Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Michael Jackson Beattie	Fairfax, VA	Suspension w/Terms	March 7, 2007	2
Claude T. Compton	Manassas, VA	Public Reprimand w/Terms	February 9, 2007	6
Disciplinary Board				
Walter Franklin Green IV	Harrisonburg, VA	45-Day Suspension	July 1, 2007	9
Robert John Harris	Lovettsville, VA	60-Day Suspension	December 15, 2006	12
Robert Joseph Hill	Fairfax, VA	60-Day Suspension	February 5, 2007	40
Catherine Ann Lee	Mechanicsville, VA	Revocation	March 23, 2007	n/a
John Coury MacDonald	Fairfax, VA	Revocation	March 23, 2007	n/a
Roger Jeffrey McDonald	Glen Allen, VA	Consent to Revocation	March 14, 2007	n/a
Dennis Michael O'Keefe	Arlington, VA	Revocation	March 23, 2007	n/a
John Christopher Pasierb	Arlington, VA	Revocation	February 6, 2007	n/a
Tony Charles Rudy	Huntington Beach, CA	Revocaton	November 17, 2006	43
Starr Ilene Yoder	Ivor, VA	One-Year + One-Day Suspension	March 23, 2007	n/a
District Committees				
David Louis Konick	Washington, VA	Public Reprimand	March 2, 2007	49
Reinstatement				
James E. Ghee Jr.	Farmville, VA	Supreme Court of Virginia	February 23, 2007	n/a
Disciplinary Board Reinstatement Recommendations				
Salvage DeLacy Stith	Chesapeake, VA	Recommend Denial of Reinstatement to VSC	January 26, 2007	44
Cost Suspension				
Tony Charles Rudy	Huntington Beach, CA	Disciplinary Board	March 9, 2007	n/a
Dwayne Bernard Strothers	Suffolk, VA	Disciplinary Board	March 22, 2007	n/a
Alan Sherwin Toppelberg	Alexandria, VA	Disciplinary Board	March 13, 2007 Lifted March 15, 2007	n/a
Interim Suspensions — Failure to Comply w/Order				
Interim Suspensions — Failure to Comply w/Subpoena				
Andrew Ira Becker	Virginia Beach, VA	Disciplinary Board	March 6, 2007	n/a

**Respondent has noted an appeal with the Virginia Supreme Court.*

***Virginia Supreme Court granted stay of suspension pending appeal.*

****Virginia Supreme Court decision pending*

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX
VIRGINIA STATE BAR EX REL
FIFTH DISTRICT COMMITTEE SECTION I,
Complainant,
v.
MICHAEL JACKSON BEATTIE, ESQUIRE,
Respondent.
Case No. CL2006-10927

ORDER OF SUSPENSION, WITH TERMS

THIS MATTER came before the Three-Judge Court empaneled on October 23, 2006, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to § 54.1-3935 of the 1950 Code of Virginia, as amended. A written Agreed Disposition, dated February 2, 2007, was tendered by the parties to the Three-Judge Court, consisting of the Honorable Alfred D. Swersky and Frank A. Hoss, Jr., retired Judges of the Eighteenth and Thirty-first Judicial Circuits, respectively, and the Honorable Cleo E. Powell, Judge of the Twelfth Judicial Circuit and Chief Judge of the Three-Judge Court.

The Judges of the Three-Judge Court deliberated on February 6, 2007, and determined that the terms and provisions of the parties' Agreed Disposition should be accepted by the Court. Accordingly, the Court finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Michael Jackson Beattie, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On August 13, 2003, the Honorable Rebecca Beach Smith, presiding in the United States District Court for the Eastern District of Virginia, at Norfolk, entered an Order indefinitely suspending the Respondent "from practice before this court[1] for all future cases, absent further order of the court." The suspension was included in the relief granted on a motion for sanctions filed in a civil action on behalf of a party adverse to the Respondent's client. By Order of the Disciplinary Board of the Virginia State Bar, dated August 26, 2005, the Respondent's license to practice law in Virginia was suspended for sixty (60) days for Respondent's ethical misconduct which gave rise to the aforesaid indefinite suspension.

VSB Docket Number 05-051-4499

3. In July of 2003, the Complainant, Kimberly L. Jeffers, hired the Respondent to represent her in a sexual discrimination case against her former employer, Mount Vernon Hospital. She signed a fee agreement with the Respondent and paid him a total of $7,000.00 in advance fees. When the Respondent was suspended in August of 2003 by Judge Smith, he did not inform Ms. Jeffers of his decision not to appear in any federal court in the Eastern District of Virginia.

4. Ms. Jeffers rarely heard from the Respondent regarding her case. During the course of representation, Respondent informed her that her file had been stolen by a former member of his support staff. This news upset Ms. Jeffers because the file contained personal information such as her address and social security number.

5. In July of 2004, Respondent's law firm filed an action in the United States District Court for the Eastern District of Virginia on Ms. Jeffers's behalf. The Respondent persuaded a part-time contract attorney to draft and sign the pleadings. The pleading listed Beattie & Associates as the firm of record. That part-time attorney thought her involvement in the case ended when she provided the Respondent

FOOTNOTES

1 Respondent has consistently maintained in filings before the Eastern District and Fourth Circuit that the Order of August 13, 2003, was not entered pursuant to the Eastern District Local Rule governing attorney discipline; and, therefore, the Order was limited in application to cases before Judge Smith. In an abundance of caution, Respondent did not thereafter enter an appearance in any future case filed within any Division of the Eastern District.

with the pleading. The Respondent and attorneys associated with his firm failed to confer with opposing counsel regarding discovery, produced Fed. R. Civ. P. 26(a) discovery disclosures nominally out of time, failed to comply with the Court's Scheduling Order of December 15, 2004, failed to appear at the initial pre-trial conference in January of 2005, and failed to appear for a final pre-trial conference on April 21, 2005. Although the presiding federal judge permitted some relief to Ms. Jeffers by way of discovery, and an opportunity to challenge the adverse party's motion for summary judgment on the merits, the case was ultimately dismissed on summary judgment.

