitness to practice law. Specifically, this charge arises out of the Respondent's representation in his May 3, 2004 letter to Mr. Wade that he had no house proceeds left when, in fact, he had at least $3,724.11 in house proceeds in his trust account. The Court finds that this statement was a misrepresentation which reflects adversely on the Respondent's fitness to practice law. Therefore, the Court finds by clear and convincing evidence that the Respondent violated Rule 8.4(c). [4]

D. Sanctions

The Court has considered each of sanctions available to it upon this finding of misconduct. The Court considers it significant that the Respondent has no prior disciplinary record. In addition, the Court heard from a number of character witnesses, who testified persuasively to the Respondent's good character, honesty, integrity and professionalism. After due deliberations, the Court determined that the most appropriate sanction to impose in this matter was an admonishment without terms.

WHEREFORE, the Three-Judge Court hereby imposes an admonishment without terms and, therefore, the Respondent is hereby admonished; and it is further

ORDERED that the terms and provisions of the Summary Order entered by this Court at the conclusion of the hearing conducted on May 5, 2006, be, and the same hereby is, merged herein; and it is further

ORDERED that pursuant to Part Six, Section IV, Paragraph 13(B)(8)(c) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs against the Respondent; and it is further

ORDERED that four (4) copies of this Order be certified by the Clerk of this Court, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

FOOTNOTES

3 The parties rely on Legal Ethics Opinions, specifically Number 1471 and 1747, in support of their respective positions. These opinions indicate that it would be unethical for an attorney to disburse funds to a client when the client, "by agreement or by law, is under a legal obligation to deliver those funds to another." LEO 1747 Here, this Court could not conclude, on the record before it, that the Respondent was under a legal obligation to deliver the $31,032.40 to Ms. Macleay.

4 The Court was not persuaded by the Respondent's explanation that when he stated "I do NOT have any proceeds from the house sale" all he meant was that he did not have house sale proceeds that belonged to Ms. Macleay.

AND THIS ORDER IS FINAL.

Entered, this day 27th day of June, 2006.

Randy I. Bellows
Chief Judge of the Three Judge Court

Frank A. Hoss, Jr.
Judge of the Three Judge Court

Paul. Sheridan
Judge of the Three Judge Court

VIRGINIA:

IN THE CIRCUIT COURT OF SHENANDOAH COUNTY

VIRGINIA STATE BAR EX REL
SEVENTH DISTRICT COMMITTEE,
Complainant,

BRADLEY GLENN POLLACK
Respondent.

Case No. CL04-189

ORDER

This day came the Virginia State Bar, by its Assistant Bar Counsel Paul D. Georgiadis, and upon notice to Respondent Bradley Glenn Pollack and his counsel moved this Court to enter an effective date for Respondent's previously ordered two year suspension from the practice of law in this Commonwealth.

It appearing to the Court that Mr. Pollack's appeals in this matter have been exhausted and it is appropriate to set a new effective date for the two (2) year suspension; accordingly, it is hereby

ORDERED that the two (2) year suspension of the law license of Bradley Glenn Pollack commence on May 4, 2006. It is further

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

ORDERED that the Clerk of the Circuit Court shall send certified copies of this order to counsel of record and to the Clerk of the Disciplinary System. As stated in the Summary Order entered by the Court on March 14, 2005, as well as the Memorandum Order, it is further

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

Entered this the 4 day of May, 2006.

Benjamin N. A. Kendrick, Chief Judge Designate

Rosemarie P. Annunziata, Judge Designate

John F. Daffron, Jr., Judge Designate

WE ASK FOR THIS :
VIRGINIA STATE BAR
Paul D. Georgiadis, VSB #26340
Assistant Bar Counsel

SEEN AND OBJECTED TO:
For the reasons stated in objections to proposed order setting effective date of suspension
Alan Jay Cilman, Esq., p.d.
4160 Chain Bridge Road
Fairfax, VA 22030

SEEN AND OBJECTED TO:
Bradley Glenn Pollack, Esq.
148 North Main Street
Woodstock, VA 22664

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE,
Complainant v.
WILLIAM P. ROBINSON, JR., RESPONDENT
Case No. CL04-2184

ORDER

BY ORDER entered February 8, 2006 and filed March 15, 2006, the license of William P. Robinson, Jr. to practice law in the Commonwealth of Virginia was suspended for a period of 90 days, such suspension to commence April 1, 2006. It now appearing that good cause exists to amend the effective date of the suspension from April 1, 2006 to April 5, 2006, and there being no objection from the Virginia State Bar,

IT IS ORDERED, that the license of William P. Robinson, Jr. to practice law in the Commonwealth of Virginia be suspended for a period of 90 days, such suspension to commence on Wednesday, April 5, 2006.

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall send certified copies of this Order to counsel of record and to the Clerk of the Disciplinary System.

Entered this the 17th day of April, 2006.
The Hon. Jonathan M. Apgar, Chief Judge Designate
The Hon. Joseph E. Spruill, Jr., Judge Designate
The Hon. Alfred D. Swersky, Judge Designate

I ask for this:
Michael L. Rigsby, Esq., Respondent's Counsel
Seen and Agreed:
Richard E. Slaney, Assistant Bar Counsel

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
VSB DOCKET NOS. 02-022-1069 and 02-022-1070
TIMOTHY MARTIN BARRETT

ORDER OF SUSPENSION

It appearing that the license of Timothy Martin Barrett to practice law in the Commonwealth of Virginia was suspended for twenty-seven months, effective September 2, 2005, by Order of the Virginia State Bar Disciplinary Board; and

It appearing further that the Respondent appealed the suspension to the Virginia Supreme Court and filed a petition to stay the suspension, which petition was granted by the Virginia Supreme Court effective September 6, 2005, four days after commencement of the suspension; and

It further appearing that the Virginia Supreme Court entered an Order dated May 10, 2006, dismissing the appeal in this case, and instructing the Disciplinary Board to enter an Order fixing the effective date of the suspension and the date Timothy Martin Barrett shall comply with the provisions of Part Six, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia; and

It further appearing appropriate to do so;

It is **ORDERED** that the Respondent's license to practice law in the Commonwealth of Virginia will be suspended for a period of twenty-six months and twenty-six days, effective upon entry of this order; and

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

It is further **ORDERED** that an attested copy of this Order be mailed to the Respondent by certified mail, return receipt requested, at his address of record with the Virginia State Bar, The Injury Law Institute of Virginia, Convergence Center I, Suite 200, 295 Bendix Road, Virginia Beach, Virginia, 23452 and to Richard E. Slaney, Assistant Bar Counsel, 707 E. Main, Richmond, Virginia 23219-2800.

ENTERED THIS ORDER THIS 23rd DAY OF May, 2006
FOR THE VIRGINIA STATE BAR
DISCIPLINARY BOARD
Barbara Sayers Lanier
Clerk of the Disciplinary System

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
THERESA BRUMBACK BERRY
VSB Docket No. 05-022-3153 (VSB/Va. Sup.Ct./Pitt)
VSB Docket No. 05-022-3154 (VSB/Va. Sup.Ct/Edwards)
VSB Docket No. 05-022-2521 (VSB/Va. Ct. Appeals/Mitchell)
VSB Docket No. 05-022-3155 (VSB/Va. Sup. Ct./Wynn)
VSB Docket No. 05-022-4414 (VSB/Va. Sup.Ct./Trusty)

ORDER OF SUSPENSION OF 15 DAYS

These matters were certified to the Virginia State Bar Disciplinary Board ("Board") by the Second District Committee—Section II, and were set for hearing for June 23, 2006. On June 8, 2006, these matters were presented for approval of an agreed disposition to a duly convened panel consisting of Peter A. Dingman, Esquire, Chair Presiding, Mr. Werner H. Quasebarth, Lay Member, Bruce T. Clark, Esquire, John A. Dezio, Esquire, and William E. Glover, Esquire.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶13B5c., the Virginia State Bar, by Assistant Bar Counsel Paul D. Georgiadis, and the Respondent, *pro se*, entered into a proposed agreed disposition and presented it to the convened panel.

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 ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

I. FINDINGS OF FACT

VSB Docket No. 05-022-3153 (VSB/Va. Sup.Ct./Pitt)

1. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Following a procedural default in *Ronald Anthony Pitt against Commonwealth of Virginia* in the Court of Appeals by the Public Defender's office, the Virginia Supreme Court granted leave to Pitt on August 16, 2000 to file an appeal from the Court of Appeals judgment of February 11, 2000. In said order, the Supreme Court re-set the running of deadlines from the appointment of Respondent as counsel when it ordered "all computations of time as required by the rules of this Court and applicable statutes to commence on the date of entry of this order, or, if the said Ronald Anthony Pitt be entitled to appointed counsel upon this appeal, from the date of entry of the order of the Circuit Court of the City of Virginia Beach appointing counsel, whichever date shall be later."

3. Respondent was appointed as appeals counsel on August 23, 2000.

4. Notwithstanding the Supreme Court's order computing the appeal deadlines from the date of Respondent's appointment as counsel, Respondent failed to file the Notice of Appeal and the Petition for Appeal until October 30, 2000.

5. On January 30, 2001, the Virginia Supreme Court dismissed the Petition for Appeal for failure to timely file the Notice of Appeal per Rule 5:14(a). [1]

6. In response to Respondent's Motion for Reconsideration, the Supreme Court granted reconsideration on March 19, 2001 and that same day dismissed the appeal for failure to timely file the Petition for Appeal per Rule 5:17(a)(2). [2]

FOOTNOTES

1 **RULE 5:14. Notice of Appeal; Certification. —**

(a) No appeal from a judgment of the Court of Appeals which is subject to appeal to this Court shall be allowed unless, within 30 days after entry of final judgment or order denying a rehearing, counsel filed with the clerk of the Court of Appeals a notice of appeal.

2 **RULE 5:17. Petition for Appeal. —**

(a) Time for Filing.—In every case in which the appellate jurisdiction of this Court is invoked, a petition for appeal must be filed with the clerk of this Court:

(1) in the case of an appeal direct from a trial court, not more than three months after entry of the order appealed from; or

(2) in the case of an appeal from the Court of Appeals, within 30 days after entry of the judgment appealed from or a denial of a petition for rehearing.

VSB Docket No. 05-022-3154 (VSB/Va. Sup.Ct/Edwards)

7. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

8. On or about December 20, 2000, Respondent was appointed to take over the *pro se* DUI appeal of Johnnie Lang Edwards.

9. On October 25, 2001, Respondent filed his Petition for Appeal with the Virginia Supreme Court. The Petition failed to contain any assignments of error and had pagination that failed to correspond with the table of contents.

10. On April 4, 2002, the Court dismissed the appeal for failure to contain assignments of error.[3]

VSB Docket No. 05-022-2521 (VSB/Va. Ct. Appeals/Mitchell)

11. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

12. Respondent was appointed by the Virginia Beach Circuit Court to represent Chaheki Mitchell. On August 3, 2004, Respondent noted an appeal of the probation revocation order dated July 7, 2004. The Notice of Appeal certified that "a transcript of the proceedings…has been ordered from the Court reporter and will be filed in accordance with Rule 5A:8…" [4]

13. Notwithstanding Respondent's certification in the Notice of Appeal, Respondent did not file the transcript.

14. On November 15, 2004, the Virginia Court of Appeals dismissed the appeal for failure to file a transcript or a statement of facts.

VSB Docket No. 05-022-3155 (VSB/Va. Sup. Ct./Wynn)

15. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

16. Respondent was appointed to represent Ernest Anthony Wynn in his sentencing and subsequent appeals of a 5 year sentence for grand larceny.

17. On October 23, 2004, Respondent filed a Petition for Appeal with the Supreme Court setting forth the following Assignment of Error: "The Court of Appeals ruled in a manner inconsistent with case law in denying the appellant's petition for appeal."

18. On January 27, 2005, the Supreme Court dismissed the appeal "…because the petition for appeal does not contain sufficient assignments of error that comply with the requirements of Rule 5:17(c)…"

VSB Docket No. 05-022-4414 (VSB/Va. Sup.Ct./Trusty)

19. At all times material to these allegations, the Respondent, Theresa Brumback Berry, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

20. In December, 2004, Respondent was appointed to represent Aurther Dawntaye Trusty for his sentencing and continued as appeals counsel.

FOOTNOTES

3 (c) Form and Content.—Under a separate heading entitled "Assignments of Error," the petition shall list the specific errors in the rulings below upon which the appellant intends to rely. Only errors assigned in the petition for appeal will be noticed by this Court. Where appeal is taken from a judgment of the Court of Appeals, only assignments of error relating to questions presented in, or to actions taken by, the Court of Appeals may be included in the petition for appeal to this Court. An assignment of error which merely states that the judgment or award is contrary to the law and the evidence is not sufficient. If the petition for appeal does not contain assignments of error, the appeal will be dismissed.

Petition for Appeal., **RULE 5:17 (2000)**

4 **RULE 5A:8. Record on Appeal: Transcript or Written Statement. —**

(a) Transcript.—The transcript of any proceeding is a part of the record when it is filed in the office of the clerk of the trial court within 60 days after entry of the final judgment. Upon a written motion filed within 60 days after entry of the final judgment, a judge of the Court of Appeals may extend this time for good cause shown.

21. After filing a Notice of Appeal on January 11, 2005, Respondent failed to file a Petition for Appeal with the Court of Appeals. The record had been filed on March 15, 2005, and therefore the Petition was due 40 days later per Rule 5:A:12 (a)[5]

22. On May 6, 2005, the Court of Appeals dismissed the appeal for failure to file a Petition for Appeal.

23. On June 7, 2005, Respondent filed a Notice of Appeal to the Supreme Court.

24. On July 27, 2005, the Supreme Court dismissed the appeal for the failure of the Petition for Appeal to "contain assignments of error relating to the action taken by the Court of Appeals." Respondent's Petition alleged only that the "trial court erred."

II. NATURE OF MISCONDUCT

The Board finds that the Respondent's conduct in each of the foregoing violates Rules 1.1(a), Competence, and 1.3(a)., Diligence.

IMPOSITION OF SANCTION OF SUSPENSION OF FIFTEEN (15) DAYS

The Board, having considered all evidence before it, having considered the nature of the Respondent's actions, and having considered the Respondent's disciplinary record, ORDERS pursuant to Part 6, Sec. IV, Para. 13I 2f.(2)(C) of the Rules of the Virginia Supreme Court that the license of the Respondent, Theresa Brumback Berry, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for fifteen (15) days, effective June 30, 2006.

It is further **ORDERED** that Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M., of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from June 30, 2006, the effective date of this Order. All issues concerning the adequacy of the notice and arrangements required by the Order shall be determined by the Board, unless Respondent timely demands the matter be adjudicated by a three judge circuit court panel.

Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further **ORDERED** that a copy *teste* of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, Theresa Brumback Berry, Esq., P.O. Box 9782,Virginia Beach, VA 23450, her last address of record with the Virginia State Bar; and hand delivered to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219- 2800.

Donna Chandler, Chandler and Halasz, Inc., Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, 804/730-1222, was the reporter for the hearing and transcribed the proceedings.

ENTERED this 14TH day of June, 2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD

FOOTNOTES

5 (a) When Required.—When an appeal to the Court of Appeals does not lie as a matter of right, a petition for appeal must be filed with the clerk of the Court of Appeals not more than 40 days after the filing of the record with the Court of Appeals.

By: Peter A. Dingman, Chair Presiding

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
PATRICK JOHN BLACKBURN
VSB Docket No. 05-000-3412

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board pursuant to a Rule to Show Cause issued in accordance with Part 6, Section IV, Paragraph 13,I,7.b. and f. of the Rules of Court.

The Rule to Show Cause alleged that Mr. Blackburn had been disbarred by the Supreme Court of Alaska effective April 8, 2003. A hearing was held before the Disciplinary Board on May 19, 2006 at 9:00 a.m. in the State Corporation Commission, Courtroom A, Tyler Building, 1300 East Main Street, Richmond, Virginia. The Disciplinary Board Panel consisted of James L. Banks, Jr., Second Vice-Chair, William C. Boyce, Jr., Nancy C. Dickinson, William E. Glover, and Dr. Theodore Smith (lay member). The Bar was represented by Interim Bar Counsel Harry M. Hirsch, and the Respondent, Patrick John Blackburn., was not represented by counsel. The proceedings were recorded by Tracy J. Stroh, P.O. Box 9349, Richmond, Virginia 23227, (804)730-1222, after being duly sworn by the Second Vice-Chair.

At 9:00 a.m., Mr. Blackburn was not in the courtroom and his name was called three times in the hall prior to the commencement of the hearing with no response. The hearing proceeded in Mr. Blackburn's absence.

The Panel was polled as to whether any conflict existed which might interfere with the members' ability to hear the matter fairly and all responded in the negative, including the Second Vice-Chair.

The Bar introduced evidence of Mr. Blackburn's disbarment in the form of the Disbarment Order of the Supreme Court of Alaska effective April 8, 2003. The disbarment order reflected 17 complaints in Alaska alleging violations of various disciplinary rules similar to the Virginia Rules of Professional Conduct. Those allegations were deemed to be admitted. Each of the three exhibits offered by the Virginia State Bar were received by the Panel and entered as evidence in the matter.

Mr. Hirsch informed the Panel that he had telephoned the telephone number of record for Mr. Blackburn and had not succeeded in speaking with him or receiving any return communication.

No evidence was presented at to why Mr. Blackburn's license to practice law in the Commonwealth of Virginia should not be revoked.

Therefore, it is **ORDERED** that Respondent's license to practice law in the Commonwealth of Virginia be and hereby is revoked, effective May 19, 2006.

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the revocation of his license if he is handling any client matters at the time. If the Respondent is not handling any client matters on the effective date of his license suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.M shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

Pursuant to Part 6, Section IV, Paragraph 13.B.8(c) of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent Patrick John Blackburn at his addresses of record with the Virginia State Bar, P.O. Box 232286, Anchorage Alaska, 99523-2286 by certified mail, return receipt requested, and by regular mail to Interim Bar Counsel Harry M. Hirsch, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 6th day of July, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks, Jr., Second Vice-Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JOHN V. BUFFINGTON JR.
VSB Docket No. 06-000-3411

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board pursuant to a Rule to Show Cause issued in accordance with Part 6, Section 4, Paragraph 13,I,6 of the Rules of Court.

The Rule to Show Cause alleged that Mr. Buffington had been suspended by the United States District Court for the Eastern District of Pennsylvania for a period of six months. A hearing was held before the Disciplinary Board on May 19, 2006 at 9:00 a.m. in the State Corporation Commission, Courtroom A, Tyler Building, 1300 East Main Street, Richmond, Virginia. The Disciplinary Board Panel consisted of James L. Banks, Jr., 2nd Vice-Chairman (the "Chair"), William C. Boyce, Jr., Nancy C. Dickinson, William E. Glover, and Dr. Theodore Smith (lay member). The Bar was represented by Assistant Bar Counsel Richard E. Slaney, and the Respondent, John V. Buffington, Jr., was not represented by counsel. The proceedings were recorded by Tracy J. Stroh, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn by the Chairman.

At 9:00 a.m., Mr. Buffington was not in the courtroom and his name was called three times in the hall with no response. The hearing proceeded in Mr. Buffington's absence.

The Panel was polled as to whether any conflict existed which might interfere with the member's ability to hear the matter fairly and all responded in the negative, including the Chair.

The Bar introduced evidence of Mr. Buffington's six month suspension by the United States District Court for the Eastern District of Pennsylvania as well as a corresponding suspension by the Supreme Court of Pennsylvania.

No evidence was presented as to why Mr. Buffington's license to practice law in the Commonwealth of Virginia should not be suspended for a similar period of time.

Therefore it is **ORDERED** that Respondent's license to practice law in the Commonwealth of Virginia be and hereby is suspended for a period of six months, effective May 19, 2006.

