Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Bruce Patrick Ganey**	Ashland, VA	Public Reprimand	September 20, 2004	2
William P. Robinson Jr.	Norfolk, VA	90 Day Suspension	April 1, 2006	3
Disciplinary Board				
Harry Wayne Brown	Roanoke, VA	Public Admonition w/Terms	February 10, 2006	5
Arnold Reginald Henderson V**	Richmond, VA	Two Week Suspension	January 27, 2006	8
Wade Anthony Jacobson	Richmond, VA	Revocation	March 23, 2006	n/a
Thomas Wesford Kinnane	Arnold, MD	Revocation	February 24, 2006	11
James Thomas Lloyd Jr.	Norfolk, VA	Revocation	February 7, 2006	n/a
Charles Gilman Lowry	Lynchburg, VA	Revocation	February 24, 2006	12
James Bryan Pattison	Sterling, KS	One Year Suspension	December 29, 2005	14
Robert Gerald Scogin Jr.	Roanoke, VA	Four Month Suspension w/Terms	April 1, 2006	16
Andrew Mark Steinberg	Woodbridge, VA	60 Day Suspension w/Terms	December 28, 2005	18
District Committees				
Robert Britton Armstrong	Lexington, VA	Public Reprimand w/Terms	March 21, 2006	20
Cynthia Dawn Garris	Norfolk, VA	Public Admonition	March 8, 2006	22
Walter Ballard Harris	Petersburg, VA	Public Reprimand w/Terms	February 17, 2006	24
Cynthia Ann Johnson	Springfield, VA	Public Reprimand w/Terms	February 17, 2006	28
Danny Shelton Shipley	Norfolk, VA	Public Admonition w/Terms	March 22, 2006	30
Marc James Small	Roanoke, VA	Public Reprimand	January 27, 2006	32
Cost Suspension				
Kristen Dawn Dean	Norton, VA		March 3, 2006	n/a
Lorie Ellen O'Donnell	Leesburg, VA	Suspended March 17, 2006	Lifted March 27, 2006	n/a
Troy Aurelius Titus	Virginia Beach, VA		February 9, 2006	n/a
Interim Suspensions—Failure to Comply w/Subpoena				
David Charles Dickey	Standardsville, VA	Suspended March 14, 2006	Lifted April 3, 2006	n/a
Impairment Suspension				
Frederick Lockhart Caldwell Sr.	Virginia Beach, VA	Disciplinary Board	February 22, 2006	n/a
Reginald Michael Harding	Virginia Beach, VA	Disciplinary Board	March 27, 2006	n/a

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

(**Editor's Note:** *Respondent has noted an appeal with the Virginia Supreme Court. Virginia Supreme Court has granted stay of suspension pending appeal.*)

VIRGINIA:

IN THE CIRCUIT COURT OF HANOVER COUNTY

VIRGINIA STATE BAR EX REL
SIXTH DISTRICT COMMITTEE,
Complainant
v.
BRUCE PATRICK GANEY,
Respondent
Case No. CL05000 176-00

MEMORANDUM ORDER UPON APPEAL

THIS APPEAL came on for hearing on September 8, 2005, before a Three-Judge Circuit Court panel consisting of the Honorable John F. Daffron, Jr., the Honorable Marc Jacobson and the Honorable Melvin R. Hughes, Jr., designated Chief Judge, upon the Rule to Show Cause of this Court and pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.H.4.a(1), Va. Code Sections 54.1-3935 and 8.01-261(17), the Respondent, Bruce Patrick Ganey, having timely demanded an appeal to a Three-Judge Circuit Court of the District Committee Determination (Public Reprimand) issued to and served upon the Respondent by the Sixth District Committee of the Virginia State Bar on September 20, 2004.

This proceeding was conducted pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.H.4.a.(4), Paragraph 13.I.3. and as appeal on the record.

Respondent Bruce Patrick Ganey appeared in person, *pro se*. Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

At the beginning of the proceeding, the respondent, Bruce Patrick Ganey, requested that he be allowed to call a witness who had appeared and testified in the underlying trial of this case before the Sixth District Committee. The Court denied the request since this proceeding is an appeal on the record of the Sixth District Committee.

Upon the record of the Sixth District Committee, the briefs and arguments of the Respondent, Bruce Patrick Ganey, and counsel for the Virginia State Bar, the Court finds that there is substantial evidence in the record of the Sixth District Committee upon which the Sixth District Committee could reasonably have found violations of Disciplinary Rules 2-105(A), 6-101(B) and 6-101(C) of the Virginia Code of Professional Responsibility; and Rules 1.3(a), 1.4(a), 1.4(b) and 1.5(a) of the Virginia Rules of Professional Conduct and **IT IS ORDERED THAT SAID VIOLATIONS ARE AFFIRMED**.

The Court finds that there is not substantial evidence in the record of the Sixth District Committee to support a violation of Rule 8.4(c) of the Virginia Rules of Professional Conduct and, accordingly, **IT IS ORDERED THAT SAID VIOLATION IS DISMISSED**.

The Court then heard evidence and argument on the issue of the determination of a sanction including the prior record of the Respondent.

IT IS **ORDERED** that THE SANCTION OF PUBLIC REPRIMAND imposed by the Sixth District Committee IS AFFIRMED.

IT IS FURTHER **ORDERED** that the automatic stay of the District Committee Determination (Public Reprimand) during the pendency of this appeal shall be lifted upon the effective date of this Order.

THIS ORDER SHALL BECOME EFFECTIVE on the thirty-first day after the Respondent is served with this Order pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.E.2., unless the Respondent sooner shall have appealed this decision.

IT IS FURTHER **ORDERED** that the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.B.8.c.

IT IS FURTHER **ORDERED** that the Clerk of this Court shall mail a certified copy of this Order to the Respondent and counsel of record.

The court reporter in this proceeding was Victoria V. Halasz, RPR, of Chandler and Halasz, Inc., P.O. Box 9349, Richmond, VA 23227, phone (804) 730-1222.

ENTERED THIS 8th DAY OF DECEMBER, 2005
Melvin R, Hughes, designated Chief Judge
John F. Daffron Jr., Judge
Marc Jacobson, Judge

SEEN:
Harry M. Hirsch, Esq.
Deputy Bar Counsel

SEEN:
And objected to the findings of violations
Bruce Patrick Ganey, Esq., Respondent, *Pro Se*

A COPY TESTE
Frank D. Hargrove Jr. Clerk
Hanover Circuit Court
By Lois B. Taylor, Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE,
Complainant,
Case No. CL04-2184

WILLIAM P. ROBINSON, JR.,
Respondent.

ORDER

On February 8, 2006, a hearing in this matter was held by telephone before the Hon. Jonathan M. Apgar, Chief Judge Designate. The Virginia State Bar (the Bar) was represented by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, William P. Robinson, Jr. (Mr. Robinson or Respondent), was present by telephone and represented by his counsel, Michael L. Rigsby, Esq. The Bar previously filed a Motion to Set Effective Date of Suspension with regard to the 90 day suspension of Mr. Robinson's law license imposed by this Court's Memorandum Order of June 2, 2005. The Court heard argument from counsel on the Bar's Motion. It appearing to the Court that Mr. Robinson's appeals in this matter have been exhausted and it is appropriate to set a new effective date for the 90 day suspension; accordingly, it is hereby

ORDERED that the 90 day suspension of the law license of William P. Robinson, Jr. commence April 1, 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 April 19, 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 8th day of February, 2006.

The Hon. Jonathan M. Apgar,
Chief Judge Designate

The Hon. Joseph E. Spruill, Jr.,
Judge Designate

The Hon. Alfred D. Swersky,
Judge Designate

SEEN:
Richard E. Slaney, Assistant Bar Counsel

SEEN AND OBJECTED TO:
Michael L. Rigsby, Esq., Respondent's Counsel

VIRGINIA:

BEFORE THE DISCIPLINARY BOARDOF THE VIRGINIA STATE BAR

IN THE MATTER OF
HARRY WAYNE BROWN
VSB DOCKET NOS.: 04-080-2244
04-080-3063

ORDER
(PUBLIC ADMONITIONS WITH TERMS)

These matters were heard on February 10, 2006, upon the Agreed Disposition of the Virginia State Bar and the respondent, Harry Wayne Brown ("Respondent"), based upon the certification of the Eighth District Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Werner H. Quasebarth, Lay Member, Robert E. Eicher, Esquire, William H. Monroe, Esquire, William E. Glover, Esquire, and Peter A. Dingman, Esquire, First Vice-Chair and presiding officer.

The hearing was conduced telephonically. Respondent Harry Wayne Brown appeared with his counsel, John H. Kennett, Jr. Assistant Bar Counsel Kathryn R. Montgomery appeared for the Virginia State Bar. The hearing was transcribed by Theresa S. Griffith, Court Reporter, with Chandler & Halasz, P.O. Box 9349, Richmond, VA 23228, telephone number (804) 730-1222.

Upon consideration of the Agreed Disposition, the prior record of Respondent, and the arguments of counsel, the Board deemed it appropriate to approve the Agreed Disposition and impose an Admonition with Terms in each of the pending cases. Accordingly, the Board finds by clear and convincing evidence the following:

I. VSB No. 04-080-2244
Complainant: Pippa M. Hairston

A. FINDINGS OF FACT

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

2. On or about April 28, 2003, Complainant Pippa M. Hairston ("Complainant") retained Respondent to represent her with regard to a Chapter 13 bankruptcy.

3. On May 5, 2003, on behalf of Complainant, Respondent filed a Chapter 13 bankruptcy petition with the United States Bankruptcy Court in Harrisonburg, Virginia.

4. Thereafter, Complainant made numerous calls and sent numerous e-mails to Respondent's office supplementing information and inquiring about the status of the case. Respondent himself did not return many of her calls; however, Complainant did communicate with Respondent's paralegal via e-mail and telephone.

5. On August 27, 2003, Complainant and Respondent attended an initial confirmation hearing in Complainant's bankruptcy case. The judge did not confirm the plan, but instead indicated that he would dismiss the case at the next hearing if Complainant did not become current with her plan payments. The next hearing was set for November 19, 2003.

6. After the hearing, Complainant told Respondent she did not understand how she could be delinquent because she was on automatic wage reduction. Through his paralegal, Respondent responded to Complainant's concerns, but the explanation left Complainant confused.

7. On November 18, 2003, Respondent's office faxed a request to attorney Roland S. Carlton, Jr., who was not affiliated with Respondent's law practice, asking him to appear on behalf of Complainant at the hearing. The fax indicated that an amended plan would be filed in Complainant's case and instructed Mr. Carlton to request a continuance. Mr. Carlton agreed to appear and did so.

8. At the November 19, 2003 hearing, Complainant's case was dismissed without prejudice for failure to keep plan payments current.

9. Thereafter, Complainant terminated Respondent's services and retained attorney Roland S. Carlton, Jr. to handle her bankruptcy.

B. NATURE MISCONDUCT

Based on the facts described above, the Board finds that 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.

C. DISPOSITION

Accordingly, it is **ORDERED** that Respondent receive a Public Admonition with Terms, effective February 10, 2006. The Terms are as follows:

Retain and pay a law office management consultant approved by the Virginia State Bar to meet with Respondent and his staff, review office procedures for case management, provide recommendations, and prepare a report. Respondent must submit the report and proof of payment to Assistant Bar Counsel, Kathryn R. Montgomery, or her designee, by **September 1, 2006**.

By April 3, 2006, Respondent shall submit to Assistant Bar Counsel, Kathryn R. Montgomery, or her designee, a form fee agreement that complies with the Rules of Professional Conduct. Thereafter, Respondent shall use the fee agreement in his practice.

If, however, Respondent fails to meet these terms within the time specified, the Disciplinary Board shall impose upon him a ten (10) day suspension as an alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Disciplinary Board 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.

The Clerk of the Disciplinary System shall assess the appropriate administrative fees.

II. VSB No. 04-080-3063
Complainant: Linda C. Mahoney

A. FINDINGS OF FACT

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

2. Respondent completed a Chapter 7 bankruptcy on behalf of Complainant Linda C. Mahoney ("Complainant"). Thereafter, Complainant's husband, Will Smith Mahoney, retained Respondent for a Chapter 13 bankruptcy.

3. On or about June 27, 2003, Respondent filed a Chapter 13 bankruptcy petition on behalf of Mr. Mahoney.

4. On or about October 14, 2003, Respondent filed a Motion for Continuance to continue all matters currently pending, including the Trustee's Objection and Show Cause on Dismissal and the confirmation hearing, to November 20, 2003, when a pending Motion for Valuation was scheduled to be heard.

5. Pursuant to Respondent's motion, the case was continued to November 20, 2003 with conditions.

6. On or about October 29, 2003, Respondent filed a second Motion for Continuance, requesting that all matters be continued to December 11, 2003. The Motion included a proposed Order of continuance with conditions. However, the proposed order was never signed by the trustee, nor entered by the court.

7. Complainant and her husband received notices from the court regarding the continuance, and called Respondent's office regarding the court date. Respondent's paralegal said the case was continued and that there was no need for them to appear in court on November 20, 2003.

8. On or about November 19, 2003, Respondent's paralegal faxed two notes to attorney David Cox, who was not affiliated with Respondent's law practice, requesting that he cover the November 20, 2003 hearing. In one fax, the note cover sheet says that counsel for Bank One, "has no objection to the continuance of her Motion to Lift Stay and Objection to 12/11." The note went on to say "I will hear back from the Trustee today. For your information all the conditions are met in regard to the Trustee's report. Thank you." The second faxed note stated "Attached is a copy of the Order of Continuance that was forwarded to the Trustee on 10/28/03 and to the Court for filing. The original is with the Trustee and he has no objections to the continuance since the conditions stated in the Order have been met. If you have any questions, please do not hesitate to call me. Thank you for your assistance."

9. However, contrary to Respondent's understanding, due to a miscommunication, Bank One's objections to the plan were not resolved.

10. When attorney David Cox appeared at the November 20, 2003 hearing on behalf of Mr. Mahoney, the case was dismissed without prejudice for failure to comply with the terms of the continuance order. Pursuant to the instructions of Respondent's paralegal, Mr. Mahoney did not appear. Neither the Mahoneys nor Mr. Cox were prepared for or expected this result.

B. NATURE OF MISCONDUCT

Based on the facts described above, the Board finds that 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.

C. DISPOSITION

Accordingly, it is **ORDERED** that Respondent receive a Public Admonition with Terms, effective February 10, 2006. The Terms are as follows:

Attend three (3) hours of a live MCLE-approved Continuing Legal Education program in the area of ethics, attend (3) hours of a live MCLE-approved Continuing Legal Education program in the area of bankruptcy law, and certify completion to Assistant Bar Counsel Kathryn R. Montgomery, or her designee, by **September 1, 2006**. These six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours for credit 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, the Disciplinary Board shall impose upon him a ten (10) day suspension as an alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Disciplinary Board 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.

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

It is further **ORDERED** that a copy teste of this Order shall be mailed, certified mail, return receipt requested, to Respondent at his last address of record at the Virginia State Bar, 335 West Church Avenue, Roanoke, Virginia 24016, and by first class mail to his counsel, John H. Kennett, Jr., Esquire, and a copy shall be furnished to Assistant Bar Counsel Kathryn R. Montgomery.

Entered this 15 day of February, 2006.
Virginia State Bar Disciplinary Board

By: Peter A. Dingman, Esquire
First Vice-Chair and Presiding Officer

(**Editor's Note:** *Respondent has noted an appeal with the Virginia Supreme Court. Virginia Supreme Court has granted stay of suspension pending appeal.)*

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ARNOLD REGINALD HENDERSON, V
VSB DOCKET NO. No. 06-032-0837

ORDER OF SUSPENSION

THIS MATTER came on to be heard on January 27, 2006, before a panel of the Disciplinary Board consisting of James L. Banks, Jr., 2nd Vice Chair, Bruce T. Clark, Esquire, William H. Monroe, Jr., Esquire, Dr. Theodore Smith, Lay member, and H. Taylor Williams, IV, Esquire. The Virginia State Bar was represented by Harry M. Hirsch, interim Bar Counsel. The Respondent, Arnold Reginald Henderson, V, was represented by Michael L. Rigsby, Esquire. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Donna T. Chandler, court reporter, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board following a Third District Committee Determination on a show cause hearing that the Respondent, Arnold Reginald Henderson, V, had failed to fulfill Term Three of a sub-committee determination (a Public Reprimand with Terms) issued March 18, 2005. The District Committee certified the matter to the Board for sanction determination. Because this matter comes before the Board on a Certification for Sanction Determination whereby the Third District Committee had ruled that the Respondent had failed to carry out his burden of proving compliance with the third term of the public reprimand and that an alternate disposition should be imposed, the Board's charge pursuant to Rules of Court, Part Six, Section IV, ¶ 13.I.4.(c) and (d) was to hear evidence only of mitigation and aggravation with respect to compliance or certification and to determine the appropriate sanction.