VSB Docket Number 06-051-0125

6. In the spring of 2005, the Respondent contacted the Complainant, James C. Brincefield, Esquire, to request his assistance in the Jeffers case. The Respondent informed Mr. Brincefield that an associate in his law firm had just left the firm unexpectedly, leaving the firm short-staffed. The Respondent went on to explain that one of his clients was scheduled to give a deposition but no attorney in his firm was available to defend the client that particular day. The Respondent has stated to the Bar that he told Mr. Brincefield that he was "not licensed" in the federal courts of the Eastern District of Virginia. He asked Mr. Brincefield if his firm might be willing to help him out at the deposition. Mr. Brincefield agreed to help and assigned an attorney in his firm to meet with the Respondent's client and then attend the deposition with the client. During that and subsequent conversations, the Respondent agreed to send an advance against fees for the legal assistance to Mr. Brincefield's firm in the amount of $1,000.00. During the deposition, Mr. Brincefield's associate informed defense counsel that he and his firm had no intention of entering an appearance in the case, that they were just helping out the Respondent's firm at the deposition because the firm was suddenly short-staffed.

7. After the deposition, the Respondent contacted Mr. Brincefield again and requested that, since he was still short-staffed, Mr. Brincefield or an associate "cover" a final pre-trial conference and a hearing on a motion for summary judgment. Mr. Brincefield declined, telling the Respondent he was not prepared to enter his appearance on Ms. Jeffers's behalf at such short notice and without meeting with her.

8. Subsequently, Mr. Brincefield learned that the case was dismissed on the motion for summary judgment, as well as the facts suggesting that Respondent had not been forthright concerning the status of his license. The Respondent did not pay Mr. Brincefield's firm the promised advance, or additional sums accrued for services rendered, until January 2007.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Michael Jackson Beattie, Esquire, constitutes a violation of the following provisions of the 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.

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

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

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of fact or law[.]

RULE 5.1 Responsibilities Of A Partner Or Supervisory Lawyer

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty … which reflects adversely on the lawyer's fitness to practice law[.]

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Respondent shall receive a **SUSPENSION, WITH TERMS**, subject to the terms and alternative disposition set forth below:

1. Subject to the provisions set forth below, the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of six (6) months, commencing on March 7, 2007, which suspension represents an appropriate sanction if this matter were to have been heard.

2. For a period of three (3) years following the date of entry of this Order, the Respondent shall engage in no conduct which violates any provisions of Virginia Rules of Professional Conduct 1.3, 1.4, 5.1, or 8.4, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this Paragraph 2 shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by any disciplinary tribunal which contains a finding that Respondent has violated one or more provisions of the disciplinary rules referred to above; *provided, however*, that the conduct upon which such finding was based occurred within the three-year period referred to above, and provided, further, that such ruling has become final.

3. Subject to the provisions appearing below, when the Respondent resumes the private practice of law as a Virginia-licensed attorney following the term of his suspension, he shall thereupon promptly engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to review and make written

recommendations concerning Respondent's law practice policies, methods, systems, and procedures. Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by Ms. Johnston following her evaluation of the Respondent's law practice. Respondent shall grant Ms. Johnston access to his practice from time to time, at Ms. Johnston's request, for purposes of ensuring that Respondent has instituted and is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). Respondent will have discharged his obligations respecting the terms contained in this Paragraph if he has fulfilled and remained in compliance with all of the terms contained in this Paragraph 3 for a period of one (1) year following the date of his engagement of Ms. Johnston's services. The provisions of this Paragraph 3 shall *not* apply during any period while Respondent is engaged in the private practice of law as a *bona fide* employee of a law firm or other business entity in which Respondent has no interest whatsoever as owner, shareholder, director, officer, partner, member, or manager; *provided, however,* that if and when the Respondent ceases to be a *bona fide* employee under the conditions referred to above, he shall engage, or re-engage, Ms. Johnston pursuant to the terms and conditions set forth above for the balance of the said one (1) year period, it being specifically intended that Respondent have the benefit and comply with Ms. Johnston's evaluation and recommendations for a period which, in the aggregate, covers a period of one (1) year.

4. Should the Respondent fail to comply with the terms set forth in the immediately preceding Paragraphs 2 and 3, he shall receive a three (3) year suspension of his license to practice law in the Commonwealth of Virginia, *in addition to* the six (6) month suspension referred to above, as an alternative disposition of this matter.

5. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a "show cause" proceeding pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.2.g. will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein.

6. The Respondent shall comply with the provisions of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia.

7. Pursuant to Part 6, Section IV, Paragraph 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.

8. The allegations contained in the Certification, with respect to Docket 05-051-4341, are hereby dismissed for lack of clear and convincing evidence.

9. The provisions of this Order shall not be interpreted as precluding Respondent's right to provide any service for which a license to practice law is not required; and it is further

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

Pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia, the Court dispenses with any requirement that this Order be endorsed by counsel of record for the parties.

ENTERED this 13th day of February, 2007.

FOR THE THREE-JUDGE COURT:
CLEO E. POWELL
Circuit Judge and Chief Judge of Three-Judge Court

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY
VIRGINIA STATE BAR, ex rel.
FIFTH DISTRICT SECTION III COMMITTEE,
Case No. 69168

Complainant/Petitioner,
v.
CLAUDE T. COMPTON, ESQ,
Respondent.

ORDER

THIS MATTER came before the Three-Judge Court empaneled on October 6, 2006, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to § 54.1-3935 of the 1950 Code of Virginia, as amended. A written Agreed Disposition was thereafter tendered by the parties and presented via teleconference on January 29, 2007, to the Three-Judge Court, consisting of the Honorable Marc Jacobson and Donald H. Kent, retired Judges of the Fourth and Eighteenth Judicial Circuits, respectively, and by the Honorable Margaret Poles Spencer, Judge of the Thirteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

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

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

2. In 1998, the Respondent was engaged by a client to prepare a legal instrument needed to establish a sewer line easement for the client's benefit across the client's neighbors' land. The contemplated easement was to facilitate the client's plan to subdivide and build upon land that he owned and/or controlled in Prince William County, Virginia.

3. The client retrieved from the Respondent the document designed to create the easement, entitled "Deed of Dedication and Easement," prepared by the Respondent, so that the client could obtain the required signatures from his neighbors and their respective mortgage lenders.

4. The said Deed was ultimately returned to the Respondent and held by him pending resolution of a subdivision issue. On October 8, 2004, the Respondent presented the aforesaid Deed to the Clerk of the Circuit Court of Prince William County, Virginia, for recordation among the land records. The said Deed, consisting of eleven pages, was recorded as Instrument Number 200410080172 116.

5. While conducting research on his own property, one of Respondent's client's neighbors, Danny G. Jamison (hereafter "Complainant"), discovered that the said Deed had been recorded. He obtained a copy of the Deed from his lender, and observed that it was notarized by the Respondent and contained Respondent's certification that Danny G. Jamison "has acknowledged [his signature] before me in my State and City/County aforesaid [Prince William County, Virginia]."