The Respondent must comply with the requirements of Part 6, Section IV, paragraph 13.M of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the suspension of his license if he is handling any client matters at the time. If the Respondent is not handling any client matters on the effective date of his license suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.M shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

Costs

Pursuant to Part 6, Section IV, Paragraph 13.B.8(c) of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent at his addresses of record with the Virginia State Bar, being John V. Buffington, Jr., 4730 Oakland Street, Philadelphia, Pennsylvania 19124-2941, by certified mail, return receipt requested, and by regular mail to Richard Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this 31st day of May, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., 2nd Vice-Chair

VIRGINIA:

VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DOROTHEA PATRICIA KRAEGER, ESQUIRE
VSB Docket Number 06-000-3439

ORDER AND OPINION

THIS MATTER came on the 16th day of May, 2006, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, as a result of a Rule to Show Cause and Order of Suspension and Hearing entered on April 28, 2006. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Robert E. Eicher, Glenn M. Hodge, Carl A. Eason, Werner H. Quasebarth, and Peter A. Dingman, presiding.

Alfred L. Carr, Esquire, representing the Bar, and the Respondent, Dorothea Patricia Kraeger, Esquire, presented an endorsed Agreed Disposition. The hearing was transcribed by Tracy J. Stroh, Court Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

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

1. At all times relevant hereto, the Respondent, Dorothea Patricia Kraeger (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On March 23, 2005, the Disciplinary Commission of the Supreme Court of Arizona suspended Ms. Kraeger from the practice of law for a period of four years for conduct in violation of her duties and obligations as a lawyer. *(Exhibit A)*

3. The Disciplinary Commission, upon reinstatement of her license to practice law in Arizona, shall place Ms. Kraeger on two years probation. *(Id.)*

4. Mitigating factors recognized by the ABA include the following:

   The Disciplinary Commission of the Supreme Court of Arizona found six mitigating factors: a) absence of a prior disciplinary history; b) personal and emotional problems; c) timely good faith effort to make restitution or to rectify consequences of misconduct; d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; e) character or reputation, and; f) remorse. *(Id.)*

5. Aggravating factors recognized by the ABA include the following:

   The Disciplinary Commission of the Supreme Court of Arizona found three aggravating factors: a) a pattern of misconduct; b) multiple offenses; and c) substantial experience in the practice of law. *(Id.)* The Respondent and the Virginia State Bar agree that the same sanction should be imposed in Virginia.

STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent constitutes a violation of the following Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision,

after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

Upon consideration of the Agreement to Imposition of Reciprocal Discipline before this panel of the Disciplinary Board, it is hereby **ORDERED** that, pursuant to Part 6, § IV, ¶ 13(I)(7) of the *Rules of Virginia Supreme Court*, that the Respondent, Dorothea Patricia Kraeger, Esquire, shall receive a four-year suspension of her license to practice law in the Commonwealth of Virginia, commencing April 28, 2006, as representing the appropriate reciprocal discipline pursuant to Pt. 6, § IV, ¶ 13(I)(7) of the Rules of the Supreme Court of Virginia. Whereupon reinstatement of Respondent's license to practice law in the State of Arizona, she shall be on probation for two years per the conditions set forth in the Judgment and Order of the Supreme Court of Arizona, and for so long as the Supreme Court of Arizona probation is in effect.

IT IS FURTHER ORDERED that, pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

IT IS FURTHER ORDERED that, as directed in the Board's April 28, 2006 Order in this matter, a copy of which was served on the Respondent by certified mail, the Respondent must comply with the requirements of Part 6, § IV, ¶ 13(M) of the *Rules of Virginia Supreme Court*. The time for compliance with said requirements runs from April 28, 2006, the effective date of the Rule to Show Cause and Order of Suspension and hearing. All issues concerning the adequacy of the notice and arrangements required by that Order shall be determined by the Board.

It is further **ORDERED** that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at 1545 West Avalon Drive, Phoenix, AZ 85015, her last address of record with the Virginia State Bar, and to Assistant Bar Counsel Alfred L. Carr, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, VA 22314.

Enter this Order this 16th day of May, 2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Peter A. Dingman, Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
WILLIAM THEODORE LINKA

VSB Docket Nos.; 05-033-0959
05-033-2226; 05-033-2295; 05-033-2296;
05-033-4283; 06-033-1513; 06-033-1737

ORDER OF PUBLIC REPRIMAND (WITH TERMS)

THESE MATTERS were certified to the Virginia State Bar Disciplinary Board ("Board") by the Third District Committee—Section III, and were set for hearing for June 23, 2006. On June 23, 2006, the Respondent, William Theodore Linka, and his counsel, Thomas O. Bondurant, Jr. appeared before a panel of the Board. The Virginia State Bar ("Bar") was represented by Paulo E. Franco, Jr., Assistant Bar Counsel. The duly convened panel consisted of Peter A. Dingman, Chair Presiding, Russell W. Updike, David R. Schultz, Roscoe B. Stephenson, III, and Stephen A. Wannall, Lay Member.

Prior to commencing the proceedings, the Chair swore in the court reporter and polled the Board 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 ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

The Virginia State Bar and the Respondent then advised the Board that they had a proposed Agreed Disposition that contained a Stipulation of Findings of Fact and Stipulated Finding of Misconduct and a Joint Request for a Public Reprimand with Terms. In colloquy with the Board, Mr. Bondurant and Mr. Franco advised the Board that, by agreement of the parties, the matter was to be presented pursuant to a stipulation that, upon a full hearing, the Bar's witnesses and documentary exhibits would establish the facts as set forth in a pleading, styled "Proposed Agreed Disposition" and executed by Mr. Linka, Mr. Bondurant, and Mr. Franco, a copy of that pleading being jointly tendered to the Board. The Chair then queried the Respondent, who acknowledged, in person and through counsel, that the Bar's evidence was sufficient to prove each and every allegation set forth in the Certification by clear and convincing evidence. Further, Respondent, his counsel, and the Bar acknowledged that the Board was not bound in any respect by the recommendation for discipline contained in the "Proposed Agreed Disposition". The Board also received into evidence, without objection, the Bar's book of exhibits, numbered 1-38, which it marked as Bar Exhibit A.

After duly deliberating, the Board found that, considering the stipulation of the Respondent and the other matters in evidence, the Bar had met its burden of proof as to each charge of misconduct set forth in the Certification.

Accordingly, the Board makes the following:

FINDINGS OF FACT AND DETERMINATIONS OF MISCONDUCT: AS TO ALL DOCKET MATTERS

A. Mr. Linka was admitted to the practice of law in the Commonwealth of Virginia on September 4, 1981.

B. At all times relevant to this proceeding, Mr. Linka was an attorney active and in good standing to practice law in the Commonwealth of Virginia.

VSB Docket No. 05-033-0959
Complainant: Antonio C. Villeda

Findings of Fact

1. Mr. Linka was appointed by the Circuit Court of Henrico County to represent Antonio C. Villeda on charges of murder.

2. Mr. Villeda was convicted of first degree murder, and on February 18, 2004 he was sentenced to 60 years, with 22 years suspended.

3. On February 25, 2004, Mr. Linka filed a Notice of Appeal.

4. On April 26, 2004, the Henrico County Circuit Court advised Mr. Linka that the trial transcripts were ready for filing.

5. Mr. Linka filed the trial transcripts on April 28, 2004.

6. Approximately one week before the Petition for Appeal was due, Mr. Linka reviewed the trial transcript and realized that his motion to strike the evidence was not among the matters that had been transcribed.

7. Mr. Linka contacted the Clerk's Office and was advised that because it was the court's policy not to transcribe opening and closing statements, his motion to strike the evidence was not transcribed.

8. Rather than seek to file a statement of facts with the record on appeal or seek an extension time within which to file the necessary transcripts, Mr. Linka elected to purposefully file the petition for appeal one day late on July 2, 2004.

9. On July 8, 2004, the Virginia Court of Appeals dismissed Mr. Villeda's Petition for Appeal on the grounds that it was not timely filed.

10. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar established, by clear and convincing evidence, the following Charge of Misconduct:

RULE 1.3 Diligence

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

VSB Docket No. 05-033-2226
Complainant: Anonymous

Findings of Fact

11. Jason Loftis retained Mr. Linka and John Boatwright to represent him on charges of murder, conspiracy to commit murder and use of a firearm in the commission of a felony.

12. On November 6, 2000, Mr. Loftis' trial resulted in a hung jury.

13. Mr. Linka represented Mr. Loftis on retrial on January 22, 2001, whereby Mr. Loftis was convicted of murder, conspiracy to commit murder and use of a firearm in the commission of a felony.

14. During trial, Mr. Linka and the Commonwealth's Attorney presented arguments on jury instructions in judge's chambers.

15. The court reporter was present but failed to transcribe the proceedings that took place in chambers.

16. On April 12, 2001, the trial court sentenced Mr. Loftis to 30 years.

17. On April 19, 2001 Mr. Linka filed a Notice of Appeal with the Halifax Circuit Court.

18. On June 8, 2001, Mr. Linka was given an extension until July 11, 2001 to file the trial transcripts.

19. Ten days prior to the date that the petition for appeal was due, Mr. Linka realized that his arguments relating to the jury instructions were not transcribed, even though he had received the trial transcripts in advance.

20. Mr. Linka subsequently failed to file a Petition for Appeal.

21. The Court of Appeals entered an Order dated September 14, 2001, dismissing the appeal on the grounds that no Petition for Appeal was filed.

22. On June 19, 2002, Mr. Linka executed an Affidavit related to the incidents of Mr. Loftis' appeal.

23. In the affidavit, Mr. Linka states that he received the transcript well in advance of the date the petition for appeal was due and that had he taken earlier action he could have approached the Commonwealth's Attorney concerning a statement of facts in lieu of the missing portion of the transcript.

24. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of Misconduct:

RULE 1.3 Diligence
(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

VSB Docket No. 05-033-2295
Complainant: Ralph Fauntleroy

Findings of Fact

25. Ralph Fauntleroy retained William T. Linka in the Fall of 2002 to represent him on charges of Driving While Under the Influence, 2nd Offense, driving on a suspended license and refusing to submit to a breath sample in Chesterfield County ("Chesterfield Charges") and on charges of violating the terms of his Court Ordered ASAP probation and for refusing to submit to a breath sample in Henrico County ("Henrico Charges").

26. On November 25, 2002, the Circuit Court of Chesterfield County convicted Mr. Fauntleroy on the Chesterfield Charges.

27. Mr. Linka filed a Notice of Appeal on the Chesterfield Charges with the clerk's office, and believed he had ordered the transcript in order to perfect the appeal.

28. Mr. Linka did not indicate on the Notice of Appeal he filed in connection with the Chesterfield Charges that his representation was limited to solely filing the appeal in order to protect his client's rights.

29. Mr. Linka never ordered the transcript and otherwise failed to perfect Mr. Fauntleroy's appeal on the Chesterfield Charges.

30. The Court of Appeals of Virginia entered an Order on March 17, 2003 requiring Mr. Fauntleroy to show cause why his appeal should not be dismissed.

31. Mr. Linka failed to file a response to the Show Cause Order.

32. The Court of Appeals of Virginia dismissed Mr. Fauntleroy's appeal of his Chesterfield County convictions on April 10, 2003 because he failed to respond to the Show Cause Order and because the appeal had not been properly perfected.

33. At no time did Mr. Linka ever seek leave to withdraw as counsel of record.

34. On October 24, 2002, Mr. Fauntleroy was convicted by the Henrico County General District Court on the Henrico Charges.

35. Mr. Linka filed a Notice of Appeal of that conviction to the Henrico County Circuit Court.

36. On February 6, 2003, the Henrico County Circuit Court convicted Mr. Fauntleroy on the Henrico Charges.

37. Mr. Linka filed a Notice of Appeal.

38. The record on appeal was transmitted to the Clerk's Office of the Court of Appeals on May 16, 2003.

39. Mr. Linka filed a Petition for Appeal on the Henrico Charges on June 23, 2003.

40. On October 22, 2003, the Court of Appeals denied part of the appeal and transferred a part of the case to the Virginia Supreme Court.

41. On October 30, 2003, Mr. Fauntleroy requested that the Court of Appeals appoint him counsel.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of Misconduct:

RULE 1.3 Diligence

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

VSB Docket No. 05-033-2296
Complainant: Anonymous

Findings of Fact

42. Mr. Linka was appointed to represent Lawrence Fitzgerald on charges of possession of heroin with intent to distribute.

43. In addition to these charges, Mr. Linka was appointed to represent Mr. Fitzgerald on other unrelated charges.

44. Mr. Fitzgerald was convicted by the Circuit Court for the City of Richmond on April 23, 2003, of possession of heroin with intent to distribute. He was sentenced to ten years with 7 years and nine months suspended.

45. Mr. Linka prepared and filed a Notice of Appeal on May 5, 2003.

46. Mr. Linka did not request that the incidents of trial be transcribed and did not file all of the necessary transcripts with the Virginia Court of Appeals.

47. Mr. Linka subsequently filed the necessary trial transcripts but did so in an untimely manner.

48. On September 17, 2003, the Virginia Court of Appeals dismissed Mr. Fitzgerald's appeal and denied the motion to have the untimely transcripts considered on appeal.

49. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of Misconduct:

RULE 1.3 Diligence

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

VSB Docket No. 05-033-4283
Complainant: Supreme Court of Virginia

Findings of Fact

50. On July 24, 2002, the Circuit Court of Henrico County convicted Christopher E. Cottrell of one count of robbery and sentenced him to eleven years.

51. Mr. Cottrell's court appointed counsel, John McGarvey, failed to file a timely Notice of Appeal.

52. The Virginia Court of Appeals subsequently dismissed Mr. Cottrell's appeal.

53. On October 10, 2003, the Virginia Supreme Court granted Mr. Cottrell's Petition for Habeas Corpus and granted him the right to file a delayed petition for appeal.

54. The Virginia Court of Appeals appointed Mr. Linka to represent Mr. Cottrell on the delayed appeal.

55. On March 10, 2004, The Virginia Court of Appeals entered an order denying Mr. Cottrell's appeal.

56. On March 22, 2004, Mr. Linka filed a Petition for Appeal with the Supreme Court of Virginia.

57. On May 20, 2004, the Virginia Supreme Court dismissed Mr. Cottrell's Petition for Appeal on the grounds that he failed to timely file a Notice of Appeal with the trial court.

58. On December 13, 2005, Cam Moffat, investigator for the Virginia State Bar, interview Mr. Cottrell by telephone.

59. During that interview, Mr. Cottrell advised Ms. Moffat that Mr. Linka never told him that his appeal had been dismissed due to his error.

60. Mr. Cottrell did not learn about the dismissal until he contacted the Clerk of the Virginia Supreme Court to inquire about the status of his case.

61. Mr. Cottrell had to rely on the advice of "jailhouse" lawyers to assist him in preparing a Petition for a Writ of Habeas Corpus.

62. On December 15, 2005, Cam Moffat, investigator for the Virginia State Bar, conducted an interview with Mr. Linka.

63. During the interview, Mr. Linka admitted that he failed to file a notice of appeal with the trial court.

64. Mr. Linka further told Ms. Moffat that "I can't blame anyone but myself."

65. Mr. Linka also told Ms. Moffat that he had no specific recollection of ever advising Mr. Cottrell about the dismissal of his case and he had no documentation in his file to that effect.

66. On January 4, 2005, Mr. Linka prepared a letter to Harry M. Hirsch, Deputy Bar Counsel, whereby he acknowledged error in this matter.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charges of Misconduct:

RULE 1.3 Diligence

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

* * * *

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

* * * *

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

VSB Docket Nos. 06-33-1513 and 06-033-1737
Complainant: Anonymous (1513)/Desmond Higgs (1737)

Findings of Fact

67. Mr. Linka was appointed to represent Desmond Higgs on charges of murder and use of a firearm.

68. On May 24, 2005, the Circuit Court of Henrico County convicted Mr. Higgs of murder and use of a firearm.

69. Mr. Linka filed a Notice of Appeal on June 9, 2005.

70. Mr. Linka requested that the transcripts of the trial be prepared.

71. The Clerk of the Henrico County Circuit Court advised Mr. Linka on August 16, 2005 that the transcripts had not yet been filed.

72. Mr. Linka filed Motion for an Extension of Time in which to file the transcripts with the Virginia Court of Appeals.

73. The Virginia Court of Appeals denied the Motion as untimely.

74. On September 12, 2005, the Virginia Court of Appeals issued a Rule to Show Cause why the appeal should not be dismissed.

75. Mr. Linka failed to respond to the Show Cause Order.

76. On October 5, 2005, the Virginia Court of Appeals dismissed Mr. Higgs' appeal on the grounds that the transcripts of the proceedings had not been timely filed.

77. The Virginia State Bar received the Complaint from the Virginia Court of Appeals in Docket No. 06-033-1513.

78. Mr. Higgs filed his own Complaint with the Virginia State Bar in Docket No. 06-033-1737.

Determination of Misconduct

The Bar has established, by clear and convincing evidence, the following Charge of Misconduct

RULE 1.3 Diligence

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

IMPOSITION OF DISCIPLINE

After announcing its conclusion that it had made the forgoing determinations of misconduct, the Board received from the parties such evidence and statements as they chose to present in mitigation and/or in aggravation of the misconduct. The Board received a certified copy of Respondents prior disciplinary record (Dismissal with Terms on a found violation of DR6-101) and heard statements (in addition to the joint recommendation contained in the "Proposed Agreed Disposition") from the Bar, Mr. Bondurant and Respondent. Both the Bar and Mr. Bondurant spoke of Mr. Linka's strong reputation as an effective advocate for indigent defendants and his continuing service to the criminal justice system of the Commonwealth. The Board notes that Mr. Linka, in his remarks, was unflinching in his acceptance of personal responsibility for the misconduct found by the Board. He offered no excuses, did not seek to minimize the severity of the misconduct and indicated his readiness to make practice changes to assure the misconduct is not repeated. With regard to the client matters referenced in each Docket matter, Mr. Linka had taken steps to ameliorate the effect of his misconduct, and it appears that no client sustained significant, unremediated harm. The joint recommendation of the parties incorporated terms intended to address the source of Respondent's misconduct.

The Board then retired to consider the appropriate discipline to be imposed upon the misconduct found, and after deliberation returned to announce its disposition in this matter, as follows:

ORDERED that the Respondent, William Theodore Linka, be issued a **PUBLIC REPRIMAND WITH TERMS**.

The terms to which Respondent shall be held are as follows:

1. **On or before August 25, 2006**, Consult with VSB Risk Manager John Brandt, Esquire at 800-215-7854 regarding establishing and implementing docket controls and procedures for case deadlines, with Respondent to report in writing to Assistant Bar Counsel Paulo E. Franco, Jr. the date, time, substance, and resulting changes in Respondent's practice of said consultation; and

2. **On or before December 31, 2006**, the Respondent shall complete four hours of continuing legal education (CLE) in the subject of criminal appeals and two hours of general ethics. Such hours shall **not** be submitted or applied toward Respondent's Mandatory Continuing Legal Education annual requirement in the Commonwealth of Virginia or in any other jurisdiction where Respondent is admitted to practice law. Respondent shall certify his compliance with said CLE terms by promptly delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form to Assistant Bar Counsel Paulo E. Franco, Jr.; and

3. **On or before August 25, 2006**, the Respondent shall certify that he has purchased and implemented a suitable commercial docket control computer program to track deadlines within his office. The respondent shall provide compliance of implementing such system, in writing, to Assistant Bar Counsel Paulo E. Franco, Jr.

4. **Up and through September 30, 2006**, the Respondent shall engage Craig S. Cooley, Esquire, to supervise any and all criminal appeals that respondent undertakes, whether such appellate work be court appointed or retained work. The Respondent shall submit a written report each month from Mr. Cooley noting Respondent's preparation of all appellate work within the rules of each court in which Respondent presents an appeal on behalf of a client.