I. FINDINGS OF FACT

VSB's Exhibits presented collectively as Exhibit 1 were admitted without objection. Respondent's prior disciplinary history was admitted as VSB's Exhibit 2. Respondent's letter dated May 19, 2005, from Arnold R. Henderson, V, to Mr. Reginald Hayspell, together with a final accounting, was admitted without objection as Respondent's Exhibit 1.

1. This matter originated as a complaint against Respondent initiated by Alvin Hayspell, VSB Docket No. 04-032-2883. Respondent and Bar Counsel reached an agreed disposition. The agreed disposition resulted in the Public Reprimand with Terms, including Term Three as set forth below. The public reprimand was issued on March 18, 2005, and served upon the Respondent.

2. Pursuant to the Public Reprimand with Terms in the matter of Arnold Reginald Henderson, V, formerly VSB Docket No. 04-032-2883, issued on March 18, 2005, and received by Respondent, Term Three of the Public Reprimand with Terms states as follows:
   "3. By May 15, 2005, Respondent shall:
   (a) Provide to Deputy Bar Counsel an accounting of the funds paid to Respondent by Alvin or Reginald Hayspell;
   (b) after contacting Reginald Hayspell and determining to whom to pay any funds remaining, pay to said person any of said funds which the accounting reflect as being unearned fees and unexpended costs."

   The Public Reprimand with Terms further states as follows:
   "Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met as stated herein, the Third District Committee, Section Two, shall impose a Certification for Sanction Determination."

3. The Third District Committee, Section Two, determined that the Respondent, Arnold Reginald Henderson, V, failed to fulfill Term Three and therefore certified this matter to the Disciplinary Board for sanction determination on October 25, 2005.

4. Respondent offered evidence in mitigation that he had substantially complied with the requirements of Term Three of the public reprimand issued by the Third District Committee by offering the following narrative of actions: sometime prior to May 11, 2005, Respondent reviewed the case file and prepared information for a spread sheet to be prepared by an employee, Malik Hodari. Malik Hodari testified that he received the information from Respondent and prepared the accounting that he

attached to Respondent's Exhibit No. 1. The accounting was sent with a letter dated May 19, 2005, to Reginald Hayspell. Respondent testified that he instructed Mr. Hodari to send a copy of the accounting and the letter to Mr. Hirsch, assistant Bar Counsel. Mr. Hodari testified that Respondent instructed him to send a copy to Mr. Hirsch. Mr. Hodari further testified that it was his recollection he did send a copy to Mr. Hirsch. The letter does not show a copy to be sent to assistant Bar Counsel.

5. No copy of the letter or the accounting was received by the Bar or Bar Counsel until January 26, 2006, the day before the hearing scheduled before the Board.

6. Because Bar Counsel had not received a copy of the accounting as required by the Term, assistant Bar Counsel wrote to Respondent by letter dated June 21, 2005, requesting Respondent to advise counsel of the status of his compliance with these terms. (The Board would note that this letter was more than a month after the date for compliance and was nonthreatening and simply asked whether or not Respondent had complied with the term requiring the accounting, etc.)

7. Respondent's employee, Malik Hodari, testified that in July, 2005, before Respondent went on vacation, he and Respondent discussed this inquiry. Respondent asked whether or not Hodari had sent a copy of the accounting to Bar Counsel. Hodari responded in the affirmative to the question. Hodari recalled that Respondent checked that item off of a check list of things to be accomplished before he went on vacation. Nothing further was contemplated in response to the inquiry from Bar Counsel, and in fact, Respondent did not communicate at that time to Bar Counsel that he thought he had already complied with the term requiring him to submit the accounting.

8. By letter dated August 12, 2005, sent certified mail, return receipt requested, Deputy Bar Counsel again sent a letter to Respondent advising Respondent that nothing had been received by the Bar regarding compliance with the term to provide an accounting. It should be noted that the letter was addressed to Respondent but used an improper zip code. It should further be noted that the letter was returned to the office of the Virginia State Bar stamped "unclaimed" but shows that delivery was attempted on August 18, August 23, and September 2, 2005. The Bar contends that Respondent was refusing certified mail. Respondent replies that he was having difficulty with postal service employees at that particular time.

9. A notice of show cause hearing dated September 15, 2005, was mailed to Respondent by certified mail, return receipt requested, advising Respondent that a show cause hearing before the Third District Committee would be held on October 14, 2005, at 9:30 a.m. The notice was evidently delivered because the receipt was returned, although the receipt was not signed and does not indicate the date it was received by Respondent or his employees.

10. A letter dated September 23, 2005, giving notice of a show cause hearing before the Third District Committee scheduled for October 14, 2005, at 9:30 A.M. was sent to Respondent by certified mail, return receipt requested. Evidently the letter was delivered because the return receipt came back to the Virginia State Bar although it was not signed and does not state when it was received by Respondent or his employees.

11. The show cause hearing was held before the Third District Committee on October 14, 2005. Respondent did not appear at the show cause hearing to show cause why he should not be faced with the alternate sanction because he had failed to comply with the requirements of Term Three to provide Bar Counsel an accounting of the fees paid and earned by Respondent. The Third District Committee panel found that Respondent had failed to show cause why the alternate sanction should not be imposed and referred the matter of what sanction to impose to the Disciplinary Board.

12. On November 9, 2005, an amended notice of hearing on Certification for Sanction Determination before the Disciplinary Board scheduled for January 27, 2006, was sent to Respondent by certified mail, return receipt requested. According to the return receipt, the amended notice of hearing was received by Respondent on November 10, 2005.

13. On January 26, 2006, Respondent, by counsel, filed a copy of a letter dated May 19, 2005, from Respondent to Reginald Hayspell providing an accounting of the fees paid and earned by Respondent. The letter was accepted as evidence only in mitigation of the determination of what sanction to impose against Respondent.

II. DISPOSITION

Upon review of the foregoing findings of fact relating to Docket No. 06-032-0837, upon review of exhibits presented by Bar Counsel on behalf of the VSB, upon review of an Exhibit presented by Respondent, upon evidence offered in mitigation presented by Respondent in the form of his own testimony and the testimony of his employee, Malik Hodari, and upon the argument of counsel, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

It is the Board's unanimous decision that an alternate sanction be imposed upon Respondent that his license to practice law in the Commonwealth of Virginia be suspended for a period of two weeks. The Board finds that Respondent had ample opportunity to

comply with the requirements of Term Three of the public reprimand. Compliance was set for May 15, 2005. That date for compliance was approximately 60 days after issuance of the Public Reprimand With Terms, but even more time had passed since the Respondent reached an agreed disposition with Bar Counsel regarding the Public Reprimand with Terms. The Board heard evidence offered in mitigation by Respondent that he sought an extension of time from a May 15th deadline for purposes of complying with Term One of the public reprimand. An extension of time was granted to Respondent to comply with Term One from May 15, 2005, to May 20, 2005. The Board knows that Respondent took steps to comply with Term Three by sending a refund together with a letter dated May 20, 2005, to Alvin Hayspell and preparing an accounting and sending a copy of the accounting to Reginald Hayspell by letter dated May 19, 2005. However, it was the responsibility of Respondent to insure that a copy of the accounting was delivered to Bar Counsel.

The Board cannot understand why Respondent didn't follow through on numerous contacts made by Bar Counsel to Respondent inquiring about the status of the completion of the terms required in Term Three. Respondent did not offer a credible explanation as to why he did not respond to the inquiries of Bar Counsel. It is apparent from the testimony of Respondent's employee that the issue of compliance with the requirements of Term Three was visited some time in July, 2005, before Respondent went on vacation and yet he took no action to show Bar Counsel that he had complied with the requirements of Term Three. A show cause hearing was scheduled before the Third District Committee to give Respondent an opportunity to show cause why the alternate sanctions should not be imposed. Respondent received notification of the date of the show cause hearing by two separate certified mailings from the Virginia State Bar and yet Respondent failed to appear at the show cause hearing scheduled for October 14, 2005, and offer any explanation as to why the alternate sanction should not be imposed. The Board finds it incredible that Respondent failed to appear on October 14, 2005, and produce the letter now marked as Respondent's Exhibit No. 1 dated May 19, 2005, addressed to Reginald Hayspell enclosing an accounting as required by Term Three. Although the letter was received in the sanctions hearing on January 27, 2006, it could only be offered for mitigation purposes at that time and could not be accepted as evidence to show cause why he should not receive the alternate sanction. The Board also cannot understand why the letter dated May 19, 2005, addressed to Reginald Hayspell with the necessary accounting that would have shown compliance with Term Three was not received until the eleventh hour on January 26, 2006. It is for these reasons that the Board believes suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of two weeks is the appropriate sanction.

Accordingly, it is **ORDERED** that the license of Respondent, Arnold Reginald Henderson, V, to practice law in the Commonwealth of Virginia is hereby suspended for a period of two weeks effective upon entry of this order.

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

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

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being 116 East Franklin Street, Suite 102, Richmond, Virginia 23219, by certified mail, return receipt requested, and to Michael L. Rigsby, Esquire, Carrell Rice & Rigsby, Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, Virginia 23226, and to Harry Hirsch, Interim Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, by regular mail.

ENTERED this 22nd day of February, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks, Jr.,
2nd Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
THOMAS WESFORD KINNANE
VSB DOCKET NO. 06-000-2270

ORDER OF REVOCATION

THIS MATTER came on to be heard on Friday, February 24, 2006 before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, 1300 East Main Street, Richmond, Virginia, 23219, hearing room B. The Board was comprised of Peter A. Dingman, Chair, Theodore Smith, Ph.D., Lay member, Russell W. Updike, Esquire, H. Taylor Williams, IV, Esquire, and Sandra Lee Havrilak, Attorney at Law. Proceedings in this matter were transcribed by Theresa L. McLean, CCR, a registered professional reporter, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether they had any personal or financial interest or bias which would interfere with or influence that member's determination of the matter. Each member, including the Chair, answered in the negative; the matter proceeded.

The hearing was originally scheduled to be heard at the Lewis F. Powell Courthouse; however, the hearing was moved to the current location at the State Corporation Commissin. Notice was posted on the door of the Lewis F. Powell Courthouse courtroom and a clerk of the Virginia State Bar was assigned to the Lewis F. Powell Courthouse courtroom to direct all interested parties to the State Corporation Commission. The Respondent, Thomas Wesford Kinnane, failed to appear. The Chair directed the Clerk to call the case in the hallway three (3) times and no one responded. The Virginia State Bar appeared by its counsel, Paulo E. Franco, Esquire.

I. Findings of Fact

This matter came before the Disciplinary Board as a result of the respondent being disbarred from the practice of law in the State of Maryland, effective December 23, 2005, by order of the Court of Appeals of Maryland, Misc. Docket AG No: 74, decided December 23, 2005. A Rule to Show Cause and Order of Suspension and Hearing was entered on January 27, 2006.

The Board found that all legal notices of the date and time and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

Part Six § IV ¶ 13.I.7 of the *Rules of the Supreme Court of Virginia* specifies how the Board is to proceed upon receiving notice of disbarment of a Virginia attorney in another jurisdiction. The Rule states that the Board shall impose the same discipline as was imposed in the other jurisdiction unless the Respondent proves, by clear and convincing evidence, one or more of the following three grounds for an alternative or no sanction being imposed:

(1) That the record of the proceeding in the other jurisdiction clearly shows that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process.

(2) That the imposition by the Board of the same discipline upon the same proof would result in a grave injustice.

(3) That the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

The following items were admitted into evidence:

Exhibit 1—a certified copy of Mr. Kinane's disciplinary record as of February 22, 2006.

Exhibit 2—a certified copy of the opinion and order in the matter of *Attorney Grievance Commission of Maryland v. Thomas W. Kinnane, Misc*. Docket AG No: 74, September term, 2004, filed December 23, 2005.

Exhibit 3—Stipulation of Facts presented in the case of *Attorney Grievance Commission of Maryland v. Thomas W. Kinnane, In the Court of Appeals Misc*. Docket AG No: 74, September term, 2004.

Mr. Kinnane failed to appear, failed to file a written response to the notice and failed to file any argument in these proceedings.

II. Disposition

After hearing the evidence and argument of the Virginia State Bar, the Board found by clear and convincing evidence that the license of Thomas W. Kinnane to practice law in the State of Maryland has been revoked and that such action has become final. The Board also found that Respondent failed to prove by clear and convincing evidence any of the three grounds, which would permit this Board to impose any sanction other that revocation. Mr. Kinnane failed to produce any evidence whatsoever. Mr. Kinnane did not participate in the proceedings in the State of Maryland and stipulated to the facts that warranted his revocation.

Accordingly, it is hereby **ORDERED** that Thomas W. Kinnane's license to practice law in the Commonwealth of Virginia be and hereby is, revoked effective February 24, 2006.

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

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by ¶ 13 (M) shall be determined by of the Virginia State Bar Disciplinary Board unless the Respondent makes a timely request for hearing before a three (3) judge court.

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar, being Thomas Wesford Kinnane, 959 Blue Fox Way, Arnold, Maryland 21012, by certified mail, return receipt requested, and by regular mail to Paulo France, Esquire, Assistant Virginia State Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this 3rd day of March, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Peter A Dingman, Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
CHARLES GILMAN LOWRY
VSB DOCKET NO. 06-000-2270

ORDER OF REVOCATION

THIS MATTER came on to be heard on Friday, February 24, 2006, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, Courtroom B, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, 23219. The Board was comprised of Peter A. Dingman, Chair, Sandra Havrilak, H. Taylor Williams, IV, Russell W. Updike, and Dr. Theodore Smith, lay member.

The matter was originally scheduled to be heard at the Lewis F. Powell Courthouse, but was moved to the State Corporation Commission. Notice of this relocation was posted on the door of the originally scheduled courtroom and an Assistant Clerk of the Disciplinary System was assigned to that location to redirect all interested persons. After this matter was announced for hearing, at the request of the Chair, an Assistant Clerk called the name of Respondent three times in the hallway outside the hearing room.

Respondent, Charles Gilman Lowry, did not appear nor was he represented at the hearing by counsel. The Virginia State Bar was represented by J. Scott Kulp, Assistant Bar Counsel.

The Chair polled the members of the Board as to whether any of them were conscious of any personal or financial interest or bias which would preclude them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Teresa L. McLean, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

This matter came before the Board on the Board's Rule to Show Cause and Order of Suspension and Hearing dated January 26, 2006.

Bar Counsel made an opening statement and thereafter VSB Exhibits 1 through 4 were admitted without objection. Bar Counsel called one witness, Robert L. Michael. No evidence was offered on behalf of the Respondent. Thereafter, Bar Counsel made his closing argument.

I. FINDINGS OF FACT

Having considered the evidence, including VSB Exhibits 1 through 4, entered into evidence, the Board unanimously found by clear and convincing evidence, to wit:

(1) At all relevant times hereto, Charles Gilman Lowry, hereinafter the "Respondent," has been a lawyer duly licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been 3937 Fort Avenue, Lynchburg, Virginia, 24502-4713. The Respondent was properly served with notice of this proceeding as required by Part Six, § IV, ¶ 13(E) of the Rules of the Supreme Court of Virginia.

(2) On June 23, 2005, a Superceding Indictment was returned in the United States District Court for the Western District of Virginia, Lynchburg Division, charging Respondent with eight counts of criminal activity, resulting in Respondent facing possible punishment of sixty-one years incarceration and a $1.75 million fine.