6. Respondent cannot dispute the Complainant's contention that he never met the Respondent and had neither signed nor acknowledged the Deed in the Respondent's presence because Respondent has no recollection of same.

7. In response to the Complaint filed by Mr. Jamison with the Virginia State Bar concerning this issue, the Respondent wrote to the Bar, stating, *inter alia*:

> Mr. Jamison came into my office, signed the document, changed his name in the Notary acknowledgement, and initialed the change, [*sic*] I then notarized his signature. As you can readily determine by looking at this document,

> Mr. Jamison's signature is the same as on the Complaint, even his initials are the same. I have no idea what Mr. Jamison's problem is regarding this document, but he is definitely wrong about his signature being forged and not signing the documents in my presence.

The Respondent agrees that although he believed it to be accurate at the time he made it, the aforesaid statement was inaccurate.

8. The Respondent also notarized the signature of one Bernadine Eberle, represented in the aforesaid Deed to be an Assistant Vice President of Marine Midland Mortgage Corporation. As notary, the Respondent falsely certified "that Bernadine Eberle, Authorized Signature of MARINE MIDLAND MORTGAGE CORPORATION, whose name is signed to the foregoing Deed of Dedication and Easement, dated May 15, 1998, has acknowledged the same before me in my State and City/County aforesaid [Prince William County, Virginia]." Although Respondent's evidence would be that in a telephone conversation with Ms. Eberle, he personally verified the authenticity of Ms. Eberle's signature on the Deed, Ms. Eberle was employed in an office of the Marine Midland Mortgage Corporation in Buffalo, New York and never appeared "before" Respondent to acknowledge her signature.

9. When interviewed in his office on July 15, 2005, by a Virginia State Bar investigator, the Respondent stated with respect to the signatures that he had notarized that if the persons signing were not available to come to his office he would talk to them by telephone and that if the Complainant said that he hadn't come to the Respondent's office, then he, Respondent, must have talked to the Complainant by telephone.

10. At no time relevant to the events referred to herein did the laws of the Commonwealth of Virginia permit a notary public to certify that a person acknowledged the execution of an instrument before the notary if such acknowledgement was by telephone, in lieu of personal appearance before the notary.

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

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

(A) In his representation of a client, a lawyer shall not:

(5) Knowingly make a false statement of law or fact.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of fact or law[.]

RULE 8.1 Bar Admission And Disciplinary Matters

[A] lawyer … in connection with a disciplinary matter, shall not:

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter.

THE THREE-JUDGE COURT considered as applicable the following evidence in mitigation of sanction, as stipulated by the parties:

1. Respondent has a virtually unblemished record of thirty-eight years of practice at the bar.

2. Respondent is in the process of winding down his practice, is taking on no new clients and a more severe sanction would serve no meaningful purpose.

3. The following mitigating factors recognized by the American Bar Association are applicable in this matter:
   a. Character and reputation;
   b. Remorse.

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

1. Respondent shall read the Virginia Notary Act, Section 47.1 *et seq.*, Code of Virginia as amended, and the Uniform Recognition of Acknowledgements Act, Section 55-118.1 *et seq,* Code of Virginia, as amended, and the Handbook for notaries referred to in Section 47.1-11, Code of Virginia, as amended, and shall certify in writing his having done so to Senior Assistant Bar Counsel Seth M. Guggenheim within THIRTY (30) days following the date of entry of this Order.

2. Upon satisfactory proof that the terms and conditions of this Order have been met, a Public Reprimand with Terms shall be imposed. Failure to comply with any of the foregoing terms and conditions will result in the imposition of an alternative disposition of a SIXTY (60) day Suspension of the Respondent's license to practice law; and it is further

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

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

ENTERED this 9th day of February, 2007.

FOR THE COURT:
MARGARET POLES SPENCER
Circuit Judge and Chief Judge of Three-Judge Court

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD
IN THE MATTER OF:
WALTER FRANKLIN GREEN, IV
VSB DOCKET NO. 03-070-3720

ORDER

THIS MATTER came on for hearing upon mandate and certification from the Supreme Court of Virginia.

By order dated November 27, 2006, the Supreme Court certified this matter to the Virginia State Bar Disciplinary Board (the "Board") for proceedings consistent with the opinion of the Court issued on November 3, 2006, which reversed a prior order of the Board, dated January 24, 2006, vacated the sanctions imposed in this matter and remanded this case for further proceedings consistent with the Court's opinion.

A panel of the Board consisting of V. Max Beard (Lay Member), Bruce T. Clark, Robert L. Freed, Russell W. Updike and Peter A. Dingman convened on January 26, 2007, for the mandated hearing. Messrs. Beard, Clark, Freed and Updike all sat on the panel of the Board which heard this matter on November 19, 2004, and, after the first remand, on January 10, 2006. Ann N. Kathan, who participated in both prior hearings, is no longer an active member of the Virginia State Bar. Peter A. Dingman, current Chair of the Board, was designated to sit in her place after reading transcripts and reviewing each exhibit admitted in prior proceedings. Mr. Freed, who chaired the prior hearings and recently completed a term as Chair of the Board, sat as Chair, designate, for these proceedings.

The Virginia State Bar (the "Bar") was represented by Edward L. Davis. Walter Franklin Green, IV ("Respondent"), appeared in person and represented himself. The proceedings were transcribed by Tracey Stroh, a Registered Professional Reporter, employed by Chandler & Halasz, Post Office Box 9349, Richmond, Virginia, 23227; telephone number (804) 730-1222.

At 9:15 a.m., Mr. Freed convened the hearing, taking the oath of Ms. Stroh to faithfully transcribe the proceedings and inquiring of each member of the panel as to whether he had any personal or financial interest that might affect, or reasonably be perceived to affect, his ability to be impartial in this matter. Each member of the panel, including the Chair, answered this inquiry in the negative. The Chair then recited in summary fashion the procedural history of this matter and offered to make a detailed statement as to the manner in which the hearing would go forward. Both the Bar and Respondent waived such a statement from the Chair. The Chair also noted Mr. Dingman's substitution for Ms. Kathan on the hearing panel, and Respondent stated that he had no objection to such substitution. Further, the Chair recounted the fact that Respondent did, subsequent to the Supreme Court's order of November 28, 2006, make a request to have further proceedings conducted before a three-judge panel, a request which the Chair denied, upon the bases (i) that Respondent's request was not timely made pursuant to Part 6, Section IV, Para. 13(I)(1)(a)(1) of the Rules of the Supreme Court of Virginia; and (ii) that this matter being before the Board on a remand mandate and certification order from the Supreme Court, the Board was without authority to send the case to another forum. Respondent renewed his request, asking that the Chair's prior ruling be reversed by vote of the entire panel. After consideration by the panel, the Chair's prior ruling was affirmed, unanimously, and the hearing continued before the Board.

