Virginia Supreme Court Approved Amendments to Rule 5.6(B) of the Rules of Professional Conduct

On July 20, 2006 the Virginia Supreme Court approved, effective September 1, 2006, an amendment to Rule 5.6(b) of the Rules of Professional Conduct.

RULE 5.6(b)

The Boyd-Graves Conference recommended the proposed amendment to the Virginia State Bar's Standing Committee on Legal Ethics. That recommendation included deletion of the word "broadly" from Rule 5.6(b), which prohibits an attorney from entering into an agreement that *broadly* restricts the attorney's ability to practice law. The inclusion of "broadly" in Virginia's rule is unique. All other states' rules, as well as the American Bar Association's Model Rule 5.6(b), prohibit *any* restriction on the ability to practice in this context. In contrast, the presence of "broadly" in Virginia's Rule 5.6 has the effect, in some circumstances, of permitting defense counsel in the settlement of a civil claim, to prevent plaintiff's counsel from ever bringing similar claims against the defendant. The Standing Committee on Legal Ethics adopted the Boyd-Graves Conference's recommendation to eliminate "broadly," harmonizing Virginia's rule with those of all other jurisdictions.

Inspection and Comment

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

REINSTATEMENT PETITION

Pursuant to Part 6, Section IV, Paragraph 13(I) of the Rules of the Supreme Court of Virginia, Salvage DeLacy Stith, petitioned the Court on June 16, 2006, for reinstatement of his license to practice law. The Virginia State Bar Disciplinary Board will hear the second petition for reinstatement on Friday, January 26, 2007, at 9 a.m. in the State Corporation Commission Tyler Building, 1300 East Main Street, Second Floor, Courtroom A, Richmond, Virginia. After hearing evidence and oral argument, the board will make factual findings and recommend to the Court whether the petition should be granted or denied.

The board seeks information about Mr. Stith's fitness to practice law. Written comments or requests to testify at the hearing may be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219 by Wednesday, January 17, 2007. Letters will become a matter of public record.

Salvage DeLacy Stith

The Virginia State Bar Disciplinary Board revoked Salvage DeLacy Stith's license on June 24, 1994, for improper recordkeeping that resulted in overdrafts of his trust account, and for neglect of client legal matters in three criminal cases in which he failed to properly appeal. At the time of the hearing that resulted in his disbarment, Mr. Stith's prior disciplinary record included two suspensions of his law license, a public reprimand, and four other instances of discipline dating back to 1978.

On October 2, 2001, the Supreme Court of Virginia denied Mr. Stith's first petition for reinstatement of his law license.

Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Harry Wayne Brown	Roanoke, VA	20 Day Suspension w/Terms	October 2, 2006	2
Wayne Trivette Horne	Grundy, VA	Public Reprimand w/Terms	May 16, 2006	6
Dwayne Bernard Strothers	Suffolk, VA	90 Day suspension	June 12, 2008	n/a
Disciplinary Board				
Kristen Dawn Dean	Norton, VA	Revocation	August 25, 2006	8
Darren Scott Haley	Taylors, SC	30 Day Suspension	May 25, 2006	9
John E. Hamilton, Jr.	Reedville, VA	Public Reprimand w/Terms	July 18, 2006	11
Khalil Wali Latif	Midlothian, VA	One Year Suspension w/Terms	October 27, 2006	17
James Spaulding Powell*	Lakewood, CO	One Year Suspension w/Terms	August 25, 2006	24
Dion Francis Richardson	Lynchburg, VA	28 Day Suspension	September 30, 2006	26
Tony Charles Rudy	Huntington Beach, CA	Suspension	July 31, 2006	n/a
District Committees				
Marsha Dunning Carter	Eastville, VA	Public Admonition w/Terms	July 17, 2006	29
Jon I. Davey	Danville, VA	Public Admonition	September 6, 2006	31
Robert Joseph Hill	Fairfax, VA	Public Reprimand w/Terms	September 26, 2006	32
Arlene Lavinia Pripeton	Fairfax, VA	Public Reprimand w/Terms	June 27, 2006	34
Benjamin Thomas Reed	Norfolk, VA	Public Admonition	July 19, 2006	38
Allan W. Smith	Richmond, VA	Public Reprimand w/Terms	August 23, 2006	40
Eddie Raymond Vaughn, Jr.	Ashland, VA	Public Reprimand w/Terms	October 2, 2006	46
Cost Suspension				
Mikre-Michael Ayele	Arlington, VA	Disciplinary Board	August 31, 2006	n/a
Timothy Martin Barrett	Yorktown, VA	Disciplinary Board	September 19, 2006	n/a
John V. Buffington, Jr.	Philadelphia, PA	Disciplinary Board	September 21, 2006	n/a
Khalil Wali Latif	Midlothian, VA	Disciplinary Board	August 24, 2006	n/a
Denise Ann Maniscalco	Washington, DC	Disciplinary Board	August 16, 2006	n/a
Dwayne Bernard Strothers	Suffolk, VA	Disciplinary Board	August 23, 2006	n/a
Impairment Suspension				
Richard Gibson Wohltman	Alexandria, VA	Disciplinary Board	August 31, 2006	n/a
Reinstatement Petition				
Salvage DeLacy Stith	Chesapeake, VA		January 17, 2006	50
Interim Suspensions — Failure to Comply w/Disciplinary Board Order				
Myles Talbert Hylton	Roanoke, VA	Disciplinary Board	August 25, 2006	n/a
Interim Suspensions — Failure to Comply w/Subpoena				
Roger Jeffrey McDonald	Glen Allen, VA	Disciplinary Board	September 20, 2006	n/a
Marc James Small	Chester, VA	Disciplinary Board	August 31, 2006	n/a
Dwayne Bernard Strothers	Suffolk, VA	Disciplinary Board	September 5, 2006	n/a

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

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

VIRGINIA STATE BAR EX REL
EIGHTH DISTRICT COMMITTEE,
Case No. CL06-1003

Complainant
v.
HARRY WAYNE BROWN,
Respondent.

VSB Nos. 05-080-1947
05-080-3697

MEMORANDUM ORDER
(20 DAY SUSPENSION WITH TERMS)

On September 11, 2006, a telephonic hearing was held before a three-judge panel designated by the Chief Justice of the Supreme Court of Virginia pursuant to Virginia Code § 54.1-3935 consisting of The Honorable Margaret Poles Spencer, Judge of the Thirteenth Judicial Circuit and Chief Judge Designate, The Honorable Carl Edward Eason, Jr., Judge of the Fifth Judicial Circuit, and The Honorable Nicholas E. Persin, Retired Judge of the Twenty-ninth Judicial Circuit. Respondent Harry Wayne Brown ("Respondent"), was present and represented by his counsel Frank N. Perkinson, Jr., Esquire. Assistant Bar Counsel Kathryn R. Montgomery, Esquire appeared for the Virginia State Bar ("Complainant"). The parties jointly presented an Agreed Disposition and sought the Court's approval pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia.

The parties have entered into certain stipulations relative to the facts and charges which are made a part of this order as follows:

I. VSB No. 05-080-1947

A. STIPULATIONS OF FACT

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

2. Samara Maloney worked in Respondent's office prior to her death in 2001. In June 2001, David Dodson, ex-husband of decedent, and Stephanie Ruffino (formerly Stephanie DiPasquale), adult daughter of decedent, qualified as co-administrators of her estate. Around that time or soon thereafter, they retained Respondent as counsel. Samara Maloney was also survived by at least one minor child who lived with David Dobson.

3. During her last illness and hospitalization, Samara Maloney incurred substantial medical bills that were not paid. After her death, co-administrator Stephanie Ruffino received numerous medical bills addressed to her mother.

4. In May 2002, Respondent received Court approval and arranged for Samara Maloney's residence to be sold. The sale netted approximately $30,000. Soon after the sale, Respondent advised the co-administrators to disburse the proceeds of the sale to the heirs, which they did. Respondent was also paid an attorney's fee. The Respondent advised the co-administrators that the homestead exemption and family allowances would be paid in priority over creditors of the estate, if properly claimed, and would consume the funds of the estate. Following Respondent's advice, the co-administrators did not pay the medical bills of the estate.

5. Following the Respondent's advice, on June 28, 2004, the co-administrator David Dodson filed an exemption on behalf of decedent's minor daughter. On July 15, 2004, the Commissioner of Accounts wrote Respondent a letter advising him that in his opinion, the exemption had been filed too late, and that Respondent should notify his malpractice carrier of the situation.

6. For the period of May 16, 2003 to May 16, 2004, Respondent was insured for legal malpractice by The Lawyer's Protector Plan, which is underwritten by Clarendon National Insurance Company ("hereinafter carrier"). The policy provided a 60-day extended reporting period. During the extended reporting period, Respondent advised his local agent of the claim. On July 16, 2004, Respondent notified his carrier of the claim related to his representation of the Estate of Samara Maloney.

7. On August 11, 2004, Respondent's carrier sent him a letter by certified mail, return receipt requested, denying coverage because in the carrier's estimation, Respondent had reported only a potential claim, not an actual claim. The carrier suggested he report the matter to his present carrier. Respondent disagreed with the carrier's interpretation of the policy and wrote the carrier to dispute the denial.

8. On September 9, 2004, Respondent, the Commissioner of Accounts Furman Whitescarver, Jr., Judge Robert P. Doherty, Jr., along with his law clerk, and Judge James R. Swanson met to discuss finalizing the estate. During the meeting, Judge Doherty addressed various concerns and issues he saw with Respondent's representation of the Estate. Judge Doherty suggested that Respondent should withdraw from his representation due to a potential conflict of interest. He also advised Respondent to write letters to provide written notice to his clients, his malpractice carrier, and the bonding company that he may have erroneously advised his clients concerning the filing of exemptions and payment of decedent's medical bills, and to provide a copy of the letters to the Commissioner of Accounts and the Court. Respondent agreed to do so. Respondent advised Judge Doherty that he had already notified the carrier. However, Respondent did not disclose the fact that the carrier had already denied the claim and that there was a dispute as to the carrier's denial.

9. On September 15, 2004, Respondent wrote letters to his clients, co-administrators David Dodson and Stephanie Ruffino, and to his carrier advising of his possible erroneous advice in connection with the Estate of Samara Maloney. Respondent copied his clients on the letter to his carrier, and called Stephanie Ruffino to discuss the letters and his anticipated withdrawal. In addition Respondent discussed the carrier's denial of the claim and his dispute related to the carrier's denial. On September 15, 2004, Respondent sent copies of both letters to the Commissioner of Accounts and to Judge Doherty, along with a cover letter thanking the Court for its friendship and professional courtesy and stating that it made a "great difference in my outlook."

10. On September 28, 2004, Respondent's carrier sent him a letter by certified mail, return receipt requested, advising that it had already denied coverage for potential claims arising out of his representation of the Estate of Samara Maloney.

11. Respondent subsequently withdrew from his representation of the co-administrators for the Estate of Samara Maloney.

B. STIPULATION RELATIVE TO CHARGES OF MISCONDUCT

Respondent maintains that it was not his intention to mislead the Court, however Respondent and Assistant Bar Counsel agree that the above facts and Respondent's failure to communicate openly and to fully inform the Court about his carrier's denial and of his dispute as to the denial, if proven, would constitute a misrepresentation in violation of the following Rule of Professional Conduct:

C. FINDING OF MISCONDUCT

The Court finds that Complainant has by the stipulation, proven its case and Respondent's actions constitute a violation of the following Rule of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

II. VSB No. 04-080-3697

A. STIPULATIONS 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 May 28, 2003, Respondent filed a motion for declaratory judgment in the Roanoke Circuit Court on behalf of his client, Gladys Bevil, Administratrix of the Estate of Billie Ruth Keen, against The Rawlings Company. The suit asked the Court to determine the validity of the defendant's lien against proceeds of a wrongful death suit paid into court.

3. The suit papers were not served on the defendant and no responsive pleadings were filed.

4. On July 7, 2004, Respondent filed a praecipe, signed by him, which read, "I certify that the above-styled matter is matured for trial on its merits and request that the Clerk place it on the docket to be called August 3, 2004." However, at the time Respondent filed the praecipe, no process had been issued nor service on the defendant obtained.

5. At the August 3, 2004 docket call, Judge Jonathan M. Apgar, at Respondent's behest, scheduled a two-hour bench trial to be held on September 30, 2004. No one was present on behalf of the defendant.

6. On September 30, 2004, attorney Philip W. Parker appeared specially on behalf of the defendant to assure no order was entered to the detriment of his client. Counsel met in chambers, and Respondent asked to non-suit the case. On February 2, 2005, the Court received a proposed non-suit order, which was entered.

7. On January 31, 2005, the Roanoke Circuit Court issued a Rule requiring Respondent to show cause why 1) the declaratory judgment action should not be discontinued and removed from the docket; and 2) why the Court should not impose sanctions upon him for violation of Virginia Code § 8.01-271.1.

8. On February 18, 2005, a hearing was held on the Rule to Show Cause. At the hearing, Respondent contended that at the time the praecipe was filed, the case was in a settlement posture since Respondent had a written offer to settle the case. Respondent maintained that the offer was received from an agent for the defendant, and therefore the case should be considered "ready for trial on its merits." The Court found that Respondent's filing of the praecipe violated Virginia Code § 8.01-271.1. The Court ordered Respondent to pay counsel for defendant $500 in attorney's fees and within six months, satisfactorily complete the Virginia State Bar's Mandatory Professionalism Course and certify completion and payment to the Court. The Court opened a new file styled *In the Matter of Harry W. Brown*, case no. CL05-377 to monitor Respondent's compliance. The Court's findings and order were stated in an Order entered April 6, 2005.

9. On March 22, 2006, the Court entered an order stating that Respondent had completed his obligations under the order imposing sanctions and struck from its docket *In the Matter of Harry W. Brown*, case no. CL05-377.

B. STIPULATION RELATIVE TO CHARGES OF MISCONDUCT

Respondent and Assistant Bar Counsel agree that the above facts, if proven, would constitute a violation of the following Rule of Professional Conduct:

C. FINDING OF MISCONDUCT

The Court finds that Complainant has by the stipulation, proven its case and Respondent's actions constitute a violation of the following Rule of Professional Conduct:

RULE 1.3 Diligence

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

DISPOSITION

The Court, having heard the arguments of counsel, having reviewed the Agreed Disposition and the stipulations of the parties, having made the foregoing finding, and having reviewed Respondent 's disciplinary record as maintained by the Clerk of the Disciplinary System; it is **ORDERED** that the proposed Agreed Disposition is approved and accepted and the Court does hereby impose the following terms upon Respondent:

1. Respondent's law license shall be suspended for 20 calendar days which shall become effective on October 2, 2006; in addition

2. Respondent shall also complete the following additional term: By **March 31, 2008**, Respondent shall take and pass with a scaled score of 85 or better, the Multistate Professional Responsibility Exam and submit the official results reflecting his score to Assistant Bar Counsel Kathryn R. Montgomery, or her designee. Respondent is responsible for all test fees.