The alternate disposition of these matters, should Respondent fail to comply fully with the foregoing terms, will be a **forty-five (45) day suspension** from the practice of law.

In the event of the Respondent's alleged failure to meet one or more of the terms set forth above, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause before the Disciplinary Board why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of the Board's Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of the Board's Disposition shall be determined by the Disciplinary Board, and Respondent hereby waives any right he may have to have a three judge Board consider imposition of the alternate disposition. At the hearing, the burden of proof shall be on the Respondent to show, by clear and convincing evidence timely compliance with the terms, including timely certification of such compliance.

Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further **ORDERED** that a copy *teste* of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, William Theodore Linka at 7 South First Street, Richmond, Virginia 23219, his last address of record with the Virginia State Bar; by regular mail to Respondent's counsel Thomas O. Bondurant, Jr., at 3600 Douglasdale Road, Richmond, Virginia 23221-3801, and hand delivered to Paulo E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219-2800.

Donna Chandler, Chandler and Halasz, Inc., Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, 804/730-1222, was the reporter for the hearing and transcribed the proceedings.

ENTERED this 7th day of July, 2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Peter A. Dingman, Chair

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
DAVID ASHLEY GRANT NELSON, ESQUIRE
VSB Docket Numbers: 05-090-1355
05-090-1665
06-090-1542

ORDER

THESE MATTERS came to be heard on April 28, 2006, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Joseph Roy Lassiter, Jr., Acting Chair, Bruce T. Clark, Sandra L. Havrilak, Herbert Taylor Williams, IV and Dr. Theodore Smith, lay member.

Scott Kulp, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar. The Respondent, David Ashley Grant Nelson, appeared *pro se*. The proceedings were recorded by Jennifer L. Hairfield, a registered court reporter with Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 780-1222, she having been duly sworn by the Chair.

The Chair made inquiry of all Panel members as to whether they had any personal or financial interest or any bias that would preclude them from hearing this matter fairly and impartially. Each member and the Chair answered such inquiry in the negative. Thereafter, the Respondent advised the Panel that he agreed to stipulate to all evidence and acknowledged all violations submitted to the Panel in the cases under consideration as follows:

VSB 05-090-1355 (Stacy R. Dewberry)

STATEMENT OF FACTS

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

2. Complainant Stacy R. Dewberry (herinafter the "Complainant") and her husband, Steven McTyre (hereinafter "Mr. McTyre"), hired Respondent in June, 2004 to handle a no-fault divorce which Complainant expected to be finalized shortly thereafter. This would permit her to carry out her plans to remarry.

3. Respondent charged Ms. Dewberry a fee of Four Hundred Dollars.

4. On June 10, 2004, Complainant and Mr. McTyre each paid Respondent Two Hundred Dollars.

5. At the end of August 2004, after nothing had been done in furtherance of the divorce during the months that followed and after Complainant was unsuccessful in her repeated attempts to communicate with Respondent, Complainant filed a bar complaint against Respondent.

6. Complainant went to Respondent's office on or about September 10, 2004 to inquire about the status of her divorce.

7. Respondent informed Complainant that he was going to give her a refund of her portion of the legal fee.

8. Respondent instructed Complainant to tell Mr. McTyre to meet him at his office the following day to sign some papers.

9. Complainant and Mr. McTyre appeared at Respondent's office as directed, but the Respondent did not appear.

10. On or about September 14, 2004, again in compliance with the instructions of the Respondent, Complainant went to his office in order to pick up her refund and a copy of the separation papers. Again, Respondent did not appear.

11. Several days later, Complainant finally obtained a Two Hundred Dollar refund of her portion of the legal fee from Respondent.

12. Like Complainant, despite his attempts to do so, Mr. McTyre could not get in touch with Respondent.

13. Respondent has never obtained the divorce for which the Complainant paid him requiring her to hire alternative counsel to conclude the matter.

FINDINGS

Based upon the stipulations made and the evidence presented, the Panel finds that the Respondent violated the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

VSB 05-090-1665 (Lucy Alexander)

STATEMENT OF FACTS

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

2. On April 27, 2004, Complainant, Lucy Alexander, (herinafter the "Complainant") received a traffic ticket for which a court date of June 10, 2004 was scheduled. Complainant engaged Respondent to handle the matter. Respondent informed the Complainant about the material she needed to provide. He also provided information concerning his legal fee and the expected court fees (fine and costs).

3. Respondent told Complainant that she did not need to appear at the June 10th court date, he would take care of it.

4. On or about May 11, 2004, Complainant sent Respondent the information he had requested, including check #3056 for Two Hundred Seventy Five Dollars payable to the Respondent for the legal fee and check #3057 in the amount of Fifty Four Dollars payable to the Charlotte County General District Court to cover her anticipated court fees.

5. On or about May 24, 2004, Respondent deposited checks #3056 and #3057 in his escrow account #2008918 with the Bank of Charlotte County.

6. Due to improper endorsement, the Federal Reserve Bank thereafter returned check #3057 to the Bank of Charlotte County.

7. On June 10, 2004, Respondent failed to appear in court on Complainant's behalf to respond to her Uniform Traffic Summons. (The Respondent, having stipulated to the evidence, asserted before the Panel that in fact he had attended this hearing).

8. On or about July 9, 2004, the Bank of Charlotte County notified Respondent by letter that his escrow account was overdrawn in the amount of One Thousand Three Hundred Five Dollars and Twenty Three Cents. In this notice Respondent was requested to cover the overdraft within five days.

9. Respondent did not contact the Bank nor did he made a deposit to cover the overdraft.

10. On or about August 2, 2004, Ms. Sterling Laughlin, the Collections Manager for the Bank of Charlotte County, noted that Respondent's escrow account still showed a One Thousand Three Hundred Twenty Nine Dollars and Twenty Three Cents negative balance.

11. The Bank of Charlotte County closed Respondent's personal and escrow accounts due to continuing problems with negative balances in both accounts.

12. As an adjustment, the Bank of Charlotte County's bookkeeping department applied the sum of Two Hundred Sixty Three Dollars and Ten Cents remaining in the Respondent's personal checking account to the negative balance in Respondent's escrow account, bringing the negative balance to One Thousand Eighty Six Dollars and Thirteen Cents.

13. On or about August 16, 2004, Complainant received a letter from the Charlotte County General District Court telling her that unless she paid her court fees, her license would be revoked on August 27, 2004.

14. Having previously sent Respondent Check #3057 in the amount of Fifty Four Dollars payable to the Charlotte County General District Court to cover the court fees, Complainant was confused as to why the court fees remained unpaid.

15. Complainant attempted to reach Respondent on multiple occasions by phone, she received an answering machine response advising her that there was no one available to answer her calls. The machine did not accept Complainant's messages.

16. On or about August 18, 2004, Complainant wrote Respondent and explained that she had received the August 16, 2004 letter from the court and did not understand what was happening. Complainant requested that Respondent pay the fee immediately and asked that he call her immediately to explain the status of her matter. Complainant further wrote that she had on multiple occasions attempted to reach Respondent by phone without success. Complainant never heard from Respondent.

17. On or about September 2, 2004, Complainant learned that the court fees still had not been paid. Complainant further learned from the Clerk's Office that if Complainant took a driver improvement course, the Judge had agreed to dismiss the case.

18. Complainant scheduled a driver improvement course and obtained an extension from the court in her case. This extension would permit successful completion of the driver improvement course and would allow time to forward the certificate of completion to the court.

19. On or about September 2, 2004, Complainant sent Respondent a certified letter in which she advised him of the forgoing developments. She also enclosed a copy of her canceled check #3057 and again requested that Respondent pay the court fees. In addition, she again requested that the Respondent contact her to discuss the status of her situation.

20. The Bank of Charlotte County obtained a Warrant-in-Debt against Respondent for the deficit balance of One Thousand Eighty Six Dollars and Thirteen Cents in his escrow account.

21. On or about the September 9, 2004 return date for the Warrant-in-Debt, Respondent made a cash payment satisfying the bank's claim. The Warrant-in-Debt was dismissed.

22. On or about September 14, 2004, the Complainant sent the Respondent a certified letter informing him due to his substantial nonperformance, he was dismissed as her attorney. Complainant also requested return of all monies paid to the Respondent.

23. As of September 15, 2004, the Charlotte County General District Court still had not received Complainant's fees from Respondent. The Complainant therefore sent the Charlotte County General District Court another Fifty Four Dollars with her driver improvement certificate. These items were accompanied by a letter telling the court that Respondent was not long her attorney.

24. In response, the Charlotte County General District Court dismissed the Complainant's traffic case.

25. Despite her repeated efforts to communicate with Respondent prior to discharging him, Complainant never received a response from the Respondent.

26. On or about January 3, 2005, Ms. Sterling Laughlin, the Collections Manager for the Bank of Charlotte County, mailed Respondent a letter requesting that the Respondent come to the Bank to make good his check #3057 which had been returned for improper endorsement. By this time, the Respondent's P.O. Box had been closed. For this reason, this letter was returned.

27. Ms. Laughlin thereafter sent another letter to the Respondent using his home address. Ms. Laughlin again asked Respondent to make good check #3057. In this letter, Ms. Laughlin advised the Respondent that failure to pay by January 19 would result in legal action.

28. During the period from December 2003 through August 31, 2004—the period during which Respondent maintained escrow account number 208918 with the Bank of Charlotte County—Respondent contends that he was working in the trucking business for a company called R.T. Justice Trucking Company.

29. During this period of time, Respondent deposited personal money in his escrow account that was unrelated to his law practice. In addition, the Respondent used funds from his escrow account to satisfy obligations unrelated to his law practice.

30. Certain of these checks were written to cover the Respondent's trucking business which was unrelated to his law practice.

31. The checks that put Respondent in an overdraft situation resulting in the negative balance in his escrow account with the Bank of Charlotte County were written to employees of R.T. Justice Trucking Company.

32. During this period of time, Respondent did not maintain trust accountant records in accordance with Rule 1:15 of the Rules of Professional Conduct.

33. During this period of time, Respondent was not doing trust account reconciliations. Respondent did not have an up-to-date receipts journal, Respondent did not maintain a disbursements journal, Respondent did not have client subsidiary records nor did Respondent keep time records.

34. Initially, after Respondent was contacted by the Bar Investigator, he refused to refund the Two Hundred Seventy Five Dollars legal fee believing he did enough work on the case to have earned the money. Later, however, Respondent agreed to refund Complainant's money in its entirety, both his fee and the court costs. The Bar's Investigator advised Respondent that the Bank of Charlotte County was also owed the court costs because it paid this amount to him when he endorsed and deposited the check. Respondent said he would take care of it.

35. When Complainant deposited Respondent's Two Hundred Seventy Five Dollar reimbursement check for legal fees in March, 2005, it was returned for insufficient funds. As a result, Complainants bank charged a Five Dollar service fee to her account. Complainant has not yet received reimbursement of her fees nor for this bad check fee.

FINDINGS

Based upon the above facts outlining Respondent's neglect of Complainant's representation; the determination that Respondent did not maintain proper trust account records and that he also commingled personal funds with client funds while running a negative balance in his escrow account, the Panel finds that he has violated the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.15 Safekeeping Property

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

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

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

(c) A lawyer shall:

(2) Promptly notify a client of the receipt of the clients funds, securities, or other properties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Reconciliations.

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

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

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

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

RULE 1.16 Declining Or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

VSB 06-090-1542 (Michael Bruce Jackson)

STATEMENT OF FACTS

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

2. On June 23, 2005, Respondent appeared in the Nottoway County Juvenile and Domestics Relation Court on behalf of his client, Michael Bruce Jackson.

3. Respondent asked the court for a continuance to allow time for the parties to reach an agreement concerning issues of support.

4. Judge Southall, Chief Judge in the Nottoway County Juvenile and Domestics Relation Court, granted the continuance. Judge Southall ordered the parties to appear again on August 11,2005.

5. Respondent's client, Michael Jackson, and Karen Jackson appeared on the appointed date with a written support agreement in hand. Respondent did not appear.

6. In order to allow Mr. Jackson time to see if he could locate the Respondent by phone, Judge Southall temporarily postponed the hearing.

7. Mr. Jackson was unable to reach Respondent. As he was returning to his military base in North Carolina, he decided to proceed without Respondent. Judge Southall thereafter approved the agreement for support.

8. The court then issued a show cause for Respondent. This show cause was first sent to the Respondent by mail. When it was returned as undeliverable, Judge Southall had a second show cause issued which was sent to the Sheriff for service.

9. The second show cause was served on Respondent in person on September 21, 2005. This show cause required the Respondent to appear for a hearing on October 27. 2005.

10. When Respondent did not appear for the October 27th hearing, Judge Southall issued a capias for Respondent.

11. The capias issued on October 27, 2005 remains on file but two weeks prior to the hearing remained unserved. Respondent advised the Panel that he had been in touch with the court and was attending to the capias.

FINDINGS

Based upon the evidence presented, the Panel finds that the Respondent violated the following Rules of Professional Conduct:

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.16 Declining Or Terminating Representation

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(**d**) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Following the presentation of these above stipulated matters and the finding by the Panel of the violations set forth above, the Panel entered into the sanctions phase of the hearing. At this time, the Panel was informed that the Respondent over the approximately past five years has had a number of complaints against him focusing on his failure to carry out assignments he had accepted. The Panel was also advised that the Respondent was currently on administrative suspension for his failure to comply with subpoenas issued by the Bar in several ongoing investigations.

While the Panel credits the Respondent for being forthcoming concerning the cases before it today, and for his willingness to stipulate these matters, it goes without saying that the issues before the Panel are serious in nature, especially when viewed in light of the Respondent's prior history and his apparent inability or unwillingness to fully address the matters currently under Bar investigation or to deal with the capias outstanding against him. At this hearing during the sanctions phase, some indications were made by the Respondent attempting to explain his actions as a result of depression he was suffering. However, the Rules are clear that if a Respondent desires to base a defense upon an impairment, timely notice of the same must be provided to the Bar no less than fourteen days prior to the hearing to allow appropriate time to investigate and address any such allegation. In this matter, no such notice was given nor was any evidence presented to the Panel in reference to theses allegations other than the statements of the Respondent upon which the Panel could act if it were so inclined, which it is not.

It is clear that the Respondent has displayed a history of neglect of his cases for some time. It is also deeply troubling that the Respondent's neglect of his escrow account and his clear commingling of funds has led to injury of his clients. The Respondent himself said it best in the hearing when he stated, "It is the interest of the client and the interest of the public which comes first". Equally eloquent was one of the complainants, Lucy Alexander, who said during her testimony that Respondent's actions were, " just not the way to treat people". We agree.

The actions of the Respondent in these matters endangered his clients and discredit every member of the Bar, no matter how ethical and no matter how attentive they may be to their charges. It is the type of behavior which cannot be tolerated. Moreover the failure of an attorney to attend to his escrow account is a matter of the greatest concern. For these reasons the Panel ORDERS that the license of the Respondent to practice within the Commonwealth be **REVOKED** effective the 28th day of April, 2006.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent, David Ashley Grant Nelson, 2819 Lorcom Lane Arlington, Virginia 22207 by certified mail, return receipt requested and by regular mail to Scott Kulp, Esquire, Assistant Bar Counsel, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23215.

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

ENTERED this 9th day of May, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Joseph Roy Lassiter, Jr., Acting Chair

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
DWAYNE BERNARD STROTHERS

VSB Docket Nos. 05-010-1033, 05-010-1540 and 05-010-3013

MEMORANDUM ORDER

THESE MATTERS came to be heard on April 27, 2006, by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of V. Max Beard, lay member, Nancy C. Dickenson, Esq., Rhysa Griffith South, Esq., Joseph R. Lassiter, Jr., Esq., and Peter A. Dingman, Esq., Chair presiding (the Panel). The Virginia State Bar appeared through its Assistant Bar Counsel, Richard E. Slaney (the Bar), and the Respondent, Dwayne Bernard Strothers (Mr. Strothers), appeared *pro se*.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13(B)(5)(c), the Bar and Mr. Strothers entered into a written proposed Agreed Disposition and presented same to the Panel.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his ability to be impartial in these matters. Each member, including the Chair, verified they had no such interests.

The Panel heard argument from counsel as well as Mr. Strothers' prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. A majority of the Panel accepted the Agreed Disposition with the caveat, agreed by the Bar and Mr. Strothers, that Mr. Strothers not accept any new clients or new legal business prior to the effective date of the suspension imposed by this order. The forty-five (45) day delay in the effective date of the suspension imposed by this order is for the prompt and orderly winding up of Mr. Strothers' law practice, and not an opportunity to take on new clients or new legal work. It should be noted that panel member V. Max Beard voted against accepting the Agreed Disposition and had strong reservations about its terms.

I. FINDINGS OF FACT

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

The Davis Discrimination Suit 05-010-1033

2. On or about December 1, 2003, one Robert Davis (Davis) hired Strothers to pursue a discrimination claim and paid Strothers $5,000.

3. None of the $5,000 paid by Davis was deposited into a trust account.

4. Strothers wrote to Davis on December 11, 2003, stating in part that one-half of the $5,000 paid would be deemed earned upon the filing of a federal lawsuit. In fact, Strothers had already filed a Complaint on Davis's behalf in the U.S. District Court for the Eastern District of Virginia (the District Court) on December 5, 2003. The suit was styled *Davis v. City of Newport News*, Civil Action No. 4:03cv165 (the Davis Suit).

5. On January 14, 2004, the District Court entered a typical Rule 26(f) Pretrial Order, and on February 5, 2004, the District Court entered a typical Rule 16(b) Scheduling Order in the Davis Suit.

6. The defendant in the Davis Suit, the City of Newport News (Newport News), filed a Motion for Summary Judgment on June 3, 2004.

7. On June 28, 2004, the District Court entered an order granting summary judgment in favor of Newport News (the Judgment Order). In footnote one of the Judgment Order, the District Court noted that pursuant to Local Civil Rule 56(B) Newport News submitted an outline of material facts it claimed was not in dispute, but Strothers failed to timely file a response. Further, in footnote three the District Court stated:

> Plaintiff's counsel repeatedly failed to meet timing deadlines in this matter. The Plaintiff failed to file a timely Response to Defendant's Motion for Summary Judgment. The Plaintiff did send a responsive pleading by facsimile, received by the Court on June 20, 2004, six days after the filing deadline; however, the Plaintiff never filed a motion to extend the filing deadline or the original copy of his untimely response. The Plaintiff also failed to deliver the pretrial disclosure of exhibits and witnesses required by Rule 26(a)(3) to Defendant's counsel by June 18, 2004, as required by the Rule 16(b) Scheduling Order. (Document No. 5, ¶ 5). Even if the Court were to deny Defendant's Motion for Summary Judgment, this matter would not be in a posture to try

on July 14, 2004 because of Plaintiff's counsel's failure to comply with disclosure requirements and this Court's pretrial orders. Finally, Plaintiff's counsel was forty minutes late to the final pretrial conference, advising that he was caught in tunnel traffic.

In the body of the Judgment Order, the Court stated:

> The Plaintiff failed to timely file a responsive pleading opposing the Defendant's Motion for Summary Judgment. The Plaintiff's failure to file a responsive pleading and noncompliance with the requirements set forth in Local Civil Rule 56(B) triggers the consequences set forth in that rule-the facts identified by the Defendant as material facts to which there is no genuine issue in its initial memorandum are admitted. [citations omitted]
>
> In accordance with Local Civil Rule 56(B), the Court's findings of fact will be those set forth in pages 2-17 of Defendant's Memorandum of Law in Support of its Motion for Summary Judgment.

Judgment Order, pp. 2-3. As such, the District Court declined to consider Strothers' untimely response and deemed the facts as alleged by Newport News to be admitted and undisputed, essentially making judgment for Newport News and against Davis a foregone conclusion.