(3) On January 12, 2006, Respondent executed a plea agreement whereby he entered pleas of guilty to Counts One and Three of the Indictment, charging Respondent with Conspiracy (Count One) and with Wire Fraud (Count Three). The aforesaid plea agreement was also executed by Respondent's counsel as well as an Assistant United States Attorney.

(4) On February 22, 2006, Respondent executed an Affidavit stating as follows:
(a) My name is Charles Gilman Lowry;
(b) I reside at 3937 Fort Avenue, Lynchburg, Virginia, 24502;
(c) I was licensed to practice law within the Commonwealth of Virginia on April 24, 1981;
(d) The Virginia State Bar Disciplinary Board suspended my license on January 26, 2006;
(e) I have no objection to further suspension and/or revocation of my Virginia Bar License; and,
(f) I make this Affidavit of my own free will and consent.

(5) Respondent has entered a plea to a Crime, as defined by the Rules of Court, Part Six, § IV, ¶ 13.I.5.

(6) By Rule to Show Cause an Order of Suspension and Hearing dated January 26, 2006, Respondent's license to practice law in Virginia was immediately suspended pursuant to the Rules of Court, Part Six, § IV, ¶ 13.I.5.b and the Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

II. DISPOSITION

PARAGRAPH 13.I.5.b and c, Part Six, ¶ IV of the Rules of the Supreme Court of Virginia entitled "a Guilty Plea or Adjudication of a Crime" and "Action by the Board" provide in relevant part:

(b) Whenever the Clerk of the Disciplinary System receives written notification from any court of competent jurisdiction stating that an Attorney (the "Respondent") has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, irrespective of whether sentencing has occurred, a member of the Board shall forthwith and summarily issue an Order of Suspension on behalf of the Board against the Respondent and shall forthwith cause to be served upon the Respondent: a copy of the written notification from the court; a copy of the Board member's order; and a notice fixing the time and place of the hearing to determine whether Revocation or further Suspension is appropriate.

(c) If the Board finds at the hearing that the Respondent has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, an Order shall be issued, and a copy thereof served upon the Respondent in which the Board shall:

(1) continue the Suspension or issue an order of Suspension against the Respondent for a stated period not in excess of five years; or

(2) issue an order of Revocation against the Respondent.

The Board unanimously finds that the Respondent has pled guilty to a crime and has not furnished any evidence or reasons as to why the Board should not issue an Order of Revocation against the Respondent.

It is therefore **ORDERED** pursuant to Paragraph 13.I.5.b and c of the Rules of the Supreme Court of Virginia that the license of the Respondent, Charles Gilman Lowry, to practice law in the Commonwealth of Virginia be, and the same is hereby, **REVOKED** effective February 24, 2006.

It is further **ORDERED** that, as directed in the Board's January 26, 2006, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, Paragraph 13M of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within fourteen (14) days of the effective date of the Suspension Order and make such arrangements as are required herein within forty-five (45) days of the effective date of the Summary Order. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the Summary Order that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an Affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Charles Gilman Lowry, at his address of record with the Virginia State Bar, 3937 Fort Avenue, Lynchburg, Virginia, 24502-4713, by certified mail, return receipt requested, and a copy hand-delivered to James S. Kulp, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219.

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

ENTERED this 20th day of March, 2006
VIRGINIA STATE BAR DISCIPLINARY BOARD

Peter A. Dingman, Chair
Virginia State Bar Disciplinary Board

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JAMES BRYAN PATTISON
VSB Docket No: 06-000-2064

ORDER AND OPINION

THIS MATTER came before the Virginia State Bar Disciplinary Board ("Board") for hearing on January 27, 2006, upon a Rule to Show Cause and Order of Suspension and Hearing entered on December 29, 2005 ("Rule"). A duly convened panel of the Board consisting of Robert L. Freed, presiding, Joseph R. Lassiter, Jr., Russell W. Updike, David R. Schultz, and Stephen A. Wannall, lay member, heard the matter. Edward L. Davis, assistant bar counsel, appeared on behalf of the Virginia State Bar ("VSB"). James Bryan Pattison ("Respondent") did not appear. The court reporter for the proceeding, Valerie L. Schmit May, Post Office Box 9349, Richmond, Virginia, 23227, telephone (804) 730-1222, was duly sworn by the Chair.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk"), in the manner prescribed by law. Part Six, § IV, ¶ 13(I)(7)(a) of the Rules of the Supreme Court, *Disbarment or Suspension in Another Jurisdiction* provides, in relevant part, that following the issuance of a show cause order and order of suspension, the Board shall serve upon the Respondent by certified mail a copy of the suspension or revocation notice, a copy of the Board's Order, and a notice fixing the time and place of a hearing to determine what action should be taken in response to the suspension or revocation notice and stating the purpose of the hearing. The Board finds that the VSB has complied with these requirements by forwarding a certified letter dated January 3, 2006, return receipt requested, to Respondent at both his address of record and at an alternate address obtained by the VSB.

The case was thrice called by the clerk, and the Respondent neither answered the docket call nor appeared to defend his interests. Respondent did not file a response to the Rule as required by ¶ 13(I)(7)(b). The Chair opened the hearing by polling the Board members to ascertain whether any member had any personal or financial interest or bias which would interfere with or influence each such member's determination, and each member responded that there were no such conflicts.

The Virginia State Bar Exhibits 1, 2 and 3 were admitted into evidence without objection. Exhibit 1 is the affidavit of Diana L. Balch, VSB director of membership, with attachments, setting forth the status of Respondent's membership with the VSB, which is not in good standing, and including an order from the Supreme Court of the State of Kansas, filed October 21, 2005, suspending his license to practice law in Kansas for a period of one year. Exhibit 2 is the disciplinary record of Respondent. Exhibit 3 is proof of notice to an alternate address provided for Respondent, as well as his address of record.

The Respondent has failed to assert a defense as provided in Part 6, § IV, ¶ 13(I)(7)(b) of the Rules of the Supreme Court. Accordingly, the Board must impose the same discipline imposed by the Supreme Court of the State of Kansas, to-wit: suspension of Respondent's license to practice law for a period of one year.

Upon consideration of the matters before this panel of the Board, it is hereby **ORDERED** that, pursuant to Part 6, § IV, ¶ 13(I)(7) of the Rules of the Supreme Court, the license of Respondent, James Bryan Pattison, to practice law in the Commonwealth of Virginia shall be, and is hereby, **SUSPENDED** for a period on one year beginning December 29, 2005.

It is **FURTHER ORDERED** that, as directed in the Board's January 27, 2006 Summary Order in this matter, a copy of which was served on Respondent by certified mail, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of one (1) year 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 give notice within fourteen (14) days of the effective date of the Summary Order and make such arrangements as are required within forty-five (45) days of the effective date of the order. The Respondent shall also furnish proof to the VSB within sixty (60) days, or on or before March 28, 2006, that such notices have been timely given and such arrangements made for the disposition of matters.

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

It is ordered that Part Six, § IV, ¶ 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk shall assess all costs against Respondent.

It is further **ORDERED** that the Clerk shall send an attested copy of this Order and Opinion to Respondent, James Bryan Pattison, by certified mail, at his address of record, 727 North 6th Street, Sterling KS 67579; and to Edward L. Davis, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219-2803.

SO **ORDERED**, this 10th day of February, 2006.
By: Robert L. Freed, Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ROBERT GERALD SCOGIN, JR
VSB DOCKET NO. 06-000-0156

ORDER OF SUSPENSION OF FOUR MONTHS WITH TERMS

Pursuant to Pt. 6, Sec. IV, Para. 13.I.5 of the Rules of the Virginia Supreme Court, the Board issued a Rule To Show Cause on February 24, 2006, following its receipt of information that Respondent Robert Gerald Scogin, Jr. had entered guilty pleas to the crime of Possession of Cocaine under a first offender statute. On March 21, 2006, this matter was presented by teleconference for approval of an agreed disposition to a duly convened panel consisting of James Leroy Banks, Jr., Esquire, 2nd Vice Chair, Bruce Taylor Clark, Esquire, Leonard L. Brown, Jr., Esquire, William M. Moffet, Esquire, and Mr. Werner H. Quasebarth, lay member. The Virginia State Bar appeared through its Assistant Bar Counsel, Paul D. Georgiadis, and the Respondent, who was present, appeared by counsel Craig S. Cooley.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶ 13.B.5.c., the Virginia State Bar, by Paul D. Georgiadis, Assistant Bar Counsel, and the Respondent, by counsel Craig S. Cooley, 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 or her ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

I. FINDINGS OF FACT

1. At all times material to these allegations, Robert Gerald Scogin, Jr., hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about July 1, 2005, Respondent entered into a plea agreement pursuant to Va. Code Sec. 18.2-251 in the City of Roanoke Circuit Court. Therein, Respondent pled guilty to first time possession of cocaine in violation of Virginia Code Sec. 18.2-250 arising out of an arrest on January 7, 2005. The Court accepted said agreement and plea.

3. On or about October 14, 2005, Respondent entered into a plea agreement pursuant to Va. Code Sec. 18.2-251 in the Roanoke County Circuit Court. Therein, Respondent pled guilty to first time possession of cocaine in violation of Virginia Code Sec. 18.2-250 arising out of arrests on December 28, 2004, and January 13, 2005. The Court accepted said agreement and plea.

4. Prior to entering into the City of Roanoke Circuit Court plea agreement on July 1, 2005, Respondent entered into substance abuse treatment programs.

5. Both the Roanoke County Circuit Court and the City of Roanoke Circuit Court have ordered Respondent to enter into and comply with the terms of the Twenty-Third Judicial Drug Court Program.

6. In compliance with said orders, Respondent has entered into said Drug Court Program and is in compliance with the orders and terms of the Drug Court Program.

II. NATURE OF MISCONDUCT

The Board finds that such conduct on the part of the Respondent violates Rule 8.4 (b):

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;

III. IMPOSITION OF SANCTION OF FOUR-MONTH SUSPENSION WITH TERMS

The Board considered all evidence before it, considered the nature of the Respondent's actions, and considered the mitigating evidence in this matter. In mitigation, it found that Respondent has been fully cooperative with law enforcement and with the Virginia State Bar in admitting to his misconduct and seeking healthcare assistance.

Pursuant to Part 6, Sec. IV, Para. 13.I.2.f. of the Rules of the Virginia Supreme Court, the Board **ORDERS** that the license of the Respondent, Robert Gerald Scogin, Jr., to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for Four Months, effective April 1, 2006.

Pursuant to the terms of the parties' Agreed Disposition, it is further **ORDERED** that Respondent comply with the following terms, and written proof of compliance with terms 1, 2, and 4 shall be provided to Assistant Bar Counsel Paul D. Georgiadis on or before April 1, 2006:

1. Respondent shall execute a Consent to Release Confidential Information or such further releases as may be requested by the Virginia State Bar to authorize Lawyers Helping Lawyers ("LHL") to release information regarding Respondent's compliance with LHL's Rehabilitation and Monitoring Agreement;

2. Respondent shall enter into an agreement of rehabilitation and monitoring with LHL with a duration of two (2) years commencing April 1, 2006 and terminating March 31, 2008.

3. Respondent shall comply with all terms and conditions of the LHL agreement and monitoring agreement for a period of two (2) years commencing April 1, 2006, and terminating March 31, 2008.

4. Respondent shall direct LHL to provide a quarterly report to Assistant Bar Counsel Paul D. Georgiadis and/or his designee in which LHL certifies Respondent's compliance or lack thereof with the terms and conditions of LHL's monitoring and rehabilitation agreement. The first such report shall be due on or before July 1, 2006.

If, however, Respondent fails to meet the aforesaid terms within the time periods specified, Respondent, as agreed in the aforementioned Agreed Disposition, shall be suspended under the alternate sanction of a three-year suspension to be imposed by the Disciplinary Board, subject only to a show cause hearing.

In the event of alleged failure to meet 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 a three-year suspension should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. As set forth in the parties' Agreed Disposition, Respondent has agreed and has waived his right to demand a hearing before a three-judge circuit court panel and has consented to any such hearing being solely before the Virginia State Bar Disciplinary Board. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board. 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.

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 April 1, 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. Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules of the Supreme Court of Virginia, 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, Robert Gerald Scogin, Jr., at 1515 Longview Road, Roanoke, Virginia 24018, his last address of record with the Virginia State Bar; by first class mail, postage prepaid, to his counsel of record, Craig S. Cooley, 3000 Idlewood Avenue, P.O. Box 7268, Richmond, Virginia 23221-0268, and hand delivered to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Jennifer L. Hairfield, 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: March 22nd, 2006
VIRGINIA STATE BAR DISCIPLINARY BOARD

By: James Leroy Banks, Jr., 2nd Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ANDREW MARK STEINBERG
VSB DOCKET NOS. 06-000-2058

ORDER OF SUSPENSION

THIS MATTER came on to be heard on January 27, 2006, at 9:00 A.M., in Courtroom Court C of the State Corporation Commission, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia 23219, before a panel of the Disciplinary Board consisting of Robert L. Freed, Chair, David R. Schultz, Joseph R. Lassiter, Russell W. Updike, and Stephen A. Wannall, Lay member. The Virginia State Bar was represented by Edward L. Davis, Assistant Bar Counsel, The respondent, Andrew Mark Steinberg, appeared in person *pro se*.

The court reporter, Valarie L. Schmit May, RPR, of Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by the Chair and thereupon reported the hearing and transcribed the proceedings.

The Chair inquired of the members of the panel of the Board whether any of them had any personal or financial interest or any bias that would preclude their hearing this matter fairly and impartially, to which inquiry each member and the Chair answered in the negative.

The matter came before the Board on the Board's Rule to Show Cause why the Respondent's license to practice law in the Commonwealth of Virginia should not be suspended by reason of the disciplinary suspension of his license to practice law in the District of Columbia.

Bar counsel made an opening statement and thereafter VSB Exhibits 1, 2, 3 were admitted without objection.

Respondent moved to have the hearing dismissed or continued on the grounds that he had not received adequate or proper notice of the hearing. More particularly he argued that since he was out of town for approximately three weeks and did not pick up his mail until six days prior to the scheduled hearing, the notice failed to meet the requirements of Part 6, Section IV, Paragraph 13.I.7., of the Rules of the Supreme Court of Virginia "Rules". He did however admit that the notice was properly mailed in accordance with such Rules. The Chair denied the motion and the hearing proceeded.

The Bar then moved to deny Respondent the opportunity to present any evidence because Respondent had not filed a written response to the Rule to Show Cause under Part 6, Section IV, Paragraph 13.I.7.b and f. The Board agreed with the Bar that as a matter of fact Respondent had not timely filed a response and had not complied with the Rule. However, it also noted that the cover letter from the Clerk's office dated January 3, 2006 which accompanied the Rule to Show Cause stated that the Respondent "may" file a written response rather than using the mandatory word "shall." For this reason the Board believed the Respondent should be entitled to present evidence. Bar counsel objected and moved to continue the hearing, which motion was taken under advisement by the Chair.

Respondent then gave testimony under oath as regarding the disciplinary hearing in the District of Columbia. He admitted to the Board that even though he believed such hearing was flawed and he was denied due process and a fair hearing he did not exhaust his appeal remedies since he stated he had no intention to further practice in the District of Columbia. Respondent offered no further evidence.

After closing arguments by Bar Counsel and Respondent the Board adjourned to deliberate.

I. FINDINGS OF FACT

The Board makes the following findings of fact based on clear and convincing evidence, to wit:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been 3581 Sherbrooke Circle, Woodbridge, Virginia 22192.

2. The Rule to Show Cause was properly issued and duly served on the Respondent by certified mail on January 3, 2006, at his address of record with the Virginia State Bar.

3. The Respondent has not filed any response to the Rule to Show Cause and has not presented any evidence at the hearing to rebut by clear and convincing evidence the provision of Rule 13.I.7.D (1) (2) or (3).

4. By Order of the District of Columbia Court of Appeals, dated on July 7, 2005, the Respondent has been suspended from the practice of law in the District of Columbia for a period of sixty days and ordered to make restitution to his client in the amount of $750.00 plus interest at 6 percent per annum, subject to reinstatement upon his compliance with the conditions imposed in the Order.

II. DISPOSITION

The Board notes that if the Respondent fails to file a timely written response to the Rule to Show Cause, or fails to appear at the hearing on the Rule to Show Cause, the Board is required to impose the same discipline on the Respondent that was imposed in the District of Columbia. *Rules of the Supreme Court of Virginia*, Pt. 6, § IV, Para. 13(I)(6)(f).