If, however, Respondent fails to meet this term within the time specified, Respondent agrees that the Virginia State Bar Disciplinary Board shall impose upon him a one-year suspension as an alternative sanction.[1] 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 term 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 Circuit Court for Roanoke City is directed to provide a copy of this order to counsel of record and further shall certify four copies of this order and mail them to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, VA 23219 for further service upon the Respondent consistent with the rules and procedures governing the Virginia State Bar Disciplinary System; and it is further

ORDERED that the Clerk of the Disciplinary System of the Virginia State Bar shall assess the appropriate administrative fees; and finding nothing further to be done in this matter, the case shall be stricken from the docket and placed among ended causes.

Upon agreement of counsel for the parties, the Court dispenses with the signatures of counsel pursuant to Rule 1:13 of the Rules of the Virginia Supreme Court.

THIS IS A FINAL ORDER.

Date: 9/13/2006
Margaret Poles Spencer
Chief Judge Designate
Judge of the Thirteenth Judicial Circuit

Date: 9/20/2006
Carl Edward Eason, Jr.
Judge of the Fifth Judicial Circuit

Date: 9/25/2006
Nicholas E. Persin
Retired Judge of the Twenty-ninth Judicial Circuit

FOOTNOTES

1 In the Agreed Disposition, Respondent agreed that the Virginia State Bar Disciplinary Board shall assume jurisdiction over this matter and any subsequent proceedings should a disagreement arise among the parties as to whether the term was timely completed.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF BUCHANAN

VIRGINIA STATE BAR EX REL
TENTH DISTRICT COMMITTEE

v.
WAYNE TRIVETTE HORNE
Case No. 77-06

Memorandum Order

This cause came on for hearing on April 12, 2006, before a duly appointed Three-Judge Court consisting of the Honorable Charles M. Stone, the Honorable J. Robert Stump and the Honorable Larry B. Kirksey, Chief Judge Designate; upon the Rule to Show Cause of this Court; pursuant to Va. Code § § 54.1-3935 and 8.01-261(17) and Rules of Court, Part Six, § IV, Paragraph 13.

Respondent Wayne Trivette Horne appeared in person and with his attorney, Michael L. Rigsby. Scott Kulp appeared on behalf of the Virginia State Bar.

Upon the evidence presented and arguments of counsel, the court finds that the Virginia State Bar has proved by clear and convincing evidence the following facts:

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

2. In November 2002, Complainant Bobby J. Baker (hereinafter the "Complainant") and a co-defendant were charged with maiming.

3. On or about July 18, 2003, Respondent was appointed by the Buchanan County Circuit Court to represent Complainant given Complainant's indigence.

4. Respondent's court-appointed representation of Complainant was memorialized in a form document entitled "Request for Appointment of a Lawyer," a copy of which Respondent received.

5. A consolidated trial occurred on June 16-17, 2004, and Complainant was convicted and sentenced to 5 years.

6. Subsequent to Complainant's conviction and on a date not clearly demonstrated by the evidence, Complainant's father, Rufus Baker, went to Respondent's office and asked Respondent to appeal Complainant's case.

7. Respondent informed Rufus Baker that it would cost $2,500 in advance for Respondent to handle Complainant's appeal, even though, depending upon the date of such contact, Respondent continued to serve as court-appointed counsel or, alternatively, the time for such appeal had elapsed.

8. Rufus Baker was unable to come up with the $2,500 to meet Respondent's demand.

9. Later, Rufus Baker came to see Respondent after hearing a rumor that the victim may have recanted his testimony and sought Respondent's representation and advice in pursuing relief from the sentence imposed.

10. Respondent informed Rufus Baker that for $400 he would pursue relief of the sentence from the trial court.

11. On or about January 12, 2005, Rufus Baker paid Respondent $400.

12. Respondent appeared before Judge Keary Williams and a representative of the Buchanan County Commonwealth's Attorney's office and made an oral motion for consideration of sentence reduction. No written motion was filed with the trial court by Respondent. Respondent conducted no interviews and no legal research in the pursuit of the relief sought.

13. The motion to reduce sentence was denied because the time had long run to make such a motion.

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

Rule 1.1 Competence

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

It is the finding of this Court that the Virginia State Bar failed to prove by the required evidentiary standard of clear and convincing evidence any of the remaining alleged violations of the Virginia Rules of Professional Conduct and said alleged violation are dismissed.

Evidence was presented and arguments by counsel were made on the issues of an appropriate sanction. The prior record of the respondent was presented by the bar. The Respondent's prior record consists of the following:

1. A public reprimand, effective May 18, 1995.

2. A 30-day suspension, effective July 19, 1995

The bar also presented relevant provisions of the most recent ABA Standards for Imposing Lawyer Sanctions. The Respondent presented character witnesses.

Following due consideration of the nature and character of the ethical violation involved herein and the prior disciplinary record of Respondent, the Court was of the opinion to issue a public reprimand with terms.

Accordingly, **IT IS ORDERED** that the Respondent shall be publicly reprimanded and is herewith so publicly reprimanded with terms. The terms which the Respondent must fulfill by the dates indicated as a condition for the issuance of a public reprimand are the following:
The refund of the fee, in full, in the amount of $400 to Rufus Baker, Sr., on or before May 12, 2006.

1. Prohibition of Respondent from engaging in the practice of criminal law for a period of eighteen (18) months, effective April 12, 2006, and thereafter only upon completion of thirty (30) hours of continuing legal education in the area of criminal law in addition to the usual mandatory continuing legal education required.

2. Upon proof that the terms have been fulfilled as required, the case shall be closed. Upon the failure of the Respondent to fulfill all of the terms imposed as required, this Court shall impose revocation of his license to practice law.

IT IS FURTHER ORDERED that the Respondent shall forthwith give notice, by certified mail, of his prohibition from the practice of criminal law to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges and clerks in pending cases. The Respondent shall also make appropriate arrangements for the disposition of matters then in his case in conformity with the wishes of his clients. The Respondent shall give notice within 14 days of the effective date of his prohibition from the practice of criminal law and make such arrangements as are required herein within 45 days of the effective date. The Respondent shall also furnish proof to the Virginia State Bar within 60 days of the effective date of the prohibition from the practice of criminal law that such notices have been timely given and such arrangements made for the disposition of matters and that the fee, in full, has been refunded.

IT IS FURTHER ORDERED that the costs shall be assessed by the Clerk of the Disciplinary System pursuant to rule of Court, Part Six § IV, Paragraph 13.B.8.c.

IT IS FURTHER ORDERED that certified copies of this order shall be mailed by the Clerk of the Circuit Court to the counsel of record.

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall send a certified copy of this order to the Clerk of the Disciplinary System, at Suite 1500, 707 East Main Street, Richmond, VA 23219.

IT IS FURTHER ORDERED that upon the end of all proceedings in this matter, the Clerk of the Disciplinary System shall maintain the complete file of this matter in accordance with the file retention policies and requirements of the bar.

ENTERED: May 16, 2006

Larry B. Kirksey, Chief Judge Designate
Charles M. Stone, Judge
J. Robert Stump, Judge

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the Matter of
KRISTEN DAWN DEAN
VSB Docket Number 07-000-0085

ORDER OF REVOCATION

THIS MATTER came to be heard on August 25, 2006 upon Notice to Show Cause and Motion to Impose Alternative Sanction by the Virginia State Bar (Bar) to revoke the law license of Kristen Dawn Dean (Respondent) for failure to comply with the terms of the Disciplinary Board's (Board) prior order entered December 16, 2005.

A duly convened Panel of the Board consisting of David R. Schultz; Glenn M. Hodge; John W. Richardson; Stephen A. Wannall, Lay Member; and James L. Banks, Jr., First Vice-Chair presiding, considered the matter. The Respondent did not appear in person, her name having been called three separate times outside the hearing room by the deputy clerk of the hearing. Scott Kulp, Assistant Bar Counsel, appeared on behalf of the Bar.

The Chair swore the Court Reporter and polled the members of the Board to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his ability to be impartial in this matter. Each member, including the Chair, verified he had no such conflict.

The Board's Order of December 16, 2005 suspending Respondent's license to practice law in the Commonwealth of Virginia for a period of five (5) years provided in part as follows:

The Respondent will pay restitution in the principal amount of $4,268.75 and accrued interest in the amount of $554.00 for a total of $4,822.75 by June 1, 2006 in the following manner $3,500 to Sue Baker Cox, P.C., 120-B Roberts Avenue, Wise, VA 24293, and the balance, $1,322.75, to Ms. Geraldine Beverly, 10722 Maple Grove Road, Wise, VA 24293. Interest will continue to accrue on the principal at the rate of 6% for all amounts unpaid after December 31, 2005. All such accrued interest shall be paid Ms. Geraldine Beverley.

The Respondent will sign a Rehabilitation/Monitoring Agreement with Lawyers Helping Lawyers and comply with all the treatment recommendations, including, but not limited to, continuing care and aftercare. During the term of the Rehabilitation/Monitoring Agreement, Respondent will comply with the Virginia State Bar's requests for information and execute releases necessary for the bar to obtain information from third parties. In no event shall Respondent return to the practice of law in the Commonwealth of Virginia upon expiration of the suspension period without a report from a treating professional approved by Lawyers Helping Lawyers stating that Respondent is fit to resume the practice of law.

Further, and pursuant to the agreement of the parties, Respondent's failure to comply with the Rehabilitation/Monitoring Agreement or one or more of the agreed terms and conditions will result in **REVOCATION** of her license to practice law in the Commonwealth of Virginia.

The Bar proceeded to introduce evidence that the Respondent had not complied with term one (1) of its December 16, 2005 Order. Upon completion of the Bar's evidentiary presentation the Board adjourned in private to decide whether to grant the Bar's motion for imposition of the alternate sanction of Revocation.

Disposition

The Board found that the evidence presented by the Bar to be clear and convincing and that the Board's Order of December 16, 2005 had not been complied with to wit: the Respondent had failed to make any restitution as required in condition one (1) of such Order. The Board also determined that the Respondent had been properly and timely served with all notices of this proceeding as required by the Rules.

Accordingly, it is **ORDERED** that the license of Respondent, Kristen Dawn Dean, to practice law in the Commonwealth of Virginia is hereby revoked effective August 25, 2006.

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 revocation of her license to practice law in the Commonwealth of Virginia, to all clients for whom she 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 her care in conformity with the wishes of her clients. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective days of the revocation 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 revocation, she 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 her address of record with the Virginia State Bar, being P.O. Box 743, Norton, VA 24273, by certified mail, return receipt requested, and hand-delivered to Scott Kulp, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Victoria V. Halasz, Chandler and Halasz, Inc. Court Reporters, P.O. Box 9349, Richmond, VA 23227 (804) 730-1222, was the reporter for the hearing and transcribed the proceedings.

Entered this 30th day of August, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., First Vice-Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the Matter of
DARREN SCOTT HALEY
VSB DOCKET NO. 06-000-3730

ORDER OF SUSPENSION

THIS MATTER came on to be heard on Friday, June 23, 2006, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, Courtroom A, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, 23219. The Board was comprised of Peter A. Dingman, Chair, Roscoe B. Stephenson, III, David R. Schultz, Russell W. Updike, and Steven A. Wannall, lay member. The Respondent, Darren Scott Haley, was present and proceeded pro se. The Virginia State Bar was represented by Marian L. Beckett, 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.

The court reporter, Donna T. Chandler, of Chandler & Halasz, P.O. 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 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 State of South Carolina.

Bar Counsel and Respondent made opening and closing statements, both requesting that the Board suspend Respondent's license for a period of thirty (30) days, effective May 25, 2006.

I. FINDINGS OF FACT

Having considered the evidence, the Board unanimously finds by clear and convincing evidence, to wit:

(1) At all relevant times hereto, Darren Scott Haley, 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 5 Weston Street, Taylor, South Carolina, 29687. 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 30, 2005, Respondent executed an Agreement for Discipline by Consent with Henry B. Richardson, Jr., Disciplinary Counsel to the Supreme Court of South Carolina, wherein Respondent acknowledged conduct in violation of the Rules for Lawyer Disciplinary Enforcement in the State of South Carolina.

(3) On September 15, 2005, an investigative panel of the Commission of Lawyer Conduct considered the above-referenced Agreement for Discipline by Consent and voted unanimously to recommend to the court that the agreement be accepted. The investigative panel further voted to recommend to the court that a sanction of a definite suspension from the practice of law for a period of thirty (30) days be imposed on the Respondent. Respondent was suspended from the practice of law in the State of South Carolina for a period of thirty (30) days effective November 14, 2005.

(4) By Rule to Show Cause and Order of Suspension and Hearing dated May 25, 2006, Respondent's license to practice law in Virginia was immediately suspended pursuant to the Rules of Court, Part Six, § IV, ¶ 13.I(7) 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 suspended.

II. DISPOSITION

After hearing the evidence and argument of Assistant Bar Counsel and the Respondent, the Board finds, by clear and convincing evidence, that the Respondent was suspended from the practice of law in the State of South Carolina for a period of thirty (30) days, effective November 14, 2005.

It is therefore **ORDERED** that the license of the Respondent, Darren Scott Haley, to practice law in the Commonwealth of Virginia be, and the same is hereby, suspended for a period of thirty (30) days, effective May 25, 2006.

It is further **ORDERED** that, as directed in the Board's Summary Order dated May 25, 2006, 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 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.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Darren Scott Haley, at his address of record with the Virginia State Bar, 5 Weston Street, Taylor, South Carolina, 29687, by certified mail, return receipt requested, and a copy hand-delivered to Marian L. Beckett, 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 30th day of July, 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 Matters of
JOHN E. HAMILTON, JR.
VSB Docket Nos. 04-060-2919,
04-060-3430,
05-060-0031, and
05-060-2260

MEMORANDUM ORDER

On July 18, 2006, these matters came to be heard by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Dr. Theodore Smith, lay member, Rhysa Griffith South, Esq., William H. Monroe, and Peter A. Dingman, Chair presiding (the Panel). The Virginia State Bar appeared through its Assistant Bar Counsel, Richard E. Slaney (the Bar), and the Respondent, John E. Hamilton, Jr. (Mr. Hamilton or Hamilton), appeared *pro se*. A fifth member of the panel was unavailable at the time of the conference call; however, the parties and the Panel unanimously elected to proceed with a panel of four.