8. On July 6, 2004, Strothers wrote Davis, indicating he was in a lengthy jury trial but suggesting he had not yet received any ruling on the Motion for Summary Judgment. Strothers would testify the Judgment Order had been misplaced either by his office staff or misdelivered to an adjacent business owner and he did not see it until shortly before his letter to Davis of August 6, 2004, referenced below.

9. On July 12, 2004, Strothers again wrote Davis, enclosing a copy of the response to the Motion for Summary Judgment. This letter said nothing about the fact the District Court had already ruled against Davis or the reasons for that ruling.

10. Finally, on August 6, 2004, Strothers wrote Davis and enclosed the Judgment Order, without further elaboration.

11. On August 25, 2004, Strothers again wrote Davis. Strothers failed to address any of the procedural problems mentioned in the Judgment Order and instead suggested Davis's claim was weakened by the fact Newport News prevailed in an administrative proceeding. Strothers did offer Davis a refund of $2,500.

12. Eventually, Strothers refunded to Davis the entire $5,000 paid.

[Rules applicable: 1.3(a); 1.4(a); 1.5(a); 1.15(a); 3.4(d); and 3.4(g)]

The Eure Appeal 05-010-1540

13. On March 16, 2004, one Lonnell Eure (Eure) pled guilty to possessing a firearm after a felony conviction and was sentenced. Thereafter, Eure's mother, Lillie Barnes (Barnes), hired Strothers to represent Eure on appeal. Barnes paid Strothers $1,000 as a down payment on a $5,000 fee quoted by Strothers. None of the $1,000 paid was placed in any trust account. Strothers would testify he earned the $1,000 shortly after it was paid, at the time the Notice of Appeal was filed.

14. In mid April, Strothers filed a Notice of Appeal stating he was retained and, in paragraph 6, that "Transcripts of the criminal proceedings will be ordered." Rule 5A:6, however, requires that the Notice of Appeal certify "that in the event a transcript is to be filed a copy of the transcript has been ordered from the court reporter who reported the case."

15. As Eure was sentenced by order dated March 30, 2004, Rule 5A:8 required that the transcripts be filed on or before May 31, 2004 (within 60 days).

16. No transcripts were filed.

17. On June 2, 2004, Strothers wrote to Eure, stating in part that "To provide adequate appellate representation, I must review the transcripts. Therefore, I make demand for payment of attorney fee [sic] of $4,000. Failure to pay these fees will seriously compromise my representation."

18. On June 24, 2004, the Court of Appeals of Virginia (the Court of Appeals) entered an order requiring Eure to show cause why the appeal should not be dismissed for failure to file the transcript. That order also required Eure, on or before July 10, 2004, to state any questions properly presented and preserved for appeal which could be considered without resort to a transcript, further describing why the transcript was unnecessary to those questions.

19. In response, on July 12, 2004 Strothers filed a Reply which stated:

    1. The appealable issues of merit are contained within the domestic and foreign convictions orders admitted.

    2. The meritorious issues may be decided without reference to a transcript of statement of facts.

20. On July 16, 2004 the Chief Deputy Clerk of the Court of Appeals wrote Strothers, indicating the Reply did not comply with that Court's rules because there was no certificate of service on opposing counsel and the requisite number of copies were not provided. That letter instructed Strothers to respond within seven days and provide the date on which he mailed the Reply to opposing counsel as well as an original certificate of service and three copies, each attached to a copy of the Reply.

21. Strothers filed nothing in response to the Chief Deputy Clerk's letter of July 16.

22. On August 3, 2004, the Chief Deputy Clerk of the Court of Appeals sent a second letter to Strothers, essentially giving him an additional seven days to provide the required filings.

23. Strothers filed nothing in response to the Chief Deputy Clerk's letter of August 3.

24. On August 18, 2004, the Court of Appeals entered an order dismissing Eure's appeal for failure to file a Petition for Appeal.

25. During the Bar's investigation of this matter, Strothers stated he assumed that, after the filing of the Reply, the appeal was dismissed. He acknowledged he never told Eure of the dismissal of his appeal, but may have told Barnes. He also acknowledged he never advised anyone of the possibility of seeking a delayed appeal. Strothers would testify his office staff (no longer employed by Strothers) failed to make him aware of the two letters from the Chief Deputy Clerk until it was too late to respond.

[Rules applicable: 1.1; 1.3(a) and 1.4(a)]

The Bernice Duncan Divorce 05-010-3013

26. In May of 2003, Bernice Duncan (Duncan) hired Strothers to defend her in a divorce action brought by her husband. At that time, she paid him $1,500. On information and belief, none of the $1,500 was deposited into a trust account. Strothers would testify the $1,500 was for an uncontested divorce only, and that he did not charge any further fee even though the divorce became contested.

27. Strothers had the matter transferred from Norfolk to Suffolk and filed an Answer and Cross-Bill. Strothers did not, however, seek any relief *pendente lite.*

28. In the Summer of 2004, Duncan learned her husband wanted to sell the marital home, where she lived, and had taken a draw against their home equity line of credit. Strothers didn't respond to Duncan's attempts to communicate with him until September, when Duncan received an angry telephone call from her husband, who wanted to know why she hadn't signed a real estate listing agreement his attorney sent to Strothers in June.

29. Subsequently, Strothers and Duncan met in September of 2004, and Strothers acknowledged he had received the listing agreement in June but had not told her about it because he didn't want her to sign it. At this time, the husband was late on mortgage payments and although Duncan expressed concern Strothers told her not to worry about it. Strothers would testify he did not tell Duncan about the listing agreement as it did not fit with her previously expressed desire for a guarantee of a certain amount from the sale of the marital home.

30. In December of 2004 and January of 2005, Duncan received numerous late notices from the mortgage company and became increasingly worried. Strothers failed to respond to her attempts to contact him.

31. In early February of 2005, Duncan fired Strothers and requested her file. Strothers never provided the file to Duncan or her new attorney, G. Daniel Forbes (Forbes). Despite requests from Forbes, Strothers never endorsed any order of substitution.

32. Forbes promptly sought and obtained *pendente lite* relief for Duncan, including spousal support, health insurance, an orderly procedure for selling the marital home and exclusive use and possession of it until any sale was complete.

[Rules applicable: 1.1; 1.3(a); 1.4(a); 1.15(a) and 1.16(c), (d) and (e)]

II. NATURE OF MISCONDUCT

The Board finds that such conduct of Mr. Strothers constitutes a violation of the following Disciplinary Rules:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 1.15 Safekeeping Property

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

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

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

RULE 1.16 Declining Or Terminating Representation

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

(e) All original, client furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third party communications; the lawyer's copies of client furnished documents (unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

(g) Intentionally or habitually violate any established rule or procedure or of evidence, where such conduct is disruptive of the proceedings.

III. IMPOSITION OF SANCTION

The Board, having considered all the evidence before it, determined to accept the Agreed Disposition. Having determined to accept the Agreed Disposition, the Board **ORDERS** that

Pursuant to Part 6, Section IV, Paragraph 13(I)(2)(f)(2)(c) of the Rules of the Supreme Court of Virginia, the license of the Respondent, Dwayne Bernard Strothers, to practice law in the Commonwealth of Virginia be, and the same is, hereby **SUSPENDED** for a period of two (2) years, effective June 12, 2006. Further, pursuant to the agreement of the parties, the Board **ORDERS** Mr. Strothers shall not take on any new clients or new legal business during the period of time between the date of the hearing in this matter on the Agreed Disposition (April 27, 2006) and the date the Suspension is made effective by the terms of this order. The Board's intention is that this suspension run consecutively with any other previously imposed discipline, including, without limitation, the prior ninety (90) day suspension imposed by a three-judge panel of the Circuit Court of the City of Suffolk, currently stayed and on appeal to the Supreme Court of Virginia.

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to the Respondent, Dwayne Bernard Strothers, Esq., at 130 Commerce Street, Suffolk, Virginia 23434, his last address of record with the Virginia State Bar.

It is further **ORDERED** that the Respondent shall comply with the requirements of Part 6, Section IV, Paragraph 13 (M) of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from June 12, 2006, the effective date of the suspension in these matters. Issues concerning the adequacy of the notice and arrangements required shall be determined by the Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph.

Teresa L. McLean, Chandler and Halasz, Inc. Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the reporter for the hearing and transcribed the proceedings.

Entered this the 3rd day of May, 2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Peter A. Dingman, Chair Presiding

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

IN THE MATTER OF
JAMES PEARCE BRICE, JR.
VSB Docket No. 05-021-1980
05-021-3317
05-021-4683

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On May 11, 2006, a hearing in these matters was held before a duly convened Second District Committee panel consisting of Croxton Gordon, Esquire, James C. Lange, Esquire, Robert W. McFarland, Esquire, Emmanuel W. Michaels, Lay Member, Michael S. Brewer, Lay Member, David McDonald, Lay Member, and Paul K. Campsen, Esquire, Vice-Chair, presiding.

The Respondent, James Pearce Brice, Jr., Esquire appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis, Esquire.

The matter proceeded upon the Notices of Hearing, dated March 29, 2006. The Notices of Hearing set forth allegations that the Respondent's conduct violated Rules of Professional Conduct 1.1, *Competence*, 1.3 (a), *Diligence*, 1.4 (a) and (b), *Communication*, 1.16 (a) and (d), *Declining or Terminating Representation,* and 8.1 (c), *Bar Admission and Disciplinary Matters*.

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The panel received Virginia State Bar Exhibits 1-63 without objection, and the parties made opening statements. By agreement of the parties, the panel held separate evidentiary hearings in all three cases, and then held one hearing to determine a sanction for all three cases. The panel received the testimony of Virginia State Bar Investigator Ronald Pohrivchak, Cynthia Estes, and the Respondent, who testified as an adverse witness and in his own behalf.

Upon the conclusion of the bar's evidence, the Respondent moved to strike the bar's case, which motion was overruled. Thereafter, the parties presented closing arguments.

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

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, James Pearce Brice, Jr., was an attorney licensed to practice law in the Commonwealth of Virginia.

05-021-1980
Complainant: Daryl R. Ricks

2. On or about March 25, 2003, the complainant, Daryl R. Ricks, hired Mr. Brice to pursue a personal injury case on a contingent fee basis.

3. Mr. Ricks alleged that he was a passenger on a Greyhound bus that was involved in a traffic accident on October 23, 2002. He said that he had just been released from jail, and that the accident occurred on Interstate 95 in Newport News, Virginia (although there is no I-95 in Newport News, Virginia.) By the time that he hired Mr. Brice, he had been arrested and incarcerated on other criminal charges.

4. Mr. Brice's records indicate that he promptly requested Mr. Rick's medical treatment records from Sentara Norfolk General Hospital, where Mr. Ricks was treated for neck and back pain the day after the accident. On April 9, 2003, Sentara furnished its records to Mr. Brice. Mr. Brice, however, did not pay Sentara's invoice, and Sentara continued to send invoices for several months.

5. Mr. Brice did not seek the treatment records from the prison facilities where his client was subsequently treated.

6. Mr. Brice's records indicate that Mike McDonald of Greyhound Risk Management returned his telephone call on September 1, 2003, but provide no further information about the contact.

7. Mr. Brice's records reflect that the next activity was a letter, dated September 23, 2003, in which he asked Mr. Ricks to execute some new medical release forms, saying that he was "awaiting updates from various sources regarding your case."

8. Mr. Brice's records also indicate that on September 23, 2003, he contacted the Hampton Police Department, who said that they had no information on any persons injured, and referred him to the State Police. (His client, however, said that the accident occurred in Newport News, Virginia, not Hampton.)

9. On March 11, 2004, Mr. Brice sent his client some new medical release forms, and the two exchanged letters over the course of the next several months.

10. By letter, dated April 23, 2004, Mr. Brice asked his client for more details about the accident, such as whether he was on the bus or in the car, where he was traveling, what road or intersection he was on, and what other treatment he received besides Norfolk Sentara General Hospital.

11. By letter, dated April 25, 2004, the client complained that he was concerned about the progress of the case, and that he had not received an answer.

12. By letter, dated April 29, 2004, the client responded to Mr. Brice's letter of April 23, 204, providing numerous details about the accident and his medical treatment history, including subsequent treatment at the Hampton Roads Regional Jail for which he said there were records.

13. Mr. Brice responded by letter, dated May 3, 2004, asking the client to provide more details about the accident, such as the exact location.

14. On May 14, 2004, the client responded to the letter, naming the intersection in Newport News, Virginia, where he thought that the accident had occurred, and saying that the State Police had responded to the accident.

15. On June 7, 2004, Mr. Brice responded to his client's letters, enclosing new medical release authorizations for the client's endorsement. He closed the letter by saying, "We are in the process of obtaining the police report from the Virginia State Police."

16. Mr. Brice's records indicate that his next activity was a letter to the Virginia State Police, dated July 6, 2004, asking for a copy of the accident report. The date that he gave for the accident, however, was September 23, 2002, not the date provided by his client, October 23, 2002. Accordingly, the State Police replied that they had no information on the accident.

17. By letter, dated August 12, 2004, Mr. Brice notified CT Corporation System of his representation, and asked for information about the accident, citing the correct date of October 23, 2002, on I-95 in Newport News, Virginia. CT is the registered agent for Greyhound, according to Mr. Brice. At the time, Mr. Brice had been involved in the case for seventeen months.

18. During the next month, Mr. Ricks, concerned about the lack of progress on the case, sent several letters to Mr. Brice demanding action and offering suggestions.

19. Mr. Brice responded to all of the letters, declining his client's suggestions, and offering no hope for recovery, given his inability to gather information about the accident.

20. By letter, dated September 15, 2004, Mr. Brice informed his client that Greyhound had no information on the accident, that they needed the driver's name, bus number, schedule number, and itinerary.

21. At the time, eighteen months had passed since Mr. Brice accepted the case, and the limitations period would run in about five weeks.

22. Although his file log indicated that someone sent a request for medical records to the Hampton Roads Regional Jail on September 23, 2003, Cynthia Estes, medical records custodian for the jail, testified that she researched the records and determined that no one ever requested information pertaining to Mr. Ricks.

23. Mr. Brice took no further steps to investigate the accident, such as contacting the jail that released his client to the bus, or the jail where he was treated for his injuries.

24. By letter, dated September 20, 2004, Mr. Ricks criticized Mr. Brice for prolonging the case so close to the statute of limitations.

25. In response, Mr. Brice discharged his client and took no further action in the matter.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rule of Professional Conduct:

RULE 1.1 Competence

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

The Committee did not find violations of the Rules 1.3, 1.4, and 1.16 by clear and convincing evidence, and dismissed those charges accordingly.

I. FINDINGS OF FACT (Continued)

05-021-3317
Complainant: VSB/Court of Appeals

The Respondent and the Virginia State Bar stipulated to the following facts:

27. On September 15, 2004, the Circuit Court for the City of Virginia Beach sentenced Tony Alexander Wiggins to nine months in jail and a $1000 fine on his convictions of possession of controlled substances. Mr. Brice was his court-appointed counsel.

28. Sometime after the sentencing hearing, Mr. Wiggins informed Mr. Brice that he wanted to appeal his case.

29. Mr. Brice explained to his client that he did not think that he could act because he had not been appointed for the appeal, that an appointment from the circuit court would be necessary.

30. Nonetheless, Mr. Brice prepared a notice of appeal, an order for the production of the trial transcripts, and a suitable cover letter, all for his client to file *pro se,* which the client did.

31. The court did not enter the order for the production of transcripts, however, until November 18, 2004, the day before they were due.

32. Mr. Brice explained to the Virginia State Bar Investigator that he sent a letter to the court asking for it to appoint him, but he does not have a copy, and there is none in the court's file.

34. On an unknown date, Mr. Wiggins forwarded a request for the appointment of counsel to the court. On November 20, 2004, the circuit court entered an order appointing Mr. Brice for the appeal. The front page of the order, however, contains the wrong address for Mr. Brice.

35. Brice informed the bar's investigator that he never received the order.

36. On December 27, 2004, the Court of Appeals received the record from the circuit court, without transcripts, and notified Mr. Wiggins about this by letter. A note on the letter says that it was "sent to Brice" on December 28, 2004. The letter set forth the deadline for filing a petition for appeal. The address for Mr. Brice on record at the Court of Appeals at the time was his previous address.

37. No transcript having been filed, on December 29, 2004, the Court of Appeals issued an order for the appellant to show cause why the appeal should not be dismissed for failure to file a transcript. The order indicates that a copy was sent to Mr. Brice. As mentioned above in (36), the address of record at the Court of Appeals at the time was Mr. Brice's previous address.

38. No one ever responded to the show-cause order, resulting in the dismissal of the appeal on January 25, 2005.

39. Mr. Brice said that he did not receive any of these materials.

40. By letter, dated February 28, 2005, Brice told his client:

> *Your appeal is still being worked on at this time. We are awaiting the court to appoint an attorney. I have your transcripts and am waiting for a duplicate copy to give you.*

41. Mr. Brice told the bar's investigator that he cannot explain why he sent the letter, noting that he wrote it after the time for an appeal had passed.

42. Having received Mr. Brice's letter, Mr. Wiggins sent a letter, undated, to the circuit court asking it to appoint an attorney. On April 5, 2005, the circuit court received the letter and responded to Mr. Wiggins, informing him that his case had already been sent to the Court of Appeals, and enclosing a copy of the order appointing Mr. Brice as counsel.

43. Mr. Wiggins responded with another undated letter that the court received on April 15, 2005, saying that he did not blame Mr. Brice for the lapse of his appeal because he did not believe that Mr. Brice ever received the order appointing him.

44. Mr. Brice advised the bar's investigator that now, having done his research, he understands that it is the obligation of court-appointed counsel to see their clients' appeals through the Supreme Court of Virginia. He provided a copy of a letter, dated December 19, 2005, to Mr. Wiggins indicating that Mr. Brice had been mistaken about his obligations, and that Mr. Wiggins had the right to seek a delayed appeal through the habeas corpus process.

Thereafter the Committee received the testimony of Virginia State Bar Investigator Ronald Pohrivchak. Based upon the witness' testimony, the Committee made the following additional findings of fact:

45. On March 23, 2005, the Virginia State Bar sent a copy of the complaint to Mr. Brice at his correct address of record. Mr. Brice, however, did not submit a response to the bar complaint. He advised the bar's investigator that it was not like him not to respond to a bar complaint, and that he would attempt to locate a copy of his letter. Mr. Brice, however, never produced the letter.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rule of Professional Conduct:

RULE 1.1 Competence

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

The Committee did not find violations of the Rules 1.3 and 1.4 by clear and convincing evidence, and dismissed those charges accordingly.

I. FINDINGS OF FACT (Continued)

05-021-4863
Complainant: Larry A. Oliver

For reasons unknown, the complaining witness failed to appear at the hearing. Accordingly, the bar withdrew the Rule 1.1, 1.3, and 1.4 violations.

The sole remaining issue was whether the Respondent failed to respond to two letters from the Virginia State Bar demanding information concerning the complaint. The Respondent testified that while he thought he had responded to the letters, he agreed that he had no copies of any responses to furnish to the Committee, and that there were none in his files when he met with the Virginia State Bar Investigator on November 30, 2005.

Accordingly, the Committee made the following findings of fact:

46. On June 21, 2005, the bar sent Brice a proactive letter, asking him to communicate with Mr. Oliver, and demanding that he furnish the bar with a copy of his letter or a written summary of any oral communication. Mr. Brice failed to respond to the letter.[1]

47. Accordingly, on July 1, 2005, the bar opened a formal complaint against Mr. Brice, and sent him a letter demanding a response to the complaint. Mr. Brice did not respond to this letter either.

48. For this reason, the bar referred the matter for a detailed investigation, and notified Mr. Brice of this by letter, dated September 2, 2005.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rule of Professional Conduct:

FOOTNOTES

1 Mr. Brice's records indicate that he sent a letter of explanation to Mr. Oliver on June 22, 2005, but do not show that he responded to the bar's proactive letter of inquiry.