Each side was offered an opportunity to present an opening statement. The Bar waived opening. Respondent stated that his goal was to have the Board over turn the findings of misconduct made by the Board for the November 2004 hearing. The Chair advised Respondent his request exceeded the authority of the Board under the mandate and certification. Respondent then said he would show that a Bar press release on November 22, 2004, coupled with newspaper accounts and a Bar website notice concerning suspension of his law license had combined to so impact his practice as to be tantamount to a two and one-half year suspension of his license.

The Bar and Respondent then presented two stipulations. First, the Bar and Respondent stipulated that, if called as a witness in this matter, Judge John Paul of the Rockingham County, Virginia, General District Court, would testify that Respondent is "a generally good lawyer" and that the Judge would "like to see him get this Bar business behind him and return to the practice of law". Second, the Bar and Respondent stipulated that, if called to testify as a witness, George Willi, a retired Judge of the United States Claims Court, would testify in a manner consistent with an affidavit given by him on November 24, 2004, an affidavit which was subsequently introduced into evidence as Respondent's Exhibit '1'.

The Bar then offered in evidence its Exhibit '1', a compilation of seven prior dispositions in disciplinary matters regarding this Respondent. Initially, Respondent objected to the introduction of the Bar's Exhibit '1', arguing that nine of the eleven referenced Bar docket numbers arose from a single case, his representation of a woman charged with capital murder. When the Bar, in response to Respondent's argument, noted that the proffered Exhibit was exactly the same as the certification of prior disciplinary record admitted in two prior proceedings in this matter, Respondent withdrew his objection to the Exhibit. The Bar then rested.

Respondent, on his own behalf, at various stages of the proceedings, offered twenty Exhibits, all of which were admitted into evidence, and the testimony of three witnesses, including himself.

Respondent was sworn and testified as his own witness, stating that, immediately following the initial hearing in his matter, which commenced on November 19, 2004, concluding in the early morning hours of November 20, 2004, his practice was substantially adversely affected by a perception in the community where Respondent practices (the vicinity of Harrisonburg, Virginia) that his license had been immediately suspended. Despite the fact that neither a summary order nor a memorandum order were entered until several weeks after the hearing, and further despite the fact that the suspension imposed by the Board was not to take effect until January 15, 2005, Respondent testified that his practice was immediately adversely affected. He asked the Board to pay particular attention to Respondent's Exhibit '7' (newspaper articles concerning the disposition of his disciplinary matter) and Respondent's Exhibit '8' ("screen shots" of a notation on the Virginia State Bar website concerning the status of his license, showing it as suspended) and testified that he lost hundreds of thousands of dollars in income and saw his practice reduced from several lawyers and multiple support staff to himself and a single secretary in consequence of the understanding in the community that Respondent was "not able to work".

Respondent further testified that he returned unearned advanced legal fees to as many as 30 or 40 clients who requested such refunds immediately after the November 2004 hearing. Respondent further stated that he felt he had done nothing wrong in this matter and that he did not know why he had been suspended. He stated that he did not bring in financial records of his practice or tax returns to show lost income because he felt it would be too complicated to demonstrate the loss to the Board. He estimated, though, that his gross income declined from $250,000.00 in 2004, to approximately $100,000.00 in 2005. Responding to cross-examination by the Bar, Respondent maintained that "everybody" saw the Bar website and that most of his clients would not take the time to review the portion of the website which noted Respondent's appeal from the prior disposition in this matter.

Respondent called as a witness Gregory Lewis, a man who has known Respondent since childhood, some 40 to 50 years. He stated that he became aware of Respondent's suspension in late 2004 and that many people in the community asked him when Respondent would get his license back. He stated that, prior to the November 2004 hearing, Respondent's practice was extremely busy. Mr. Lewis stated that, prior to the hearing, it was difficult for him to obtain an opportunity to visit with his friend because Respondent was so busy working as a lawyer. After the hearing, it became much easier for Mr. Lewis to contact Respondent.

Mr. Lewis further stated that he reacted to questions in the community as to when Respondent would get his license back by pointing out to people that Respondent continued to practice on a daily basis and was frequently reported in the local newspapers for the cases he was handling. Responding to cross-examination, he stated that he did not believe any of the people who spoke to him had actually read the Virginia State Bar website. Mr. Lewis conceded that he himself did not have a computer and had never visited the Virginia State Bar website.

Respondent called as his final witness, Jack L. Stayner, who testified that the newspaper articles reporting Respondent's suspension had a negative impact on the volume of his practice. Mr. Stayner noted that at one time Respondent's practice required two people to answer the telephones, but that task can now be handled by one person, the witness, who is helping out his friend, Respondent. Under cross-examination and questioning from members of the Board, the witness noted that the steep decline in telephone calls to Respondent's office had actually commenced on or about January 1, 2007 (which coincides with the imposition of a suspension of Respondent's law license in a separate matter), and that Respondent's practice had been in decline since "as far back as 2002". He stated that "the wheels started to come off the cart" as early as 1995, when Respondent was representing a woman in a capital murder case. The witness stated that it was this representation which "disturbed the peace and good order of the community". At the time of that case, the witness told the Board, Respondent was in a firm of three to four lawyers, but by the year 2000 or 2002, Respondent had become a solo practitioner.

The witness further noted that more than five years ago, he was instrumental in getting Respondent into a 12-step program and that Respondent had been sober for at least the past five years. Following Mr. Stayner's testimony, Respondent rested his case. By way of rebuttal, the

Bar introduced its Exhibit '2', a "screen shot" from the Virginia State Bar website showing the fact of an imposition of suspension in this matter, coupled with an explanatory note stating that the suspension had been stayed pending appeal.

The Bar and Respondent then argued their positions. The Bar asked the Board to consider the facts found at the November 2004 hearing of this case, which the Bar asserted amounted to "egregious" misconduct, Respondent's stated lack of remorse, or even acceptance of culpability, and Respondent's damning prior record.

Respondent argued that he had been through two and one-half years of "pure hell" because of these proceedings. He stated, "I did not do anything wrong" and that he would not have agreed to disposition in prior disciplinary matters had he known he would be before the Board in this matter. Respondent argued that the publication of the result of the November 2004 hearing on the Bar's website and by press release to state and local newspapers by the Clerk of the Disciplinary System was an abuse of power by the Bar and had caused an impact on his practice which amounted to sufficient punishment for the misconduct found by the Board in his matter.