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

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

The Panel heard argument from the parties as well as Mr. Hamilton's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. The Panel accepted the Agreed Disposition with the caveat, agreed by the Bar and Mr. Hamilton, that Term 2 be modified to require that the attorney performing the random audit of the Respondent's real estate files, Kathleen Uston, file a written report with the Bar indicating either that Respondent continues to timely complete his work on such files and accurately maintain subsidiary ledgers for such files, or that, if deficiencies are found, Ms. Uston shall make recommendations and subsequently perform another random audit to make sure any deficiencies are cured and her recommendations are being implemented. Additionally, a Term 3 was added stating the Respondent consents and agrees that any alleged failure to comply with any Term shall be heard exclusively by the Board, and the sole issue at any such hearing shall be whether the Respondent has complied with the Term(s) at issue. The parties having accepted both caveats on the record at the hearing, the Panel voted to accept the Agreed Disposition.

I. FINDINGS OF FACT

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

The Clanton Closing 04-010-2919

2. On August 14, 2003, Hamilton served as settlement agent for a real estate closing in which Candyce Clanton (Clanton) was the buyer. Not knowing the exact amount of cash to bring to closing, Clanton estimated and brought a check for $87,500. At that time, her actual closing costs as calculated by Hamilton were $86,170.15.

3. At the closing, Clanton expressed a desire for owner's title insurance. Hamilton advised Clanton the $975 premium listed on the HUD-1 did not include owner's title insurance. Clanton agreed to allow Hamilton to retain and use the $1,329.85 overpayment to obtain owner's title insurance. Hamilton advised Clanton a survey would be required in order to procure owner's title insurance; however, Clanton wanted to locate a surveyor who would do the job for less than the surveyor recommended by Hamilton.

4. On September 3, 2003, Banker's Title, LLC (Banker's Title) issued to Hamilton a title commitment for both owner's and lender's title

insurance on the property Clanton purchased. On November 13, 2003, Banker's Title received Hamilton's payment for both policies. Banker's Title did not receive anything satisfying Condition 5 of the title insurance commitment, including completed forms 401 (Homeowner's Policy Supplemental Certification) and 402 (Homeowner's Policy of Title Insurance Affidavit).

5. On December 9, 2003, Clanton wrote Hamilton, making inquiry as to the status of the owner's title insurance policy and her $1,329.85 overpayment.

6. On February 9, 2004, Banker's Title wrote Hamilton, indicating they could not issue title insurance until documentation satisfying condition 5 was received.

7. On February 17, 2004, Marco Lopez, Esq. (Lopez), on behalf of Clanton, wrote Hamilton and made demand for a title insurance policy, a revised HUD-1 and refund of any remaining overpayment. Hamilton denies receiving the letter from Lopez and Lopez received no response from Hamilton.

8. On April 2, 2004, Clanton sent her complaint against Hamilton to the Bar and sent a copy of the complaint to Hamilton.

9. On or about April 8, 2004, Hamilton sent to Banker's Title completed forms 401 and 402.

10. On or about April 15, 2004, Banker's Title issued both the owner's and lender's title insurance policies. On April 18, 2004, Hamilton sent the owner's policy and a refund check in the amount of $374.85 to Clanton.

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

The Rinehart Closing 04-060-3430

11. On November 4, 2003, Hamilton served as settlement agent in a real estate closing in which Thomas Rinehart (Rinehart) and his wife were the purchasers.

12. Prior to the closing, Rinehart told Hamilton he wanted owner's title insurance. At closing, line 1108 on the HUD-1 stated that Bankers Title, LLC would provide owner's title insurance for $325, which Hamilton collected from the Rinehart's funds at closing.

13. Also prior to the closing, Hamilton did a title search on the subject property and found a judgment recorded August 15, 1984 against the sellers (the Judgment). Hamilton did not tell Rinehart about the Judgment; however, he was aware of similar judgments by the same creditor and believed the successor company to that creditor would not have the information required to either release the judgment or enforce the lien.

14. After the November 4, 2003 closing, Rinehart attempted to contact Hamilton about receipt of his title and title insurance policy and faxed a letter to Hamilton on April 27, 2004, although Hamilton denies receiving any fax. Rinehart filed his Bar complaint in June of 2004. When interviewed by Bar Investigator Oren M. Powell (Investigator Powell), Hamilton admitted that following the closing he forgot to obtain title insurance for Rinehart.

15. Following receipt of the Bar complaint, Hamilton wrote to one Tracie Dening of 3-D Communications, Inc. (Dening) and requested an owner's title insurance policy for Rinehart. Dening performed a title search on Rinehart's property and located the Judgment. She sent the information from her title search to Catherine Mundy (Mundy) at Allegiance Title Insurance Agency, Inc. (Allegiance Title).

16. Mundy contacted Hamilton about the Judgment and indicated Allegiance Title could either issue owner's title insurance with an exception for the judgment or wait until August 15, 2004 for the expiration of the Judgment. Hamilton advised her to do the latter, and Allegiance Title sent an owner's title insurance policy to Rinehart by letter dated September 2, 2004.

17. At closing, Hamilton collected $325 for title insurance. He paid Dening $100 for the title search and paid Allegiance Title $182.50, leaving a balance of $42.50. Hamilton would testify his prior practice was to add together both the cost of title insurance and his own fees

and costs for assisting in obtaining title insurance and place that sum in line 1108 on the HUD-1; however, he now understands that is not appropriate and separates out all fees and charges on the HUD-1.

18. In regard to owner's title insurance, the subsidiary ledger maintained by Hamilton for the Rinehart closing does not accurately reflect payments Hamilton made and does not comport with the HUD-1.

[Rules applicable: 1.3(a); 1.4(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

The DiGiandomenico Closing 05-060-0031

19. On August 22, 2003, Hamilton served as settlement agent in a real estate closing in which Carmen DiGiandomenico (DiGiandomenico) and his wife were the purchasers.

20. Prior to the closing, DiGiandomenico told Hamilton he wanted owner's title insurance. At closing, line 1108 on the HUD-1 stated that Bankers Title would provide owner's title insurance for $250, which Hamilton collected from the DiGiandomenico's funds at closing.

21. Also prior to the closing, Hamilton did a title search on the subject property and found an unreleased deed of trust recorded April 19, 1974 against the property (the Deed of Trust). Hamilton did not tell DiGiandomenico or Robert Booth, the realtor in regard to the property (Booth), about the Deed of Trust. Hamilton would testify he had reason to believe the Deed of Trust had been satisfied.

22. After the August 22, 2003 closing, DiGiandomenico and Booth attempted to contact Hamilton about receipt of his title insurance policy. DiGiandomenico, having been told the problem was with Banker's Title, called their office on at least two occasions and was told Hamilton had not applied for an owner's title insurance policy for DiGiandomenico. When interviewed by Investigator Powell, Hamilton admitted that following the closing he forgot to obtain owner's title insurance for DiGiandomenico.

23. Not having received any title insurance, DiGiandomenico filed his Bar complaint in July of 2004. At about the same time, Hamilton obtained a release of the Deed of Trust and arranged for title insurance through Allegiance Title, which then sent an owner's title insurance policy to DiGiandomenico in July of 2004.

24. At closing, Hamilton collected $250 for title insurance. He paid Dening $105.50 for the title search and paid Allegiance Title $85, leaving a balance of $59.50. Again, Hamilton would testify about his prior practice as detailed in paragraph 17 above and that he now separates out all fees and costs on the HUD-1.

25. In regard to owner's title insurance, the subsidiary ledger maintained by Hamilton for the DiGiandomenico closing does not accurately reflect payments Hamilton made and does not comport with the HUD-1.

[Rules applicable: 1.3(a); 1.4(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

Three Additional Closings 05-060-2260

The Smith Closing

26. On January 8, 2003, Hamilton served as settlement agent in a real estate closing in which Clifford E. Smith, II (Smith) and his wife were the purchasers.

27. At closing, the HUD-1 read:

1108. Title Insurance to Banker's Title, LLC	1,275.00
1109. Lender's coverage	368000.00
1110. Owner's coverage	460000.00

The Smiths believed, based on the language of the HUD-1, that they were purchasing owner's title insurance, and would testify Hamilton never raised the issue of owner's title insurance. Hamilton would testify one of the Smiths declined owner's title insurance. The realtor, Kenneth G.

Smith (no relation) would testify he attended the closing and nothing was said about waiving owner's title insurance. In any event, Hamilton never obtained from the Smiths a written statement declining owner's title insurance as required by Code of Virginia Section 38.2-4616.

28. Prior to the closing, Hamilton did a title search on the subject property and found an unreleased deed of trust recorded September 30, 1996 against the property (the Other Deed of Trust). Hamilton did not tell the Smiths or Kenneth G. Smith about the Other Deed of Trust, as he had reason to believe the underlying indebtedness had been satisfied.

29. In the Spring of 2004, the Smiths attempted to refinance the loan on the subject property. Fireside Settlement and Title Services (Fireside) did a title search on the property, found the Other Deed of Trust and alerted the Smiths. The Smiths left several messages for Hamilton, eventually spoke to him and learned they had no owner's title insurance. The Smiths also contacted Banker's Title and learned Hamilton had only ordered lender's title insurance.

30. The Smiths were getting close to the end of their interest rate lock on their new loan, and in order to close they were required to put $20,000 into escrow until a release of the Other Deed of Trust was obtained by Fireside in April of 2004.

31. The subsidiary ledger maintained by Hamilton for the Smith closing does not comport with the HUD-1.

32. Having received complaints from DiGiandomenico, Smith and one other person who did not give her name, on August 2, 2004, Investors Title Insurance Company (the underwriter for Banker's Title) terminated Hamilton as an approved settlement provider due to his failure to timely deliver owner's title insurance policies that were paid for at settlement.

[Rules Applicable: 1.3(a); 1.4(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

The Makrinikolas Closing

33. On November 17, 2003, Hamilton served as settlement agent in a real estate closing in which James Makrinikolas (Makrinikolas) and his wife were the purchasers.

34. Prior to the closing, Makrinikolas told Hamilton he wanted owner's title insurance. At closing, line 1108 on the HUD-1 stated that Bankers Title would provide owner's title insurance for $275, which Hamilton collected from the Makrinikolas's funds at closing.

35. When interviewed by Bar Investigator Powell, Hamilton admitted that following the closing he forgot to obtain title insurance for Makrinikolas.

36. Sometime in June of 2004, Hamilton asked Dening to perform a title search, which she did. She sent the information from her title search to Mundy at Allegiance Title. Allegiance Title then sent a title insurance policy to Makrinikolas in July of 2004.

37. At closing, Hamilton collected $275 for title insurance. He paid Dening $71 for the title search and paid Allegiance Title $85, leaving a balance of $119. Again, Hamilton would testify about his prior practice as detailed in paragraph 17 above and that he now separates out all fees and costs on the HUD-1.

38. In regard to owner's title insurance, the subsidiary ledger maintained by Hamilton for the Makrinikolas closing does not accurately reflect payments Hamilton made and does not comport with the HUD-1.

[Rules Applicable: 1.3(a); 1.5(b); 1.15(c)(3) and (4), (e)(1)(iii) and (f)(5)]

The Bradshaw Closing

39. On May 28, 2004, Hamilton served as settlement agent in a real estate closing in which Kenneth Bradshaw (Bradshaw) and his wife were the purchasers.

40. At closing, line 1108 on the HUD-1 stated that Bankers Title would provide owner's title insurance for $375, which Hamilton collected from the Bradshaw's funds at closing.

41. On September 2, 2004, Hamilton provided Allegiance Title with the documents necessary for the title insurance policy. Allegiance issued the policy on September 15, 2004.

42. Allegiance Title charged Hamilton $291.70 for the owner's title insurance policy, leaving an apparent balance of $83.30. Again, Hamilton would testify about his prior practice as detailed in paragraph 17 above and that he now separates out all fees and costs on the HUD-1.

[Rules applicable: 1.5(b)]

43. In mitigation, Hamilton would present evidence that during mid and late 2003, he had a series of computer malfunctions (in part caused by Hurricane Isabel) and, in addition to his normal workload, was appointed to defend an individual charged with 35 counts of various sexual offenses, some of which carried the potential for life sentences. Further, as a result of an unrelated complaint, Hamilton hired an attorney suggested by the Bar. Kathleen M. Uston, Esq. (Uston) to conduct a thorough review of his office practices and procedures. Hamilton advises, and the Bar confirmed, that such review included trust account and real estate settlement practices and procedures.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.5 Fees

(b) The lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

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

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

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

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

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

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

(5) Reconciliations.

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

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

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

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

III. IMPOSITION OF SANCTION

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

Pursuant to Part 6, Section IV, Paragraph 13(I)(2)(f)(2)(b) of the Rules of the Supreme Court of Virginia, the Board hereby imposes upon the Respondent, John E. Hamilton, Jr., a **PUBLIC REPRIMAND WITH TERMS**. The Terms shall be:

1. Respondent shall, within thirty days of the date this Agreement is approved and a Memorandum Order is issued, pay to the following persons the following amounts:

a. To the Rineharts	$42.50
b. To the DiGiandomenicos	$59.50
c. To the Makrinikolas	$119
d. To the Bradshaws	$83.30

2. Respondent shall, within six months of the date this Agreement is approved and a Memorandum Order is issued, engage Kathleen M. Uston, to revisit his law practice and conduct a random audit of recently closed real estate settlement files, to insure Respondent continues to timely complete his work of such files and accurately maintain subsidiary ledgers on such files. Ms. Uston shall file a written report with the Bar indicating either that Respondent continues to timely complete his work on such files and accurately maintain subsidiary ledgers for such files, or that, if deficiencies are found, Ms. Uston shall make recommendations and subsequently perform another random audit to make sure any deficiencies are cured and her recommendations are being implemented.

3. Respondent consents and agrees that any alleged failure to comply with any Term shall be heard exclusively by the Board, and the sole issue at any such hearing shall be whether the Respondent has complied with the Term(s) at issue.