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Admonition with Terms of these complaints. The terms and conditions shall be:

1. **In Case Number 05-021-1980, within twelve (12) months of the date that the Committee issues this disposition, the Respondent shall attend three (3) hours of Continuing Legal Education (CLE) on the subject of ethics for no annual CLE credit**.

2. **In Case Number 05-021-3317, within twelve (12) months of the date that the Committee issues this disposition, the Respondent shall attend three (3) hours of Continuing Legal Education (CLE) on the subject of appellate practice for no annual CLE credit.**

3. **In Case Number 05-021-4683, within six (6) months of the date that the Committee issues this disposition, the Respondent shall attend three (3) hours of Continuing Legal Education (CLE) on the subject of law office management for no annual CLE credit.**

4. **The Respondent shall provide the Assistant Bar Counsel with written certification of his attendance at each CLE course by the deadlines noted.**

The Respondent may obtain information about suitable CLE courses by calling the Virginia State Bar's MCLE Department at (804) 775-0578.

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 by the dates specified, this District Committee shall certify the cases to the Virginia State Bar Disciplinary Board for determination of an appropriate sanction based upon this Committee's findings and the Respondent's failure to comply with the terms imposed.

In reaching this decision, the Committee considered the Respondent's prior disciplinary record, which consisted of a Private Admonition involving similar misconduct just prior to the misconduct found in the present cases.

Pursuant to Paragraph 13.B.8 (c) (1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By: Paul K. Campsen, Esquire
Committee Vice-Chair

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
DEL M. MAUHRINE BROWN
VSB Docket No. 05-021-4570
Complainant: Karen M. Forde

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)

On April 7, 2006, a duly convened Second District, Section I, Subcommittee consisting of Donald C. Schultz, Esquire, Emmanuel W. Michaels, Lay Member, and Afshin Farashahi, Esquire, presiding, considered an Agreed Disposition in the above-referenced matter. It was the decision of the Subcommittee to accept the Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.c (1) of the Rules of the Supreme Court of Virginia, the First District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Del M. Mauhrine Brown, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On February 16, 2005, Karen Forde paid Ms. Brown $1,500 to assist her with the administration of her late husband's estate.

3. Ms. Brown and her client executed a fee agreement that provided for an improper "nonrefundable" retainer of $1,500.

4. Ms. Brown explained that she was hired to review the open accounts, determine the outstanding creditors, pay estate bills and the outstanding creditors, and do a full accounting with a view toward closing the estate.

5. Ms. Brown and her client met for about four hours on February 16, 2005 and met again on March 3, 2005 for about two hours. Thereafter, they had additional meetings, but Ms. Brown made no progress in closing the estate.

6. The client left multiple telephone messages for Ms. Brown on April 20, April 22, April 28, May 2, May 17, May 19, and May 20, 2005 but received no response. She also sent Ms. Brown an e-mail on May 3, 2005 but received no response.

7. On May 23, 2005, the client sent Ms. Brown a letter detailing her frustrations with the lack of progress and her inability to contact Ms. Brown, and sent a copy to the Virginia State Bar.

8. By letters, dated May 27 and June 10, 2005, the Virginia State Bar's Intake Department asked Ms. Brown to address her client's concerns and inform the bar, but Ms. Brown did not respond to either letter.

9. The client said that she had to contact the Virginia State Bar to learn how to contact Ms. Brown, who had moved her office without informing her client.

10. On several occasions, the client made it clear to Ms. Brown that if the matter was too much to handle, she wanted Ms. Brown to let her hire a different attorney. Ms. Brown, however, persisted in staying in the case, even after becoming a full-time Assistant Public Defender.

11. Thereafter, between June 2 and July 27, Ms. Brown and her client had a series of meetings and discussions about the estate.

12. The client initiated a criminal proceeding against a debtor of the estate in the Newport News General District Court. The court delivered a summons for the client's appearance to Ms. Brown as her attorney. Ms. Brown, however, did not notify her client about the summons.

13. The client left two telephone messages for Ms. Brown on August 1, 2005 and again on August 5, 2005, but received no response.

14. By letter, dated August 23, 2005, the client terminated Ms. Brown.

15. Ms. Brown did not enforce the nonrefundable provision of her fee agreement, issuing a partial refund instead.

16. Ms. Brown acknowledged that the case was too much for her to handle.

17. At the time, Ms. Brown was occupied with an unusually heavy caseload as an Assistant Public Defender.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. PUBLIC ADMONITION

Accordingly, it is the decision of the Subcommittee to impose a **Public Admonition**.

In accordance with the Rules of the Virginia Supreme Court, Part 6: § IV, ¶13(B) (8) (c) (1), the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By: Afshin Farashahi, Committee Chair

VIRGINIA:

BEFORE THE NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
ANTONIO PIERRE JACKSON
VSB Docket Nos.: 05-090-3659
05-090-4266
05-090-4412

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Admonition with Terms)

On March 14, 2006, a duly convened Ninth District Subcommittee consisting of Joy Lee Price, Esquire (Chair presiding), Charles Glasgow Butts, Jr., Esquire, and John E. Crowder, lay member, met and considered these matters.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(1) of the Rules of the Supreme Court of Virginia, the Ninth District Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Antonio Pierre Jackson ("Respondent") and Assistants Bar Counsel Scott Kulp and Kathryn R. Montgomery, and hereby serves upon Respondent the following Public Admonition with Terms:

FINDINGS OF FACT

I. In the Matter of Antonio Pierre Jackson
VSB No.: 05-090-3659

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

2. Respondent was appointed to represent Jayson Franklin Maxwell on an appeal of his conviction for felony cocaine possession.

3. The Court of Appeals dismissed the appeal in February 2005 because Respondent failed to timely file the opening brief.

4. Respondent did not advise Mr. Maxwell of the dismissal until after Respondent received notice of the bar complaint.

5. Respondent then prepared a habeas corpus petition that was subsequently granted.

[Rules 1.1, 1.3(a), and 1.4(a)]

II. In the Matter of Antonio Pierre Jackson
VSB No.: 05-090-4266

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

2. Respondent served as court-appointed counsel to Aaron Green for his appeal to the Court of Appeals.

3. Respondent not only inadvertently moved to withdraw the appeal but also inadvertently moved for extension of time to file the opening brief even though no appeal had yet been granted.

4. Upon notification that the Court of Appeals denied the petition for appeal by Order dated April 15, 2005, Mr. Green desired to have that denial reconsidered by a 3-Judge panel.

5. Despite knowing the provisions of Rule 5A:3(c), Respondent mailed his motion for reconsideration by a 3-Judge panel by regular mail after 5:00 p.m. on the day before the motion was due.

6. Respondent's motion for reconsideration by a 3-Judge panel was not marked received by the Court of Appeals until May 2, 2005, three days after it was due.

7. On May 3, 2005, the Deputy Clerk of the Court of Appeals notified Respondent that because his request for argument before a 3-Judge panel was not timely filed, the Court of Appeals would not conduct the review. The Deputy Clerk further advised Respondent that his time to appeal to the Virginia Supreme Court was running from April 15, 2005, the date on which the Court of Appeals denied the petition for appeal.

8. Respondent failed to communicate with Mr. Green about his right to pursue an appeal to the Virginia Supreme Court.

9. Respondent has since attempted to assist Mr. Green in preparing a habeas corpus petition.

[Rules 1.1, 1.3(a), and 1.4(a)]

III. In the Matter of Antonio Pierre Jackson
VSB No.: 05-090-4412

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

2. Respondent was court-appointed to represent Jeffrey Allen Haga in an adoption matter.

3. After an adverse ruling in the circuit court, Respondent informed the court of Mr. Haga's intention to appeal.

4. Respondent's motion for an extension of time to file the opening brief was denied as untimely filed, and the Court of Appeals thereafter dismissed the appeal because no opening brief was filed.

5. Respondent did not advise Mr. Haga of the dismissal of his appeal until approximately two months had passed and after he had received notice of the bar complaint.

[Rules 1.1, 1.3(a), and 1.4(a)]

NATURE OF MISCONDUCT

The foregoing findings of fact in matters I, II, and III give rise to the following violations of the Rule of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(**a**) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

SUBCOMMITTEE DETERMINATION

It is the decision of the Ninth District Subcommittee to accept the Agreed Disposition of the parties. Accordingly, a hearing is not necessary to resolve this matter and Respondent shall receive a Public Admonition with Terms pursuant to Part Six, Section IV, Paragraph 13.G.1.d(1) of the Rules of the Supreme Court of Virginia.

WHEREFORE, the Respondent is hereby issued a single Public Admonition for the foregoing matters (VSB Docket Nos. VSB Docket Nos. 05-090-3659, 05-090-4266, and 05-090-4412) with the following Terms:

> Attend in person six (6) hours of MCLE-approved Continuing Legal Education in the area of ethics and/or appellate practice in Virginia and certify completion to Assistant Bar Counsel Scott Kulp by **September 15, 2006**. These six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other bar organization.

If, however, Respondent fails to meet these terms within the time specified, Respondent agrees that the Ninth District Committee shall impose upon him a single Public Reprimand with the same Terms as an alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Ninth District Committee will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

Failure to comply with the alternate sanction of a Public Reprimand with Terms if imposed will result in a Certification for Sanction Determination pursuant to Part 6, Section IV, ¶ 13.H.2.p(2).

Upon approval of this Agreed Disposition by the Subcommittee, the Clerk of the Disciplinary System shall assess the appropriate administrative fees.

NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: Joy Lee Price, Esquire
Subcommittee Chair Presiding

VIRGINIA:

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

IN THE MATTERS OF
ALEASA DAWN LEONARD
VSB Docket No.: 05-022-1248 (Ct Appeals/Erickson)
VSB Docket No.: 05-022-1253 (Ct Appeals/McCleary)
VSB Docket No.: 05-022-1255 (Ct Appeals/Alexander)
VSB Docket No.: 05-022-1263 (Ct Appeals/Hanks)
VSB Docket No.: 05-022-2415 (Ct Appeals/Woodard)
VSB Docket No.: 05-022-2414 (Ct Appeals/Riddick)
VSB Docket No.: 05-022-1983 (Ct Appeals/Cook)
VSB Docket No.: 05-022-1249 (Ct Appeals/Turner)
VSB Docket No.: 05-022-1256 (Ct Appeals/Gaines)

SUBCOMMITTEE DETERMINATION
(Public Reprimand with Terms)

On June 12, 2006, a meeting in this matter was held before a duly convened Subcommittee of the Second District Committee - Section II, consisting of Lawrence Hunter Woodward, Jr., Esquire, Ms. Diane B. Frantz, (Lay Member), and Megan Elizabeth Burns, Esquire, Chair presiding.

Pursuant to an Agreed Disposition of the parties and Part 6, Section IV, ¶13G1d.(3) of the Rules of the Virginia Supreme Court, the Second District—Section II Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Aleasa Dawn Leonard, the following Public Reprimand with Terms:

FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Aleasa Dawn Leonard, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket No.: 05-022-1248 (Ct Appeals/Erickson)

2. On May 3, 2002, the Court of Appeals of Virginia ("Court of Appeals") dismissed the appeal of Respondent's client Jason Scott Erickson for failure to file a transcript per Rule 5A:8. Although Respondent had certified in her Notice of Appeal that she had ordered the transcripts, Respondent had not ordered the transcripts, did not order the trial transcripts, and therefore defaulted on the appeal.

3. Citing Rule 5A:8(b), Respondent filed on February 11, 2002 a Notice of Filing of Transcript, stating that "a transcript of the proceedings …shall be tendered…on or before March 9, 2002 and will be made part of the record. Respondent filed the Notice of Filing Transcript prior to filing the transcript, which is not contemplated by Rule 5A:8(b).

4. Following the Court's dismissal of the appeal, Respondent did not notify Erickson of the dismissal.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-1253 (Ct Appeals/McCleary)

FINDINGS OF FACT

5. On July 30, 2002, the Court of Appeals dismissed the appeal of Respondent's client Dustyn K. McCleary for failure to file a Petition for Appeal per Rule 5A: 12.

6. Following the Court's dismissal of the appeal, Respondent did not notify McCleary of the dismissal.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-1255 (Ct Appeals/Alexander)

FINDINGS OF FACT

7. On August 2, 2002, the Court of Appeals dismissed the appeal of Respondent's client Tyrone Lamark Alexander for failure to file a transcript per Rule 5A:8. Respondent had received one extension to June 26, 2002 for filing the transcript. On June 21, 2002, Respondent received a faxed notice from the court reporter that he needed a 30 day extension to prepare the transcript. However, Respondent did not move for the further extension until June 26, 2002, which the Court did not receive until June 27, 2002.

8. Citing Rule 5A:8(b), Respondent filed on April 26, 2002, a Notice of Filing Transcript, stating that "a transcript of the proceedings…shall be tendered…". In doing so, Respondent filed the Notice of Filing Transcript prior to filing the transcript, which is not contemplated by Rule 5A:8(b).

9. Following the dismissal of the appeal, Respondent did not notify Alexander of the dismissal of his appeal.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-1263 (Ct Appeals/Hanks)

FINDINGS OF FACT

10. On December 31, 2002, the Court of Appeals dismissed the appeal of Respondent's client Jeffrey Dean Hanks for failure to timely file a transcript per Rule 5A:8. Respondent filed the transcript one day late on October 29, 2002.

11. Following the dismissal of the appeal, Respondent did not notify Hanks of the dismissal of his appeal.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-2415 (Ct Appeals/Woodard)

FINDINGS OF FACT

12. On January 13, 2003, the Court of Appeals dismissed the appeal of Respondent's client Antonio Daniel Woodard for failure to file a Petition for Appeal per Rule 5A:12.

13. Citing Rule 5A:8(b), Respondent filed on September 12, 2002 a Notice of Filing Transcript, stating that "a transcript of the proceedings …shall be tendered on or before October 12, 2002…". In doing so, Respondent filed the Notice of Filing Transcript prior to filing the transcript, which is not contemplated by Rule 5A:8(b).

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-2414 (Ct Appeals/Riddick)

FINDINGS OF FACT

14. On October 14, 2003, the Court of Appeals dismissed the appeal of Respondent's client Ronny Riddick for failure to file a Petition for Appeal per Rule 5A:12. R

15. Citing Rule 5A:8(b), Respondent filed on July 1, 2003 a Notice of Filing Transcript, stating that "a transcript of the proceedings …shall be tendered on or before on or before August 2, 2003. In doing so, Respondent filed the Notice of Filing Transcript prior to filing the transcript, which is not contemplated by Rule 5A:8(b).

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

VSB Docket No.: 05-022-1983 (Ct Appeals/Cook)

FINDINGS OF FACT

16. After the Supreme Court denied the appeal of Respondent's client Charles R. Cook on the merits on May 11, 2004, Respondent failed to notify him of the dismissal until her letter of October 19, 2004. Respondent wrote said letter only after receiving numerous prior complaints from the Virginia State Bar arising from her other appellate representation.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rule of the Virginia Rules of Professional Conduct:

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-1249 (Ct Appeals/Turner)

FINDINGS OF FACT

17. On March 25, 2004, Respondent filed a Rule 5A:8(b) Notice of Filing of Transcript in the appeal of Casper Turner indicating a transcript would be tendered on or before May 8, 2004. In doing so, Respondent filed the Notice of Filing Transcript prior to filing the transcript, which is not contemplated by Rule 5A:8(b).

18. Respondent and client Casper Turner agreed to abandon the appeal and seek relief through a motion to reconsider. After the Court denied Turner's Motion to Reconsider on May 18, 2004, Respondent did not notify Turner until October 20, 2004.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

VSB Docket No.: 05-022-1256 (Ct Appeals/Gaines)

FINDINGS OF FACT

19. On August 19, 2004, the Court of Appeals dismissed the appeal of Respondent's client Junius Lee Gaines for failure to timely file the Notice of Appeal.

20. On November 10, 2004, the Virginia Supreme Court dismissed the appeal of Respondent's client Gaines per Rule 5:17(c) for failure to contain sufficient assignments of error.

21. Respondent did not advise client Gaines of the August 19, 2004 dismissal until October 20, 2004—after the bar opened a number of procedural default complaints. At no time did Respondent notify Gaines of the Supreme Court's denial of his appeal on November 10, 2004.

NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

III. PUBLIC REPRIMAND (WITH TERMS)

The Subcommittee hereby reprimands the Respondent for said misconduct. It further orders the following terms and conditions be met by the Respondent as follows:

1) On or before December 31, 2006, the Respondent shall complete two (2) hours of continuing legal education (CLE.) in the subject of criminal appeals and two (2) hours of CLE in ethics. The Respondent shall not submit or report such CLE credit hours toward Respondent's Mandatory Continuing Legal Education annual requirement in the Commonwealth of Virginia or in any other jurisdiction where Respondent is admitted to practice law.

2) On or before December 31, 2006, Respondent shall certify her compliance with said CLE terms by promptly delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form to Assistant Bar Counsel Paul D. Georgiadis.

Pursuant to the Agreed Disposition entered into between Respondent and the bar, upon satisfactory proof that such terms and conditions have been met, these matters shall be closed. If, however, Respondent fails to meet the specified terms within the deadlines set forth, pursuant to the Agreed Disposition, the Second District Committee—Section II shall impose the alternate sanction of a five (5) day suspension of Respondent's license to practice law in the Commonwealth of Virginia, subject only to a show cause hearing before a panel of the Second District Committee—Section II. Respondent has waived her right to any such hearing before a three judge circuit court panel, and has agreed that any such hearing shall be before a panel of the Second District Committee—Section II.

In the event of alleged failure to meet any of the terms as set forth above, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction of five (5) day suspension should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Determination without legal justification or excuse. All issues concerning the Respondent=s compliance with said terms shall be determined by the Second District Committee—Section II. At said hearing, the burden of proof shall be on the Respondent to show timely compliance and timely certification of such compliance by clear and convincing evidence. As the Respondent has agreed, her prior disciplinary record may be disclosed to the committee at any such hearing.
The Clerk of the Disciplinary System shall impose an administrative fee.

SECOND DISTRICT—SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: Megan Elizabeth Burns
Subcommittee Chair

VIRGINIA:

BEFORE THE THIRD DISTRICT COMMITTEE, SECTION THREE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
CONRAD CHARLES LEWANE
VSB DOCKET NO. 04-033-3756

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On April 13, 2006, a hearing in this matter was held before a duly convened panel of the Third District Committee, Section Three, consisting of Mary P. Hunton, Lay Member; Andrew J. Gibb, Lay Member; Stephanie E. Grana, Esq., a member of the Third District Committee, Section One; Dennis R. Kiker, Esq.; and John D. Sharer, Esq, Chair, presiding.

Conrad Charles Lewane appeared in person and with his counsel Michael M. Weise, Esq. Interim Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.l.(2)(c) of the Rules of the Supreme Court of Virginia, the Third District Committee, Section Three, of the Virginia State Bar hereby serves upon the Respondent, Conrad Charles Lewane, the following Public Admonition with Terms:

I. FINDINGS OF FACT:

1. At all times relevant hereto the Respondent, Conrad Charles Lewane [Mr. Lewane], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about September 26, 2002, Mr. Lewane qualified as the executor of the Estate of Edward Bledsoe Thomas, Deceased [estate], in accordance with the Last Will and Testament of the deceased. This was the first estate that Mr. Lewane had handled in twenty years. The estate was within the jurisdiction of the Commissioner of Accounts for the Circuit Court of Henrico County, John Page Rawlings [Mr. Rawlings].

3. Upon qualification, Mr. Lewane received from the Clerk's Office of the Henrico Circuit Court, *inter alia*, a Memorandum To Each Personal Representative of a Decedent's Estate setting forth the duties of the personal representative.