The Board then retired to consider all of the evidence adduced at the hearing, the prior proceedings in this matter, including the opinions and orders of the Supreme Court of Virginia, and the argument of counsel. The Board specifically considered the "factors to be considered in imposing sanctions" set out in the *Standards for Imposing Lawyer Sanctions* (1991 Edition, published by the American Bar Association), and factors in mitigation and/or aggravation of sentencing discussed in the *Judge's Bench Book*.

Weighing all this, the Board found, as factors of aggravation, Respondent's lack of remorse and/or recognition of misconduct in this matter, his significant record of prior discipline and his unwillingness to accept responsibility for the consequences of his conduct. Respondent is, and was at the time of the misconduct, a lawyer with substantial experience. As factors of mitigation, the Board found Respondent has successfully participated in a 12-step program and has been sober for over five years. In consideration whereof, it is,

ORDERED, that Respondent's license to practice law is suspended for a period of forty-five (45) days, such period to commence on July 1, 2007; and

FURTHER, ORDERED, that Respondent must comply with the requirements of Part 6, Section IV, Para. 13(M) of the Rules of the Supreme Court of Virginia. 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 lawyers and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of each client. Respondent shall give notice within fourteen (14) days after July 1, 2007, and make such arrangements as are required herein within forty-five (45) days after that date. Respondent shall also furnish proof to the Bar within sixty (60) days after July 1, 2007, that such notices have been timely given and such arrangements made for the disposition of all client matters. If Respondent is not handling any client matters on July 1, 2007, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Para. 13(M) shall be determined by the Virginia State Bar Disciplinary Board unless Respondent makes a timely request for hearing before a three-judge panel; and, it is

FURTHER, ORDERED, that, pursuant to Part 6, Section IV, Para. 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs of this matter against Respondent; and, it is

FURTHER, ORDERED, that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Bar, 77 North Liberty Street, Harrisonburg, Virginia, 22802, and by hand delivery or regular mail to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219.

ENTERED this 28th day of February, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Robert L. Freed, Chair Designate

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD
IN THE MATTER OF:
ROBERT JOHN HARRIS, ESQUIRE

VSB DOCKET NOS. 05-070-2914,
05-070-2969,
05-070-4587, and
06-070-0684

ORDER OF SUSPENSION

THIS MATTER came on to be heard on December 15, 2006, before a panel of the Disciplinary Board consisting of Robert E. Eicher, Chair, Glenn M. Hodge, Esquire, Thomas R. Scott, Jr., Esquire, Stephen A. Wannall, Lay Member, and H. Taylor Williams, IV, Esquire. The Virginia State Bar was represented by Alfred L. Carr, Esquire, Assistant Bar Counsel. The Respondent, Robert John Harris, appeared in person and was represented by Spencer D. Ault, Esquire. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would impair, or reasonably could be perceived to impair, his ability to be impartial in this matter, to which inquiry each member responded in the negative. Tracy J. Stroh, court reporter, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the District Committee Determination for certification by the Seventh District Committee.

I. FINDINGS OF FACT

VSB's Exhibits 1 through 19 were admitted without objection. Respondent's Exhibits 1 through 33 were admitted without objection. The Bar and Respondent entered into a Stipulation of Fact admitted as VSB's Exhibit 20 without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Robert John Harris, hereinafter the "respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia and his official address of record with the Virginia State Bar has been Stone Manor, 13193 Mountain Road, Lovettsville, Virginia, 20180. The respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

VSB Docket Number 05-070-2914

2. On April 25, 2005, the Assistant Bar Counsel assigned to this matter referred this complaint to the Seventh District Committee for further investigation because Respondent Harris did not lawfully respond within twenty-one (21) days as instructed by the Virginia State Bar's February 15, 2005, letter, in violation of Rule of Professional Conduct 8.1(c). Investigator Ronald H. McCall received the assignment to investigate this matter and submitted his report on June 27, 2005.

3. On May 19, 2004, the Frederick County Circuit Court sentenced Michael Lee Shanholtz on charges of felony neglect and malicious wounding of a minor. Respondent Harris represented Mr. Shanholtz in the appeal of his conviction. On June 11, 2004, Respondent filed a Notice of Appeal in the Frederick County Circuit Court. On June 17, 2004, he filed a Motion for the Production of Transcripts. On June 22, 2004, the Court of Appeals received the Notice of Appeal. On September 16, 2004, the Court of Appeals received the record of Mr. Shanholtz's trial from the lower court and so notified Respondent Harris.

4. On November 16, 2004, the Virginia Court of Appeals dismissed Mr. Shanholtz's appeal because Respondent Harris did not file a Petition for Appeal. In response to the dismissal, on November 30, 2004, Respondent filed a Petition for Rehearing in the Court of Appeals. On January 20, 2005, the Court of Appeals denied the Petition for Rehearing.

5. On February 22, 2005, because the Court of Appeals denied the Petition for Rehearing, Respondent Harris filed in the Supreme Court of Virginia a Motion for Enlargement of Time to File a Petition for Appeal, a Notice of Change of Address and Telephone Number and a Notice of Appeal.

6. In the Motion for Enlargement of Time to File a Petition for Appeal, Respondent Harris informed the Court that he was a solo practitioner and involved in "numerous demanding cases … and … recently moved his office." He also contended that the relocation of his office caused the malfunctioning of his computer equipment and this justified his failure to file Mr. Shanholtz's Petition for Appeal in a timely fashion. On March 21, 2005, the Supreme Court of Virginia denied his Motion for Enlargement of Time to File a Petition for Appeal.

7. In July of 2005, Investigator McCall interviewed Respondent Harris. During the interview, Respondent Harris stated that he was aware of the *Rule* 5A:12 requiring that the petition be filed within forty (40) days after the record is received by the Court of Appeal, but he missed the deadline because he "lost track of things." Further, Respondent Harris stated that he did not keep up with the deadlines, and admitted that he did not have a tickler system and could not recall if he had calendared the appeal's deadline date.

VSB Docket Number 05-070-2969

8. On May 10, 2005, the Assistant Bar Counsel assigned to this matter referred this complaint to the Seventh District Committee for further investigation because Respondent Harris did not lawfully respond within twenty-one (21) days, as instructed by the Virginia State Bar's February 23, 2005 letter, in violation of Rule of Professional Conduct 8.1(c). Investigator Ronald H. McCall received the assignment to investigate this matter and submitted his report on July 19, 2005.

9. On October 12, 2000, the Complainant, Jennifer Glowner, was injured in a car accident. At the time of the accident, Miss Glowner was a minor. She turned eighteen in June of 2001.