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to the Respondent, John E. Hamilton, Jr., Esq., at 198 Crowder Point Drive, Reedville, Virginia 22539, his last address of record with the Virginia State Bar, Richard E. Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

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 this the 31st day of July, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Peter A. Dingman, Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the Matters of
KHALIL WALI LATIF
VSB Docket Nos: 04-031-0899
04-031-3237
05-031-0466
05-031-0082
05-031-2868
05-031-3226
05-031-3674
05-031-4699
06-000-0741

ORDER
(SUSPENSION OF 1 YEAR AND 1 DAY WITH TERMS)

On June 14, 2006, a duly-convened 5-member panel of the Virginia State Bar Disciplinary Board consisting of Robert L. Freed, Chair, V. Max Beard, Lay Member, William C. Boyce, Jr., William H. Monroe, Jr., and Rhysa G. South, met and heard the Agreed Disposition of the parties, Respondent Khalil Wali Latif, by counsel Thomas H. Roberts, and the Virginia State Bar, by Assistant Bar Counsel Kathryn R. Montgomery, made pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia. The proceeding was transcribed by Theresa H. Griffith of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222. The Board hereby approves the Agreed Disposition.

The Board heard evidence in the case involving Complainant Zachary Hamlet (Docket No. 04-031-3237) during the March 23-24 hearing and based upon the testimony of witnesses *ore terms* and through *de bene esse* deposition, the exhibits and oral argument of counsel for the Bar and Respondent makes the following findings of fact in that case. In the remaining cases, Respondent, his counsel and counsel for the Bar have stipulated to the findings of fact.

FINDINGS OF FACT

1. Khalil Wali Latif, formerly known as Alan Eugene Barnett, Sr., was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.

Docket No. 04-031-3237 (Zachary Hamlett)

2. In July of 2002 Zachary Hamlett (Hamlett) and/or his family paid Respondent $7,500 to represent Hamlett in an appeal of his criminal convictions. Respondent filed an appeal with the Court of Appeals.

3. In his Notice of Appeal to the Court of Appeals, Respondent represented (as is required) "a transcript has been ordered by counsel from the COURT REPORTER, who reported this case."

4. Subsequently, Respondent filed a Motion to Extend Time for Filing Transcript (the Motion) in which he represented "Counsel has ordered same from COURT REPORTER RACHEL BARKSDALE, TEL. [REDACTED PHONE NUMBER], in Brookneal, VA and has paid her in advance for same. Ms. Barksdale advised office of counsel that the record is so lengthy and her schedule so busy that she cannot meet the required deadline and needs an extension." The Court of Appeals granted the Motion in an order dated August 19, 2002.

5. Rachel Barksdale then wrote Respondent on August 28, indicating she received the Motion and "This is to advise that I have not received payment in this matter, in advance, and I have not agreed to prepare the transcript until payment is received by me. I have attempted to contact your office several times regarding this matter but my calls have not been returned." Barksdale also told Respondent's secretary several times she would not prepare the transcript until she was paid $1,000.

6. Subsequently, Rachel Barksdale was paid and the transcript was prepared and filed.

7. The Court of Appeals denied the appeal in an order dated June 24, 2003.

8. Respondent did not advise Hamlett of the denial of the appeal until a letter dated August 22, 2003. That letter did not address the possibility of a further appeal to the Virginia Supreme Court.

9. In responding to the complaint, Respondent said he did not believe Hamlett wanted to continue the appeals process. More recently, in an interview with the Bar's Investigator, Respondent said he did not file an appeal to the Virginia Supreme Court because Respondent believed such an appeal would not be successful.

10. On August 20, 2003, Hamlett's father (Carter) paid Respondent $1,850 for possible representation in a habeas corpus matter (unrelated to the failure to file an appeal to the Supreme Court). Respondent admits he did not put those funds into his trust account. He told the Bar Investigator he performed about 4 hours worth of work on the habeas matter at $200 per hour, and in response to her questions acknowledged he owed a refund of $1,050. He has made no refund despite repeated requests from Hamlett.

11. This case was tried before the Virginia State Bar Disciplinary Board on March 23, 2006. The Board found violations of Rules 1.3(b); 1.4(a); 1.15(a) and (c); 8.4(c), but did not determine the appropriate sanction. Pursuant to the agreement and request of the parties, the Board includes this case in the proposed disposition.

Docket No. 05-031-0466 (Elizabeth Caraveo)

12. The Bar contends that Respondent did not diligently file Complainant's bankruptcy petition in violation of Rule 1.3(a) of the Rules of Professional Conduct and did not promptly comply with her reasonable requests for information in violation of Rule 1.4(a).

13. Respondent contends that he filed Complainant's petition in a timely manner and promptly complied with her reasonable requests for information. Respondent further contends that Complainant's petition was not filed earlier because she vacillated in her decision whether to file.

14. In consideration for this Agreed Disposition, the Bar withdrew the charge that Respondent violated Rule 1.3(a) and Rule 1.15(c) and (e) of the Rules of Professional Conduct.

15. In consideration for this Agreed Disposition, Respondent stipulates to a violation of Rule 1.4(a) of the Rules of Professional Conduct.

Docket No. 05-031-0082 (Daniel S. Arnold, Sr.)

16. In early September 2002, Complainant Daniel S. Arnold, Sr. ("Complainant") retained Respondent to represent his mother, Mary Virgil, age seventy (70), in a divorce from her husband, James Virgil, Complainant's stepfather. The couple had separated in June 2002, and Complainant had taken his mother to live with him in New Jersey. Complainant agreed to pay Respondent for the legal services with the client's consent.

17. In addition to the separation and divorce, Respondent also agreed to handle the property settlement, assist in the sale of property, and investigate why James Virgil had not been prosecuted for physically abusing Complainant's mother. Complainant sent to Respondent an advanced legal fee of $2500, which Complainant paid by cashier's check dated September 3, 2002. Complainant understood this amount was "to get the services started." Dep. at 26.

18. In the time period between September 3, 2002 and September 1, 2003, James Virgil died, leaving all the marital property to Complainant's mother and rendering the divorce and property settlement issues moot.

19. Respondent did not file a petition for divorce, since James Virgil died in about a year, and did not settle the property issues, since Mr. Virgil's will left everything to Respondent's client. Respondent did determine that the abuse charges were dropped against James Virgil due to lack of evidence. Respondent also talked with Mr. Virgil's son regarding property issues and determined that no action was necessary to prevent the sale of the real estate which was owned as tenants by the entirety with right of survivorship. Sometime in 2003, Respondent advised Complainant of what he had learned.

20. During the course of the representation, Respondent rarely returned Complainant's calls.

21. By letter dated June 5, 2003, Respondent advised Complainant's mother that his license to practice law would be suspended on September 1, 2003 for a period of four months.

22. After receiving the June 5, 2003 letter, Complainant spoke with Respondent, who promised him a partial refund of his $2500 fee. Respondent told Complainant that an employee had embezzled money from his trust account, and therefore he could not immediately refund the fee. Complainant told Respondent that he would drop the bar complaint if Respondent refunded his money.

23. In a letter dated November 19, 2003 from Respondent to Complainant, Respondent promised to refund $2500 to Complainant after his license to practice law was reinstated in January 2004.

24. As of May 24, 2005, Respondent has no refunded any portion of the $2500.00 fee to Complainant.

25. Respondent contends that Complainant was attempting to extort money from him in violation of law and that he was not required to pay or deliver to Complainant any refund. However, in consideration of this Agreed Disposition, Respondent stipulated to a violation of Rule 1.15(c)(4), which requires lawyers to promptly pay to the client or another as requested by such person the funds in possession of the lawyer which the person is entitled to receive.

Docket No. 05-031-2868 (Brandon Hubbard)

26. The Bar withdraws the charges of violations of Rule 1.1 (competence) and Rule 1.3(a) (diligence).

Docket No. 05-031-3674 (Michael Fortanbary)

27. On December 15, 2004, Respondent was appointed by the Prince Edward Circuit Court to represent Lauren Fortanbary, daughter of Michael Fortanbary ("Complainant"), on various criminal charges.

28. On January 5, 2005, Complainant agreed to pay Respondent to represent his daughter on these same charges in addition to additional charges levied against her. He paid Respondent $5,000. Respondent's rate was $200 per hour.

29. On January 10, 2005, Respondent represented Complainant's daughter at a preliminary hearing. Three charges were nolle prosed, and one charge was reduced to a misdemeanor. Complainant's daughter was released on bond. On January 18, 2005, the grand jury returned an indictment for possession of a controlled substance. Trial was set for April 4, 2005.

30. On January 28, 2005, Respondent's license to practice law was suspended for two years. In early February, 2005, Respondent notified Complainant of the suspension.

31. On February 19, 2005, Complainant and his daughter met with Respondent at his office. Complainant told Respondent he wanted an itemized bill and a refund on the portion of the fee that was unearned. Respondent said attorney Eric Tinnell would handle the case, and that Respondent would transfer the unearned portion of his fee to Mr. Tinnell. Respondent also said he would schedule a meeting with Mr. Tinnell.

32. On several occasions thereafter, Complainant tried to reach Respondent by phone, but was unsuccessful. On March 11, 2005, Complainant e-mailed Respondent's then former assistant requesting a full accounting and transfer of the unearned portion of the fee to Mr. Tinnell or alternatively, a refund of the unearned fee.

33. Respondent mentioned Complainant's daughter's case to Mr. Tinnell, but did not discuss the case in detail or provide the file. Moreover, Respondent did not transfer any part of his fee to Mr. Tinnell or advise Mr. Tinnell that he would do so.

34. Thereafter, having heard nothing from Respondent, Complainant scheduled a meeting with Mr. Tinnell. Complainant paid Mr. Tinnell $500 to handle the case, which Mr. Tinnell did. An order of substitution was entered and a plea agreement for probation was reached and accepted by the court on April 20, 2005.

35. Complainant never received an itemized bill from Respondent or a refund of the unearned portion of his fee.

36. Mr. Tinnell never received the file or any portion of the $5,000 fee from Respondent.

37. The Virginia State Bar issued a subpoena duces tecum to Respondent returnable June 24, 2005 for all trust account records related to this case. However, Respondent has produced no trust account records related to this case. Respondent contends that since his suspension, he has struggled to earn a livelihood for his family and has been unable to locate the records to produce same.

38. Respondent contends that he was poorly trained and equipped to manage the "backend" of a small law office including proper trust accounting implicating Rule 1.15 (e), realizing that he should have remained in an office environment where those functions were performed either by the state (e.g., his job as a prosecutor in Petersburg, VA) or a larger law office or public defenders office. In that regard, when and if Mr. Respondent enters the practice of law again, he would take such steps necessary to ensure that these law office management tasks are not part of his duties or responsibilities, by working in a government office or the like.

39. In consideration of this Agreed Disposition, Respondent stipulates to violations of Rules 1.3(a), 1.4(a),1.5(a), 1.15(c) and (e), and 1.16(d) and (e).

Docket No. 05-031-4699 (Andrea R. Sprague-Smith)

40. The Bar withdraws the charges that Respondent violated Rule 1.3(a) of the Rules of Professional Conduct and Rule 1.4(a) of the Rules of Professional Conduct.

II. RULES OF PROFESSIONAL CONDUCT

The Board hereby finds the following violations of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

RULE 1.5 Fees

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

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

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

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

RULE 1.15 Safekeeping Property

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

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

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

(c) A lawyer shall:

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

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

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

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

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

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly

identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

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

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

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

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

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

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

RULE 1.16 Declining Or Terminating Representation

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. DISPOSITION

The Board hereby approves the Agreed Disposition, and ORDERS as follows:

Respondent's license to practice law shall be Suspended for One Year and One Day. *All but three months* of the one-year, one-day suspension shall run *consecutively* with his current suspension, such that the suspension imposed herein shall begin on **October 27, 2006 and end on October 28, 2007**. This proposed disposition includes any sanction the Board would impose for the Rule violations found in 04-031-3237. The Board also ORDERS that Respondent shall timely comply with the following terms:

1. Respondent Khalil Wali Latif shall remit the following amounts to the following persons by **August 1, 2006**:

   • $1850 to James Carter, the father of Complainant Zachary Hamlett;

   • $500 to Complainant Daniel S. Arnold, Sr.

   • $1000 to Complainant Michael Fortanbary

2. Respondent shall not engage in the private practice of law for five (5) years after his suspension herein imposed ends unless he first completes two (2) hours of CLE credit in the area of trust account management and completes four (4) hours of *live* CLE credit in the area of ethics. These hours of CLE shall not count toward Respondent's annual MCLE requirement or the reinstatement requirements of Part Six, Section IV, Paragraph 13.I.8.c of the Rules of the Supreme Court of Virginia. Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization for credit. Instead, he shall submit proof of attendance to the Office of Bar Counsel of the Virginia State Bar.

3. Respondent shall not engage in the private practice of law for five (5) years after his suspension herein imposed ends unless he engages the services of a law office management consultant approved by the Virginia State Bar to review and make written recommendations concerning his law practice policies, methods, systems, and procedures.

   a. The Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by the law office management consultant following the law office management consultant's evaluation of the Respondent's practice. The Respondent shall grant the law office management consultant reasonable access to his law practice from time to time, at the consultant's request, for purposes of ensuring that the Respondent has instituted and is complying with the law office management consultant's recommendations. In evaluating the Respondent's law office management policies and procedures, the law office management should, *inter alia*, consult with Respondent initially to organize and to set practices and procedures into place and thereafter may provide three quarterly checkups to adjust and/or to insure that the practices and procedures are working.

   b. The engagement of the law office management consultant's services shall specifically include the authorization and directive by the Respondent to the law office management consultant, upon the Respondent's failure to comply with any of the law office management consultant's recommendations, that the law office management consultant shall provide the Virginia State Bar with access, by telephone conferences and/or written reports detailing the failure to comply with the findings and recommendations of the law office management consultant by the Respondent.

   c. The Respondent shall be obligated to pay when due the fees and costs of the law office management consultant including, but not limited to, the provision to the Bar of information described above concerning this matter.

4. Respondent shall timely comply with his obligations under Part Six, Section IV, Paragraph 13.M of the Rules of Court, which states as follows:

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

5. Time is of the essence for compliance with each and every one of the above stated terms.

6. Before, Respondent's license to practice law is reinstated, he must comply with Part Six, Section IV, Paragraph 13.I.8.c of the Rules of Court, which states:

> After Disciplinary Suspension for More than One Year
>
> After a Suspension for more than one year, the License of the Attorney subject to the Suspension shall not be reinstated unless the Attorney demonstrates to the Board that he or she: has attended 12 hours of continuing legal education, of which at least two hours shall be in the area of legal ethics or professionalism, for every year or fraction thereof of the Suspension; has taken the Multistate Professional Responsibility Examination since imposition of discipline and received a scaled score of 85 or higher; has reimbursed the Bar's Clients' Protection Fund for any sums of money it may have paid as a result of the Attorney's Misconduct; has paid to the Bar all Costs that have been assessed against him or her, together with any interest due thereon at the judgment rate at the time the Costs are paid; and has reimbursed the Bar for any sums of money it may have paid as a result of a receivership involving Petitioner's law practice.