4. A first accounting was due to be filed in Mr. Rawlings' office on January 26, 2004, said date being sixteen months after the date of qualification, in accordance with Va. Code § 26-17.5. A first accounting was not filed by the due date.

5. By letter to Mr. Lewane dated February 4, 2004, Mr. Rawlings set forth, *inter alia*, the statutory requirement of the filing of a first accounting with the Commissioner of Accounts, the fact that such an accounting had not been filed, and that Mr. Lewane should file the first accounting as indicated within thirty days of the date of the letter.

6. Mr. Lewane did not file a first accounting within the thirty-day filing extension noted in Mr. Rawlings' February 4, 2004 letter.

7. On March 18, 2004, Mr. Rawlings issued to Mr. Lewane a summons for a first accounting to be filed within thirty days of the date of service of the summons. The summons recited that if Mr. Lewane failed to fulfill the requirements of the summons, that failure would be reported to the Circuit Court of Henrico County [Court] and that Mr. Lewane "may be fined by the said Court for such failure unless excused for sufficient reason." In effect, the summons granted Mr. Lewane another filing extension.

8. The summons was personally served upon Mr. Lewane on March 23, 2004.

9. Sometime after service of the summons, Mr. Lewane contacted Mr. Rawlings by telephone personally and asked for a further filing extension. Mr. Rawlings gave Mr. Lewane an additional extension for the filing of the first accounting until June 14, 2004.

10. Mr. Lewane did not file a first accounting by June 14, 2004.

11. In accordance with Va. Code Section 26-18, Mr. Rawlings reported to the Court Mr. Lewane's failure to file a first accounting despite the issuance and personal service of the summons.

12. In accordance with Va. Code § 26-18, by letter dated June 24, 2004, Mr. Rawlings reported to the Virginia State Bar Mr. Lewane's failure to file a first accounting within thirty days of service of the summons.

13. On June 28, 2004, the Court issued an order requiring Mr. Lewane to appear on August 6, 2004 to show cause why fines and other procedures in Va. Code § 26-18 should not be imposed upon him.

14. The show cause order was personally served on Mr. Lewane on July 12, 2004.

15. On or about August 5, 2004, Mr. Hatcher Johnson, a paralegal who was helping Mr. Lewane, met with Mr. Rawlings. Mr. Rawlings agreed to ask the Court to continue the show cause proceeding if Mr. Lewane filed a first accounting by August 6, 2004 and a final accounting by October 1, 2004.

16. The show cause proceeding was continued from August 6, 2004 to October 1, 2004. The show cause proceeding subsequently was further continued to December 3, 2004.

17. At points in time after December 3, 2004, a final accounting was approved and Mr. Lewane's administration of the estate was completed.

II. NATURE OF MISCONDUCT

Such conduct by Conrad Charles Lewane constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

III. PUBLIC ADMONITION WITH TERMS

Accordingly, it is the decision of the Third District Committee, Section Three, to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of the instant case by a Public Admonition with Terms. The terms and conditions, with which the Respondent must comply, are as follows:

1. The Respondent, Conrad Charles Lewane [Lewane], shall no longer engage in the administration of estates, either as an attorney-at-law or as a fiduciary serving as an administrator, executor or trustee. During the hearing of this case, Mr. Lewane stated affirmatively on the record that he agreed to this term.

2. No later than Monday, May 15, 2006, Mr. Lewane shall enter into and execute a monitoring agreement with Lawyers Helping Lawyers. The monitoring agreement shall have a minimum duration of eighteen (18) months. The Virginia State Bar shall draft the monitoring agreement, and both the Virginia State Bar and Lawyers Helping Lawyers shall approve it.

3. Mr. Lewane shall successfully complete all of the terms and conditions of the monitoring agreement as well as the terms of this Public Admonition with Terms.

4. Mr. Lewane shall use all necessary diligence to insure compliance with all the terms and conditions of the monitoring agreement.

5. Any breach of the monitoring agreement shall constitute a breach of the terms and conditions imposed by this Public Admonition with Terms.

6. It is, and shall be, the personally responsibility of Mr. Lewane to notify the Virginia State Bar of any failure(s) by Lawyers Helping Lawyers to perform or fulfill any requirement(s) of the monitoring agreement. Mr. Lewane shall notify the Virginia State Bar of any such failure(s) within two weeks after becoming aware of said failure(s). Such notification to the Virginia State Bar may be accomplished by a letter(s) directed to the Bar from Mr. Lewane's attorney, provided that Mr. Lewane himself has personally signed the letter(s). Letters from Mr. Lewane's attorney that are only copied to Mr. Lewane are not acceptable.

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

The Clerk of the Disciplinary System shall impose costs pursuant to Rules of Court, Part 6, § IV, ¶ 13.B.8.c.

Third District Committee, Section Three
of the Virginia State Bar

By: John D. Sharer
Chair

VIRGINIA:

BEFORE THE FOURTH DISTRICT—SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JERRY CARLOS LYELL, ESQ.
VSB Docket No. 05-041-1667

COMMITTEE DETERMINATION
PUBLIC REPRIMAND

On May 10, 2006, a hearing in this matter was held on the charge of misconduct contained in the Notice of Hearing issued by Bar Counsel to Jerry Carlos Lyell, the Respondent, on February 24, 2006. The hearing was conducted before the duly convened Fourth District—Section I Committee of the Virginia State Bar, consisting of David Alan Sattler, Esq., Mary Ellen Craig, Esq., Debra D. Fitzgerald-O'Connell, Esq., Raighne Coleman Delaney, Esq, Romaine Frances O'Brien, Esq., Ms. Patricia A. Bias lay member, and David Edward Sher, Esq., presiding.

The Chair polled the members of the Committee 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 all members responded in the negative.

The Virginia State Bar was represented by Seth M. Guggenheim, Assistant Bar Counsel. The Respondent appeared, *pro se*. Rudiger, Green & Kerns Reporting Service, 4116 Leonard Drive, Fairfax, Virginia 22030, telephone number (703) 591-3136, provided court reporting services for the proceedings.

Pursuant to Part 6, § IV, ¶ 13(H) of the Rules of the Supreme Court of Virginia, the Fourth District—Section I Committee of the Virginia State Bar hereby serves upon the Respondent a Public Reprimand, as follows:

I. FINDINGS OF FACT

1. At all times relevant to the facts set forth herein, Jerry Carlos Lyell, Esq. (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In November of 2003, the Respondent was appointed by the Arlington County, Virginia, General District Court to represent an individual then identified as Christopher Troy Michael on a felony charge of grand larceny.

3. As of the time of a bond motion attended by the Respondent, the Respondent learned that the government had information that the Respondent's client was in fact named Kerri Lee Thompson, who had an extensive criminal record under that name.

4. After first denying that his name was Kerri Lee Thompson, the Respondent's client admitted to the Respondent that he was, in fact, Kerri Lee Thompson, and that the conviction record existing under that name was, in fact, his record. The Respondent's client's admission regarding his true name had been made to the Respondent as of the time of the client's scheduled preliminary hearing on November 24, 2003.

5. Notwithstanding the information in the government's files respecting the Respondent's client's true identity, the Commonwealth of Virginia issued an indictment against Christopher Troy Michael. Following his indictment, the Respondent's client agreed to plead guilty to the charge of grand larceny. A "Plea Memorandum" was prepared by the Office of the Commonwealth's Attorney for execution by the Respondent's client. The first paragraph of the Plea Memorandum read "My name is Christopher Troy Michael and my birth date is March 7, 1973."

6. The Plea Memorandum was signed by Respondent's client as "Christopher Michael" on January 7, 2004, and was endorsed by the Respondent and a prosecutor. Despite Respondent's knowledge that his client's true name was Kerri Lee Thompson, he nonetheless counseled the client to proceed in the criminal matter under the name of Christopher Troy Michael, and acquiesced in and witnessed his client's execution of the Plea Memorandum using that fictitious name.

7. On January 7, 2004, Kerri Lee Thompson appeared before a judge of the Arlington County Circuit Court to enter a plea of guilty to the grand larceny charge. After first being sworn, Kerri Lee Thompson falsely stated, in Respondent's presence, in response to questions from the Court that his name was Christopher Michael and that his date of birth was March 7, 1973. The Respondent took no action on the occasion of the January 7, 2004, court appearance to correct the false testimony of his client or otherwise to advise the Court that he had counseled his client to proceed before the Court via the fictitious name of Christopher Troy Michael.

8. On March 26, 2004, Kerri Lee Thompson was before the Court for sentencing. The presiding judge was the same judge who had accepted Respondent's client's guilty plea, and to whom the client at the time of his plea had falsely stated under oath his name and date of birth. Although at the time of sentencing the Respondent asked the judge to correct the record and pre-sentence investigation report regarding his client's true name and date of birth, the Respondent failed to explain the circumstances of, and accept responsibility for, advising his client to perpetuate the client's identity as Christopher Troy Michael.

9. It was Respondent's client who informed the Court of the aforesaid advice regarding his identity given him at the time of his plea by the Respondent. The Court considered Mr. Thompson's false statements made at the time of his plea to have been an attempt to manipulate the Court, and took such false statements into account when sentencing Respondent's client to a term of incarceration.

II. NATURE OF MISCONDUCT

The Committee finds, by unanimous vote, that the following Rules of Professional Conduct have been violated:

RULE 1.1 Competence

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

The Committee further finds that the Virginia State Bar failed to prove by clear and convincing evidence that the Respondent violated Rules of Professional Conduct 3.3(a)(2) and 8.4(b) as charged in the aforesaid Notice of Hearing.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee, by unanimous vote, that Respondent receive a Public Reprimand pursuant to Part 6, § IV, ¶ 13(H)(2)(l)(2)(d) of the Rules of the Supreme Court of Virginia, and the Respondent, Jerry Carlos Lyell, is hereby reprimanded.

IV. COSTS

Pursuant to Part 6, § IV, ¶ 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

FOURTH DISTRICT—SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

By: David Edward Sher, Esq.
Chair

VIRGINIA:

BEFORE THE FIFTH DISTRICT—SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ARLENE LAVINIA PRIPETON, ESQ.
VSB Docket No. 05-053-2613

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND

On May 23, 2006, a meeting in this matter was held before a duly convened Fifth District—Section III Subcommittee consisting of Dennis Robert Carluzzo, Esq., Mr. Berchard Lee Hatcher, lay member, and H. Jan Roltsch-Anoll, Esq., presiding, to review an Agreed Disposition reached by the parties. The Agreed Disposition was presented, in person, by Seth M. Guggenheim, Assistant Bar Counsel, appearing on behalf of the Virginia State Bar, and by Arlene Lavinia Pripeton, Respondent, appearing *pro se.*

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13(G), the Fifth District—Section III Subcommittee of the Virginia State Bar accepts the proposed Agreed Disposition and hereby serves upon the Respondent the following Public Reprimand, as set forth below.

I. FINDINGS OF FACT

1. At all times relevant to the facts set forth herein, Arlene Lavinia Pripeton, Esq. (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In February of 2003, a client (hereafter "Complainant") retained the Respondent to determine the identity, through court action if necessary, of the person or persons who had made false allegations against him to Child Protective Services of Fairfax County, Virginia.

3. The Complainant paid the Respondent the sum of $1,000.00 at the time she was retained. Although the full fee was not earned as of the time it was paid, the Respondent deposited it into an account other than an attorney trust account. When questioned by a Virginia State Bar investigator regarding this matter on April 13, 2005, the Respondent advised him that the sum charged the Complainant was a "flat fee" and that she does not deposit "flat fees" in her trust account.

4. As of the time the Complainant wrote to the Virginia State Bar regarding this matter, on January 2, 2005, nearly two years following her being retained, the Respondent had taken no action to petition the court for disclosure of the identity of the person(s) who had made false allegations against the Complainant to Child Protective Services. After retaining the Respondent, the Complainant contacted her and advised her that he had received a letter from the state attorney general's office responsive to an inquiry he made regarding the Child Protective Services matter. Although the letter indicated that it had also been sent to the Respondent, she advised the Complainant that she had not received a copy, but stated at that time that she would attempt to secure a court date for his case.

5. As of January 2, 2005, when the Complainant wrote to the Virginia State Bar regarding this matter, the Respondent had failed to respond to repeated phone messages the Complainant left at her office and had failed to advise the Complainant either orally or in writing of any action that she had taken on his behalf.

6. On January 21, 2005, Bar Counsel mailed a copy of Complainant's Complaint to the Respondent, with a letter containing the following text:

> I am conducting a preliminary investigation to determine whether the enclosed complaint should be dismissed or referred to a district committee for a more detailed investigation. Pursuant to Rule of Professional Conduct 8.1(c), you have a duty to comply with the bar's lawful demands for information not protected from disclosure by Rule 1.6. **As part of my preliminary investigation of the complaint, I demand that you submit a written answer to the complaint within 21 days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits.**

The Respondent failed to submit a written answer to the Bar Complaint within the twenty-one (21) day period referred to in the letter, or at any time thereafter.

7. After the Bar Complaint was filed, the Complainant called the Respondent in an attempt to resolve matters with her by having her proceed with his case, or, if not, by having her refund the unearned portion of the fee he had paid.

8. Following an interview with a Virginia State Bar investigator on April 13, 2005, the Respondent spoke again to the investigator, stating that she had since refunded the sum of $500.00 to the Complainant.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.15 Safekeeping Property

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

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

(c) A lawyer shall:

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

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Arlene Lavinia Pripeton, Esq., and she is so reprimanded.

IV. COSTS

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

FIFTH DISTRICT—SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: H. Jan Roltsch-Anoll, Esq.
Chair/Chair Designate

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

IN THE MATTER OF
JOHN W. WESCOAT
VSB Docket No. 05-021-0107

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITHOUT TERMS)

On April 13, 2006, a hearing in this matter was held before a duly convened Second District Committee panel consisting of Donald C. Schultz, Esquire, S. Clark Daugherty, Esquire, Robert W. McFarland, Esquire, Emmanuel W. Michaels, Lay Member, Michael S. Brewer, Lay Member, and Afshin Farashahi, Esquire, Chair, presiding.

The Respondent, John W. Wescoat, Esquire appeared in person *pro se*. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis, Esquire.

The matter proceeded upon the Notice of Hearing, dated February 21, 2006, on appeal of a Subcommittee Determination. The Notice of Hearing set forth allegations that the Respondent's conduct violated Rules of Professional Conduct 1.1, *Competence*, 1.3 (a), *Diligence*, 1.4 (a), (b) and (c), *Communication*, and 8.4 (c), *Misconduct*.

The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The parties made opening statements, and the panel then received the testimony of the Complainant, Mr. Frederick E. Walker, who testified by telephone from the Haynesville Correctional Center, Haynesville, Virginia, by agreement with the Respondent. Corrections Sergeant Russell Radebaugh, Notary Public, Haynesville, placed the witness under oath. The panel received Virginia State Bar Exhibits 1-19 without objection. The rest of the bar's evidence consisted of the testimony of the Respondent, who also testified in his own behalf.

Upon the conclusion of the bar's evidence, the Respondent moved to strike the bar's case, and the matter was argued by counsel. Upon due deliberation, the panel chose to grant the motion to strike with respect to Rules 1.4 (c) and 8.4 (c), and proceeded on the remaining charges. Thereafter, the parties presented closing arguments.

Pursuant to Part 6, Section IV, Paragraph 13.H.2 (m) of the Rules of the Virginia Supreme Court, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, John W. Wescoat, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On June 21, 2002, the Circuit Court for the County of Northampton found Frederick E. Walker guilty of breaking and entering, and assault and battery. Mr. Wescoat was his appointed counsel.

3. On September 16, 2002, the Court sentenced Mr. Walker to eight years and twelve months to serve in the Department of Corrections.

4. Mr. Wescoat timely noted an appeal of the convictions.

5. By letter, dated April 28, 2003, Mr. Wescoat informed his client that he was preparing the petition for appeal to the Court of Appeals.

6. On September 23, 2003, the Court of Appeals of Virginia denied the petition for appeal.

7. Thereafter, Mr. Wescoat took no further action in the matter, although his client wanted him to appeal further to the Supreme Court of Virginia.

8. By letter, dated June 25, 2003, Mr. Walker inquired about the status of his appeal, but Mr. Wescoat did not respond.

9. By letter, dated September 30, 2003, Mr. Walker inquired again about the status of his appeal, but Mr. Wescoat did not respond.

10. By letter, dated February 10, 2004, Mr. Walker inquired a third time to inquire about the status of the appeal, but Mr. Wescoat did not respond.

11. By letter, dated April 9, 2004, Mr. Walker inquired a fourth time about the status of the appeal, but Mr. Wescoat did not respond.

12. Mr. Walker also wrote to Mr. Wescoat on May 12, 2003, May 13, 2003, and May 20, 2003, but Mr. Wescoat did not respond.

13. On an unknown date during 2004, having not heard from Mr. Wescoat, Mr. Walker wrote to the trial court to inquire about the status of his appeal.

14. By letter, dated June 7, 2004, the court informed him that his petition for appeal had been denied on September 23, 2003. This was the first time that Mr. Walker learned about the denial of his appeal.

15. By letter, dated June 14, 2004, he informed Mr. Wescoat about this development, and asked for a copy of the order.

16. Mr. Wescoat said that when he received this letter, he contacted the Commonwealth's Attorney to confirm it, and, having not received a copy the dismissal order himself, then learned for the first time that the appeal had been dismissed. He then responded to Mr. Walker by letter, dated June 18, 2004, and enclosed a copy of the order. Mr. Wescoat closed the letter with,

    I'm sorry that the appeal was unsuccessful and hope that things are going as well as possible for you under the circumstances.

17. Mr. Wescoat did not mention his client's right to further appeal to the Supreme Court of Virginia, or that Mr. Wescoat had missed the deadline for appealing to the Supreme Court.

18. Mr. Wescoat explained to the bar that he did not do so because his client was well-informed about the court system, and he believed that a writ writer at the prison was assisting him. He also said that he did not respond to Mr. Walker's previous letters because he had no new information.

19. On August 18, 2004, Mr. Walker filed a petition for a writ of habeas corpus alleging ineffective assistance of counsel by Mr. Wescoat.

II. NATURE OF MISCONDUCT

Upon due deliberation, the Committee found that the Respondent's Conduct was in violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Committee did not find a violation of Rule 1.1 by clear and convincing evidence, and dismissed that charge accordingly.

III. PUBLIC ADMONITION

Accordingly, it is the decision of the Committee to impose a Public Admonition on the Respondent for the misconduct set forth herein, and the Respondent is hereby admonished.

Pursuant to Paragraph 13.B.8 (c) (1) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By: Afshin Farashahi, Esquire
Committee Chair

VIRGINIA SUPREME COURT APPROVED UPL OPINION 209 CONCERNING A FOREIGN ATTORNEY REPRESENTING A CLIENT BEFORE THE VIRGINIA GAS & OIL BOARD

On February 28, 2006, the Virginia Supreme Court approved, effective immediately, Unauthorized Practice of Law Opinion 209, *Foreign Attorney Representing Client Before Virginia Gas & Oil Board,* that was issued by the Standing Committee on the Unauthorized Practice of Law ("UPL Committee") on June 14, 2005.

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

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

A full copy of the opinion may be obtained by contacting the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the opinion can also be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at 804-775-0557, or can be found at the Virginia State Bar's Web Page at http://www.vsb.org/profguides/upl/opinions/index.html.