10. In September of 2002, Miss Glowner and her mother hired Respondent Harris to represent Miss Glowner in the personal injury case. Miss Glowner paid Respondent $200.00 in advance costs and signed a medical release form. Respondent deposited these unearned advance legal fees into his law practice operating account rather than into his trust account. Respondent informed Miss Glowner that he would use the medical release form to get copies of her medical records.

11. On October 15, 2002, after Miss Glowner turned eighteen, Respondent filed a Motion for Judgment in Miss Glowner's case, *Glowner v. Argueta*, At Law No. 02-204, in the Circuit Court of Frederick County. However, he never served the defendant.

12. On or about November 22, 2002, Progressive Insurance, defendant Argueta's insurance carrier, contacted Respondent Harris by letter in an effort to settle. Progressive stated that although Respondent Harris had not sent a formal letter of representation, it was their understanding that he was legal counsel for Miss Glowner. The letter also requested that Respondent Harris, as Miss Glowner's attorney, provide the following: medical bills relevant to the claim; Miss Glowner's medical treatment records for the last five years; her prescription medication history; all hospital admission and discharge summaries for any hospitalizations related to the claim; all documentation of lost wages relevant to the claim; detailed medical reports which indicated the full extent of Miss Glowner's injuries; and the records of any treatment provided by specialists for any orthopedic and/or neurological conditions or injuries. Respondent did not respond with a formal letter of representation or provide Progressive with any of the requested documentation. Respondent did not inform Miss Glowner that Progressive had requested such documentation in an effort to settle the claim.

13. On or about December 9, 2002, Progressive Insurance again contacted Respondent Harris and requested that he provide the previously mentioned documentation. Enclosed with the letter were pictures of the vehicle Miss Glowner occupied at the time of the accident and an estimate for repair. Respondent Harris did not respond to this second request from Progressive for information in their attempt to settle the claim. Respondent Harris again did not inform Miss Glowner or her mother of Progressive's attempt to settle the claim. Respondent Harris did not pursue the gathering of necessary information to prepare and present a demand letter for settlement on behalf of Miss Glowner, even after being prompted to do so by the defendant's insurance company, Progressive Insurance.

14. In August of 2003, Judge Posser of the Frederick County Circuit Court issued a Notice to Appear on September 9, 2003, because the case had been pending for over six months and had not been set for trial.

15. On September 22, 2003, the Court dismissed Miss Glowner's case. Miss Glowner and her mother contend that Respondent Harris did not inform them of the September 9, 2003, court date.

16. After Miss Glowner and her mother hired Respondent, Miss Glowner called Respondent repeatedly to find out the status of her case. Respondent rarely returned her calls. In January of 2005, Miss Glowner was able to reach Respondent Harris in his office. Only then did he inform Miss Glowner that the Court had dismissed her case and that the statute of limitations had expired so she could not re-file it. He also asserted that the dismissal and lapsing of the statute of limitations was due to Miss Glowner's not keeping in touch with him and her failure to provide him with copies of the documentation that he needed to prepare a demand letter.

17. In his response to a subpoena *duces tecum*, Respondent Harris did not provide the Virginia State Bar with the following: documentation in support of his contentions that he communicated with Miss Glowner regarding Progressive's two requests for documentation to settle the accident; documentation that he had notified her or her mother of the September 9, 2003, court date to set a date for trial; or documentation that he had informed Miss Glowner of the necessity to re-file to toll the running of the statute of limitations.

VSB Docket Number 05-070-4587

18. Respondent Harris did not lawfully respond within twenty-one (21) days as instructed in the Virginia State Bar's June 30, 2005, letter, in violation of Rule of Professional Conduct 8.1(c). Investigator Ronald H. McCall received the assignment to investigate this matter and submitted his report on July 19, 2005.

19. In August of 2004, the husband of the Complainant, Sheletta Faucette, hired Respondent to file an appeal for Ms. Faucette, who had been convicted of child endangerment and driving under the influence in Fauquier County. Mr. Faucette paid Respondent $2,650.00 in advance fees. Respondent Harris contends that Complainant's family paid him in irregular installments. Respondent deposited these unearned advance legal fees into his law practice operating account rather than into his trust account.

20. On September 2, 2004, Respondent filed a Notice of Appeal and Motion for Transcripts on behalf of Ms. Faucette. On October 6, 2004, he filed a motion for an extension of time to file the transcript, which the court granted on October 8, 2004. On November 4, 2004, Respondent filed a second motion for an extension of time to file, which the court granted on November 16, 2004. Respondent now had until December 3, 2004, to file the transcript. On December 8, 2004, the Court of Appeals issued a Show Cause directing that Respondent Harris respond by December 23, 2004, why the appeal should not be dismissed because a transcript or statement of facts had not been filed by December 3, 2004. Respondent Harris did not respond to the Show Cause Order. On December 29, 2004, the Court of Appeals dismissed Ms. Faucette's appeal because Respondent Harris did not file the transcript or a statement of facts.

21. Respondent's Harris' Motion for Production of Transcripts contends that Ms. Faucette is indigent and unable to pay for the transcripts. However, on November 10, 2004, Tina Oehser, Deputy Clerk of the Fauquier County Circuit Court, notified Respondent Harris that Judge Parker had asked, "Under what authority am I to enter this Order?" Deputy Clerk Oehser's letter further explained that because Respondent Harris had not been appointed by the Court as counsel for Ms. Jackson and nothing had been filed indicating a need based on indigence on behalf of Ms. Faucette triggered the judge's question. Ms. Faucette states that Respondent Harris contacted her and requested that she execute a sworn statement that she had been incarcerated since May 6, 2004, and therefore had no income. She complied with his request and executed the sworn statement. However, he did pick up the sworn statement, but did not file it with the court. However, Ms. Faucette and her family informed Respondent Harris that should he have trouble getting the State to pay for the transcript, they would do whatever was necessary to obtain the money to pay for the trial transcripts. Respondent Harris did not inform them of his trouble getting the State to pay for the transcript or that they needed to pay for the transcripts. Respondent Harris contends, however, that he could not continue the appeal because Ms. Faucette could not afford to purchase the trial transcripts. Further, Respondent Harris contends that his last conversation with Ms. Faucette's family specifically addressed the need to pay for the transcripts in a lump sum payment to the court reporter.

22. After expiration of the second extension to file the transcripts, he did not fully respond to her inquiries or those from her family regarding the status of her appeal. He moved his office and changed his telephone numbers without informing Ms. Faucette or her family. When the Court of Appeals dismissed her appeal, Respondent did not inform Ms. Faucette or her family. Ms. Faucette finally heard that her appeal had been dismissed in June of 2005 when her Department of Corrections counselor informed her. Respondent Harris did not respond to the Department of Corrections counselor's telephone calls seeking an update on the status of Ms. Faucette's appeal.