If, however, Respondent fails to meet any of terms #1 through #5 within the time specified as to that term, pursuant to the Agreed Disposition, the Disciplinary Board **ORDERS** that the alternative sanction is Revocation. 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 term or terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

In consideration of this Agreed Disposition, Assistant Bar Counsel has sought a dismissal of VSB 06-000-0741, a Paragraph 13M Show Cause pending before the Disciplinary Board. By this Order, that case is hereby **DISMISSED**.

On March 22-23, 2006, the Board conducted a full hearing in both VSB 04-031-0899 and 05-031-3226, and dismissed all Charges of Misconduct. By this Order, those cases are hereby **DISMISSED**.

As part of the Agreed Disposition, Assistant Bar Counsel withdrew all Charges of Misconduct in VSB 05-031-2868 and 05-031-4699. Therefore, by this Order, those cases are hereby **DISMISSED**.

The Clerk of the Disciplinary System shall assess costs pursuant, Part 6, Section IV, Paragraph 13.B.8.C., of the Rules of the Supreme Court of Virginia.

It is further ordered that an attested copy of this Order be mailed by certified mail, return receipt requested, to Khalil Wali Latif, at his address of record with the Virginia State Bar, P.O. Box 5300 Midlothian, Virginia 23112-0022, and copy by regular mail to Thomas H. Roberts, counsel for the Respondent, at 105 South First Street, Richmond, Virginia 23219, and hand delivered to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 30th DAY OF June, 2006.

Robert L. Freed, Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the Matter of
JAMES SPAULDING POWELL
VSB DOCKET NO. 07-000-0273

ORDER OF SUSPENSION

THIS MATTER came to be heard on Friday, August 25, 2006, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the General Assembly Building, House Room C, First Floor, 910 Capitol Street, Richmond, VA 23219. The Board was composed of James L. Banks, Jr., First Vice-Chair, Glenn M. Hodge, John W. Richardson, David R. Schultz, Stephen A. Wannall, Lay Member. The Bar was represented by Paul E. Franco, Assistant Bar Counsel. On August 22, 2006, Peter A. Dingman, Chair of the Disciplinary Board, granted the Respondent's request to participate in the hearing of this matter on August 25, 2006, telephonically. Therefore, a conference call was established with James Spaulding Powell at his office in Lakewood, Colorado. Present with Mr. Powell was Kelly Mackereth who stated that she was a notary public and court reporter for the State of Colorado. She advised that she inspected Mr. Powell's Colorado driver's license bearing number 00-230 0559, and he appeared to be the person to whom the license was issued.

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

Kelly Mackereth, the Court reporter in Colorado, did then duly swear the respondent and then allegedly left the respondent's offices. 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 and Respondent made opening and closing statements as to their respective positions.

The Bar introduced into evidence of Mr. Powell's suspension from the practice of law in the District of Columbia in the form of an Order entered by the District Court of Columbia Court of Appeals, decided May 4, 2006, effective June 3, 2006. The Suspension Order reflected Respondent's failure to disclose his admission to practice before the District of Columbia or his interim suspension by the District of Columbia Court of Appeals when Respondent made a sworn application for admission to the Bar of the United States District Court for the District of Colorado. The exhibits offered by the Virginia State Bar were received by the Panel and entered as evidence in the matter.

Mr. Powell, once again, argued that he misread the application and should have in fact disclosed his previous suspension.

I. FINDINGS OF FACT

Upon considering the record, the Board unanimously finds, by clear and convincing evidence, to wit:

1. At all relevant times hereto, James Spaulding Powell, is an attorney licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been James Spaulding Powell, James Spaulding Powell, LLC, Suite 225, 1746 Cole Boulevard, Lakewood, Colorado 80401. The Respondent was properly served with notice of this proceeding as required by Part Six, § 4, ¶ 13 (E) of the Rules of the Supreme Court of Virginia.

2. It appearing that James Spaulding Powell has been suspended from the practice of law in the District of Columbia for a period of one (1) year, effective June 3, 2006, by Order entered by the District of Columbia Court of Appeals.

3. It further appearing such disciplinary action has become final.

4. By Rule to Show Cause, an Order of Suspension and Hearing entered July 31, 2006, Respondent's license to practice law was suspended pursuant to the Rules of Court, Part Six, § 4, ¶ 13.I.7.a and the Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. on Friday, August 25, 2006, to show cause why his license to practice law within the Commonwealth of Virginia should not be suspended.

II. DISPOSITION

After hearing the evidence and argument of Assistant Bar Counsel and the Respondent, the Board finds, by clear and convincing evidence, that the Respondent was suspended from the practice of law in the District of Columbia for a period of one year effective June 3, 2006. It is therefore **ORDERED** that the license of the Respondent, James Spaulding Powell to practice law in the Commonwealth of Virginia, be, and the same hereby is, suspended for a period of one year effective July 31, 2006.

It is further **ORDERED** that, as directed in the Board's Summary Order dated July 31, 2006, Respondent must comply with the requirements of Part Six, § 4, ¶ 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 make appropriate arrangements for the disposition of matters then in his care in conformity of the wishes of his clients. The 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 Suspension Order. The Respondent shall also furnish proof to the Bar within sixty (60) days of the effective date of the Suspension Order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further **ORDERED** that a copy of the Order of Suspension with the District of Columbia Court of Appeals be attached to this Order of Suspension and made a part hereof and that prior to reinstatement the Respondent shall comply with all requirements set forth therein.
It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, James Spaulding Powell, at his address of record with the Virginia State Bar: James Spaulding Powell, LLC, Suite 225, 1746 Cole Boulevard, Lakewood, Colorado 80401, by certified mail, return receipt requested, and a copy hand delivered to Paulo E. Franco, Jr., 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 Respondent.

ENTERED this 12th day of September, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., First Vice Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In the Matter of
DION FRANCIS RICHARDSON
VSB Docket Number 06-090-2453

ORDER OF SUSPENSION

This matter came to be heard on September 13, 2006, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Dion Francis Richardson.

A Panel of the Virginia State Bar Disciplinary Board consisting of William H. Monroe, Jr.; Russell W. Updike; Joseph R. Lassiter, Jr.; Rev. Dr. Theodore Smith, (Lay Member); and Peter A. Dingman, (Chair), was duly convened to hear the matter by telephone conference. The Respondent, Dion Francis Richardson, appeared and represented himself, and Scott Kulp, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("Bar").

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

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

Unfortunately, the presentation of the matter raised questions as to whether Respondent and the Bar were prepared to unequivocally stipulate:

- That, if the matter went forward to hearing, the evidence adduced by the Bar would establish each and all of the matters set forth below as "Stipulations of Fact";

- That upon establishing such facts the Bar would have sustained its burden of proving the charge of misconduct certified to the Board by clear and convincing evidence; and

- That a suspension of Respondent's license for a period of 28 days is an appropriate sanction upon such finding of misconduct and considering Respondent's prior record.

After hearing from both the Virginia State Bar and the Respondent, and upon due deliberation, it was the unanimous decision of the Panel to authorize the Chair to accept the Agreed Disposition if, prior to 5:00 p.m., October 13, 2006, the Bar and Respondent submitted an unequivocal stipulation. The Respondent and the Bar did, prior to the designated time on the designated date, present an amended pleading styled as an Agreed Disposition and executed by the Virginia State Bar and the Respondent, which pleading satisfactorily resolved the questions raised by the Panel. In consideration of the stipulations and agreements of the parties, the papers filed and read in this matter and the argument of counsel, the Board finds as follows:

I. Findings of Fact

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

2. Respondent's address of record with the Virginia State Bar from November 1, 2005 through the month of January 2006 was Allied Arts Building, Ste. 15B, 725 Church Street, Lynchburg, VA 24504.

3. The Bar sent Respondent correspondences dated November 15, 2005 and December 1, 2005 regarding another disciplinary matter —VSB Docket No. 06-090-0604— in connection with the Bar's request that Respondent comply with a subpoena *duces tecum* ("SDT") issued in that matter.

4. The Bar submitted a Notice of Noncompliance and Request for Interim Suspension to Respondent on December 13, 2005 in connection with the aforementioned SDT. This Notice stated, in part, that if Respondent did not petition the Disciplinary Board by December 27, 2005 to withhold entry of an interim suspension order pending a hearing, Paragraph 13.B.5.b.3 directed the Board to enter the suspension order.

5. On December 22, 2005, Respondent signed for the certified mailing enclosing the Notice of Noncompliance and Request for Interim Suspension. Respondent contends, however, that he failed to read this Notice.

6. Respondent did not petition the Disciplinary Board to withhold entry of an interim suspension order pending a hearing.

7. As a result, by Order dated December 28, 2005, Respondent was subject to interim suspension commencing on December 28, 2005 because he failed to comply with the SDT in VSB Docket No. 06-090-0604.

8. On January 13, 2006, Respondent signed for the certified mailing enclosing the Notice of Interim Suspension. Respondent contends, however, that he failed to read this Notice.

9. The Bar's investigation revealed that on or about the 23rd or 24th of January 2006, the clerk of the Campbell County General District Court observed Respondent's administrative suspension on the Bar's website. When she confronted Respondent, he pulled from his briefcase correspondence from the Bar, opened it, and read it. This was the Notice of Suspension.

10. Upon Respondent's compliance with the SDT in VSB Docket No. 06-090-0604, Respondent's license to practice law in the Commonwealth of Virginia was reinstated on January 25, 2006.

11. Notwithstanding the interim suspension of his license to practice law in the Commonwealth of Virginia, Respondent engaged in the practice of law during the suspension period [December 28, 2005 through January 24, 2006] by representing parties on multiple occasions in the courts of the Twenty-Fourth Judicial District within the Commonwealth of Virginia.

12. To date, the Bar is unaware that any of Respondent's unauthorized court appearances caused the courts either to reopen the cases due to litigant demand or to take any other remedial action.

II. Disciplinary Rule Violation

Such conduct by the Respondent constitutes Misconduct in violation of the following provision of the Virginia Rules of Professional Conduct:

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

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

III. Disposition

Upon such findings, taking into account the Respondent's cooperation in this matter and acceptance of discipline, and considering the Respondent's prior disciplinary record (a Public reprimand for failures of Diligence, Communication and Proper Termination of Representation), it is **ORDERED** that Dion Francis Richardson's license to practice law in the Commonwealth of Virginia is hereby **SUSPENDED** for a period of **twenty-eight (28) days**, effective September 30, 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 Respondent shall comply with the requirements of Part Six, 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 his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements 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. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13(M) shall be determined by the Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to counsel of record and to the Respondent, Dion Francis Richardson, Allied Arts Building, Suite 15B, 725 Church Street, Lynchburg, VA 24504, his last address of record with the Virginia State Bar, and by hand to Scott Kulp, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Donna Chandler, Chandler and Halasz, Inc. Court Reporters, P.O. Box 9349, Richmond, VA, 23227, 804.730.1222, was the reporter for the hearing and transcribed the proceedings.

Entered this 15th day of September, 2006.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Peter A. Dingman, Chair

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MARSHA DUNNING CARTER
VSB DOCKET NO. 06-021-0228

Complainant: Terrence E. Reid, #315261

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

On March 29, 2006, a duly convened Second District, Section I, Subcommittee consisting of James T. Lange, Esquire, David J. McDonald (Lay Member), and Paul K. Campsen, 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, Marsha Dunning Carter, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On November 12, 2002, the Circuit Court for Northampton County sentenced Terrence E. Reid to fifteen years in prison for his three convictions of discharging a firearm from a motor vehicle.

3. Ms. Carter appealed the case to the Court of Appeals, where it was denied on February 24, 2004.

4. Ms. Carter timely filed a notice of appeal to the Supreme Court of Virginia on March 23, 2004.

5. Thereafter, Ms. Carter never filed a petition for appeal or took any further action to perfect the appeal.

6. Ms. Carter explained that she did not know that the petition for appeal was due within thirty days of the final order of the Court of Appeals, in accordance with the Rules of the Supreme Court of Virginia.

7. She said that she thought the process was the same as at the Court of Appeals, and that her time for filing the petition for appeal would run from the date that the record was forwarded to the Supreme Court, admitting that she had not consulted the Rules.

8. The following year, on January 6, 2005, having not heard about the status of his appeal, the client wrote to the Supreme Court of Virginia directly.

9. By letter, dated January 20, 2005, the Supreme Court informed him that nothing had been filed there on his behalf.

10. By letter, dated April 22, 2005, Ms. Carter told her client:

> *I have had no response from the Supreme Court, for our appeal of the rejection of our petition by the Court of Appeals. I will let you know as soon as I do.*
>
> She closed the letter by saying:
>
> *I will continue to keep you in my prayers and will notify you as soon as I receive anything from the Court.*

11. At the time of her letter, fourteen months had passed since the Court of Appeals dismissed the appeal.

12. By letter, dated May 4, 2005, in response to a second inquiry from the client, the Supreme Court advised him again that nothing had been filed there, and advised him further about seeking habeas corpus relief for a delayed appeal.

13. The client then wrote to Ms. Carter, who responded by letter, dated June 18, 2005, admitting that she had not handled the matter properly, and not consulted the Rules.

14. Ms. Carter wrote to him again on July 10, 2005, enclosing a petition for a writ of habeas corpus alleging her own ineffectiveness, with instructions on how to file it so that the client could seek a delayed appeal.

15. Unfortunately, the client did not accept her advice, filing his own petition instead, which was dismissed because of a late filing.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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 January 1, 2007, the Respondent will attend one Continuing Legal Education (CLE) Course with a block of instruction on appellate practice for no annual CLE credit. The Respondent shall certify her attendance at said course in writing to the Bar Counsel's Office, Virginia State Bar, Suite 1500, 707 East Main Street, Richmond, Virginia 23219-2800, by January 1, 2007.