Pursuant to Part 6, Section IV, Paragraph 13(I) of the Rules of the Supreme Court of Virginia, ***Charles Daugherty Fugate II*** *petitioned the Court on January 23, 2006, for reinstatement of his license to practice law. The Virginia State Bar Disciplinary Board will hear the petition on Friday, November 17, 2006, at 9:00 a.m. in House Room C of the General Assembly Building, Capitol Square, Richmond, Virginia. After hearing evidence and oral argument, the board will make factual findings and recommend to the Court whether the petition should be granted or denied.*

The board seeks information about Mr. Fugate's fitness to practice law. Written comments or requests to testify at the hearing may be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219 or by email to Clerk@vsb.org *by Wednesday, November 8, 2006. Letters will become a matter of public record.*

Charles Daugherty Fugate II

Mr. Fugate's license to practice law was revoked on May 17, 2002, effective as of January 7, 2000. This action followed Mr. Fugate's guilty pleas to an indictment charging two counts of felony mail fraud in the U.S. District Court for the Western District of Virginia. That court sentenced Mr. Fugate to fifteen months of prison and three years of supervised release. The indictment charged that Mr. Fugate and others defrauded both the United States and Lee County Community Hospital. He and others formed companies to lease medical and related equipment to the hospital, without disclosing their ownership interest in the companies to the hospital's board of directors. The leasing companies used the tax exempt status of the hospital to purchase equipment without paying sales tax. The equipment was then leased back to the hospital at rates of interest between 30 percent and 300 percent. Mr. Fugate previously served as chairman and a member of the hospital's board of directors and provided legal advice to the hospital's administrator and others associated with the hospital.

In his petition, Mr. Fugate states he has been employed for several years as a risk manager for a large regional retailer, has been active in community and charitable work, has otherwise satisfied all conditions required for reinstatement and is fit to practice law.

On July 11, 2005, ***James E. Ghee*** *petitioned the Supreme Court of Virginia for the reinstatement of his license to practice law in Virginia. The reinstatement is governed by Rules of Court, Part 6, Section IV, Paragraph 13.I. The Virginia State Bar Disciplinary Board will hear the petition on Friday, October 27, 2006, at 9:00 a.m. at the State Corporation Commission, Courtroom A in Richmond, Virginia. After hearing evidence and oral argument, the board will make factual findings and recommend to the Court whether the petition for reinstatement should be granted or denied.*

The board seeks information about Mr. Ghee's fitness to practice law. Written comments or requests to testify at the hearing may be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219 or by email to Clerk@vsb.org *by October 18, 2006. Letters will become a matter of public record.*

James E. Ghee

On October 19, 1995, Mr. Ghee surrendered his license to practice law with charges of misconduct pending. At the time, his license was already suspended for other misconduct. According to Mr. Ghee's reinstatement petition, on May 16, 1996, he pled guilty to eleven counts of misdemeanor embezzlement from an estate for which he served as administrator and was sentenced to serve twelve months on each of the eleven charges with all but six months of the sentences suspended. The sentences required that Mr. Ghee be placed on unsupervised probation for a period of five years after his release from prison and that he not seek reinstatement of his license to practice law for five years. Mr. Ghee also states in his petition that on May 28, 1996, he was assigned to the Piedmont Regional Jail work release program; on June 14, 1996, he was assigned to home incarceration with electronic monitoring; on August 15, 1996, he was released from home incarceration; and on November 28, 1996, he was released from active probationary supervision. In November 1997, he was hired by the law firm of Williams, Luck and Williams as a legal assistant and was still an employee of that firm on the date of the petition. Mr. Ghee further states that on May 15, 1998, he was released from probation and the prohibition against seeking reinstatement of his law license, that he has kept current with the law, been active in his church and community, and completed other requirements for reinstatement.

Present: Hassell, C.J., Lacy, Keenan, Koontz, Kinser, and Lemons, JJ., and Compton,* S.J.

NICHOLAS ASTOR PAPPAS
v.
VIRGINIA STATE BAR
Record No. 052136

OPINION BY JUSTICE DONALD W. LEMONS April 21, 2006

FROM THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In this appeal of right, Nicholas Astor Pappas ("Pappas") challenges the rulings of the Virginia State Bar Disciplinary Board ("Board") in a proceeding in which the Board suspended Pappas' license to practice law for a period of six months.

I. Background

On August 15, 1999, Rochelle McCarl ("McCarl") was injured in an automobile accident. Soon thereafter, McCarl employed Pappas to represent her concerning a personal injury claim arising from this accident. On February 28, 2000, McCarl was injured in another automobile accident, this time while riding in a car driven by her boyfriend, Kenneth Randall Poe ("Poe"). Poe was charged with violating Code §18.2-266 (driving while intoxicated), 46.2-324 (failure to notify the Department of Motor Vehicles of a change in address), 46.2-852 (reckless driving), 46.2-1043 (operating a motor vehicle with defective equipment), and 46.2-1094 (failure to wear a seat belt). Poe was directed to appear in the General District Court of the City of Fredericksburg on March 14, 2000.

For reasons that are unclear in the record, Poe's hearing did not occur on March 14. On or about May 4, 2000, based on a referral by McCarl, Poe approached Pappas and asked Pappas to represent him. Pappas agreed. At about the same time, McCarl and Poe, who were living together, moved from Virginia to New Jersey. Later that year, McCarl and Poe moved from New Jersey to Tennessee.

On June 22, 2000, the hearing on Poe's February 28 violations was held and Pappas appeared on behalf of Poe before the General District Court of the City of Fredericksburg. Pappas entered a plea of guilty on Poe's behalf and the district court found Poe guilty of driving while intoxicated under Code §18.2-266. All of the other charges were either dismissed or *nolle prossed*. Pappas informed Poe of the district court's action in a letter dated June 26, 2000.

On July 7, 2000, Pappas wrote the Virginia State Police to request information regarding the February 28 accident. Pappas stated in the letter that he represented McCarl. On September 26, 2000, McCarl signed an agreement with Pappas for Pappas to represent McCarl in her claim for personal injuries against Poe. On September 27, 2000, Pappas had Poe execute a document entitled, "Waiver," stating that Poe was waiving any possible conflicts that might arise from the representation of McCarl by Pappas in a suit against Poe regarding injuries McCarl sustained in the February 28 accident.

Subsequently, Pappas filed a motion for judgment on behalf of McCarl against Poe in the Circuit Court for the City of Fredericksburg on February 27, 2002. Poe was represented by John W. Hartel ("Hartel"), and on October 11, 2002, Hartel requested that Pappas be removed as McCarl's counsel. On March 4, 2003, the Circuit Court for the City of Fredericksburg found that Pappas' conduct violated Rule 1.7 of the Virginia Rules of Professional Conduct, "Conflict of Interest: General Rule," and removed Pappas as counsel for McCarl. On March 5, 2003, Hartel filed a complaint with the Virginia State Bar ("Bar") against Pappas.

On November 30, 2004, the Sixth District Committee certified its determination to the Board that Pappas' conduct violated Rule 4.3(b)[1] and Rule 8.4(c)[2] of the Rules of Professional Conduct. As part of the facts cited in support of its determination, Paragraph 5 of the certification stated,

"Mr. Poe ha[s] moved to Tennessee and did not appear for the DUI hearing, but Mr. Pappas appeared and, with Mr. Poe's consent, entered a guilty plea on his client's behalf." In his answer, Pappas admitted that Paragraph 5 was correct.

FOOTNOTES

* Senior Justice Compton participated in the hearing and decision of this case before his death on April 9, 2006.

1 "A lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interest of the client."

2 "It is professional misconduct for a lawyer to: … engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law."

Pappas' hearing before the Board commenced on April 22, 2005. In the course of the hearing that day, counsel for the Bar moved for a continuance in order to obtain the retainer agreement between McCarl and Pappas in McCarl's suit against Poe because the date it was signed was a material fact. Pappas objected, but the continuance was granted.

Prior to the commencement of the hearing, the Bar had been unable to locate Poe; however, subsequent to the granting of the continuance, the Bar located Poe and deposed him. The Board re-convened on July 22, 2005. In addition to the retainer agreement, Counsel for the Bar sought to introduce the deposition testimony of Poe and amend the certification from the Sixth District Committee. In his deposition, Poe stated that he did not authorize Pappas to enter a guilty plea on his behalf. Because of this testimony, the Bar sought to amend Paragraph 5 of the certification so that it would read, "Mr. Poe had moved to Tennessee and did not appear for the DUI hearing, but Mr. Pappas appeared and, allegedly with Mr. Poe's consent, entered a guilty plea on his client's behalf." Pappas objected to both the deposition testimony and the amendment of the certification, but his objections were overruled. The Bar was granted leave to amend the certification and Poe's deposition testimony was received in evidence. The hearing concluded on July 22. The Bar withdrew the certification of a violation of Rule 4.3(b) and asked the Board to find Pappas in violation of Rule 8.4(c).

On August 10, 2005, the Board issued its order finding by clear and convincing evidence that Pappas violated Rule 8.4(c). The Board suspended Pappas' license to practice law in the Commonwealth for six months. The Board also ordered Pappas to comply with the requirements of Part Six, § VI, ¶ 13(M) of the Rules of the Supreme Court and assessed costs against Pappas.

In this appeal of right, Pappas assigns four errors to the decision of the Board: (1) error "in permitting the bar to amend ¶ 5 of the Certification at the disciplinary hearing on July 22, 2005"; (2) error "in admitting the deposition testimony of [Kenneth Randall] Poe with reference to ¶ 5 of the Certification at the disciplinary hearing on July 22, 2005"; (3) error "in finding that [Pappas] engaged in professional conduct involving dishonesty, fraud, deceit[,] or misrepresentation which reflects adversely on the lawyer's fitness to practice law, in violation of Rule 8.4(c) of the Rules of Professional Responsibility;" and (4) error because the "Board's Findings of Fact do not rise to the level of proof necessary to establish ethical misconduct."[3]

II. Analysis

The standard of review we employ in reviewing a matter of attorney discipline is familiar and well-settled:

> We conduct an independent examination of the entire record. We consider the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party [below]. We accord the [Board's] factual findings substantial weight and view those findings as *prima facie* correct. Although we do not give the [Board's] conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears that they are not justified by a reasonable view of the evidence or are contrary to law.

Anthony v. Virginia State Bar, 270 Va. 601, 608-09, 621 S.E.2d 121, 125 (2005). *See also Pilli v. Virginia State Bar*, 269 Va. 391, 396, 611 S.E.2d 389, 391 (2005).

In reviewing Pappas' first two assignments of error, we hold that the Board's decision to permit the amendment of Paragraph 5 of the certification and its related decision to admit the deposition testimony of Poe were improper.

Pursuant to Code §54.1-3909, this Court "may promulgate rules and regulations" which define the practice of law, prescribe "a code of ethics governing the professional conduct of attorneys," and prescribe "procedures for disciplining, suspending, and disbarring attorneys." In accordance with this statutory authority, we promulgated Part Six of the Rules of the Supreme Court of Virginia. Section IV, Paragraph 13 of Part Six outlines the procedures "for Disciplining, Suspending, and Disbarring Attorneys."

Prior to the hearing before the District Committee, the Bar must serve upon the attorney "by certified mail the Charge of Misconduct, a copy of the Investigative Report considered by the Subcommittee and any exculpatory materials in the possession of the Bar Counsel." Part 6, § IV, ¶ 13(H)(1)(a)(1). If, at the conclusion of its hearing, "the District Committee finds that the evidence shows the [attorney] engaged in Misconduct by clear and convincing evidence, then the Chair shall issue the District Committee's Determination." Part 6, § IV, ¶ 13(H)(2)(m). One of the options available to the District Committee is to certify its Determination to the Board for its consideration. Part 6, § IV, ¶ 13(H)(2)(n). A "certification" is "the document issued by a Subcommittee or a District Committee when it has elected to certify the Charges 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." Part 6, § IV, ¶ 13(A). The attorney may appeal the District Committee's

FOOTNOTES

3 Pappas also assigned error to the decision of the Board for "imposing discipline for conduct previously adjudicated and resolved in circuit court," but withdrew this assignment of error in his brief before this Court.

determination either to the Board or a three-judge circuit court panel. Part 6, § IV, ¶ 13 (H)(2)(p)(4). If, as Pappas did in this case, an attorney elects to appeal to the Board, the Board must then follow the procedures outlined in Part 6, § IV, ¶ 13(I).

Fundamental to any legal proceeding is notice and an opportunity to be heard. *Tidwell v. Virginia State Bar*, 262 Va. 548, 550, 554 S.E.2d 451, 453 (2001); *see also Heacock v. Commonwealth*, 228 Va. 235, 241, 321 S.E.2d 645, 649 (1984) (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). The procedures outlined in Part Six provide the notice and hearing provisions for disciplinary proceedings. These provisions ensure the integrity of the disciplinary process and protect the rights of the attorney.

There is no mechanism in Part Six that allows the Board to amend a certification from the District Committee. Paragraph 5 of the certification stated, "Mr. Poe ha[s] moved to Tennessee and did not appear for the DUI hearing, but Mr. Pappas appeared and, with Mr. Poe's consent, entered a guilty plea on his client's behalf." (Emphasis added.) In his answer, Pappas admitted that Paragraph 5 was correct. Yet, with no notice and no review by the District Committee, the Board granted the Bar's request to amend Paragraph 5 of the certification so that it would read, "Mr. Poe had moved to Tennessee and did not appear for the DUI hearing, but Mr. Pappas appeared and, allegedly with Mr. Poe's consent, entered a guilty plea on his client's behalf." (Emphasis added.) This amendment was tantamount to a new charge. As such, Pappas was entitled to the procedural protections outlined in Part 6, § IV, ¶ 13, including notice, review by the District Committee, and the opportunity to be heard by the Board or a three judge panel. Furthermore, because the Board's decision to permit the amendment of Paragraph 5 of the certification was improper and the amended charge was not properly before the Board, its related decision to admit the deposition testimony of Poe also was improper.

In his two remaining assignments of error, Pappas argues the Board erred in finding that he violated Rule 8.4(c) of the Rules of Professional Conduct because the Board's "Findings of Fact" do not prove the ethical misconduct charged by clear and convincing evidence. We agree.

The charge properly before the Board was a violation of Rule 8.4(c). However, upon review of the Board's findings of fact, we conclude that none of the Board's findings address a violation of Rule 8.4(c). The Board's findings seem to address a conflict of interest, adverse representation, and a breach of the duty of loyalty:

> 30. A current or former client's consent to a conflict of interest in an adverse representation is required to be consent after consultation. Consultation is defined in the Rules of Professional Conduct as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." Without consultation, a client's consent to a conflict of interest is not an informed consent and thus is no consent at all.
>
> 31. Loyalty is an essential element in the lawyer's relationship with a client.
>
> 32. Lawyers have superior knowledge and experience in addressing conflicts of interest with clients, current or former, and such clients justifiably may rely on their lawyer to be honest, candid, and thorough in eliciting consent to an adverse representation of another client.
>
> 33. A client's consent to a representation adverse to the client's interests, whether in litigation or otherwise, is required to be elicited before the adverse representation commences.

The only finding that could be considered to have addressed a violation of Rule 8.4(c) was:

> 29. There were conflicts between the testimony of [Pappas] and Ms. McCarl, on the one hand, and Mr. Poe, on the other hand, in material respects. The deposition testimony of Mr. Poe is credible. Ms. McCarl's deposition testimony was marked by uncertainty and speculation. [Pappas'] testimony *ore tenus*, if not evasive in material respects, was marked by inconsistency and vagueness.

However, this one finding is not sufficient to support the Board's determination that Pappas engaged "in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on [Pappas'] fitness to practice law" by clear and convincing evidence. We hold that the evidence was insufficient to find by clear and convincing evidence that Pappas violated Rule 8.4(c).

III. Conclusion

The Board's decisions to permit the amendment of Paragraph 5 of the certification and to admit the deposition testimony of Poe were improper. On the charge that was before the Board, the evidence was insufficient to find by clear and convincing evidence that Pappas violated Rule 8.4(c). We will reverse the order of the Board and dismiss the action against Pappas.

Reversed and dismissed.

Virginia State Bar Council To Review A Proposed Amendment To The Comments Of Rule 8.4 Of The Rules Of Professional Conduct

RICHMOND—Pursuant to Part Six: Section IV, Paragraph 10(c) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on October 26–27, in Williamsburg, Virginia, is expected to consider for approval, disapproval, or modification, a proposed amendment to the Comments of Rule 8.4 of the Rules of Professional Conduct by the Standing Committee on Legal Ethics.

RULE 8.4

In recent times, the Committee has been asked to provide the members of the Virginia State Bar clear, appropriate guidance regarding a lawyer's use of undisclosed recording of communications or events in the course of conducting an investigation on behalf of a client. The proposed comments represent an important change in the Committee's position on the ethical propriety of a lawyer, or his or her agent, using an undisclosed recording device to capture a communication or event in which the lawyer or agent is a participant. Under the new comments, the undisclosed recording of a communication or event is not unethical per se if: the recording a) is lawful; b) is consented to by one of the parties to the transaction; c) is in furtherance of an investigation on behalf of a client; d) is not effectuated by means of any misrepresentations; and e) the means by which the communication or event was recorded and the use of the recording do not violate the legal rights of another.

These comments represent a significant departure from the position taken by the Committee in prior legal ethics opinions, wherein the Committee took the position (although often in dicta) that undisclosed tape recording was inherently deceitful conduct in violation of Rule 8.4 (c) and, therefore, generally prohibited except in narrowly defined circumstances. *See, e.g.,* Virginia Legal Ethics Ops. 1738 and 1765 (recognizing exceptions to the ban on undisclosed tape recording for law enforcement undercover activity, discrimination testing and intelligence operations). Recent opinions of the Committee that have thoroughly examined the issue of undisclosed recordings, however, had moved away from the statements in the earlier opinions endorsing a "blanket prohibition" against any undisclosed recording. Now, after more than a year of study and discussion of the pertinent rules, all of its prior opinions, and other pertinent authorities, the Committee has recommended the adoption of the new proposed comments which the Committee has drafted.

Inspection and Comment

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

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendment by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **September 29, 2006.**

# # #

DRAFT

(As proposed by the Standing Committee on Legal Ethics, July 21, 2006.)

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

COMMENT

[1] *ABA Model Rule* Comment not adopted.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate

lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] *ABA Model Rule* Comment not adopted.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(c) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law. *See* also Rule 3.1, Rule 3.4(d).

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Use of Undisclosed Recording

[6] Generally, a lawyer who makes or causes another to make an undisclosed recording of communications or events violates these Rules if the recording is unlawful, is accomplished by means of fraud or misrepresentation which reflects adversely on the lawyer's fitness to practice law, or is accomplished by means which violate the legal rights of another.

[7] It is not an automatic violation of the Rules for an lawyer to record or cause to be recorded a communication or event without disclosing the fact of recordation to all parties to the communication or event where the recording a) is lawful, b) is consented to by one of the parties to the transaction, c) is in furtherance of an investigation on behalf of a client, d) is not effectuated by means of any misrepresentations, e) and the means by which the communication or event was recorded and the use of the recording do not violate the legal rights of another. Such conduct is not unethical per se. For example, a lawyer representing a criminal defendant, or his investigator, may conduct interviews with potential witnesses using an undisclosed recording device, provided that the lawyer or the lawyer's investigator clearly informs the potential witness of the interviewer's identity and the interviewer's connection with the accused, the recording is lawful, the recording is consented to by one of the parties to the interview, and is not effectuated by means of any misrepresentations or violation of legal rights of another. In civil cases, a lawyer or his agents investigating a matter on behalf of a client may interview potential witnesses using an undisclosed recording device with the consent of only one party to the conversation provided the same conditions are met.

[8] Lawyers should be aware that although federal law, and most states' laws, permit recording with the consent of only one party to the conversation, some states prohibit recordings unless consent has been obtained from all parties to the conversation. In addition, a secret recording that is accomplished by means of false statements would generally violate Rule 4.1 prohibiting false statements of material fact to a third person, as well as Rule 8.4 (c).

[9] There may be special circumstances in the civil and criminal setting where even the use of misrepresentations in connection with an undisclosed recording made in the course of an investigation does not reflect adversely on an attorney's fitness to practice law. *See, e.g.*, Virginia Legal Ethics Ops. 1738 and 1765.