VSB Docket Number 06-070-0684

23. On November 1, 2005, the Assistant Bar Counsel assigned to this matter referred this matter to the Seventh District Committee for further investigation and issued a subpoena *duces tecum* for Respondent Harris' file on the Complainant, Warren J. Rankin, and his case. Respondent Harris did not respond within twenty-one (21) days to the Virginia State Bar's September 15, 2005, letter in violation of Rule of Professional Conduct 8.1(c). Respondent Harris did not respond to the subpoena *duces tecum*. Respondent Harris contends that he did not receive service of the subpoena *duces tecum*. During Investigator McCall's investigation of Respondent Harris, he gave Investigator McCall one page of hand-written notes, claiming it was a copy of his entire file on the Rankin case.

24. In January of 2005, the Complainant, Warren J. Rankin, spoke with Eugene Gunter, Esquire's assistant about re-establishing Mr. Rankin's rights to vote and to own firearms, which had been revoked when he was convicted of a felony. Mr. Gunter's assistant referred Mr. Rankin to Respondent Harris, who had shared office space with Mr. Gunter. On January 19, 2005, Respondent Harris visited Mr. Rankin at his home and he paid Respondent $750.00 cash in advance legal fees. Respondent deposited these unearned advance legal fees into his law practice operating account rather than into his trust account.

25. In January of 2005, but before his visit to Mr. Rankin's home, Respondent moved his office out of the office space he shared with Mr. Gunter. At the conclusion of Respondent Harris' visit with Mr. Rankin at his home, he gave Mr. Rankin a hand-written receipt for his advance legal fees on Respondent's new office letterhead which included his new office address and phone number. Between January of 2005 and August of 2005, Mr. Rankin left numerous messages at Respondent's previous office, which Respondent did not return. Mr. Rankin did not realize that he was calling the wrong office. In March of 2005, Respondent Harris did call Mr. Rankin and left a message in response to a cell phone message left by Mr. Rankin. Respondent Harris' message did not convey an update on the status of his work on Mr. Rankin's case.

26. On August 20, 2005, Mr. Rankin filed his complaint with the Virginia State Bar. On October 6, 2005, Respondent contacted Mr. Rankin after receiving the complaint and the Bar's opening letter. During that phone conversation, Mr. Rankin informed Respondent that he was fired and requested that Respondent refund his unearned advance legal fee of $750.00. To date, Respondent Harris has not refunded Mr. Rankin's fees.

27. Respondent contends that he required more time than he had anticipated to research Mr. Rankin's felony conviction because the conviction had occurred so many years before, and he put off completing the work. However, Respondent never informed Mr. Rankin why he was taking so long to complete the work on the case.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

VSB Docket Number 05-070-2914

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.

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

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

VSB Docket Number 05-070-2969

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.

(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

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

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

RULE 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.

(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 non-escrow 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 non-escrow disbursements;

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

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

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

(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.

(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.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow

account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

(iii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

(iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefore.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;

(vi) Definitions. "Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;

"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to

the offices in this State, to escrow accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under Uniform Commercial Code Section 4-104, if sufficient funds were available.

(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

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

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

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

(5) Reconciliations.

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

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

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

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

RULE 1.16 Declining Or Terminating Representation

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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

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

VSB Docket Number 05-070-4587

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.

(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.

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

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

RULE 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.

(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 non-escrow 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 non-escrow disbursements;

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

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

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

(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.

(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.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms

of the agreement;

(iii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

(iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefore.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;

(vi) Definitions. "Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;

"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to escrow accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under Uniform Commercial Code Section 4-104, if sufficient funds were available.

(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

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

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

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

(5) Reconciliations.

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

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

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

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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

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

VSB Docket Number 06-070-0684

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.

(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.

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

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

RULE 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.

(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 non-escrow 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 non-escrow disbursements;

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

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

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

(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;

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(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

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(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

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

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

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

(5) Reconciliations.

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

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It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

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

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

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1 through 19, and the Stipulation of Facts admitted as VSB Exhibit 20, upon evidence from witnesses presented on behalf of VSB, upon review of exhibits presented by Respondent as Exhibits 1 through 30, upon evidence from witnesses presented on behalf of Respondent, and upon evidence presented by Respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

Upon motion by Bar Counsel that the following charges be dismissed, the board does dismiss the following charges of misconduct:

(a.) VSB Docket Number 05-070-2914, Rule 1.3(c);

(b.) VSB Docket Number 05-070-2969, Rule 1.1, Rule 1.3(c), and Rule 8.4(a)(b)(c);

(c.) VSB Docket Number 05-070-4587, Rule 1.1, Rule 1.3(c), and Rule 8.4(a)(b)(c); and

(d.) VSB Docket Number 0605-070-0684, Rule 1.1, Rule 1.3(c), and Rule 8.4(a)(b)(c).

2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent violated the following Rules of Professional Conduct:

(a.) VSB Docket Number 05-070-2914:

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

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

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

(b.) VSB Docket Number 05-070-2969:

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

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(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.

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(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;

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(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

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"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;
"Insufficient Funds" refers to an overdraft in the commonly accepted sense of there being an insufficient balance as shown on the bank's accounting records; and does not include funds which at the moment may be on deposit, but uncollected;

"Law firm" includes a partnership of lawyers, a professional or nonprofit corporation of lawyers, and a combination thereof engaged in the practice of law. In the case of a law firm with offices in this State and in other jurisdictions, these Rules apply to the offices in this State, to escrow accounts in other jurisdictions holding funds of clients who are located in this State, and to escrow accounts in other jurisdictions holding client funds from a transaction arising in this State;

"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under Uniform Commercial Code Section 4-104, if sufficient funds were available.

(2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;

(3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;

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

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

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

(5) Reconciliations.

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

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

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

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

RULE 1.16 Declining Or Terminating Representation

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

(c.) VSB Docket Number 05-070-4587; and

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

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

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

RULE 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.

(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 non-escrow 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 non-escrow disbursements;

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

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

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

(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.

(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.

(1) Insufficient fund check reporting.

(i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;

(ii) Overdraft notification agreement required. A financial institution shall be approved as a depository for lawyer escrow accounts if it shall file with the Virginia State Bar an agreement, in a form provided by the Bar, to report to the Virginia State Bar in the event any instrument which would be properly payable if sufficient funds were available, is presented against a lawyer escrow account containing insufficient funds, irrespective of whether or not the instrument is honored. The Virginia State Bar shall establish rules governing approval and termination of approved status for financial institutions. The Virginia State Bar shall maintain and publish from time to time a list of approved financial institutions.