2. By August 1, 2006, the Respondent shall certify in writing to the Bar Counsel's Office that she has read and understands the following cases and Legal Ethics Opinions (LEOs):

***Anders v. California,* 386 U.S. 738 (1967), *Brown v. Warden*, 238 Va. 551, 385 S.E.2d 587 (1989), *Dodson v. Department of Corrections*, 233 Va. 303, 355 S.E.2d 573 (1987), *Kuzminski v. Commonwealth*, 8 Va. App. 106, 378 S.E.2d 632 (1989), LEO 1817, LEO 1558 and LEO 1122.**

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 Paul K. Campsen, Esquire
Subcommittee Chair

VIRGINIA:

BEFORE THE NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JON I. DAVEY
VSB DOCKET NO. 06-090-2814

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Admonition)

On August 8, 2006, a duly convened Ninth District Subcommittee consisting of John Michael Perry, Jr., Esquire (Chair presiding), Tyler Williams, III, Esquire, and Frances Giles, lay member, met and considered these matters.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(1) of the Rules of the Supreme Court of Virginia, the Ninth District Subcommittee, of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Jon I. Davey ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Admonition:

FINDINGS OF FACT

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

2. Respondent was court-appointed to represent Barrett Thomas Vernon in a probation revocation hearing on August 12, 2005 in the Pittsylvania County Circuit Court.

3. Mr. Vernon pled guilty and received a 5 1/2 year sentence. Mr. Vernon asked Respondent to appeal.

4. Respondent filed a timely notice of appeal.

5. According to Respondent, the only other correspondence he has in his file is notification by the circuit court dated November 2, 2005 submitting the record to the Court of Appeals.

6. The Court of Appeals received the record from the circuit court on November 4, 2005, and it sent notice to Respondent on November 8, 2005. Notwithstanding, Respondent contends he never received this notice advising him that he had 40 days to file his opening brief. Instead, the next and last correspondence Respondent contends he received from the Court of Appeals was the dismissal decision on January 20, 2006.

7. Respondent has been handling appellate cases for 9 or 10 years. Respondent did not notify Mr. Vernon that his appeal had been dismissed because he believed Respondent's girlfriend would share that information with him.

8. Mr. Vernon contends the last communication he received from Respondent was the appeal request in August 2005.

9. Respondent was not diligent in tracking his representation in this case, and he failed to notify Mr. Vernon (a) that his appeal had been dismissed, (b) of the reasons for the dismissal, and (c) of any recourse Mr. Vernon might have to revive the appeal.

NATURE OF MISCONDUCT

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

SUBCOMMITTEE DETERMINATION

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

WHEREFORE, the Respondent is hereby issued a Public Admonition for the foregoing matter.

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

NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: John Michael Perry, Jr., Esquire
Subcommittee Chair Presiding

VIRGINIA:

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

IN THE MATTER OF
ROBERT JOSEPH HILL, ESQ.
VSB DOCKET NO. 05-053-3814

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND, WITH TERMS

On September 19, 2006, a meeting in this matter was held before a duly convened Fifth District—Section III Subcommittee consisting of Dennis Robert Carluzzo, Esq., Mr. Paul C. Moessner, lay member, and Kristina Keech Spitler, Esq., presiding, to review an Agreed Disposition reached by the parties.

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

I. FINDINGS OF FACT

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

2. The Respondent represented a client (hereafter "Complainant") in a divorce suit. A final decree of divorce was entered in October of 1999 by the Fairfax County, Virginia, Circuit Court. The decree incorporated the provisions of written property settlement agreement reached by the parties.

3. Under the settlement reached between the Complainant and her husband, it was necessary that the Circuit Court enter a "Qualified Domestic Relations Order" (QDRO) as a condition of Complainant's receipt of her share of her husband's retirement benefits.

4. On March 25, 2005, the Complainant notified the Virginia State Bar that despite her numerous calls placed, and letters sent, to the Respondent regarding the QDRO, and despite his promises to the Complainant that he would do so, the Respondent failed to file a QDRO with the Circuit Court.

5. Assistant Intake Counsel wrote to the Respondent concerning the Bar Complaint on March 28, April 12, and April 20, 2005, to which letters the Respondent made no response. On May 12, 2005, Assistant Bar Counsel Seth M. Guggenheim mailed a copy of the Bar Complaint to the Respondent, with a letter containing the following text:

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

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

6. The Bar Complaint was referred to a Virginia State Bar investigator who left telephone messages for the Respondent on June 17, 22, 24, and 30; July 11, 14, 18, and 19; and August 2, 2005. The Respondent failed to return any of the investigator's calls. Thereafter, Bar Counsel left a message for the Respondent instructing him to contact the investigator, which the Respondent eventually did.

7. As of the time of his interview with the Virginia State Bar investigator on August 17, 2005, the Respondent had neither filed any motion with the Circuit Court for entry of the QDRO nor served the Complainant's ex-husband with any notice of such a motion.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. PUBLIC REPRIMAND, WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain Terms, compliance with which shall be a predicate for the disposition of this complaint by imposition of a PUBLIC REPRIMAND, WITH TERMS. The Terms are as follows:

1. The Respondent shall, within thirty (30) days following issuance of this Determination, engage the services of his choice of one of the following law office management consultants:

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

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

   to review Respondent's law office management practices and procedures to aid in Respondent's future compliance with all Rules of Professional Conduct.

2. The Respondent shall promptly inform Assistant Bar Counsel Seth M. Guggenheim, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, in writing, that he has engaged the law office management consultant as required herein, and shall identify which consultant he has engaged. The Respondent shall be obligated to pay when due the consultant=s fees and costs for her services (including provision to the Bar and to Respondent of information concerning this matter).

3. The consultant shall review all of Respondent's law office management practices and procedures, in general, but shall focus particularly upon those practices and procedures which involve file maintenance and organization, the use of a tickler system, and the means of communication with clients. In the event the consultant determines that Respondent has practices and procedures in place so as to aid in his future compliance with the Rules of Professional Conduct, the consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the consultant determines that Respondent does not have such practices and procedures in place so as to aid in his future compliance with the Rules of Professional Conduct, then, and in that event, the consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to improve his practices and procedures.

4. In the event the consultant determines that Respondent's law office practices and procedures are deficient, such that, in the consultant's opinion, the Respondent will likely commit future violations of any Rules of Professional Conduct, the Respondent shall have sixty (60) days following the date the consultant issues her written statement of the measures Respondent must take to institute such measures.

5. The consultant shall be granted access to Respondent's office following the passage of the sixty (60) day period to determine whether Respondent has instituted such measures. The consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has instituted the recommended measures within the sixty day (60) period, or that he has failed to do so. Respondent's failure to conform his law office management practices and procedures to the consultant's recommendations as of the conclusion of the aforesaid sixty (60) day period shall be considered a violation of the Terms set forth herein.

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the all of the Terms set forth above have been complied with, in full, a Public Reprimand, with Terms, shall then be imposed. If, however, Respondent violates any of the Terms set forth herein, then, 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 for Proceedings Upon Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13.I.4. of the Rules of the Supreme Court of Virginia.

IV. COSTS

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

FIFTH DISTRICT—SECTION III SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By Kristina Keech Spitler, Esq.
Chair/Chair Designate

VIRGINIA:

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

IN THE MATTER OF
ARLENE LAVINIA PRIPETON, ESQ.
VSB Docket No. 05-053-3412

COMMITTEE DETERMINATION
PUBLIC REPRIMAND, WITH TERMS

On May 23, 2006, a hearing in this matter was held on the charge of misconduct contained in the Notice of Hearing issued by Bar Counsel to Arlene Lavinia Pripeton, the Respondent, on February 10, 2006. The hearing was conducted before the duly convened Fifth District—Section III Committee of the Virginia State Bar, consisting of Dennis Robert Carluzzo, Esq., Kathleen Latham Farrell, Esq., Jerrold Jay Negin, Esq., Kristina Keech Spitler, Esq., Mr. Berchard Lee Hatcher, lay member, Mr. Paul C. Moessner, lay member, and H. Jan Roltsch-Anoll, Esq., presiding.

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

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

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

I. FINDINGS OF FACT

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

2. Ms. Dorothy A. DeGennaro (hereafter "Complainant") retained the Respondent on or about July 23, 1998, to pursue court action for the recovery of accrued child support in a sum of between $35,000.00 and $40,000.00, and for the purpose of having child support payments resume. The Complainant, then and now a resident of Georgia, sent the Respondent the documents related to her case, as well as an advance of legal fees in the sum of $600.00.

3. The Complainant inquired as to the status of her legal matter in February of 2005, and the Respondent advised her at that time that the Respondent had ceased work on the Complainant's legal matter in January of 1999 after hearing from the Complainant that the Complainant had received a child support check.

4. The Complainant requested in February of 2005 that her file materials be returned to her, but the Respondent returned no documents to the Complainant, and maintained at the hearing that she had destroyed the Complainant's file consistent with her office policy in that five years had elapsed without activity.

5. On April 7, 2005, Bar Counsel mailed a copy of Complainant's Complaint to the Respondent, with a letter containing the following text:

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

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

6. The Committee did not find that the Respondent's testimony at the hearing was completely credible and could not look to other evidence because the Respondent provided no documentary evidence or other information including documents that the Respondent said at the hearing that she had in her office that were not available to the Committee on the occasion of the hearing, like phone message slips and the file card.

7. The Respondent failed to communicate appropriately with the Complainant as to the status of the ongoing representation; failed to make a clear communication to the Complainant that the representation was being terminated or whether it was continuing, and if it was continuing, what the terms of the continuation of the representation were.

8. The Respondent failed to communicate clearly to the Complainant that there was a period of time in which the Complainant's file would be destroyed, and therefore, if the Complainant wanted information from her file, she needed to request it before a certain date.

9. The Respondent failed to communicate to the Complainant, at the time the Respondent alleges there was a termination, with respect to any statute of limitation that might be applicable to the Complainant's claim, and therefore, at the time of termination, failed to protect the Complainant's interest.

10. The Respondent failed to communicate to the Complainant how the fee of $600 was, in fact, earned and at which time it was earned, as no bill was found to have been provided or was in evidence at the hearing.

11. The Respondent also failed to communicate to the client the actual future of any representation that the Respondent would be providing. The evidence was that the Respondent assumed the Complainant wanted no further help unless the Complainant called back, with no time limit or period of time in which the Complainant must call back.

II. NATURE OF MISCONDUCT

The Committee finds that the following provisions of the Code of Professional Responsibility and Rules of Professional Conduct have been violated:

DR 6-101. Competence and Promptness.

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

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.16 Declining Or Terminating Representation

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

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. PUBLIC REPRIMAND, WITH TERMS

Accordingly, it is the decision of the Committee pursuant to Part 6, § IV, ¶ 13(H)(2)(l)(2)(d) of the Rules of the Supreme Court of Virginia, to offer the Respondent an opportunity to comply with certain Terms, compliance with which shall be a predicate for the disposition of this matter by imposition of a Public Reprimand, with Terms. The Terms are as follows:

1. That the Respondent shall pay, by certified, cashier's, or treasurer's check made payable to the order of Dorothy A. DeGennaro, the principal sum of $600, with interest thereon at the rate of nine percent per annum, from February 1, 2005, until paid. The payment due hereunder inclusive of principal and all interest shall be made by delivery of a check to Seth Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133, no later than July 1, 2006.

2. The Respondent shall, within ten days following issuance of this determination, engage the services of her choice of one of the following law office management consultants:

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

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

   for the purpose of reviewing Respondent's current law office practices and procedures with special attention to the Respondent's fee arrangements, client communications, termination of client representations, billing, trust accounting, current attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with the Rules of Professional Conduct.

In the event the consultant determines that the Respondent is in compliance with the rules, the consultant shall so certify in writing to the Respondent and to the Virginia State Bar, and should the consultant recommend changes, the consultant will so certify to the Virginia State Bar. The Respondent shall be obligated to pay, when due, the consultant's fees and cost for its services, including provision to the Bar and to the Respondent of information concerning this matter.

3. On or before May 23, 2007, the Respondent shall attend a Virginia certified CLE course predominantly focused on law office practice and management for small practitioners and report the attendance of that course back to Bar Counsel.

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the all of the Terms set forth above have been complied with, in full, a Public Reprimand, with Terms, shall then be imposed. If, however, Respondent violates any of the Terms set forth herein, then, 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 for Proceedings Upon Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13(I)(4) of the Rules of the Supreme Court of Virginia

IV. COSTS

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

FIFTH DISTRICT—SECTION III COMMITTEE
OF THE VIRGINIA STATE BAR

By: H. Jan Roltsch-Anoll, Esq.
Chair of Hearing Panel
Vice Chair of Committee

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
BENJAMIN THOMAS REED
VSB Docket Number 05-021-0456

Complainant: Ernest Lamont Young

SUBCOMMITTEE DETERMINATION
(PUBLIC ADMONITION)

On December 5, 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 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)(2 of the Rules of the Supreme Court of Virginia, hereby serves upon the Respondent the following Public Admonition:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Benjamin Thomas Reed, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On July 17, 2003, a jury sitting in the Circuit Court for the City of Norfolk found Ernest Lamont Young guilty of second degree murder, three counts of the use of a firearm during the commission of a felony, malicious wounding, robbery, and conspiracy. Mr. Reed did not represent Mr. Young at trial.

3. Thereafter, Mr. Young hired Mr. Reed to represent him at sentencing, post-trial motions, and on appeal. He paid a fee of $1,800.

4. On August 15, 2003, the court substituted Mr. Reed as counsel.

5. On October 10, 2003, the court sentenced Mr. Young to thirty-seven years in prison with no time suspended.

6. Mr. Reed represented Mr. Young at sentencing as agreed, filed a motion to set aside the guilty verdict, and appealed the case to the Court of Appeals of Virginia, and to the Supreme Court of Virginia, which dismissed the petition for appeal on July 28, 2004.

7. The Court of Appeals considered the petition for appeal on its merits.

8. The Supreme Court of Virginia, however, dismissed the appeal for a procedural default: failure to cite Assignments of Error. Mr. Reed, however, actually cited a single assignment of error that read:

> *The Trial Court erred in refusing to set-aside the jury's verdicts as contrary to the law and the evidence; the Court of Appeals erred in failing to grant appellant's Petition for Appeal on the aforesaid ground that the Trial Court should have granted appellant's motion to set aside the jury's verdicts as contrary to the law and the evidence.*

9. Rule 5:17 (c) of the Rules of the Supreme Court of Virginia provides: *an assignment of error which merely states that the judgment or award is contrary to the law and the evidence is not sufficient. If the petition for appeal does not contain assignments of error, the appeal will be dismissed.*

10. Mr. Reed explained that he had crafted similar assignments of error in the past, as many attorneys have, and never had a petition for appeal dismissed for this reason.

11. The complainant, however, alleged that Mr. Reed never advised him that the appeal was dismissed because of Mr. Reed's error. Mr. Reed candidly confirmed this during his interview with the Virginia State Bar investigator.