Virginia Code Comparison

With regard to paragraphs (a) through (c), DR 1-102(A) provided that a lawyer shall not:

"(1) Violate a Disciplinary Rule or knowingly aid another to do so.

(2) Circumvent a Disciplinary Rule through actions of another.

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

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law."

Paragraph (d) is substantially the same as DR 9-101(C).

There was no direct counterpart to paragraph (e) in the Disciplinary Rules of the *Virginia Code*. EC 731 stated in part that "[a] lawyer ... is never justified in making a gift or a loan to a [judicial officer] under circumstances which might give the appearance that the gift or loan is made to influence official action." EC 91 stated that a lawyer "should promote public confidence in our [legal] system and in the legal profession."

Committee Commentary

Much of this Rule parallels provisions of the Disciplinary Rules of the *Virginia Code*. Paragraph (e), however, sets forth a prohibition not in the *Virginia Code*, and the Committee believed it is an appropriate addition.

Virginia State Bar Council to Review a Proposed Amendment to Rule 4.2 of the Rules of Professional Conduct

Pursuant to Part Six: Section IV, Paragraph 10(c) of the Rules of the Supreme Court of Virginia, the Virginia State Bar Council, at its meeting on October 26–27, 2006, in Williamsburg, Virginia, is expected to consider for approval, disapproval, or modification, a proposed amendment to Rule 4.2 of the Rules of Professional Conduct by the Standing Committee on Legal Ethics.

RULE 4.2

The Committee proposes to add the following comment to Rule 4.2:

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

This comment, regarding the rule's applicability when the opposing (represented) party initiates contact with the attorney, is presently found in the American Bar Association's Model Rules of Professional Conduct. The text corresponds to Virginia's interpretation of the rule. Inclusion of the Comment will bring Virginia's Rules in line with the Model Rules and those jurisdictions that have adopted Rule 4.2.

Inspection and Comment

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

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendment by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **September 29, 2006.**

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DRAFT

(As proposed by the Standing Committee on Legal Ethics, May 11, 2006)

RULE 4.2 Communication With Persons Represented By Counsel

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

COMMENT

[1] This Rule does not prohibit communication with a represented person, or an employee or agent of a represented person, concerning matters outside the representation. For example, the existence of a controversy between an organization and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Also, parties to a matter may communicate directly with each other and a lawyer having independent justification or legal authorization for communicating with the other party is permitted to do so.

[2] In circumstances where applicable judicial precedent has approved investigative contacts in pre-indictment, non-custodial circumstances, and they are not prohibited by any provision of the United States Constitution or the Virginia Constitution, they should be considered to be authorized by law within the meaning of the Rule. Similarly, communications in civil matters may be considered authorized by law if they have been approved by judicial precedent.

[3] ~~*ABA Model Rule* Comment not adopted.~~ The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule.

[4] In the case of an organization, this Rule prohibits communications by a lawyer for one party concerning the matter in representation with persons in the organization's "control group" as defined in *Upjohn v. United States*, 449 U.S. 383 (1981) or persons who may be regarded as the "alter ego" of the organization. The "control group" test prohibits *ex parte* communications with any employee of an organization who, because of their status or position, have the authority to bind the corporation. Such employees may only be contacted with the consent of the organization's counsel, through formal discovery or as authorized by law. An officer or director of an organization is likely a member of that organization's "control group." The prohibition does not apply to former employees or

agents of the organization, and an attorney may communicate *ex parte* with such former employee or agent even if he or she was a member of the organization's "control group." If an agent or employee of the organization is represented in the matter by separate counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule.

[5] This Rule covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter in question. Neither the need to protect uncounselled persons against being taken advantage of by opposing counsel nor the importance of preserving the client-attorney relationship is limited to those circumstances where the represented person is a party to an adjudicative or other formal proceeding. The interests sought to be protected by the Rule may equally well be involved when litigation is merely under consideration, even though it has not actually been instituted, and the persons who are potentially parties to the litigation have retained counsel with respect to the matter in dispute.

[5a] Concerns regarding the need to protect uncounselled persons against the wiles of opposing counsel and preserving the attorney-client relationship may also be involved where a person is a target of a criminal investigation, knows this, and has retained counsel to receive advice with respect to the investigation. The same concerns may be involved where a "third-party" witness furnishes testimony in an investigation or proceeding, and although not a formal party, has decided to retain counsel to receive advice with respect thereto. Such concerns are equally applicable in a non-adjudicatory context, such as a commercial transaction involving a sale, a lease or some other form of contract.

Virginia Code Comparison

This Rule is substantially the same as DR 7-103(A)(1), except for the change of "party" to "person" to emphasize that the prohibition on certain communications with a represented person applies outside the litigation context.

Committee Commentary

The Committee believed that substituting "person" for "party" more accurately reflected the intent of the Rule, as shown in the last sentence of the Comment, and was preferable to the apparent limitation of DR 7-103(A)(1) which referred to "[c]ommunicat[ion] on the subject of the representation with a party . . . ."

Virginia Supreme Court Approved Amendments to Paragraph 14 of Rules Governing the Organization and Government of the Virginia State Bar

On June 2, 2006, the Virginia Supreme Court approved, effective July 1, 2006, amendments to Part 6, Section IV, Paragraph 14 of the Rules of the Supreme Court of Virginia ("Paragraph 14").

Lawyers admitted in a U.S. jurisdiction other than Virginia may establish a law office in Virginia if their practice is limited exclusively to areas involving federal law (i.e., patent, trademark, copyright, immigration, social security, federal taxation, etc). Moreover, the *Code of Virginia* permits those lawyers to conduct their limited practice in Virginia through limited liability entities—professional corporations, professional limited liability companies and registered limited liability partnerships. However, lawyers who practice through such limited liability entities must register those entities with the Virginia State Bar.

Prior to revising Paragraph 14, only Virginia licensed lawyers could apply to the Virginia State Bar to register their limited liability entity. No provision was made for non-Virginia lawyers whose practice is limited solely to matters for which a Virginia law license is not required. The amendments to Paragraph 14 now permit a non-Virginia lawyer, who is authorized by law to establish a limited practice in Virginia and therefore form a limited liability entity, can now register that entity with the Virginia State Bar to conduct their practice.

A full copy of the revised rule may be obtained by contacting the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the revised rule can also be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at 804-775-0557, or can be found at the Virginia State Bar's Web Page at http://www.vsb.org/site/regulation/Amendment-to-Supreme-Court-Rule-Part-6-Section-IV-Paragraph-14.

Proposed Companion Amendments to Virginia Supreme Court Rules, Part 6, § IV, Paragraph 3 (Classes of Membership) and VSB Regulation Covering Function and Operation of Legal Aid Societies, 15VAC5-10-10

The Special Committee on Access to Legal Services of the Virginia State Bar seeks public comment on proposed companion amendments it approved on July 28, 2006 to 15VAC5-10-10, the bar's regulation covering the function and operation of legal aid societies and Paragraph 3, Section IV, of the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, popularly known as the Emeritus Rule.

The proposed revisions to 15VAC5-10-10 seek to clarify, under authorizing legislation at § 54.1-3916 (legal aid societies), the heightened reporting obligations of legal services providers holding themselves out to the public as "legal aid societies" or "legal aid" in Virginia. The revisions would allow sanctions against organizations misleading the public through the use of unauthorized naming and service description practices.

To foster consistency, the committee also recommends that the Emeritus Rule be amended to more explicitly account for the existence of "approved legal assistance organizations" that do not necessarily meet the heightened criteria outlined in 15VAC5-10-10 for programs qualifying under the licensed "legal aid" or "legal aid society" designations.

The full text of the measures appears below with the proposed amendments underlined.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed amendments by filing a copy with Thomas A. Edmonds, VSB Executive Director, by Friday, September 22, 2006. His address is: Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Proposed Amendments to 15VAC5-10-10, the Virginia State Bar Regulation Covering the Function and Operation of Legal Aid Societies

15VAC5-10-10.

Function and operation of licensed legal aid societies

The bar recognizes the need to provide equal access to the system of justice in the Commonwealth for individuals who seek redress of grievances, to provide high quality legal assistance to those who would otherwise be unable to afford adequate legal counsel, to preserve attorney-client relationships and to protect the integrity of the adversary process.

~~1. The function of a legal aid society is to provide free legal assistance to those requiring such assistance but who are unable to pay therefor.~~

~~2. Only a nonprofit corporation can function as a legal aid society in the Commonwealth~~.

1 ~~3~~. A ~~legal aid society is defined as a~~ non-profit organization ~~providing~~ qualifying as a tax exempt entity under section 501(c)(3) of the Internal Revenue Code may apply to be a licensed legal aid society in the Commonwealth if its primary purpose is to provide free legal assistance exclusively to those requiring such assistance but who are unable to pay for it ~~therefor~~.

2 ~~4~~. No person, organization or corporation shall define itself or hold itself out to the public as a legal aid society ~~can function~~ or legal aid in the Commonwealth without being licensed by the Secretary-Treasurer of the Virginia State Bar.

3 ~~5~~. Upon application of a non-profit organization seeking to become a licensed legal aid society, with supporting documents, the Secretary-Treasurer of the Virginia State Bar shall issue a license if:

a. The State Corporation Commission has issued a certificate of incorporation to the applicant ~~society~~.

b. A majority of the members of the applicant's ~~society's~~ board of directors are active members of the Virginia State Bar.

c. No member of the Virginia State Bar devoting his or her full time to, or receiving any compensation from, the applicant ~~society~~ shall be a voting member of its board.

d. The provisions of subdivisions 3 ~~5~~ b and c shall be included in the bylaws of the applicant ~~society~~ at all times.

e. The applicant has submitted a copy of its IRS determination letter.

f. The applicant provides, for the prior fiscal year, if applicable, an acceptable audit conducted under standards set by the American Institute of Certified Public Accountants.

g. Proof of acceptable professional liability insurance coverage for its operations that meets or exceeds an aggregate sum determined annually by the Virginia State Bar inclusive of

coverage in the amount of $250,000 per claim for lawyers who provide client legal services under the auspices of the program.

4 ~~6~~. No ~~payment~~ fee for the provision of legal assistance shall be requested or received from clients by the licensed legal aid society or its employees, except for necessary expenses or ~~court~~ costs.

5 ~~7~~. Guidelines and procedures shall be established and maintained to insure that legal assistance is provided only to those who are unable to pay for it ~~therefor~~. Legal assistance to ~~elderly~~ persons meeting standards of eligibility under ~~the Older Americans Act~~ authorizing legislation and regulations ~~thereto~~ is deemed consistent with this requirement.

6 ~~8~~. A licensed legal aid society may appear before and practice in all the courts, administrative agencies and legislative bodies of the Commonwealth and all political subdivisions thereof, only through attorneys who are members of the Virginia State Bar or other persons who are permitted by law to so appear and practice.

7 ~~9~~. A legal aid society holding a license issued by the Secretary-Treasurer of the Virginia State Bar is deemed to be an approved licensee ~~by the Virginia State Bar~~. Each licensee shall make an annual report and file it with the Secretary-Treasurer of the Virginia State Bar within 90 days of the conclusion of the bar's fiscal year. The annual report shall contain the following information:

a. Source of funding

b. Cost of operation

c. Number of cases handled

d. Type of cases handled

e. ~~Number of lawyers employed and/or assisting~~ Staffing providing the number and title of all employees, and the number of volunteer attorneys assisting within the period covered by the report.

f. Any changes in the Articles of Incorporation or bylaws made since the last annual report.

g. A current roster of the members of the board of directors indicating vacancies, names of appointing authorities, and members' bar or lay status.

h. An audit conducted in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants, which shall be submitted within 180 days of the conclusion of the licensee's fiscal year.

i. Proof of required professional liability coverage and timely notice to the bar during the course of the year of any lapse or denial in coverage.

j. Client eligibility guidelines.

8 ~~10~~. A license shall be revoked by the Secretary-Treasurer of the Virginia State Bar on his or her own motion or on the motion of any other person if it is found, after investigation and after giving the licensee reasonable notice and an opportunity to be heard, that the licensee has committed a substantial and material violation of law or of its charter or bylaws ~~violated the law, the Code of Professional Responsibility~~ or these regulations, or has been inactive for a period of one year or more ~~or has failed to adhere to its charter or bylaws~~.

9 ~~11~~. From any decision of the Secretary-Treasurer of the Virginia State Bar in granting, or refusing or revoking or refusing to revoke a license, any interested person may appeal to the Council of the Virginia State Bar under procedures established by the Council for such purpose.

10 ~~12~~. The Council of the Virginia State Bar reserves the right to amend these regulations from time to time.

Statutory Authority

§54.1-3916 of the Code of Virginia.

Historical Notes

Derived from VR167-01-01 §1, eff. July 22, 1977; amended, eff. June 13, 1990

Proposed Amendments to Virginia Supreme Court Rules

Part 6, § IV, Paragraph 3
(Classes of Membership)

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(e) *Emeritus Members*—Those persons who are admitted to practice law in the Commonwealth of Virginia may, upon request to the Virginia State Bar with the supporting materials specified in this subparagraph, become emeritus members and provide *pro bono* legal services to ~~the poor and working poor~~ low income Virginians as emeritus members subject to the terms and conditions stated in this subparagraph. They shall pay no dues, may not practice law except in the limited manner specified in this subparagraph, and may not vote or hold office in the Virginia State Bar.

(1) Definitions.

(A) Active practice of law, for the purposes of this subparagraph, means that an attorney has been engaged in the practice of law, which includes private practice, house counsel, public employment as a lawyer, or full-time teaching at an American Bar Association approved law school.

(B) Emeritus member is any person who is admitted to practice law in the Commonwealth of Virginia, who is retiring or has retired from the active practice of law, and who intends to provide *pro bono* services under this subparagraph; and

(i) Has been engaged in the active practice of law for a minimum of ten out of the fifteen years immediately preceding the application to become an emeritus member; and

(ii) Is, at the time of requesting emeritus member status, an active member in good standing of the Virginia State Bar and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and

(iii) Signs a statement that he or she has read and will comply with the Virginia Rules of Professional Conduct and as an emeritus member submits to the continuing jurisdiction of the Virginia Supreme Court and the Virginia State Bar for disciplinary purposes; and

(iv) Agrees to neither ask for nor receive any compensation of any kind, except for out-of-pocket expenses, for the legal service to be rendered under this subparagraph.

(C) An ~~A~~approved legal assistance organization, for the purposes of this subparagraph~~,~~:

(i) I~~i~~s a Virginia licensed legal aid society or other not for profit entity, or program or clinic of an American Bar Association accredited law school, or governmental agency ~~organized in whole or in part, to provide~~ providing any legal services or pro bono referral services or dispute resolution services ~~to the poor and/or working poor in Virginia~~ benefiting low income Virginians; and

(ii) Shall either receive funding for these undertakings ~~and receiving funds for that purpose~~ from an agency or entity of the federal government or the Commonwealth of Virginia, or from the Virginia Law Foundation~~.~~ or shall provide, for the previous fiscal year, an acceptable audit conducted under standards set by the American Institute of Certified Public Accountants; and

(iii) Provides legal malpractice insurance, on behalf of individuals engaged in these activities, in a minimum amount of $250,000 per claim or a higher amount as may be set from time to time by the Virginia State Bar; or provides professional liability coverage under the Commonwealth's risk management policy; or operates under statutory immunity provisions for court-certified volunteer mediators.

(D) Supervising attorney, for purposes of this subparagraph, is an attorney who directs and supervises an emeritus member engaged in activities permitted by this subparagraph. The supervising attorney must:

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

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

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

(2) Activities.

(A) An emeritus member, in association with an approved legal assistance organization and only under the supervision of a supervising attorney, may perform only the following activities:

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

(ii) The emeritus member may prepare and sign pleadings and other documents to be filed in any court or with any administrative tribunal or arbitrator in this state in any matter in which the emeritus member is involved.

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

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

(B) The presiding judge, hearing officer, or arbitrator may, in his or her discretion, determine the extent of the emeritus member's participation in any proceeding.

(3) Supervision and Limitations

(A) An emeritus member must perform all activities authorized by this subparagraph under the direct supervision of a supervising attorney.

(B) Emeritus members permitted to perform services under this subparagraph are not, and shall not represent themselves to be, active members of the Virginia State Bar licensed to practice law generally in the Commonwealth of Virginia.

(C) The prohibition against compensation for the emeritus member contained in Section (1)(B)(iv) of this subparagraph shall not prevent the approved legal assistance organization from reimbursing the emeritus member for actual expenses incurred while rendering service under this subparagraph, nor shall it prevent the approved legal assistance organization from charging for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court awarded attorney's fees for any representation rendered by an emeritus member.

(4) Certification. Permission for an emeritus member to perform services under this subparagraph shall become effective upon filing with and approval by the Virginia State Bar of:

(A) A determination by the Virginia State Bar that the emeritus member has fulfilled the requirements of such membership and has a clear disciplinary record as required by Section (1)(B) of this subparagraph; and

(B) A certification by an approved legal assistance organization stating that the emeritus member is currently associated with that approved legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required under this subparagraph.

(5) Withdrawal of Certification.

(A) Permission to perform services under this subparagraph shall cease immediately upon the filing with the Virginia State Bar of a notice either:

(i) By the approved legal assistance organization stating that:

(a) The emeritus member has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased, or

(b) That the certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the Virginia State Bar shall be mailed by the organization to the emeritus member concerned.

(ii) By the Virginia State Bar, or the Virginia Supreme Court, at any time, stating that permission to perform service under this subparagraph is revoked. A copy of such notice shall be mailed to the emeritus member involved and to the approved legal assistance organization by which he or she has been certified. The emeritus member may apply to the Virginia State Bar or the Virginia Supreme Court for review of such revocation.

(B) If an emeritus member's certification is withdrawn, for any reason, the supervising attorney shall promptly file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus member was involved.

(6) Discipline. In addition to any appropriate investigation or proceeding instituted, or any discipline that may be imposed by the Virginia Supreme Court or the Virginia State Bar, the emeritus member shall be subject to the following disciplinary measures:

(A) The presiding judge or hearing officer for any matter in which the emeritus member has participated may hold the emeritus member in civil contempt for any failure to abide by such tribunal's orders; and

(B) The Virginia Supreme Court, the Virginia State Bar, or the approved legal assistance organization may, at any time, with or without cause, withdraw certification under this subparagraph.

(7) Mandatory Continuing Legal Education. Emeritus members must satisfy the Mandatory Continuing Legal Education (MCLE) obligations required of active members under Part 6, § IV, Paragraph 17 of the Rules of the Supreme Court of Virginia. Failure to satisfy the MCLE requirements shall subject the emeritus members to the fees and sanctions specified in Part 6, Section IV, Paragraph 19 of the Rules the Virginia Supreme Court.

(8) Change of Membership Status. An emeritus member may petition for reinstatement to active membership under the procedure prescribed in subparagraph (d) of this rule for disabled and retired members.

Eff. Sept. 1, 2004

Clients' Protection Fund Board Petitions Paid

On May 12, 2006, the Clients' Protection Fund Board approved payments to seven claimants. The matters involved six attorneys.

Attorney/Location	Amount Paid	Type of Case
Steven E. Bennett, Williamsburg	$97.00	Costs advanced/Civil suit
Steven E. Bennett, Williamsburg	$400.00	Unearned retainer/Unperformed work
Serguei Danilov, McLean	$1,000.00	Unearned retainer/Immigration matter
Roger Cory Hinde, Richmond	$5,000.00	Unearned retainer/DUI matter
Troy A. Titus, Virginia Beach	$1,495.00	Unearned retainer/Unperformed work
Terry Lee Van Horn, Richmond	$6,653.94	Unearned retainer/Matters relating to divorce
John R. Willett, Alexandria	$16,650.00	Excessive fees/Personal injury
Total	**$31,295.94**	