Accordingly, it is **ORDERED** that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of sixty days, effective December 29, 2005 and it is further ordered that he make restitution to his client in the amount of $750.00 with interest at 6 percent per annum; provided, however, that such actual suspension shall continue in effect until the Virginia State Bar receives verification satisfactory to it that the Respondent has complied with such restitution order.

It is further **ORDERED** that, as directed in the Board's Summary Order of December 28, 2005, in this matter, the Respondent shall comply with the requirements of Part 6, § IV, Para 13(M) of the *Rules of the Supreme Court of Virginia.* The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the Summary Order entered herein, and make such arrangements as are required herein within 45 days of the effective date of the Summary Order. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Summary Order that such notices have been timely given and such arrangements made for the disposition of matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Summary Order, 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 Part 6, § IV, Para. 13(M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further **ORDERED** that pursuant to Part 6, § IV, Para. 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent at his address of record with the Virginia State Bar, being 3581 Sherbrooke Circle, Woodbridge, Virginia 22912, by certified mail, return receipt requested, and by regular mail or hand deliver to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Enter this Order this 10th day of February, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD

Robert L. Freed, Chair

VIRGINIA:

BEFORE THE EIGHTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT BRITTON ARMSTRONG
VSB DOCKET NO.: 06-080-0392

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

Pursuant to the Rules of the Supreme Court of Virginia Part Six, Section IV, Paragraph 13.G.1.d(3) the Eighth District Subcommittee, consisting of Tracy A. Giles, Esquire, Anderson W. Douthat, IV, lay member, and Robin J. Mayer, Esquire, Chair presiding, hereby approve the Agreed Disposition for a Public Reprimand with Terms entered into by the Virginia State Bar, by Kathryn R. Montgomery, Assistant Bar Counsel, and the Respondent, Robert Britton Armstrong ("Respondent").

I. FINDINGS OF FACT

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

2. In November 2004, Jane Doe and her aunt (hereinafter "Aunt") went to Respondent's law office for an appointment made by Aunt. They were accompanied by Complainant, sister of Aunt, who attended for moral support. During the appointment, Aunt sought Respondent's opinion about the competency of her divorce attorney, and he assured her that her attorney was doing a good job. Afterwards, Jane Doe told Respondent that she was raped by her uncle, the soon to be ex-husband of Aunt, twenty-nine years earlier, and asked Respondent what she should do. Respondent told Doe there was nothing he could do to help her at that time, and that she should file a report with the police. Respondent did not agree to represent either Jane Doe or Aunt, and thereafter did not represent either.

3. Soon thereafter, Jane Doe filed a report with police, and her uncle (hereinafter "Uncle") was arrested and charged with aggravated sexual battery of Jane Doe.

4. In December 2004, Uncle retained Respondent to represent him on the aggravated sexual battery charge. At the time of the retention, Respondent did not connect Uncle with Jane Doe.

5. Later, Respondent spoke with Aunt's divorce attorney about his representation of Uncle. Aunt's divorce lawyer then called the Virginia State Bar Ethics Hotline and asked whether it was a conflict for Respondent to represent Uncle on an unrelated criminal matter after Aunt had sought Respondent's legal advice concerning the competency of her divorce attorney, the caller. Aunt's divorce attorney did not inquire about a possible conflict between Jane Doe's meeting with Respondent and Respondent's later representation of Uncle. Aunt's divorce lawyer was told the facts she presented did not constitute a conflict. Respondent later spoke with Aunt's divorce lawyer, and assumed he had no conflict. (As part of the Bar's investigation, Aunt's divorce lawyer agreed to release Ethics Counsel's confidential notes concerning her call to the Hotline).

6. At Uncle's preliminary hearing, Jane Doe complained to the Assistant Commonwealth's Attorney about Respondent representing Uncle, but the Commonwealth did not seek removal of Respondent from the case. Respondent did not offer to withdraw.

7. Discovery was had and Uncle's trial was set for September 2005. Complainant filed her bar complaint in August 2005 alleging a conflict of interest. Thereafter, Respondent and the Assistant Commonwealth's Attorney notified the Court of the bar complaint and its allegations. Respondent then requested a continuance until the bar complaint was resolved and the Commonwealth did not object. The continuance was granted.

8. Thereafter, the Commonwealth *nolle prosed* the case against Uncle due to insufficient evidence. It is unknown whether the case will be refiled.

II. RULES OF PROFESSIONAL CONDUCT

Based upon the factual findings listed above, the Subcommittee finds violations of the following Rules of Professional Conduct:

RULE 1.7 Conflict of Interest: General Rule

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another existing client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

Eff. June 30, 2005

RULE 1.7 Conflict of Interest: General Rule

1. Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

a. the representation of one client will be directly adverse to another client; or there is significant risk that the representation of one or more clients will be materially limited by the lawyers' responsibilities to another client, a former client or a third person by a personal interest of the lawyer.

RULE 1.9 Conflict of Interest: Former Client

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation.

III. DISPOSITION

Accordingly, the Subcommittee hereby imposes upon Respondent a Public Reprimand with Terms as follows:

1. Immediately withdraw from his representation of Uncle on any case or charge related to the alleged rape of Jane Doe.

2. Attend six (6) hours of live (not telephone or internet) MCLE-approved Continuing Legal Education in the area of ethics and certify completion to Assistant Bar Counsel Kathryn R. Montgomery, or her designee, by December 1, 2006. These six (6) hours of live 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, the Eighth District Committee shall certify this case to the Virginia State Bar Disciplinary Board for a sanction determination. If there is disagreement as to whether the terms were fully and timely completed, the Eighth 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.

The Clerk of the Disciplinary System shall assess the appropriate administrative fees.

Eighth District Subcommittee
Virginia State Bar

By: Robin J. Mayer, Esquire
Subcommittee Chair Presiding

VIRGINIA:

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

In the Matter of
CYNTHIA DAWN GARRIS
VSB DOCKET NO. 05-021-3150
05-021-3151
05-021-3152

Complainant: VSB/Supreme Court of Virginia

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION)

On March 24, 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, Cynthia Dawn Garris, was an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket No. 05-021-3150

2. During 2003, the Circuit Court for the City of Norfolk appointed Ms. Garris for the sentencing and appeal of Kevin Lamont Knight.

3. On November 7, 2003, Mr. Knight was found not guilty of robbery, but guilty of assault and battery, a misdemeanor, sentenced to 12 months in jail, and fined $2,500. Another attorney served as his trial defense counsel.

4. Ms. Garris appealed the case to the Court of Appeals, which denied the appeal on its merits.

5. When she appealed to the Supreme Court of Virginia, her former secretary did not mail the petitions for appeal when instructed, causing a late filing.

6. Ms. Garris also did not file enough copies of the petition for appeal.

7. The appeal was dismissed accordingly on November 4, 2004.

8. Ms. Garris explained that she later terminated her former secretary because of a series of similar problems.

9. Ms. Garris promptly advised her client of the error and about seeking a delayed appeal through the habeas corpus process.

10. The Supreme Court of Virginia granted her client a delayed appeal.

11. Ms. Garris acknowledged that it was her responsibility to ensure the timely mailing of the petitions for appeal

VSB Docket No. 05-021-3151

12. During 2001, the Circuit Court for the City of Norfolk appointed Ms. Garris and another attorney to represent Brandon Clay Nichols on various firearm and homicide offenses.

13. On June 5, 2001, the court found Mr. Nichols guilty as charged. On August 24, 2001, it sentenced him to 41 years in prison and fined him $50,000.

14. The court appointed only Ms. Garris for the appeal. She perfected the appeal at the Court of Appeals, where it was dismissed on the merits.

15. In November 2002, the Supreme Court of Virginia dismissed the appeal because the petition for appeal was not filed on time. As in the previous case, Ms. Garris explained that her former secretary failed to mail the matter by certified mail the day that she instructed her to.

16. Ms. Garris promptly notified her client of the error in writing, and provided advice about seeking a delayed appeal.

17. Mr. Nichols obtained a delayed appeal through the habeas corpus process.

VSB Docket No. 05-021-3152

18. In March 2001, the Circuit Court for the City of Norfolk appointed Ms. Garris as appellate counsel for Adam Murdock Powell, previously convicted of various firearm, burglary, and malicious wounding offenses, and sentenced to fifteen years in prison.

19. Ms. Garris appealed the case to the Court of Appeals, which dismissed it on the merits on October 2, 2001.

20. On October 4, 2001, Ms. Garris mailed a copy of the dismissal order to her client with a cover letter that read:

> *The Court of Appeals affirmed your conviction and sentence.*
>
> *If you wish to appeal to a three-judge panel, then you must follow the instructions contained in the final paragraph on page three.*

21. The final paragraph on page 3 of the order read:

> *This order is final for purposes of appeal unless, within fourteen days for the date of this order, there are further proceedings pursuant to Code Section 17.2-407 (D) and Rule 5A:15 (a). If appellant files a demand for consideration by a three-judge panel, the demand should include a statement, not to exceed one typewritten page, identifying how this order is in error.*

22. The letter did not advise the client about his right to further appeal to the Supreme Court of Virginia, nor did it indicate whether Ms. Garris would be taking further action on behalf of her client.

23. The author of the letter was a former associate of Ms. Garris, although Ms. Garris signed it.

24. Upon mailing the letter and order to the client, Ms. Garris' former secretary closed the file.

25. Accordingly, Ms. Garris took no steps to appeal the case to the Supreme Court of Virginia.

26. Ms. Garris explained that her letter of October 4, 2001 was not an attempt to abandon her client, just an attempt to advise him about seeking three-judge review of the dismissal order, that she would not file a frivolous motion for such relief.

27. Nonetheless, the client did not receive the letter because he had been transferred to the Department of Corrections.

28. Ms. Garris sent the letter to her client again, who responded with questions about the statute and Rule cited in the paragraph of the order.

29. By then, it was too late to appeal or seek further relief. Accordingly, she advised her client to seek habeas corpus relief.

29. The Supreme Court granted a delayed appeal on the grounds of ineffective assistance of counsel, and reported the matter to the Bar.

II. NATURE OF MISCONDUCT

The foregoing facts give rise to violations 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 5.3 Responsibilities Regarding Nonlawyer Assistants

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

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

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 THIRD DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
WALTER BALLARD HARRIS
VSB Docket Nos. 05-031-2389 and
05-031-4440

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On February 1, 2006, a meeting in these matters was held before a duly convened Third District, Section I Subcommittee consisting of W. Richard Hairfield, Chair, H. Martin Robertson, Esquire and William Manns, lay person to consider acceptance of a proposed Agreed Disposition presented by the Respondent and Paulo E. Franco, Jr., Assistant Bar Counsel.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District, Section I Subcommittee of the Virginia State Bar hereby accepts the Agreed Disposition and serves upon the Respondent the following PUBLIC Reprimand with Terms:

I. FINDINGS OF FACT AND NATURE OF MISCONDUCT

A. VSB Docket No. 05-031-2389

1. Findings of Fact

1. Mr. Harris was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.

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

3. At all times relevant, Mr. Harris was employed as an Assistant Public Defender for the City of Petersburg.

4. On or about December 3, 2003, Mr. Harris was appointed to represent Ronald E. Artis on a felony cocaine possession charge.

5. Despite his plea of innocence, on April 5, 2004, Mr. Artis was convicted of the crime in the Petersburg Circuit Court, and on May 20, 2004, he was sentenced to a term of incarceration.

6. Mr. Artis directed Mr. Harris to note an appeal, and Mr. Harris filed a notice of appeal on **June 18, 2004**.

7. Mr. Harris sent letters to the Clerk of the Court of Appeals of Virginia and the Assistant Commonwealth's Attorney dated **June 3, 2004**, purportedly enclosing a copy of the notice of appeal.

8. By letter dated **June 3, 2004**, Mr. Harris requested the court reporter to prepare a transcript of the trial, including all motions, bench conferences and opening and closing arguments, as well as the sentencing hearing.

9. Mr. Harris' letter to the court reporter states: "In order to become part of the record on appeal, the transcript will have to be filed with the Clerk of the Circuit Court on or before **April 26, 2004**.

10. On August 3, 2004, Mr. Harris wrote the court reporter again, stating: "In order to become part of the record on appeal, the transcript will have to be filed with the Clerk of the Circuit Court on or before August 3, 2004.

11. On or about August 4, 2004, Mr. Harris faxed the court reporter a handwritten note stating: "Amended transcript to be filed date – now Aug. 3, 2004 but circuit court has not acknowledged appeal being filed yet so have more time."

12. Mr. Harris never moved for an extension of time within which to file the transcript.

13. A transcript of the sentencing hearing was filed in the circuit court on August 24, 2004.

14. The Court of Appeals issued a show cause order on August 26, 2004, based upon the untimely filing of the transcript, and an amended order on September 22, 2004, giving Mr. Harris until October 7, 2004, to show cause why the court should not dismiss Mr. Artis' appeal.

15. Mr. Harris failed to respond to the show cause order, and on October 14, 2004, the Court of Appeals entered an order dismissing Mr. Artis' appeal.

16. The Court of Appeals reported the procedural default to the Virginia State Bar.

17. Deputy Intake Counsel sent Mr. Harris letters dated December 28, 2004, and January 19, 2005, requesting him to respond to the report that Mr. Artis' appeal had been dismissed due a procedural default by Mr. Harris.

18. By letter dated January 20, 2005, Mr. Harris requested an extension of time to prepare a response to the procedural default report.

19. Mr. Harris never submitted a response to the procedural default report.

20. Mr. Harris acknowledges that he did not communicate with Mr. Artis after he was sentenced on May 4, 2004.

21. Based upon information and belief, Mr. Artis is deceased.

2. Findings of Misconduct

The foregoing Stipulated Findings of Fact give rise to the following Findings 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.

* * *

(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.

A. VSB Docket No. 05-031-4440

1. Stipulated Findings of Fact

1. Mr. Harris was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.

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

3. At all times relevant, Mr. Harris was employed as an Assistant Public Defender for the City of Petersburg.

4. On or about December 2, 2003, Mr. Harris was appointed to represent Tarika Patrice Davis on felony assault and misdemeanor obstruction of justice and disorderly conduct charges.

5. Ms. Davis was eventually acquitted on the felony assault charge, but on July 22, 2004, she was convicted of the misdemeanor obstruction of justice and disorderly conduct charges.

6. Ms. Davis directed Mr. Harris to note an appeal, and he filed a notice of appeal August 3, 2004.

7. On August 3, 2004, Mr. Harris sent the Clerk of the Court of Appeals of Virginia and the Assistant Commonwealth's Attorney a notice of appeal in Circuit Court Nos. CR04-470 and CR04-471, and by letter requested the court reporter to prepare a transcript of the proceedings in Circuit Court Nos. CR04-135 and CR04-471.

8. By letter to the court reporter dated August 4, 2004, Mr. Harris corrected the Circuit Court No. CR04-135 to CR04-470.

9. By letter dated February 28, 2005, the Assistant Chief Deputy Clerk of the Circuit Court of the City of Petersburg notified Mr. Harris that the record had of the proceedings had been transmitted to the Court of Appeals.

10. Mr. Harris was notified that the Court of Appeals received the record on March 3, 2005, and that Ms. Davis' petition for appeal was due no later than 40 days after the date on which the record was received.

11. The Court of Appeals dismissed Ms. Davis' appeal in CR 04-420, CR 04-470 and CR04-471 on May 6, 2005, because Mr. Harris had not filed a petition for appeal in a timely manner.

12. Mr. Harris' records show that he did not communicate with Ms. Davis after July 22, 2004.

13. Ms. Davis learned her appeal had been dismissed after she contacted the Court of Appeals.

14. Ms. Davis called Mr. Harris after she learned her appeal had been dismissed, but he did not return her calls.

15. The Court of Appeals reported the procedural default to the bar.

16. Mr. Harris did not submit a written response to the report.

17. Mr. Harris represented to the bar investigation on August 18, 2005, that at his behest the Virginia Public Defender's Commission had agreed to file a delayed appeal on Ms. Davis' behalf.