12. Mr. Reed did not advise Mr. Young about the dismissal of the appeal at either appellate court until Mr. Young telephoned him on August 11, 2004.

II. NATURE OF MISCONDUCT

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

RULE 1.4 Communication

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

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

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

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, Acting Chair

VIRGINIA:

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

IN THE MATTERS OF
ALLAN W. SMITH
VSB DOCKET NOS. 04-032-3788 [Pomfrey]
05-032-1050 [David]

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On August 18, 2006, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of Coral C. Gills, Lay Member; Michelle C. Harman, Esq.; and Martin D. Wegbreit, Esq., Secretary and Acting Chair, presiding.

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

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

VSB Docket No. 04-032-3788 [Pomfrey]:

I. STIPULATIONS OF FACT

2. Complainants Russ and Lynne Pomfrey [Pomfreys] bought the subject property from Lowery in a transaction which closed on June 17, 2003. Smith represented the Pomfreys in the transaction [Pomfrey purchase].

3. Smith performed the title search for the Pomfrey purchase. In doing so, he found three judgments of record which he failed to report to Stewart Title & Guaranty Company [Stewart Title] when he certified title in anticipation of the issuance of a title commitment. Therefore, the commitment issued by Stewart Title did not reflect the existence of the three judgment liens.

4. At the point in time of the Pomfrey purchase and going forward at least into 2005, Smith had no support staff. Until January of 2003, Smith used the services of an individual who died that month. Thereafter, Smith personally performed all work related to real estate transactions. Smith formed a title agency, Pegasus Title Insurance Agency [Pegasus], which was not licensed by the Virginia State Corporation Commission until March of 2004. Until Pegasus was properly licensed, Smith dealt directly with Stewart Title.

5. The Pomfreys entered into a contract to sell the subject property at closing scheduled for November 22, 2003 [Pomfrey sale].

6. The purchaser's attorney in the Pomfrey sale, Chisholm, found the three outstanding judgment liens, which totaled approximately $22,893.00. Chisholm proceeded to attempt to communicate with Smith about the judgments and a survey. His efforts were unsuccessful.

7. The Pomfreys had no knowledge of the existence of the three judgment liens until it was revealed during the Pomfrey sale.

8. Smith had not purchased the title policies for which the Pomfreys had paid as a part of the Pomfrey purchase. Once Stewart Title had become aware of the existence of the three judgment liens, the title company refused to issue said policies.

9. The HUD-1 settlement statement for the Pomfrey purchase showed a charge of $966.00 payable to Stewart Title for both lender's and owner's title insurance coverage. However, the statement of charges from Stewart Title for the Pomfrey purchase totaled $816.00. According

to Smith's disbursement summary for the Pomfrey purchase, Smith paid $150.00 to Dale Holcomb to record documents for the transaction. At the time of the bar investigation in 2005, Smith's file in the Pomfrey purchase contained an original $643.00 check for Stewart Title which had never been disbursed by Smith in the Pomfrey purchase.

10. It was Smith's practice to enter in HUD-1 settlement statements a fee amount for Dale Holcomb's recordation services as part of the total amounts shown for title insurance instead of accurately reflecting Holcomb's fee as a separate charge incurred by Smith but not billed by Stewart Title. This constituted a misrepresentation of Holcomb's fee and the title insurance charges.

11. Cathy Wright from Stewart Title sent Smith a list, dated August 11, 2004, of outstanding invoices for 35 title commitments which she had issued and for which applications for title policies had not been submitted by Smith. The Pomfrey purchase was shown on Wright's list.

12. Bar investigator Cam Moffatt determined when settlement had occurred with respect to each matter shown on Wright's list as well as when a title policy was issued and the amount withheld at settlement for the title charges [Moffatt's list]. Moffatt's list shows that during the time period of 2003-2005, Smith did not timely submit to Stewart Title applications for title policies or timely disburse funds to Stewart Title which had been paid to Smith as trust funds in the corresponding real estate transctions for said title policies and associated Stewart Title charges.

13. In or about November of 2003, the Pomfreys hired Cary Ralston, Esq. [Ralston] to represent them with regard to the sale of the subject property and the problem of the three outstanding judgment liens remaining from the Pomfrey purchase.

14. The Pomfrey sale of the subject property ultimately closed on December 1, 2003, after an indemnity agreement was entered into which required, *inter alia*, the holding in escrow of $40,000.00 pending resolution of the three judgment liens. Smith was not a party to the indemnity agreement.

15. Ralston sent letters to Smith regarding the costs incurred by the Pomfreys as a result of the problem of the three judgment liens. In said letters, Ralston asked Smith to reimburse the Pomfreys for sums which they deemed they were entitled to from Smith. Smith did not answer Ralston's letters.

16. The judgment debtor paid off the three judgments and the liens were released of record in or about March of 2004. On March 18, 2004, the Pomfreys received the $40,000.00 which had been escrowed for the Pomfrey sale.

17. The Pomfreys submitted a bar complaint to the Virginia State Bar on June 30, 2004.

18. In the Pomfrey purchase, Smith failed to represent the Pomfreys diligently, failed to communicate and failed to disburse trust funds.

II. NATURE OF MISCONDUCT

It is agreed that such conduct by Allan W. Smith constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

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

RULE 1.4 Communication

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

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

Eff. Mar. 25, 2003

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

VSB Docket No. 05-032-1050 [David]:

I. STIPULATIONS OF FACT

19. In or about 2003, Complainant Lesley David [David] contacted Smith for representation in the purchase of real estate [property] by David and her husband [Transaction]. Smith had represented David and her husband in a prior real estate transaction.

20. Since Smith had not requested the payoff of an existing deed of trust on the property prior to closing, David contacted the lender to determine the payoff amount for the existing deed of trust.

21. The Transaction closed on June 16, 2003.

22. On or about October 30, 2003, David received a letter from Hurley and Koort, P.L.C. addressed to BB&T indicating that a certificate of satisfaction for a deed of trust had not been recorded [letter]. Enclosed with the letter was a certificate and affidavit of satisfaction to be completed for recordation regarding a $10,000.00 deed of trust note from the seller in the Transaction on the property. This was the first indication that David had of the existence of another deed of trust on the property.

23. Upon receiving the letter, David called Smith who indicated he would contact Hurley and Koort. In the same telephone call, David asked Smith if he had purchased the title insurance on the property. Smith told David that the policy had not been issued and the delay was caused by the title company which had a backlog.

24. Thereafter, David called Smith every couple of weeks to check on the status of the matter, but he did not return her calls. After several months, David filed a bar complaint on September 24, 2004, with the Virginia State Bar.

25. After the bar complaint was filed, Smith provided David with a copy of the title policy on the property. As of her April 8, 2005 interview with bar investigator Cam Moffatt, David did not know whether a certificate of satisfaction had been recorded for the $10,000.00 deed of trust note.

26. At the point in time of the Transaction and going forward at least into 2005, Smith had no support staff. Until January of 2003, Smith used the services of an individual who died that month. Thereafter, Smith personally performed all work related to real estate transactions. Smith formed a title agency, Pegasus Title Insurance Agency [Pegasus], which was not licensed by the Virginia State Corporation

Commission until March of 2004. Until Pegasus was properly licensed, Smith dealt directly with Stewart Title Guaranty Company [Stewart Title].

27. Smith performed the title search on the Transaction and missed the $10,000.00 deed of trust which had been recorded in the Chesterfield County Circuit Court on November 19, 1999. Since Smith had not reported the existence of this lien, it did not appear in the title binder or the HUD-1 settlement statement for the Transaction.

28. The HUD-1 settlement statement for the Transaction showed a charge of $1,009.00 payable to Stewart Title for both lender's and owner's title insurance coverage. However, the statement of charges from Stewart Title for the transaction totaled $859.00. The difference between the charges billed by Stewart Title and the amount included on the HUD-1 settlement statement for title insurance was $150.00. According to Smith, this amount was a fee for the services of Dale Holcomb to record documents for the Transaction.

29. It was Smith's practice to enter in HUD-1 settlement statements a fee amount for Dale Holcomb's recordation services as part of the total charges shown for title insurance instead of accurately reflecting Holcomb's fee as a separate charge incurred by Smith but not billed by Stewart Title. This constituted a misrepresentation of Holcomb's fee and the title insurance charges.

30. Cathy Wright from Stewart Title sent Smith a list, dated August 11, 2004, of outstanding invoices for 35 title commitments which she had issued and for which applications for title policies had not been submitted by Smith. David's Transaction was shown on Wright's list.

31. Bar investigator Moffatt determined when settlement had occurred with respect to each matter shown on Wright's list as well as when a title policy was issued and the amount withheld at settlement for the title charges [Moffatt's list]. Moffatt's list shows that during the time period of 2003-2005, Smith did not timely submit to Stewart Title applications for title policies or timely disburse funds to Stewart Title which had been paid to Smith as trust funds in the corresponding real estate transactions for said title policies and associated Stewart Title charges.

32. During the bar investigation of this matter, bar investigator Moffatt interviewed Smith on two occasions, April 12, 2005 and October 4, 2005. During the April 12, 2005 interview, Smith indicated that he had not made application for David's title policy until August of 2004 because Pegasus was not yet authorized to process the application and Stewart Title wanted him to wait until Pegasus was fully licensed so that Pegasus would get the premium instead of Stewart Title. As of the April interview, Smith had submitted applications for only twelve of the thirty-five commitments listed by Cathy Wright. As of the October interview, Smith still had not submitted applications for ten of the commitments.

33. A requirement of David's lender in the transaction was that the lender be the first lienholder on the property upon completion of the transaction. Until the 1999 deed of trust was released by recordation of a certificate of satisfaction on January 10, 2004, David's lender was not the first lienholder of record.

34. In the transaction, Smith failed to represent David and her husband diligently, failed to communicate and failed to disburse trust funds.

II. NATURE OF MISCONDUCT

It is agreed that such conduct by Allan W. Smith constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

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

RULE 1.4 Communication

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

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

Eff. Mar. 25, 2003

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. PUBLIC REPRIMAND WITH TERMS

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

Term One: Outstanding Stewart Title Guaranty Company Invoices

Part I. **By September 29, 2006**, Smith shall determine all outstanding invoices, existing as of July 31, 2006, from Stewart Title Guaranty Company [Stewart Title] for title commitments which Stewart Title issued to Smith as an approved attorney and for which applications for title policies have not been submitted by Smith;

Part II. **By September 29, 2006**, Smith shall resolve all of said outstanding invoices by

a. submitting to Stewart Title applications for title policies with title insurance premium payments or
b. determining that an application cannot be submitted because transaction(s) never went to settlement, and
c. making certain that all outstanding title insurance policies have been issued and all funds held in trust by Smith with respect to outstanding title insurance policies have been disbursed appropriately, whether to Stewart Title for premiums or to the payer of the funds as a refund because transaction(s) never went to settlement.

Part III. **By September 29, 2006**, Smith shall certify in writing to the Office of Bar Counsel that he has completed Term One.

Term Two: Outstanding Invoices for Other Title Companies

By September 29, 2006, Smith shall complete the requirements of Term One with respect to any similar outstanding invoices existing as of July 31, 2006, from other title insurance companies for which the other title insurance companies issued title commitments to Smith as an approved attorney and for which applications for title policies have not been submitted by Smith, and so certify to the Office of Bar Counsel, all as described in Term One.

Term Three: Law Office Management Consultant

Part I. **By September 15, 2006,** Smith shall engage the services of a law office management consultant approved by the Virginia State Bar to review and make written recommendations concerning Smith's law practice policies, methods, systems and procedures. Smith shall institute and thereafter follow with consistency any and all recommendations made to him by the law office management consultant following the law office management consultant's evaluation of Smith's practice. Smith shall grant the law office management consultant access to his law practice from time to time, at the consultant's request, for purposes of ensuring that Smith has instituted and is complying with the law office management consultant's recommendations. The Virginia State Bar shall have access, by telephone conferences and/or written reports, to the law office management consultant's findings and recommendations, as well as the consultant's assessment of Smith's level of compliance with said recommendations. Smith shall be obligated to pay when due the consultant's fees and costs, including, but not limited to, the provision to the Bar of information concerning this matter.

Part II. **By December 15, 2006**, Smith shall be responsible for :

1. Ensuring that the law office management consultant has previously reported to the Office of Bar Counsel his or her findings and recommendations regarding Smith's law practice.

2. Certifying to the Office of Bar Counsel that Smith has fully complied with the law office management consultant's findings and recommendations and provide written confirmation of same from the law office management consultant.

3. Any failure in the hiring of the law office management consultant, or the ability of said consultant to examine Smith's law practice and report to the Bar and to Smith findings and recommendations, and any failure of Smith to comply with said findings and recommendations, all by December 15, 2006, *inter alia*, shall constitute noncompliance with Term Three.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by Allan W. Smith as stated herein, Allan W. Smith agrees that the Third District Committee, Section Two shall impose a Certification for Sanction Determination as an alternate sanction.

The Clerk of the Disciplinary System shall assess costs pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.

Third District, Section Two, Subcommittee
Of The Virginia State Bar

By: Martin D. Wegbreit
Secretary and Acting Chair

VIRGINIA:

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDDIE RAYMOND VAUGHN, JR., ESQUIRE
VSB Docket Nos. 05-060-1146
05-060-1147
05-060-1148
05-060-1149
05-060-4836

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

On the 8th day of September, 2006, a meeting in these matters was held before a duly convened subcommittee of the Sixth District Committee consisting of Richard Henry Stuart, Esq., David R. Millard, and Jennifer Lee Parrish, Esq., presiding.

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

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Eddie Raymond Vaughn, Jr., Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket Numbers 05-060-2146 and 05-060-1147:

2. The Respondent was court appointed to represent client Richard S. Maulick ("Maulick) on appeal for a probation revocation hearing in the Hanover County Circuit Court held on December 18, 2002. The court revoked the suspension of sentence imposed in a prior case by Judgment entered March 17, 2003. The Respondent timely filed a Notice of Appeal but did not file a Petition for Appeal, based on his belief that the appeal was without merit. No Anders brief was filed.

3. The Court of Appeals dismissed the appeal by Order entered August 20, 2003. Thereafter, Maulick filed a petition for a writ of habeas corpus on December 29, 2003, contending in part that he was denied his right to appeal to the Court of Appeals. The Supreme Court of Virginia awarded a writ of habeas corpus limited to the issue of the denial of Maulick's right of appeal with leave granted to file a notice of appeal and to apply to the Court of Appeals for Virginia for an appeal of the judgment rendered on March 17, 2003, by the Circuit Court of Hanover County. Maulick, by court appointed counsel, filed a Petition for Appeal to the Court of Appeals on December 8, 2004 and the appeal was thereafter denied.