18. Although Ms. Davis was anxious for her appeal to be reinstated, the Court of Appeals' electronic docket does not list any appeal for Ms. Davis other than the one that was dismissed.

2. Stipulated Findings of Misconduct

The foregoing Stipulated Findings of Fact give rise to the following Findings 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.

* * *

(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.

II. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a PUBLIC Reprimand with Terms of this complaint. The terms and conditions are:

1. Respondent shall refrain from undertaking appeals to either the Virginia Court of Appeals and/or the Virginia Supreme Court of Appeals, save for noting any appeals with the appropriate trial court until July 31, 2007.

2. Respondent shall obtain at least four hours of Continuing Legal Education Credits in Appellate Advocacy and Procedure, which four hours shall **not** be applied towards his annual Mandatory Continuing Legal Education requirements. The Respondent must deliver written certification to Bar Counsel that he has complied with this term before July 31, 2007.

The alternate disposition of these matters, should Respondent fail to comply with the foregoing terms will be a **sixty (60) 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 why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by a Subcommittee of the Third District Committee–Section I. At the hearing, the burden of proof shall be on the Respondent to show timely compliance with the terms, including timely certification of such compliance, by clear and convincing evidence. The Respondent agrees his prior disciplinary record may be disclosed to the Subcommittee.

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

THIRD DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By W. Richard Hairfield, Chair

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
CYNTHIA ANN JOHNSON, ESQUIRE
VSB DOCKET NO. 05-070-1412

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On the 9th day of February, 2006, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of Minor Eager, Thomas J. Chasler, Esquire, and Frederick W. Payne, Esquire, presiding.

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

I. FINDINGS OF FACT

1. At all times relevant Cynthia A. Johnson, Esq. (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. In June or July of 2004, Mr. Michael D. Doniel retained Respondent Johnson to represent his interest against his wife in a divorce. Mrs. Doniel hired Complainant, William C. Scott, IV, Esquire to represent her interests.[1]

3. On or about July 29, 2004, Mr. Scott contacted Respondent Johnson by letter to inform her that he represented Mrs. Doniel. The letter discussed what Mr. Scott considered as the content of the separation agreement (hereinafter "SA") between the Doniel's and ask Respondent to prepare a draft.

4. In response to Mr. Scott's letter, on or about August 5, 2004, Respondent Johnson forwarded a proposed SA to Mr. Scott. Mr. Scott was on vacation. He did, however, forward the proposed SA to Mrs. Doniel for her review.

5. In September of 2004, Mr. Scott started discussions with Mrs. Doniel about the terms and conditions contained in the draft SA prepared by Respondent Johnson.

6. On October 5, 2004, after having made prior arrangements with Mrs. Doniel convalescent home and with Respondent Johnson's office. Mr. Doniel picked up Mrs. Doniel from the home and transported her to Respondent's office where Mrs. Doniel executed the SA before Respondent's legal assistant. Neither Respondent nor her legal assistant reviewed the file before Mrs. Doniel signed the SA.

7. After learning of these events, Mr. Scott spoke with Respondent by phone during which telephone call Respondent stated that at the time Mrs. Doniel was in her office Respondent had not recalled that Mr. Scott represented Mrs. Doniel. Mr. Scott also asked Respondent if she was aware of her ethical obligation to contact him to get permission to contact his client. Respondent answered that it was not her responsibility to get his permission. At the conclusion of the telephone call, Mr. Scott instructed Respondent Johnson not to contact Mrs. Doniel without his permission.

8. On or about October 7, 2005, Mr. Scott mailed a letter to Respondent Johnson informing her that he had filed a bar complaint against her. On or about October 8, 2004, Respondent Johnson faxed a cover letter to Mr. Scott referring to Mr. Scott's October 7, 2004 letter, informing him that Mr. Doniel, her client, had agreed to destroy the "original and the all copies of the agreement Mrs. Doniel signed in my office on October 5, 2004." The cover letter goes on to state that "[Respondent Johnson] will schedule a signing date with Mrs. Doniel and notify you of the date and time Mrs. Doniel is available to re-sign the agreement. It will be her choice to have you present when the document is signed."

9. On or about October 11, Mr. Scott again notified Respondent Johnson by letter that she was not to contact Mrs. Doniel without his permission.

FOOTNOTES ————————————

1. Mrs. Doniel worked for Mr. Scott law firm approximately 15 years until Multiple Sclerosis overtook her. She is now in the advance stages of MS, has short-term memory loss and is easily confused.

II. NATURE OF MISCONDUCT

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

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.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

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

(a) a partner or a lawyer who individually or together with other lawyers possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

III. PUBLIC REPRIMAND WITH TERMS

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

TERMS

1. The Respondent shall complete six (6) hours of continuing legal education in the areas of ethics. Her Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward her Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. She shall certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, VA 22314, promptly following her attendance of such CLE program(s). The terms and conditions shall be met and made known to the Bar by **May 31, 2006**.

2. The Respondent shall read Legal Ethics Opinions 644, 689, 876, 884, 890, 1112, 1167, 1344, and 1464. She shall certify her compliance with the term set forth in this paragraph by delivering a sworn document to Alfred L. Carr, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, VA 22314, promptly following her reading of the all the above Legal Ethics Opinions.

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

ALTERNATE DISPOSITION

If, however, the terms and conditions have not been met by the 31st day of May, 2006, and in such event, the Committee shall, as an alternative disposition to a PUBLIC REPRIMAND WITH TERMS, certify this matter to the Virginia State Bar Disciplinary Board. Upon certification, the parties shall be deemed to have stipulated to the admissibility into evidence by the Board of the "Findings of Fact" appearing above, and the Respondent shall be deemed to have admitted before the Board to a violation of the provisions of the Professional Rules of Conduct as set forth under the above "Nature of Misconduct" section.

COSTS

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

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Frederick W. Payne, Chair Designate

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DANNY SHELTON SHIPLEY
VSB DOCKET NO. 05-021-3964

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On December 28, 2005, a duly convened Second District, Section I, Subcommittee consisting of Donald C. Schultz, Esquire, Emanuel W. Michaels, Lay Member, and Afshin Farashahi, Esquire, presiding, considered the above-referenced matter and determined that an Agreed Disposition for a Public Admonition with Terms would be acceptable as an appropriate disposition if it were set for hearing before the District Committee.

The Respondent having tendered such an agreement, the Second District Subcommittee, therefore, pursuant to Part Six, Section IV, Paragraph 13(G)(1)(c)(1) of the Rules of the Supreme Court of Virginia, hereby serves upon the Respondent the following Public Admonition with Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Danny Shelton Shipley, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On February 15, 2000, the Circuit Court for the City of Norfolk convicted Lloyd Edward Anderson of abduction and imposed a two-year suspended sentence.

3. On June 17 2004, Mr. Anderson was convicted of abduction again, and sentenced to ten years in prison with seven and one-half years suspended.

4. In light of the new conviction, the Commonwealth moved to revoke the suspended sentence from the previous conviction.

5. On July 20, 2004, the court found that Mr. Anderson had violated the terms of his probation and, on November 19, 2004, revoked the entire two-year suspended sentence. The order became final on November 30, 2004. Mr. Shipley was his appointed counsel.

6. Mr. Shipley timely noted an appeal.

7. The transcript became due on January 29, 2005, but was not filed until February 4, 2005.

8. On February 14, 2005, the Court of Appeals issued an order directing the appellant to show-cause why the appeal should not be dismissed for failure to timely file the transcript.

9. Having received no response to its show-cause order, on March 9, 2005, the Court of Appeals dismissed the appeal. Mr. Shipley informed his client of his error.

10. The client desiring his two sentences to run concurrently, Mr. Shipley filed a motion to reconsider his sentence on March 3, 2005. He also had the court enter an order holding his client at the local jail pending conclusion of the motion.

11. On April 7, 2005, Mr. Anderson complained to the bar that he had heard nothing further from Mr. Shipley. On June 10, 2005, Mr. Shipley was allowed to withdraw and another attorney substituted to pursue Mr. Anderson's claim of ineffective assistance of counsel for a delayed appeal.

II. NATURE OF MISCONDUCT

The parties agree that the foregoing facts give rise to violations 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.

III. PUBLIC ADMONITION WITH TERMS

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

1. By April 1, 2006, the Respondent, Danny Shelton Shipley, will engage a risk manager, at his own expense, to audit his office procedures and make recommendations.

2. The risk manager will be one approved by the Virginia State Bar.

3. By July 1, 2006, the respondent will furnish a written report setting forth the nature of the risk manager's audit, any recommendations made by the risk manager, and the Respondent's compliance with the recommendations, if any.

Upon satisfactory proof that the terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates set forth above, the District Committee will impose the alternate sanction: Certification for Sanction Determination at the Virginia State Bar Disciplinary Board.

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, Esquire
Committee Chair

VIRGINIA:

BEFORE THE EIGHTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MARC JAMES SMALL
VSB Docket No: 06-080-1682

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On January 19, 2006, a show cause hearing was held before a duly convened district committee panel consisting of Joshua O. Elrod, Esquire, Tracy A. Giles Esquire, Robin J. Mayer, Esquire, J. Scott Sexton, Esquire, Wilson F. Vellines, Jr., Esquire, Anderson W. Douthat, IV, Lay Member, Sidney S. Evans, Lay Member, Don S. Reid, Lay Member, and Paul M. Black, Esquire, Chair presiding. The Respondent, Marc James Small, appeared in person *pro se*. Kathryn R. Montgomery appeared as counsel for the Virginia State Bar.

The Respondent was required to appear and show cause why the district committee should not issue a Public Reprimand for his alleged failure to comply with a term imposed in connection with a Private Admonition with Terms issued on August 31, 2005 pursuant to an agreed disposition in VSB docket number 04-080-2151. In that case, Respondent conceded (i) that he failed to deposit an advanced legal fee into his trust account, and (ii) that in response to the complainant's claim, that he frequently smelled of alcohol, (iii) that in the past, he has had counseling for addiction issues, and (iv) that in March 2004, while appearing before the Botetourt General District Court, he complied with the judge's request that he submit to an alcohol detection test, the result of which was positive. The term in 04-080-2151 required the following: 1) that Respondent submit to an evaluation recommended and approved by the Lawyers Helping Lawyers program to determine if he is suffering from a substance abuse problem, and 2) that Respondent or Lawyers Helping Lawyers provide confirmation of such evaluation to Marian L. Beckett, Assistant Bar Counsel, or by October 5, 2005. The agreed disposition also provided for a Public Reprimand if the Respondent did not comply with the above terms.

Based on the evidence the Respondent and the bar presented at the show cause hearing, and for the reasons stated on the record, the district committee unanimously finds that the Respondent did not prove compliance by clear and convincing evidence as required by Part 6, § VI, ¶ 13.H. 2. p(1) of the *Rules of the Supreme Court of Virginia*, and the district committee unanimously finds that Respondent failed to comply with the term associated with the Private Admonition issued in VSB 04-080-2151.

WHEREFORE, pursuant to Part Six, Section IV, Paragraph 13.H.2.p(1) of the *Rules of the Supreme Court of Virginia*, the Eighth District Committee of the Virginia State Bar hereby serves upon Respondent Marc James Small a Public Reprimand, the alternate sanction provided in the Private Admonition with Terms issued in VSB Docket No. 04-080-2151.

The Clerk of the Disciplinary System shall assess the appropriate costs.

EIGHTH DISTRICT COMMITTEE OF THE
VIRGINIA STATE BAR

By: Paul M. Black, Esquire
Vice-Chair and Presiding Officer
Eighth District Committee

LEGAL ETHICS OPINION 1750
ADVERTISING ISSUES

The Standing Committee on Lawyer Advertising and Solicitation reviewed all of its previous opinions, and issued a compendium opinion March 20, 2001, summarizing many of the existing advertising opinions and incorporating previously issued legal ethics opinions on the subject of lawyer advertising. In November 2001, the Virginia Supreme Court amended Rules 7.1 and 7.2 of the Rules of Professional Conduct. Additionally, the Virginia Supreme Court approved LAO A-0114 on August 26, 2005. The Standing Committee on Lawyer Advertising and Solicitation is now issuing this updated opinion which incorporates the new rule amendments and new opinions.

Some of the issues addressed in this opinion include: use of actors; use of the phrase "no recovery, no fee;" laudatory statements by third parties; use by a law firm of a fictitious name; use of specific or cumulative case results; participation in a lawyer referral service; communications involving listing of inclusion in publications such as *The Best Lawyers in America*; and the use of the terms "Specialist" or "Specializing In." The prohibition in Rule 7.1 concerning advertising which is false, fraudulent, deceptive or misleading applies to all public communications and includes communications over the Internet. The Standing Committee on Lawyer Advertising and Solicitation also observes that a lawyer's communications over the Internet are "disseminated to the public by use of electronic media" for which the lawyer has given value, and therefore are subject to the requirements of Rule 7.1 and 7.2.

In order to provide all members of the Bar with better access to the advertising opinions, this compendium opinion, issued by the Standing Committee on Lawyer Advertising and Solicitation, will be published as a Legal Ethics Opinion. *See*, *Rules of the Supreme Court of Virginia*, Part 6, Section IV, Paragraph 10; Virginia State Bar Bylaws, Article VII, Section 5.

Opinion:

The appropriate and controlling rules relevant to the questions raised are Rule 7.1 and 7.2, which state in part:

RULE 7.1 Communications Concerning A Lawyer's Services

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

(1) contains false or misleading information; or

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

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

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

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

RULE 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communications, including public media. In the determination of whether an advertisement violates this Rule, the advertisement shall be considered in its entirety, including any qualifying statements or disclaimers contained therein. Notwithstanding the requirements of Rule 7.1, an advertisement violates this Rule if it:

(1) contains an endorsement by a celebrity or public figure who is not a client of the firm without disclosure (i) of the fact that the speaker is not a client of the lawyer or the firm, and (ii) whether the speaker is being paid for the appearance or endorsement; or

(2) contains a portrayal of a client by a non-client without disclosure that the depiction is a dramatization; or

(3) advertises specific or cumulative case results, without a disclaimer that (i) puts the case results in a context that is not misleading; (ii) states that case results depend upon a variety of factors unique to each case; and (iii) further states that case results do not guarantee or predict a similar result in any future case undertaken by the lawyer. The disclaimer shall precede the communication of the case results. When the communication is in writing, the disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used to advertise the specific or cumulative case results and in the same color and against the same colored background as the text used to advertise the specific or cumulative case results.

(b) A recording of the actual electronic media advertisement shall be approved by the lawyer prior

to its broadcast and retained by the lawyer for a period of one year following the last broadcast date, along with a record of when and where it was used, which recording and date shall be provided to the Standing Committee on Lawyer Advertising and Solicitation upon its request.

(c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization; and

(3) pay for a law practice in accordance with Rule 1.17.

(d) A written or e-mail communication that bears the lawyer's or firm's name and the purpose of which in whole or in part is an initial contact to promote employment for a fee, sent to a prospective non-lawyer client who is not:

(1) a close friend, relative, current client, former client; or

(2) one who has initiated contact with the attorney; or

(3) one who is similarly situated with a current client of the attorney with respect to a specific matter being handled by the attorney, to the extent that the prospective client's rights may be reasonably expected to be materially affected by the outcome of the matter;

shall be identified by conspicuous display of the statement in upper case letters "ADVERTISING MATERIAL."

The required statement shall be displayed in the lower left hand corner of the address portion of the communication in type size at least equal to the largest type used on the communication and also on the front of the first page of the communication in type size at least equal to the largest type used on the page. Further, in the case of e-mail advertising or solicitation, the header shall also display the statement, in uppercase letters, "ADVERTISING MATERIAL."

Further, any such written communication shall not be sent by registered mail or other forms of restricted delivery, nor shall such written communication be sent to any person who has made known to the lawyer a desire not to receive communications from the lawyer. Lawyers who advertise or solicit by e-mail shall include instructions of how the recipient of such communications may notify the sender that they wish not to receive such communications in the future.

This paragraph does not apply to any communication which is directed to be sent by a court or tribunal, or otherwise required by law.

(e) Advertising made pursuant to this Rule shall include the full name and office address of an attorney licensed to practice in Virginia who is responsible for its content or, in the alternative, a law firm may file with the Virginia State Bar a current written statement identifying the responsible attorney for the law firm's advertising and its office address, and the firm shall promptly notify the Virginia State Bar in writing of any change in status.

In the determination of whether a communication or advertisement violates this rule, the communication or advertisement shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

A. Use of Actors in Lawyer Advertising

Rule 7.2(a) articulates several examples of communications which are prohibited, including an advertisement which contains a portrayal of a client by a non-client without a disclosure that the depiction is a dramatization. Rule 7.2(a)(2). The Committee considered the issue of whether a television advertisement is misleading when an attorney or law firm uses an actor to portray an attorney associated with the law firm without disclosing that fact in the advertisement.

The Committee viewed numerous advertisements in which, either by direct statement or by implication, it appears that a person is an attorney associated with the advertised law firm, even though that person is not, in fact, an employee or member of the law firm. In particular, when actors are speaking they frequently include first person references to themselves as lawyers or as members of the law firm being advertised. The Committee is of the opinion that failing to disclose that the actor is not truly an employee or member of the law firm, when the language used implies otherwise, is misleading or deceptive.

Therefore, the Committee concludes that advertisements which use actors who portray attorneys or employees of a law firm are misleading and deceptive, absent a clear disclosure that the actor is not a member or employee of the firm or that the depiction is a dramatization. *See also* LAO-0101.

LEO 1119 is overruled to the extent that it is inconsistent with this opinion.

B. Use of "No Recovery, No Fee"

The Committee considered whether the language "no recovery, no fee" or language of similar import contained in advertising or other public communication soliciting claims for cases in which contingent fees are permissible was misleading or deceptive pursuant to Rule 7.1(a), under circumstances in which the advertising or public communication did not also include an explanation that the client was obligated to pay litigation expenses and court costs, regardless of whether any recovery was obtained.

The Committee determined that use of the explicit phrase "no recovery, no fee" in the solicitation of contingent fee cases is misleading or deceptive without any additional explanation that litigation expenses and court costs would be payable regardless of outcome because the public generally may not distinguish the differences between the terms "fee" and "costs". *See Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 652-3 (1985)(finding that "[t]he State's position that it is deceptive to employ advertising that refers to contingent-fee arrangements without mentioning the client's liability for costs is reasonable enough to support a requirement that information regarding the client's liability for costs be disclosed"). The statement "no recovery, no fee" is misleading in light of the fact that a client is or may be liable for costs even if there is no recovery. *See* Rule 1.8(e). The statement is improper unless a suitable disclaimer is added.

Also, the Committee considered the propriety of such phrases as "we guarantee to win, or you don't pay," "we are paid only if you collect," "no charge unless we win," or other language not making explicit reference to a legal "fee." Language of this type that does not make explicit reference to a "fee" is misleading and deceptive in violation of Rule 7.1(a) since the language includes the implication that the client will not be required to pay either expenses or attorney's fees if there is no recovery, but does not disclose the circumstances in which the client will be obligated to reimburse the attorney for any litigation expenses and court costs advanced, regardless of outcome. *See also* Rule 1.8(e). *See also* LAO-0102.

LEO 1029 is overruled to the extent that it is inconsistent with this opinion.

C. Use of Fictitious Names

The question arises whether and under what circumstances attorneys may advertise using a corporate, trade, or fictitious name which is not the name or names of the firm, the attorney, or the attorneys in the firm. For example, in reviewing the telephone directory yellow page advertisements, the Committee has observed instances where attorneys have used the letter "A," "AA" or "AAA" as the first word in a name listing with the apparent intent to be in the front or near the front of the "Attorneys" or "Lawyers" section of the yellow pages.

It is misleading and deceptive under Rule 7.1(a)(1) and 7.5(d) for an attorney or attorneys to advertise using a corporate, trade or fictitious name unless the attorney or attorneys actually practice under such name. Use of a name which is not the name used in the practice is misleading and deceptive as to the identity, responsibility, and status of those using such name. The usage of a corporate, trade, or fictitious name should include, among other things, displaying such name on the letterhead, business cards, and office sign. Furthermore, the usage of such name shall be in compliance with Rule 7.5 and shall comply with applicable laws, including Sections 13.l-542 et seq. or Sections 59.l-69 et seq. of the Code of Virginia.

See also LAO-0103 and LEOs 589, 935, 937, 1242, 1342, 1356, 1369.

D. Advising That An Attorney Must Be Consulted

The question arises whether it is permissible for an advertisement to state that an individual injured in an automobile accident must consult an attorney before speaking to any representative of an insurance company. While it may make good sense for an individual involved in an accident with an injury to consult with an attorney before speaking with a representative from an insurance company, there is no legal requirement for this. Since the proposed advertisement makes an explicitly false statement, to wit, that an individual "will have to consult an attorney," the proposed advertisement would be in violation of Rule 7.1. *See also* LAO-0104.

E. Participation in Lawyer Referral Services

Attorneys may advertise participation in lawyer referral services and joint marketing arrangements so long as the advertising is not false, fraudulent, deceptive or misleading. *See* Rule 7.3(a). The Committee is concerned that some advertising concerning lawyer referral services and joint marketing arrangements are deceptive. As noted in LEO 910, statements which violate the Rules of Professional Conduct and which are used in advertisements by lawyer referral service would create automatic rules violations by the participating attorneys. The Committee has opined that the following practices are deceptive and misleading:

l. Advertising participation in a Lawyer Referral Service which is not a true, qualifying Lawyer Referral Service as defined by prior opinions of the Standing Committee on Legal Ethics; *See* LEOs 926 and 1348;

2. Implying in advertising that a lawyer is selected for participation in a Lawyer Referral Service based on quality of services or some other process of independent endorsement when in fact no bona fide quality judgment has been objectively made;

3. Stating or implying that the Lawyer Referral Service contains all of the lawyers or law firms eligible to participate in the Service by the objective criteria of the Service when in fact

the Service is closed to some lawyers or law firms who meet the objective criteria;

4. Stating or implying that there are a substantial number of attorneys or firms participating in the Service when in fact all calls in a geographic area will be directed to one or two attorneys or firms; *See* LEO 1543;

5. Using the name of a Lawyer Referral Service or joint marketing arrangement in a way which misleads the public as to the true identity of the advertiser.

See also LAO-0105 and LEOs 910, 926, 1014, 1175, 1348, 1543.

F. Advertising Specific or Cumulative Case Results/Jury Verdicts/Comparative Statements

The Committee considered the question of whether it is misleading to the public for an attorney to advertise results obtained in a specific case or to advertise cumulative results obtained in more than one specific case, e.g., "We've collected millions for thousands," or "We've collected $30 million in 1996."

The Committee determined that it is misleading to the public for an attorney to advertise specific case results, whether individually or cumulatively, for two reasons:

1. The results obtained in specific cases depend on a variety of factors, and any advertisement of the results obtained in a specific case or cases that does not include all factors is inherently misleading. This is true, in part, because it is generally impossible to know all factors that have influenced a specific result or an accumulation of specific results.

2. Each legal matter consists of circumstances that are peculiar or unique to the specific case, and the result obtained under one set of circumstances does not provide useful information to the public as a predictor of the result likely to be obtained in a case that necessarily involves different circumstances.

   An example will illustrate why information describing a specific case result or a blanket statement of cumulative results may be entirely accurate, but nonetheless misleading. An attorney could accurately cite in advertising a verdict of one million dollars, yet the public would plainly be deceived if the verdict were obtained under circumstances in which the offer prior to trial had been two million dollars. The same advertisement would be similarly deceptive if the one million dollar verdict were obtained against an uncollectible defendant, under circumstances in which the case was lost as to a collectible co-defendant who had made a substantial offer prior to trial. More importantly, since no member of the public is likely to have a case in which the circumstances precisely duplicate the advertised verdict, the report of a specific case result not only fails to provide helpful information to the consumer, but is likely to mislead the consumer as to the result that will be obtained in their case.

This reasoning is what led to the adoption of Rule 7.2(a)(3) in November, 2002. This rule now specifically prescribes the manner in which lawyer advertising can incorporate specific or cumulative case results, or any references thereto. The rule specifically identifies the use of a disclaimer and what the disclaimer must include, as well as the specifics of the type size of the text involved. The rule also clearly states that the disclaimer "shall precede the communication of the case results." The Committee agrees that many times this means the disclaimer must appear on a law firm's homepage of their website in order to meet these requirements. Rule 7.2(a)(3) states the following:

> (a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded, or electronic communications, including public media. In the determination of whether an advertisement violates this Rule, the advertisement shall be considered in its entirety, including any qualifying statements or disclaimers contained therein. Notwithstanding the requirements of Rule 7.1, an advertisement violates this Rule if it:
>
> (3) advertises specific or cumulative case results, without a disclaimer that (i) puts the case results in a context that is not misleading; (ii) states that case results depend upon a variety of factors unique to each case; and (iii) further states that case results do not guarantee or predict a similar result in any future case undertaken by the lawyer. The disclaimer shall precede the communication of the case results. When the communication is in writing, the disclaimer shall be in bold type face and uppercase letters in a font size that is at least as large as the largest text used to advertise the specific or cumulative case results and in the same color and against the same colored background as the text used to advertise the specific or cumulative case results.

The Committee has repeatedly opined that the use of claims such as "the best lawyers," "the biggest earnings," and "the most experienced" are self-laudatory and amount to comparative statements that cannot be factually substantiated, in violation of Rule 7.1 (a)(3). (*See also* Comment 5 to Rule 7.1)

The Legal Ethics Committee first issued a legal ethics opinion on this topic in 1989 in LEO 1297. This Committee continues to adhere to the belief that such statements that use extravagant or self-laudatory words are designed to and in fact mislead laypersons to whom they are directed and, as such, undermine public confidence in our legal system. Comment 3 to Rule 7.2 specifically states that "[a]dvertising through which a lawyer seeks business by use of extravagant or self-laudatory statements or appeals to fears and emotions could mislead laypersons."

See also LEOs 1229, 1443.

LEOs 1297, 1321 are overruled to the extent that they are inconsistent with this opinion.

G. Statements by Third Parties

The Committee addressed whether a lawyer can circumvent the prohibition against comparative statements with the use of client testimonials. For example, a lawyer's television advertisement shows a former client making statements about the client's satisfaction and about the quality of the lawyer's services, using statements to the effect that the lawyer is "the best" and will get you "quick results."

Rule 7.1(a)(3) prohibits statements comparing attorneys' services, unless the comparison can be factually substantiated. The Committee has previously opined that a lawyer's advertising of specific case results is misleading, without the appropriate disclaimer. *See* Rule 7.2(a)(3). Thus, an attorney has clear guidance as to the impropriety of making certain statements in his advertising. Rule 8.4(a) states that an attorney shall not violate a disciplinary rule through the actions of another. Moreover, the language of the restriction in Rule 7.1 makes no qualification as to the maker of the regulated statements. To the contrary, the rule's requirements are directed at any statements contained in the communication. Thus, there is no support in Virginia's Rules of Professional Conduct for affording greater leeway to advertising statements made by clients than to those made by attorneys. The standard is the same in both instances. Applying that standard to this hypothetical, the client's statements make a comparison ("the best") that cannot be factually substantiated and offer a guarantee of results ("quick"). If such improper statements are contained in the lawyer's advertisement, the lawyer would be in violation of Rule 7.1.

In further clarification, even statements of opinion by clients that contain comparative statements are not appropriate. This Committee adopts the mixed approach, used in Pennsylvania, while prohibiting testimonials regarding results and/or comparisons, it does allow "soft endorsements." Philadelphia Ethics Opinion 91-17; Pennsylvania Bar Association Ethics Opinion 88-142. Examples of "soft endorsements" include statements such as the lawyer always returned phone calls and the attorney always appeared concerned. Id.

In sum, the requirements for lawyer advertising are all intended for the protection of the public. The restrictions on advertising content are carefully chosen to avoid misleading the public as they make the important choice of whom to select for legal representation. This Committee will not erode that protection where non-lawyers or their statements appear in the advertisements. Such a distinction would violate both the language of the pertinent disciplinary rule and the spirit behind it.

See also LAO-0113.

H. Communications Involving Listing of Inclusion in *The Best Lawyers in America*

The Committee addressed this issue and stated that a lawyer may advertise the fact he/she is listed in a publication such as *The Best Lawyers in America*, or a similar publication and include additional statements, claims or characterizations based upon the lawyer's inclusion in such a publication, provided such statements, claims or characterizations do not violate Rule 7.1. If, for some reason, the lawyer is delisted by a publication, the statement in the advertisement must accurately state the year(s) or edition(s) in which the lawyer was listed.

Further, the lawyer may not ethically communicate to the public credentials that are not legitimate, such as, one that is not based upon objective criteria or a legitimate peer review process, but is available to any lawyer who is willing to pay a fee. Such a communication is misleading to the public and therefore prohibited.

Similarly, statements that explain, and do not exaggerate the meaning or significance of professional credentials, in laymen's terms are permissible. For example, if the lawyer is communicating his/her "A.V." rating by Martindale-Hubbell, the lawyer may properly include a description that states that "A.V." represents "the highest rating" that particular service assigns. Also, if the lawyer is recognized and listed in the book *The Best Lawyers in America*, that lawyer may properly note he/she is among those lawyers "whom other lawyers have called the best." The lawyer should be mindful to exercise discretion when communicating this information, that it be objective and not misleading. For example, although the lawyer may properly characterize inclusion in the book *The Best Lawyers in America*, he/she cannot properly characterize that inclusion into statements such as "since I am included in the book, that means I am the best lawyer in America," nor can the lawyer impute any such endorsement to others in the law firm not so recognized.

The Committee's decision includes objective and factual statements and claims of such inclusions and warns that descriptive characterizations and other qualitative statements must meet the requirements of Rule 7.1.

See also LAO-0114.

I. Use of "Specialist" or "Specializing In"

Rule 7.4 permits a lawyer to hold him/herself out as limiting or concentrating the lawyer's practice in a particular area or field of law as long as that is a true and accurate statement in accordance with Rule 7.1 and 7.2.

Comment [1] to Rule 7.4 gives guidance that a lawyer can generally state that he/she is a "specialist," practices a "specialty," or "specializes in" particular fields, but the communication is subject to the "false and misleading" standard as applied in Rule 7.1 and 7.2. Unless the lawyer is engaged in patent, admiralty or a certification recognized by the Virginia Supreme Court, the lawyer should only use the term "certified specialist" in accordance with Rule 7.4.

The Committee cautions that if the lawyer uses terms such as "specialist" or "specializing in," he/she should be mindful of Rule 7.4's requirement that only certain specialties have been certified and recognized by the Virginia Supreme Court; otherwise the lawyer can only communicate the fact he/she is certified as a specialist with an appropriate disclaimer that there is no procedure in Virginia for approving certifying organizations.

See also LAO-0111 and LEOs 1475, 1425, 1385, 1292, 1231, and 923.

Committee Opinion
March 20, 2001
Committee Revised Opinion
April 4, 2006

LEGAL ETHICS OPINION 1826
POTENTIAL CONFLICTS FOR ATTORNEY/MEDIATOR WHEN CLIENT MOVES FROM MEDIATION TO LEGAL REPRESENTATION WITH FIRM OF ATTORNEY/MEDIATOR

You have presented a hypothetical in which two attorneys are in a law firm ("Law Firm"). They are the only partners in the Law Firm. Simultaneously, they serve as mediators for a mediation firm ("Mediation Firm"), whose other mediators include both attorneys and non-attorney mediators. These two attorney/mediators are independent contractors of the Mediation Firm. One of them also serves as the director of that Mediation Firm. All of the mediators refer clients to the two lawyers for legal representation in the same matters as the mediations.

With regard to that hypothetical scenario, you have asked the following questions:

1) May the attorney who is director of the Mediation Firm represent clients who appeared before other mediators in the Mediation Firm? If this is a conflict of interest, would disclosure to the clients of the attorney's role with the Mediation Firm cure that conflict?

2) May the attorney who is *not* the director of the Mediation Firm represent clients who appeared before other mediators in the Mediation Firm? If this is a conflict, would disclosure to the clients of the attorney's work for the Mediation Firm cure that conflict? Would a "firewall" be needed between the two attorneys[1]?