4. The Respondent's paralegal erroneously filed a second Notice of Appeal. No Petition for Appeal was filed for that second notice and that appeal was subsequently dismissed as well.

5. As there were two notices of Appeal and two dismissals, two files were opened by the Virginia State Bar related to the same matter.

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

VSB Docket Number 05-060-1148:

6. The Respondent was retained to represent client Robert Jennings ("Jennings") on appeal. and entered an appearance as substitute counsel in the Hanover County Circuit Court on October 30, 2001. The posture of the case when Respondent entered the case was that Jennings had pled guilty and was awaiting sentencing. Jennings wanted to withdraw his guilty plea. Respondent made the appropriate motion to withdraw the guilty plea, which motion was denied on October 30, 2001. Respondent further represented Jennings at his sentencing hearing on March 18, 2002. The Court entered its Judgment/Sentencing Order on March 18, 2002. The Respondent timely filed a Notice of Appeal but failed to file a Petition for Appeal. The appeal was subsequently dismissed.

7. It is the Respondent's contention that the appeal was dismissed because the court reporter failed to produce a critical October 30, 2001 hearing transcript containing the defendant's request for a withdrawal of his guilty plea. The Clerk's Office for the Court of Appeals received the Record of the trial court proceedings on June 12, 2002. The Record, however, did not include the transcript of the October 30, 2001 argument. Respondent mailed by first class mail on July 29, 2002, a Petition for Extension of Time to file a Petition for Appeal which was denied on July 30, 2002. Respondent then filed a Petition for Rehearing with the Court of Appeals, on August 6, 2002, which was denied on August 21, 2002.

8. The client contends that the Respondent failed to inform him of the dismissal of the appeal and failed to communicate with him regarding the status of the case. Mr. Jennings did not learn of the dismissal until he was informed of such by the Virginia State Bar investigator.

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

VSB Docket Number 05-060-1149:

9. The Respondent was court appointed on June 15, 2000 to represent client Terry Lee Tyler ("Tyler") in the Hanover County Circuit Court on appeal of charges of breaking and entering, grand larceny and conspiracy charges. Respondent filed a Motion in *limine* to exclude the introduction of evidence of burglaries allegedly committed in surrounding jurisdictions. The motion was argued by Respondent on September 13, 2000 and denied by the court. Tyler was found guilty and sentenced on May 21, 2001.

10. The Respondent timely filed a Notice of Appeal on June 26, 2001. At Respondent's instance, the Court of Appeals, by Order entered November 9, 2001, ordered that the transcript of the motions and trial proceedings be prepared. The Record from the trial court was filed with the Court of Appeals on December 20, 2001 but did not include the transcript of the motion in *limine*. Respondent filed a motion for an extension of time to file a Petition for Appeal, as the sole appealable issue pertained to the trial court's denial of the motion in *limine.* The Court of Appeals denied the motion for an extension and Respondent was unable to file a Petition for Appeal. The Court of

Appeals subsequently dismissed Tyler's appeal on February 14, 2002. Tyler, by counsel, filed a late filed Petition for Appeal, which was dismissed on the merits. The transcript of the September 13, 2000 motion in *limine* was filed with the Court of Appeals on August 6, 2003.

11. The client contends that the Respondent failed to inform him of the dismissal of the appeal and failed to return his telephone calls. Mr. Tyler did not learn of the dismissal until he contacted the court himself to determine the outcome of the proceeding.

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

RULE 1.4 Communication

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

VSB Docket Number 05-060-4836:

12. The Respondent was retained to represent client Darrell Madison, (hereinafter the Complainant on appeal of charges related to the possession of drugs and a firearm. Trial was scheduled for July 1, 2005 in the Hanover County Circuit Court.

13. The Respondent's fee for representation through completion of the trial was $5,000. Mr. Madison's mother paid the Respondent $5,000 by check dated December 18, 2004. The Respondent deposited the check in his operating account rather than his trust account.–

14. On or about May 6, 2005, the Commonwealth informed Respondent that it would amend the charges against Complainant to include the use of a firearm if Complainant did not plead guilty to the existing charges. An amendment of the charges would have the effect of increasing the minimum sentence from three years to five years of active time served. Respondent informed Complainant of the Commonwealth's representation and Complainant advised Respondent that he wanted a jury trial. This was the first time Complainant requested a jury trial and the request was contrary to Respondent's advice. On May 9, 2005. Respondent requested a jury trial for Complainant, which request was granted. The trial date was then continued to June 22, 2005. On May 13, 2005, Respondent moved the Court for permission to withdraw as counsel, which Motion was granted. Respondent made the Motion to Withdraw because he believed, and so informed Complainant, that a jury trial was not in Complainant's best interest. Madison was present and did not object to Respondent's withdrawal.

15. Both the Complainant and his mother requested the immediate return of unearned fees so that a successor attorney could be retained for representation at a trial less than two months away.

16. The Complainant and his mother also asked the Respondent for an itemized bill setting forth the time spent and specific activities performed on the case. The Respondent explained to Complainant and his mother that he accepted the case on a flat fee basis, and there was no underlying data from which to prepare an itemized statement. No such billing records were ever produced. At the request of the Virginia State Bar, however, Respondent provided the bar with a summary of the services he provided Complainant.

17. The Complainant found another attorney who agreed to represent him if the trial could be continued. The court refused to continue the trial and appointed counsel to represent Complainant. The Complainant ultimately pled guilty to the charges against him.

18. The Respondent agreed to refund $2,500 to Complainant's mother in five payments of $500 each. The Complainant's mother requested that it be paid in a lump sum and Respondent paid her as requested.

19. The Complainant and his mother also allege the Respondent failed to return their telephone calls.

The subcommittee finds that the following Rules of Professional Misconduct have been violated:

RULE 1.4 Communication

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

RULE 1.15 Safekeeping Property

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

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

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

(c) A lawyer shall:

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

II. NATURE OF MISCONDUCT

The Subcommittee finds that certain Rules of Professional Conduct have been violated, as noted at the conclusion of each docket number above.

III. PUBLIC REPRIMAND WITH TERMS

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

On or before December 31, 2006, the Respondent shall complete 4 hours of Continuing Legal Education credits by attending courses approved by the Virginia State Bar in the areas of appellate practice, and/ or ethics and/ or practice management. The Continuing Legal Education attendance obligation set forth in this paragraph shall ***not*** be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Marian L. Beckett, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

Upon satisfactory proof that the above noted terms and conditions have been complied with, in full, a **PUBLIC REPRIMAND WITH TERMS** shall then be imposed, and this matter shall be closed. If, however, the Respondent fails to comply with any of the terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the alternative disposition of CERTIFICATION for sanction determination pursuant to Rules of Court, Part 6, § IV, ¶ 13 (G)(5)(b).

IV. COSTS

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

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: Jennifer Lee Parish
Chair/Chair Designate

UPL OPINION 210
PRACTICE OF PATENT LAW IN VIRGINIA
BY PATENT ATTORNEY NOT LICENSED IN VIRGINIA

You have asked the Committee to opine as to whether it is the unauthorized practice of law for a non-Virginia licensed attorney, who is a registered U.S. patent attorney and is a member of a Virginia law firm, to render legal advice and legal opinions in Virginia to clients who may be located anywhere in the world on matters relating only to patent law. The answer is no, this conduct would not be the unauthorized practice of law and the controlling authority is found in *Sperry v. Florida ex rel. Florida Bar,* 373 U.S. 379 (1963); Virginia Unauthorized Practice of Law Rule 9 ("UPR 9"); Unauthorized Practice Consideration 1-1 ("UPC 1-1"); and Unauthorized Practice of Law Opinions ("UPL Opinions") 158 and 201.

In *Sperry*, the U.S. Supreme Court addressed the question of whether a non-lawyer practitioner duly registered and authorized to practice before the United States Patent Office, but not licensed as an attorney in any jurisdiction, could engage in a patent practice in a jurisdiction other than the jurisdiction in which the Patent Office is located, even though the conduct could be considered the practice of law in the other jurisdiction. The Court's answer was a clear "yes," based on the authority granted in the Supremacy Clause of the U.S. Constitution and the authority granted to the Commissioner of Patents in the federal statute, 35 U.S.C. §31, to "prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office."

> The statute [35 U.S.C. § 31] thus expressly permits the Commissioner to authorize practice before the Patent Office by nonlawyers, and the Commissioner has explicitly granted such authority. If the authorization is unqualified, then, by virtue of the Supremacy Clause, Florida may not deny to those failing to meet its own qualifications the right to perform the functions within the scope of the federal authority. A State may not enforce licensing requirements which, though valid in the absence of federal regulation, give "the State's licensing board a virtual power of review over the federal determination" that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress. "No State law can hinder or obstruct the free use of a license granted under an act of Congress." *Pennsylvania v. Wheeling & B. Bridge Co.*, 13 How. 518, 566.

Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379, 385 (1963).

Virginia's Unauthorized Practice Rule 9 and unauthorized practice of law opinions addressing the scope of practice in Virginia by non-Virginia lawyers adopt the principles which the Court articulated in *Sperry*. UPR 9, "Administrative Agency Practice," allows that a non-lawyer[1] may furnish legal advice or service and may prepare legal instruments for another with regard to practice before a federal or state administrative agency if the non-lawyer is providing such service to his/her regular employer or "as permitted by the rules of such agency" and "within the scope of practice authorized by such agency." UPR 9-102 (A)(2), (B)(2). With regard to representing the interest of another before an administrative tribunal, UPR 9 refers to UPR 1, "Practice Before Tribunals." UPC1-1 defines a "tribunal" before which one must be licensed in Virginia to practice. This definition specifically *excludes* "a tribunal established *by virtue of the Constitution or laws of the United States,* to the extent that practice before such tribunal *has been preempted by federal law."* UPC 1-1 (emphasis added). *Sperry* makes clear that practice before the PTO is preempted by federal law and, under the Supremacy Clause, a state's UPL rules or laws cannot restrict nor prohibit such practice.

The UPL Committee has also addressed the issue of the limits of a non-Virginia attorney's practice in UPL Opinions 158 and 201. In UPL Opinion 158, the Committee opined:

> that a foreign attorney may advise a Virginia client in Virginia on matters regarding litigation which is pending in a jurisdiction in which the foreign attorney has been admitted to practice law, so long as the attorney remains in good standing in that jurisdiction and is competent to provide such advice, and so long as the matter does not involve issues of Virginia law. Furthermore, the Committee is of the opinion that the foreign attorney who meets those criteria may also prepare legal documents relative to the matter on which he is advising the Virginia client. However, the foreign attorney may continue to provide such advice only until Virginia legal issues arise in the matter.
>
> The Committee further opines that a foreign attorney, although admitted to and in good standing in the bar of his home jurisdiction, may not advise or prepare legal documents for a Virginia client in Virginia on matters involving Virginia law.
>
> As to matters involving federal law, the Committee is of the opinion that a foreign attorney may advise and prepare legal documents for a Virginia client in Virginia on such

FOOTNOTES

1 The term "non-lawyer" is defined as "***any*** person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia." Part 6, § I (C) Rules of the Supreme Court of Virginia.

> matters, assuming that the foreign attorney is admitted to practice before a federal court. Such advice and document preparation may be provided only to the extent that the federal matter is not impacted by state law and if state law issues are not involved.
>
> Furthermore, the Committee believes that it would constitute the unauthorized practice of law for a foreign attorney to advise any client in Virginia on matters that involve law which is neither federal law nor the law of a jurisdiction in which the foreign attorney is authorized to practice law.

UPL Opinion 158 (1996). The Committee later affirmed these conclusions in UPL Opinion 201 and added:

> A non-Virginia licensed attorney may also be authorized by federal law to represent persons before a federal administrative agency and may therefore give advice to and prepare legal instruments for such clients in the regular course and within the scope of practice authorized by such federal agency. UPR 9-102. The committee has previously opined that it is not the unauthorized practice of law for an attorney, not licensed in the Commonwealth of Virginia, to maintain an office in Virginia for a practice limited exclusively to matters before the United States Immigration and Naturalization Service. UPL Op. 55 (1983). . . . Therefore, an attorney in your multi-jurisdictional law firm need not be admitted to the Virginia State Bar to represent clients in Virginia on matters involving federal law as described above.

UPL Opinion 201 (2001).

Based on this authority, an attorney who is licensed other than in Virginia, who is registered and authorized to practice before the U.S. Patent Office and who is a member of a Virginia law firm can provide all legal services and representation related to a patent law practice to all clients needing such services and representation regardless of where the clients are located. These services and representation may include rendering legal advice and/or written opinions for clients on issues such as patent infringement, patent claim construction, patent validity, or enforceability of a patent. The patent attorney may provide such advice and opinions to a client whether related to a matter the patent attorney is actually handling for the client before the USPTO or not.[2] The patent attorney can conduct this practice and provide these services while physically in Virginia and without the supervision or association of a Virginia licensed attorney, so long as the patent attorney limits his/her activity to the practice of patent law and is not in any manner attempting to practice Virginia law. Provided the patent attorney's practice is limited as described herein, he or she may also maintain an office in Virginia to conduct that limited practice. If the patent attorney is a member of a law firm with offices in Virginia and elsewhere, the extent to which the patent attorney can conduct his/her practice outside of Virginia will depend upon the unauthorized practice rules and/or rules of professional conduct in those other jurisdictions. If the patent attorney provides advice and counsel regarding patent law to a Virginia client from a location outside of Virginia, this would not be the unauthorized practice of law in Virginia because the attorney is not physically in Virginia and because he/she is otherwise authorized to practice patent law.

While the non-Virginia patent attorney can fully engage in a patent law practice while a member of a law firm located in Virginia, UPL Opinion 196, interpreting UPR 1-101, sets out a requirement that any non-Virginia attorney practicing in Virginia must indicate on letterhead, business cards, etc. his/her limitations of practice. This can be accomplished either by denoting the jurisdiction(s) where the attorney is licensed, or by stating that the attorney is "not licensed in Virginia" or by indicating that the attorney's practice is limited to an "area of federal law that by rule, regulation or statute [does] not require Virginia State Bar membership."

Committee Opinion
August 8, 2006

FOOTNOTES

2 This advice and opinion is subject, of course, to any restriction as a result of any conflicts between clients or potential clients in doing so.