The Rules of Professional Conduct pertinent to your inquiry are:

Rule 1.7 which states:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client; or
>
> (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph(a), a lawyer may represent a client if each affected client consents after consultation, and:
>
> (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
>
> (2) the representation is not prohibited by law;
>
> (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
>
> (4) the consent from the client is memorialized in writing.

Rule 1.10(a) which states that when lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.6, 1.7, 1.9 or 2.10 (e).

Rule 2.10(e) which prohibits an attorney who has served as a third party neutral[2] from representing "any party to the dispute … in any legal proceeding related to the subject of the dispute resolution proceeding."

Also critical to your inquiry are Virginia Code §§ 8.01-581.22 and -581.24 which impose certain standards and duties when a person serves as a mediator, including the duty to maintain the confidentiality of materials and communications relating to the controversy being mediated. Fundamental to your inquiry is whether confidential information learned by a mediator in the Mediation Firm may be imputed to other employees in that firm, including the attorney/mediators, thereby creating a possible conflict of interest when a referral is made to the Law Firm.

Under Rules 2.10 (e) and 1.10 (a), any mediation performed by one of the attorneys in the Law Firm for the Mediation Firm creates a conflict of interest in representing either mediation party

FOOTNOTES

1 This opinion request asks about a "firewall." That concept is also commonly referred to with the alternate terms, "screen," "ethical screen," and "Chinese wall." Throughout the discussion in this opinion, the Committee uses the term "screen" as that term appears in the Rules of Professional Conduct. *See*, e.g., Rules 1.11 and 1.12.

FOOTNOTES

2 Rule 2.11 (a) defines a "mediator" as a "third party neutral."

in that same dispute for each of the two attorneys in the Law Firm. As to the mediating lawyer, there is no cure for such a conflict. Where the attorney/mediator herself served as a mediator in the particular matter, Rule 2.10(e) is the source of a conflict of interest for subsequent representation of either mediation party. Rule 2.10(e) does not provide a curative provision, such as consent, and a "screen" is not recognized as an appropriate means to cure a conflict under any circumstances except those described under Rule 1.11.[3] Further, Rule 1.10 (a) imputes a conflict of interest under Rule 2.10 (e) to any other attorney associated in the firm.[4]

In contrast, where the attorney's law partner's service as mediator is the source of a conflict for subsequent representation of the mediation parties, the first attorney's conflict is triggered by Rule 1.10(a)'s imputation language. Rule 1.10, unlike Rule 2.10, does provide a curative provision. Rule 1.10(c) provides that any conflict disqualification triggered by Rule 1.10, "may be waived by the affected client under the conditions stated in Rule 1.7." Rule 1.7(b) allows waiver of a conflict of interest where the enumerated are met.

To reiterate, under Rule 2.10(e), together with Rule 1.10(a), any mediation directly done by one attorney of the Law Firm for the Mediation Firm creates a conflict of interest in representing either mediation party in that same dispute for all of the attorneys in the Law Firm. For the mediating lawyer, this conflict cannot be cured by client consent; however, as to the non-mediating lawyer, the imputed conflict may be cured with the consent of the affected clients.

The foregoing analysis has only addressed successive representation where either of the two lawyers in the Law Firm has been a mediator. What about those cases referred by the other mediators in the Mediation Firm to lawyers in the Law Firm? Do those referrals trigger conflicts of interest for these two attorneys? When other mediators (lawyer or nonlawyer) refer their mediation clients to these two attorneys, those mediators are not members of the lawyers' "firm"[5] for purposes of Rule 1.10(a)'s imputation; nor would either attorney have mediated the dispute herself as contemplated by the prohibition in Rule 2.10(e). Thus, the sort of mediation conflict of interest outlined above is not triggered when mediators not in the Law Firm refer cases to these two lawyers.

Nevertheless, the two lawyers in accepting referrals from fellow mediators should analyze whether their "personal interest" of participation in this Mediation Firm may materially limit their representation of the clients, including whether there may be any duty owed the mediation parties. *See* Rule 1.7(a). Examples of things to consider would be the financial arrangement with the Mediation Firm, the nature of the relationship with fellow mediators (are they familiar with each other's cases, do they advise each other regarding their mediation cases, etc.), language in any contract between the Mediation Firm and its customers, and any pertinent legal authority. *See, e.g.*, Va. Code § 8.01-581.22. Presumably, the answer to such analysis may differ for the attorney who serves only as a contracting mediator and that attorney who also serves as the Mediation Firm's director. Whether or not these attorney/mediators have a personal interest creating a conflict of interest, pursuant to Rule 1.7, in any of these cases referred by fellow mediators cannot be determined with the limited facts provided in the hypothetical scenario.[6] However, if such a conflict is present in any of these referred cases, it would impute from one firm attorney to the other due to the language of Rule 1.10(a), quoted above.

As discussed earlier, Rule 1.7 and Rule 1.10(a) allow for conflicts of interest to be "cured" under the requirements delineated in Rule 1.7(b). That curative provision is available to these Rule 1.7 "personal interest" and/or "duty to a third person" conflicts if each requirement of Rule 1.7(b) can be met.

In sum, the direct answers to your questions are as follows:

1) May the attorney who is director of the Mediation Firm represent clients who appeared before other mediators in the Mediation Firm? If this is a conflict of interest, would disclosure to the clients of the attorney's role with the Mediation Firm cure that conflict?

The attorney/director can represent former customers of the Mediation Firm only where she either does not have a conflict of

FOOTNOTES

3 In some situations, while not a "cure" for a conflict, a "screen" may induce the parties to consent and waive a conflict. However, unlike other conflicts rules, Rule 2.10 does not provide for the waiver of a conflict under Rule 2.10 (e) with the consent of the parties in the mediation. The Committee notes that Rule 2.10 (d) allows the parties to consent to a conflict under that rule, but no such provision is made for a conflict under Rule 2.10 (e). Therefore, the Committee believes that the drafters of Rule 2.10(e) intended such a conflict to be not curable.

4 In LEO 1795 (2002) the Committee addressed a conflict problem under Rule 2.10 (e). That opinion held that Rule 2.10 (e) prohibited an attorney who had mediated a dispute from subsequently representing either party to that mediation in a legal matter related to the subject matter of the mediation. At the time LEO 1795 was issued, conflicts under Rule 2.10 (e) were not among those that are imputed to the other lawyers in a law firm under Rule 1.10 (e). Consequently, the Committee in LEO 1759 held that the conflict was personal only to the lawyer/mediator and not her partners and associates in the firm. Since that time, however, Rule 1.10 was amended to include conflicts under Rule 2.10 (e) and therefore those conflicts are now imputed to the other lawyers associated with the mediating lawyer. The conclusion in LEO 1759, that a mediation conflict pursuant to 2.10(e) is "personal to the attorney," is no longer the proper interpretation of the pertinent rules. Accordingly, any conflict either of the two attorneys in the present scenario may have from their mediation work under Rule 2.10(e) is imputed to the other attorney. If one of these attorneys refers her mediation clients to her partner for legal representation in the underlying dispute, that attorney receiving the referral and accepting the representation has a conflict of interest. LEO 1795 is overruled, in part, by the subsequent amendment to Rule 1.10 which became effective January 1, 2004.

5 The term "firm" as used in the Rules of Professional Conduct denotes a professional entity organized to deliver legal services. The mediation firm is not "firm" as defined by the Rules of Professional Conduct. Imputed disqualification under Rule 1.10 (a) applies "while lawyers are associated in a firm."

6 For further guidance regarding the affect of particular financial arrangements on the ethical responsibilities of these attorneys, see the final three paragraphs of this opinion, which address issues not asked in this request but highlighted by the Committee as worthy of note.

interest, or if she does, has properly cured it via Rule 1.7(b). Disclosure to the clients of the attorney's role with the Mediation Firm is one component of steps that would be needed to meet the requirements of Rule 1.7(b) in a particular matter.

2) May the attorney who is *not* the director of the Mediation Firm represent clients who appeared before other mediators in the Mediation Firm? If this is a conflict, would disclosure to the clients of the attorney's work for the Mediation Firm cure that conflict? Would a "firewall" be needed between the two attorneys?

Similarly, this attorney can represent those clients, who are former mediation customers of fellow mediators, where she either has no conflict of interest, or if she does, where she properly can meet the requirements of Rule 1.7(b)'s curative provision. Disclosure to the client of the attorney's role with the Mediation Firm is a likely component of the needed steps to comply with Rule 1.7(b). One appropriate strategy for obtaining client consent may be creation of a "screen" between the two lawyers regarding a case. In addition, due care must be exercised to comply with the requirements of Virginia Code Section 8.01-581.22 which makes all memoranda, work product and other material contained in the mediator's case file confidential and not subject to disclosure. Also protected are any communications made in the course of or in connection with the controversy being mediated. This means that the two lawyers associated with the mediating company must ensure that adequate security measures are implemented to avoid the unauthorized access to or disclosure of information protected under the statute unless all the parties to the mediation have waived confidentiality.

Having addressed your specific questions, the Committee also cautions that, while not part of those questions, certain issues are suggested by the present scenario. The Committee notes that the given facts lack detail as to the financial arrangements regarding this Mediation Firm. Do either of those attorneys have ownership interests in the company? This Committee has issued a number of opinions providing guidance for attorneys who own ancillary businesses. *See* LEO 1819 (lobbying firm); LEO1754 (attorney selling life insurance products); LEO 1658 (employment law firm/human resources consulting firm); LEO1647 (employee-owned title agency); LEO1634 (accounting firm); LEO 1368 (mediation/arbitration services); LEO 1345 (court reporting); LEO 1318 (consulting firm); LEO 1311 (insurance products); LEO 1254 (bail bonds); LEO 1198 (court reporting); LEO 1163 (accountant; tax preparation); LEO 1131 (realty corporation); LEO 1083 (non-legal services subsidiary); LEO 1016 (billing services firm); LEO 187 (title insurance). The Committee commends those opinions to you if in fact these attorneys are owners of the mediation company.

A second item of note regards referrals between the Mediation Firm and the Law Firm. The facts presented discuss referrals by mediators of clients to the Law Firm for legal services. Details are not provided as to whether such referrals are exclusive, i.e., whether mediators ever refer customers to any other Law Firms. While it is not inappropriate *per se* for such referrals to occur, the attorneys must be mindful of the limitation imposed by Rule 7.3(d), which states as follows:

> A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except that the lawyer may pay for public communications permitted by Rule 7.1and 7.2 and the usual and reasonable fees or dues charged by a lawyer referral service and any qualified legal services plan or contract of legal services insurance as authorized by law, provided that such communications of the service or plan are in accordance with the standards of this Rule or Rule 7.1 and 7.2, as appropriate.

The scenario lacks sufficient detail for the Committee to determine whether the arrangement complies with Rule 7.3(d); the Committee highlights the issue for your attention.

With regard to referrals, the scenario is silent as to whether the Law Firm makes referrals to the Mediation Firm. Again, there is no *per se* prohibition against such referrals. However, if these attorneys do refer clients to the Mediation Firm for which they work and which they may or may not own, the attorneys must be mindful of the potential conflict of interest regarding the attorneys' business interest, which is governed by Rule 1.7, provided above.

To reiterate, the Committee lacks sufficient information to make determinations regarding these issues regarding ancillary businesses and referrals, but refers you to the pertinent authorities for guidance.

This opinion supersedes LEO 1759 only with respect to the imputation of conflicts arising under Rule 2.10(e). This opinion is advisory only, based on the facts presented and not binding on any court or tribunal.

Committee Opinion
March 28, 2006

LEGAL ADVERTISING OPINION A-0115:
MAY A LAWYER ADVERTISE FOR A SPECIFIC TYPE OF CASE THAT THE LAWYER OR THE LAWYER'S FIRM DOES NOT INTEND TO HANDLE?

Question:

May a lawyer advertise for a specific type of case that the lawyer or the lawyer's firm does not presently handle nor intend to handle? If the advertisement generates a prospective client, the lawyer would screen a potential case to determine whether there may be a viable claim and, if so, refer the matter to other lawyers outside the firm who will provide the actual legal representation to the client. The outside lawyers will pay a referral fee back to the lawyer. At the initial intake, the lawyer will disclose to the potential client that the lawyer does not actually handle this type of case but it can refer the prospective client to a very competent lawyer with the necessary expertise in this area and this lawyer will pay the associated lawyer a referral fee. The relationship between the lawyer and the associated lawyer or his law firm, including the referral fee, will be explained in the representation letter. May the lawyer advertise for cases that the lawyer fully intends, from inception, to refer out and collect a referral fee?

Answer:

Lawyers may not advertise for specific types of cases that they do not presently handle nor intend to handle. The committee believes that engaging in this type of advertising violates Rule 7.1, and potentially Rule 7.3, which govern communications regarding lawyers' services.

Rule 7.1 (a)(1) states:

> A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:
>
> (1) contains false or misleading information …

Through the advertisement, the lawyer is holding himself or herself out as practicing law in a specific area in which he or she does not practice. Advertising for cases that the lawyer has no intention of handling is clearly misleading to the public at large. Prospective clients would reasonably believe that the lawyer provides legal services as claimed in the advertisement and has experience in this particular practice area which in fact is untrue. Comment [4] to Rule 7.1 states that, "[t]he non-lawyer is best served if communications about legal problems and lawyers contain no misleading information or emotional appeals, and emphasize the necessity of an individualized evaluation of the situation before conclusions as to legal needs and probable expenses can be made." Comment [2] clarifies further that "[a] truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no factual foundation." This comment substantiates the Committee's conclusion that an advertisement of this nature is in fact misleading.[1]

Further, Comment [1] to Rule 7.2 reminds lawyers who advertise that "[t]he proper motivation for commercial publicity by lawyers lies in the need to inform the public of the availability of competent, independent legal counsel. The public benefit derived from advertising depends upon the usefulness of the information provided to the community or to the segment of the community to which it is directed." These comments emphasize that lawyer advertising is intended to provide useful, factual information to guide non-lawyers in making informed decisions and choices regarding legal services. The advertisement in question leads to misinformation and distrust in the profession as it misdirects consumers in their choice of a lawyer.

Rule 1.5(e)[2] allows one law firm to divide a fee with another law firm if the fee is reasonable and the client consents. The Legal Ethics Committee has opined in LEO 1739 that it is proper for a lawyer to refer a client to another lawyer if he or she believes that they lack the required competence or if there is a conflict. The committee then properly cautions that a law firm's marketing efforts that include promises to compensate or reward any lawyer or law firm for a referral of clients could be viewed as an attempt[3] to engage in improper solicitation under Rule 7.3(d) or "running and capping" in violation of Chapter 39, Article 7 of Title 54.1 of the Code of Virginia. If the second law firm has an agreement with the first law firm in that they are receiving all of law firm A's referrals they may be perceived as being involved in this type of misconduct.

Rule 7.3(d) states:

> A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client …

Together these rules prohibit a lawyer from using/paying another, including another lawyer or law firm, to solicit clients for them. By sharing a referral fee with the first lawyer, who does not even practice in the area for which they are soliciting clients, the associated lawyer may have potentially violated Rule 7.3 as well.

Committee Opinion
April 4, 2006

FOOTNOTES

1 *See In the Matter of Robert Edward Howard*, VSB Docket Nos. 99-042-2586, 00-042-0234, and 00-042-1889. (Respondent advertised to Vietnamese community that his firm "specialized in" immigration when in fact no lawyer in the firm practiced immigration law, but the respondent had an attorney available to whom such matter might be referred.)

2 A division of a fee between lawyers who are not in the same firm may be made only if: 1. the client is advised of and consents to the participation of all the lawyers involved; 2. the terms of the division of the fee are disclosed to the client and the client consents thereto; 3. the total fee is reasonable; and 4. the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.

3 Under the *Virginia Rules of Professional Conduct*, it is professional misconduct to attempt to violate the Rules. Rule 8.4(a).

Clients' Protection Fund Board Petitions Paid

On February 24, 2006, the Clients' Protection Fund Board approved payments to seven claimants. The matters involved seven attorneys.

Attorney/Location	**Amount Paid**	**Type of Case**
O. Stuart Chalifoux, Richmond	$3,000.00	Unearned retainer/Divorce
Sam Garrison, Roanoke	$2,500.00	Unearned retainer/Failure to perfect appeal
Steven Y. Lee, Fairfax	$5,000.00	Unearned retainer/Immigration matter
Charles E. Malone, Norfolk	$2,500.00	Unearned retainer/Criminal appeal
David Ashley Grant Nelson, Charlotte Court House	$300.00	Unearned retainer/Divorce
John H. Partridge, Herndon	$2,050.00	Unearned retainer/Civil litigation
Troy A. Titus, Virginia Beach	$5,000.00	Unearned retainer/Business establishment
Total	**$20,350.00**	

Limited Appeal by Petition by Bar Counsel

On April 6, 2006, COLD approved a proposed amendment giving bar counsel limited authority to appeal by petition from either the Disciplinary Board or a three-judge Circuit Court to the Supreme Court of Virginia..

Part Six, Section IV, Paragraph 13 of the Rules of the Supreme Court does not provide bar counsel with the right to appeal any attorney disciplinary determination. In contrast, respondents may appeal a disciplinary determination from a District Committee, the Disciplinary Board or a three-judge Circuit Court as a matter of right. The proposed amendment would give bar counsel the authority to appeal only to the Court from a decision by the Disciplinary Board or a three-judge Circuit Court by petition. Such an appeal by bar counsel would be permitted only upon an error of law or procedure on the basis of either or both of the following: the error was outcome-determinative, or the error presents an issue of significant precedential value. The proposed amendment would apply a standard of review for an appeal by bar counsel based solely upon whether the determination is plainly contrary to the law. This standard differs from that which is applicable to an appeal of right by a respondent, i.e., whether there is substantial evidence in the record supporting the determination and whether the determination is plainly contrary to the law.

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

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

* * *

H. District Committee Proceedings

* * *

4. ~~Perfecting an Appeal from District Committee's Determination~~ Procedure For Appealing a District Committee Determination By a Respondent

~~a. By the Respondent~~

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

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

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

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

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

a. Agreed Disposition

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

b. Notice of Appeal

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

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

(3) Upon receipt of the notice of appeal, Bar Counsel shall forward those portions of the record in his or her possession to the Clerk of the Disciplinary System.

c. Staying of Discipline

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

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

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

f. Record on Appeal

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

g. Briefing Schedule

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

(1) The Respondent shall file an opening brief within 40 days after the Clerk of the Disciplinary System mails the notice to the Respondent that the record is complete. Failure of the Respondent to file an opening brief within the time specified herein shall result in the Dismissal of the appeal by the Board whether the appeal was to the Board or a three-judge Circuit Court, and affirmance of the District Committee Determination.

(2) The deadline for Bar Counsel to file an opposing brief is 25 days after the opening brief is filed.

(3) The deadline for the Respondent to file a reply brief is 14 days after the brief of Bar Counsel is filed.

h. Oral Argument

Oral argument shall be granted unless waived by the Respondent.

i. Standard of Review

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

j. Disposition on Appeal

(1) Upon review of the record in its entirety, if the Board or three-judge Circuit Court determines that there is substantial evidence in the record supporting the District Committee Determination and that the District Committee Determination is not plainly contrary to the law, the Board or three-judge Circuit Court shall affirm the District Committee Determination.

(2) Upon review of the record in its entirety, if the Board or three-judge Circuit Court determines that there is a lack of substantial evidence in the record supporting the District Committee Determination or that the District Committee Determination is plainly contrary to the law, the Board or three-judge Circuit Court may:

(a) dismiss the District Committee Determination in whole or in part; or

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

(c) reverse the District Committee Determination, in whole or in part, and remand, in whole or in part, to the District Committee for further Proceedings as directed in its Memorandum Order.

* * *

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

1. Agreed Disposition

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

~~2.~~ ~~Notice of Appeal~~

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

~~1.~~ 2. ~~Right~~ By a Respondent

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

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

(2) a Memorandum Order in an appeal affirming a District Committee Determination imposing a sanction which created a Disciplinary Record.

b. No appeal shall be permitted from a Summary Order.

c. An appeal shall be permitted once the Memorandum Order has been served on the Respondent.

d. The Respondent shall file with the Clerk of the Disciplinary System a notice of appeal and assignments of error within 30 days after the Memorandum Order is served. The transcript or a written statement of fact shall be filed with the Clerk of the Disciplinary System within 60 days of service of the Memorandum Order. An appeal shall be perfected by compliance with these filing requirements. Failure to comply with any of these filing requirements, as set forth in this subparagraph, is jurisdictional and shall result in dismissal of the appeal.

e. Preparation of the Record

(1) Upon an appeal from the Board, the Clerk of the Disciplinary System shall assemble and file the record as provided in Part 5 of the Rules of this Court.

(2) Upon an appeal from a three-judge Circuit Court, the clerk of the Circuit Court shall forward to the Clerk of the Disciplinary System any contents of the record in the file of the three-judge Circuit Court or, alternatively, certify in writing that the file of the three-judge Circuit Court does not contain any contents of the record. The Clerk of the Disciplinary System shall then assemble and file the record as provided in Part 5 of the Rules of this Court.

(3) The Clerk of the Disciplinary System shall immediately notify the Respondent, by certified mail, and Respondent's counsel, if any, and Bar Counsel, by first class mail, of the date on which the record is filed.

f. Further Proceedings shall be as provided in the Rules of this Court for cases in which an appeal has been perfected. The date of filing the record with the clerk of this Court shall be deemed to be the date of the issuance of the certificate of the clerk of this Court under Rule 5:23.

g. Standard of Review

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

~~3. Further Proceedings~~

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

3. By the Bar

a. In order to protect the interests of the public, the Bar may petition for an appeal to this Court from a Memorandum Order issued by the Board or a three-judge Circuit Court, once the Memorandum Order has been served on Bar Counsel.

b. The Bar may appeal an error of law or procedure on the basis of one or both of the following:

(1) the error was outcome-determinative, or

(2) the error presents an issue of significant precedential value.

c. No appeal shall be permitted from a Summary Order.

d. Bar Counsel shall file with the Clerk of the Disciplinary System a notice of appeal and assignments of error within 30 days after the Memorandum Order of the Board or a three-judge Circuit Court is served. The transcript or a written statement of fact shall be filed with the Clerk of the Disciplinary System within 60 days of service of the Memorandum Order of the Board or the three-judge Circuit Court. Failure to comply with any of these filing requirements, as set forth in this subparagraph, is jurisdictional and shall result in dismissal of the appeal.

e. Preparation of the Record

(1) Upon an appeal from the Board, the Clerk of the Disciplinary System shall assemble and file the record as provided in Part 5 of the Rules of this Court.

(2) Upon an appeal from a three-judge Circuit Court, the clerk of the Circuit Court shall forward to the Clerk of the Disciplinary System any contents of the record in the file of the three-judge Circuit Court or, alternatively, certify in writing that the file of the three-judge Circuit Court does not contain any contents of the record. The Clerk of the Disciplinary System shall then assemble and file the record as provided in Part 5 of the Rules of this Court.

(3) The Clerk of the Disciplinary System shall immediately notify the Respondent, by certified mail, and Respondent's counsel, if any, and Bar Counsel, by first class mail, of the date on which the record is filed and the date of service upon Bar Counsel of the Memorandum Order.

f. Further Proceedings

Further Proceedings shall be as provided in the Rules of this Court for perfecting the appeal and procedure following perfection of the appeal except as follows:

(1) The date of entry of judgment for purposes of the appeal shall be the date

of service upon Bar Counsel of the Memorandum Order.

(2) The transcript or written statement of facts shall be filed with the Clerk of the Disciplinary System.

(3) The presiding Board member in the underlying Board Proceeding or the chief judge designate of the panel in the underlying three-judge Circuit Court Proceeding shall perform the functions of the trial judge pursuant to Rule 5:11 of the Rules of this Court.

g. Standard of Review

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

~~4. Determination~~

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

4. Disposition on Appeal

Upon review of the record in its entirety, the Court may:

(1) dismiss the decision of the Board or three-judge Circuit Court in whole or in part; or

(2) affirm the decision of the Board or three-judge Circuit Court in whole or in part; or

(3) reverse the decision of the Board or three-judge Circuit Court in whole or in part and remand, in whole or in part, to the Board or three-judge Circuit Court for further Proceedings, as directed by the Court.

In affirming the decision of the Board or three-judge Circuit Court in whole or in part in an appeal in which a stay of a Suspension was imposed during the appeal, the final order of the Court shall include the date upon which the Suspension shall commence.

5. Office of the Attorney General

(1) In all appeals to this Court by a Respondent and in any cross appeal by the Bar arising out of an appeal by a Respondent, the Office of the Attorney General, or ~~the~~ Bar Counsel, if requested to do so by the Attorney General, shall represent the interests of the Commonwealth and its citizens as appellees.

(2) In appeals to this Court by the Bar, Bar Counsel, or the Office of the Attorney General if requested to do so by the Bar, shall represent the interests of the Commonwealth and its citizens as appellants.

6. Stay Pending Appeal

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

7. Lifting Stay of Suspension

This Court may, upon the motion of the Virginia State Bar without the filing of a record with the Court, lift a stay of the effect of an order of Suspension upon a failure of the Respondent to file a timely notice of appeal. The final order of the Court shall include the date upon which the Suspension shall commence.

* * *

Comments or questions should be submitted in writing to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, no later than June 12, 2006. The Virginia State Bar Council will consider the proposed amendments when it meets on June 15, 2006.

Appeal of Right by Respondents From Three-Judge Court Determinations; Limited Appeal by Petition by Bar Counsel from Three-Judge Court Determinations

On April 6, 2006, COLD approved proposed amendments to Va. Code Section 54.1-3935 giving bar counsel limited authority to appeal by petition from a three-judge Circuit Court determination to the Virginia Supreme Court. The proposed amendments also clarify that an appeal by a respondent from a three-judge Circuit Court to the Virginia Supreme Court is an appeal of right.

Virginia Code Section 54.1-3935 provides no authority for bar counsel to appeal a decision by a three-judge Circuit Court. The proposed amendments would give bar counsel the limited authority to appeal by petition pursuant to Part Six, Section IV, Paragraph 13 of the Rules of Court and as provided in the provisions of Part 5 of the Rules of Court for perfecting an appeal and the procedure following perfection of an appeal. The code section requires a respondent to appeal by petition. The proposed amendments would make a respondent's appeal a matter of right.

Code of Virginia, Section 54.1-3935. Procedure for revocation of license

* * *

E. The attorney, may, as of right, appeal from the judgment of the court to the Supreme Court pursuant to Part Six, Section IV, Paragraph 13 of the Rules of Court, and as provided for cases in which an appeal has been perfected ~~the procedure for filing an appeal from a trial court~~, as set forth in Part 5 of the Rules of Court. ~~In any such appeal, the Supreme Court may, upon petition of the attorney, stay the effect of an order of suspension during the pendency of the appeal. Any order of reprimand shall be automatically stayed prior to or during the pendency of an appeal therefrom. No stay shall be granted in cases where the attorney's license to practice law has been revoked.~~

F. In order to protect the interests of the public, the Bar may petition for an appeal from the judgment of the court to the Supreme Court pursuant to Part Six, Section IV, Paragraph 13 of the Rules of Court, and as provided in the provisions for perfecting an appeal and the procedure following perfection of an appeal as set forth in Part 5 of the Rules of Court.

G. In any such appeal, the Supreme Court may, upon petition of the attorney, stay the effect of an order of suspension during the pendency of the appeal pursuant to Part Six, Section IV, Paragraph 13 of the Rules of Court.

H.~~F.~~ In any proceeding to revoke the license of an attorney, the attorney shall be entitled to representation by counsel.

I.~~G.~~ Nothing in this section shall affect the right of a court to require from an attorney security for his good behavior, or to fine him for contempt of court.

* * *

Participation and Disqualification of District Committee or Disciplinary Board Member in Disciplinary Proceedings

On April 5, 2006, COLD approved a proposed amendment providing that a member of a District Committee or the Disciplinary Board shall be disqualified from service in a Disciplinary Proceeding if that member previously represented the Respondent.

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

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

* * *

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

* * *

6. Authority and Duties of District Committee

* * *

~~h. Disqualification~~

~~A member of a District Committee shall be disqualified from adjudicating any matter with respect to which the member has any personal or financial interest that might affect or reasonably be perceived to affect the member's ability to be impartial. The Chair shall rule on any such issue of disqualification, subject to being overruled by a majority of the Panel.~~

h.~~i.~~ Recusal or Disqualification

In the event of recusal or disqualification of so many District Committee ~~or Panel~~ Members that the District Committee ~~or Panel~~ is unable to discharge its responsibilities under this Rule, the District Committee ~~or Panel~~ may supplement its membership with members from other District Committees ~~or Panels~~ to achieve a quorum. If every member of a District Committee ~~or Panel~~ is recused or is disqualified from considering Charges of Misconduct, the Clerk of the Disciplinary System shall assign the Charges of Misconduct to another District Committee ~~or Panel~~.

F. Participation and Disqualification of Counsel in Disciplinary Proceedings

* * *

3. Disqualification of Counsel, District Committee or Board Members in Disciplinary Proceedings.

a. A member or former member of a District Committee or the Board shall be disqualified from adjudicating any matter with respect to which the member has any personal or financial interest that might affect or reasonably be perceived to affect the member's ability to be impartial. The Chair shall rule on the issue of disqualification, subject to being overruled by a majority of the Panel or Subcommittee.

* * *

d. Unless otherwise stated, ~~A~~all questions of interpretation under this Paragraph 13.F. shall be decided by the tribunal before which the proceeding is pending, except that COLD shall determine discretionary termination of membership or further service.

e. Any member or former member of a District Committee or the Board ~~member~~ shall be ineligible to serve in a Disciplinary Proceeding in which:

(1) the District Committee or Board member or any member of his or her ~~the Board member's~~ firm is involved in any significant way with the matter on which the District Committee or Board would act;

(2) the Board member or any member of the Board member's firm was serving on the District Committee that certified the matter to the Board or has otherwise acted on the matter;

(3) a ~~full-time~~ Judge would be required to withdraw from consideration of, or presiding over, the matter under the Canons of Judicial Conduct adopted by this Court; ~~or~~

(4) the District Committee or Board member previously represented the Respondent; or

(continued on page 41)

Partial MCLE credit to active members who serve in the Virginia General Assembly

The Supreme Court of Virginia has requested the Virginia State Bar to consider an amendment to Part 6, Section IV, Paragraph 17, that would give partial MCLE credit to active members who serve in the Virginia General Assembly. The proposed amendment will be considered by the Council of the Virginia State Bar at its meeting in Virginia Beach on June 15, 2006. Comments may be directed to Executive Director, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219 no later than June 9, 2006. The proposed amendment is as follows:

17. MANDATORY CONTINUING LEGAL EDUCATION RULE.CThe Virginia Supreme Court hereby establishes a Mandatory Continuing Legal Education Program in the Commonwealth of Virginia.

***

G. Credits:

(1) Credit will be given only for Continuing Legal Education courses or activities approved by the board.

(2) Hours in excess of the minimum requirements defined in this Rule may not be carried forward for credit beyond the one year provided for in the Rule.

(3) Credit will not be given for Continuing Legal Education hours accumulated prior to admission to the Virginia State Bar.

(4) Credit shall be given to active members of the Virginia State Bar who prepare course materials and who personally participate as instructors. The credit, as determined by the board, will reflect the time reasonably required for preparation of materials, as well as the actual time spent instructing.

(5) An active and in good standing member shall be credited with four (4) hours of Continuing Legal Education for compliance years during any part of which he or she serves as an elected member of the Virginia General Assembly. Such hours may not be used to satisfy any part of the requirement for legal ethics or professionalism.

***

5/3/06

(Proposed Rule Change continued from page 40)

(5)~~(4)~~the District Committee or Board member, upon reasonable notice to the Clerk of the Disciplinary System or to the Chair~~, Vice Chair or other Board member~~ presiding over a matter, disqualifies himself or herself from participation in ~~any such~~ the matter, because such member believes that he or she is unable to participate objectively in consideration of ~~such~~ the matter or for any other reason.

* * *

Comments or questions should be submitted in writing to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, no later than June 12, 2006. The Virginia State Bar Council will consider the proposed amendments when it meets on June 15, 2006.