No escrow account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled by the financial institution except upon thirty (30) days notice writing to the Virginia State Bar, or as otherwise agreed to by the Virginia State Bar. Any such agreement may be canceled without prior notice by the Virginia State Bar if the financial institution fails to abide by the terms of the agreement;

(iii) Overdraft reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(b) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(c) such reports shall be made simultaneously with and within the time provided by law for notice of dishonor to the depositor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds;

(iv) Financial institution cooperation. In addition to making the reports specified above, approved financial institutions shall agree to cooperate fully with the Virginia State Bar and to produce any lawyer escrow account or other account records upon receipt of a subpoena therefore.

A financial institution may charge for the reasonable costs of producing the records required by this Rule.

(v) Lawyer cooperation. Every lawyer or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule;

(vi) Definitions.

"Lawyer" means a member of the Virginia State Bar, any other lawyer admitted to regular or limited practice in this State, and any member of the bar of any other jurisdiction while engaged, pro hac vice or otherwise, in the practice of law in Virginia;

"Lawyer escrow account" or "escrow account" means an account maintained in a financial institution for the deposit of funds received or held by a lawyer or law firm on behalf of a client;

"Client" includes any individual, firm, or entity for which a lawyer performs any legal service, including acting as an escrow agent or as legal representative of a fiduciary, but not as a fiduciary. The term does not include a public or private entity of which a lawyer is a full-time employee;

"Dishonored" shall refer to instruments which have been dishonored because of insufficient funds as defined above;

"Financial institution" and "bank" include regulated state or federally chartered banks, savings institutions and credit unions which have signed the approved Notification Agreement, which are licensed and authorized to do business and in which the deposits are insured by an agency of the Federal Government;

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"Notice of Dishonor" refers to the notice which, pursuant to Uniform Commercial Code Section 3-508(2), must be given by a bank before its midnight deadline and by any other person or institution before midnight of the third business day after dishonor or receipt of notice of dishonor. As generally used hereunder, the term notice of dishonor shall refer only to dishonor for the purpose of insufficient funds, or because the drawer of the bank has no account with the depository institution;

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

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

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

(d.) VSB Docket Number 0605-070-0684.

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

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

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(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.

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(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;

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

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

Thereafter, the Board received evidence of aggravation from the Bar, including Respondent's prior disciplinary record.

The Board received evidence of mitigation from the Respondent himself, from his wife, and from Janean Johnson, a risk management specialist. Respondent testified in his own behalf that he had practiced law as a sole practitioner from 1979 to 2002 without incident. A lot of his practice was dependent upon referrals from Mr. Massey, an attorney that Respondent considered his mentor. This gentlemen died near the end of 2002. With this event, a lot of the cases Respondent relied upon as referrals ceased. Respondent saw his income decrease dramatically. Then, on July 11, 2003, a dramatic event occurred involving his wife's health. Mrs. Harris was struck down with an illness that left her paralyzed and in need of help around the clock. She was in the hospital for an extended period of time and then at home in need of constant help from Respondent. All of these events greatly affected Respondent's ability to operate his law practice.

In a prior event, Respondent was disciplined and given terms. He was not able to comply with the terms because his practice had evaporated and his wife's illness demanded much of his time. He reached out for help from Spencer D. Ault, an attorney and friend.

At present, Respondent is working in Mr. Ault's office trying to take care of his open files and assisting Mr. Ault in his practice. Mr. Ault has assisted Respondent with funds to pay refunds ordered in past discipline and to pay for the services of a law office management specialist. Mr. Ault is also mentoring Respondent regarding his time management.

Janean Johnson, J.D., testified on behalf of Respondent. She is a law office management specialist hired by Mr. Ault to advise Respondent (to comply with the terms of previous discipline). She testified that Respondent has accepted her recommendation and is doing well. She sees no reason why Respondent couldn't continue to practice without the problems that have dogged him in the past by following her recommendations. Trust account procedures are in place and are being followed by Respondent. Reference is made to the letter reports from Ms. Johnson marked as Respondent's Exhibits 32 and 33.

The Board recessed to deliberate the evidence of aggravation and mitigation and what sanctions to impose upon its findings of misconduct by Respondent. After due deliberation, the Board convened to announce the sanction imposed. The Chair announced the sanction as a sixty-day (60) suspension of Respondent's license to practice law.

Accordingly, it is ORDERED that the license of Respondent, Robert John Harris, to practice law in the Commonwealth of Virginia be, and is hereby, SUSPENDED for a period of sixty (60) days effective December 15, 2006.

It is further ORDERED that, as directed in the Board's December 15, 2006, summary order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the

suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, December 15, 2006, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his official address of record with the Virginia State Bar, being Stone Manor, 13193 Mountain Road, Lovettsville, Virginia, 20180, by certified mail, return receipt requested, and by regular mail to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED this 6th day of February, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Robert E. Eicher, Chair

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD OF THE
VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT JOSEPH HILL, ESQUIRE
VSB DOCKET NUMBER 06-053-1229

ORDER OF SUSPENSION

THIS MATTER came to be heard on January 26, 2007, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Robert E. Eicher, (Chair), William C. Boyce, Jr., W. Jefferson O'Flaherty, Lay Member, David R. Schultz, and Nancy C. Dickenson.

The Virginia State Bar ("VSB" or "Bar") was represented by Seth Guggenheim, Senior Assistant Bar Counsel. The Respondent, Robert Joseph Hill, appeared in person and represented himself. The Chair inquired of each member whether he or she had any personal or financial interest that would impair, or reasonably could be perceived to impair, his or her ability to be impartial in this matter, to which inquiry each member and the Chair responded in the negative.

VSB Exhibits 1 through 6 were received in evidence without objection. The Respondent offered no exhibits.

The Respondent and Bar Counsel announced that the Respondent and the Bar had, on January 16, 2007, reached certain stipulations of fact and of violations of the Rules of Professional Conduct, contained in VSB Exhibit 6, as follows:

All facts and allegations set forth in the "Statement of Facts" section of the Certification filed herein are true and accurate, shall be deemed admitted by the Respondent, and shall be admissible into evidence at the time this matter is heard by the Board as fully as if proven by clear and convincing evidence via the introduction of testimonial and documentary evidence.

All exhibits heretofore filed by the Virginia State Bar shall be admitted into evidence in this matter, without objection by the Respondent. The Respondent admits that he has violated those provisions of the Rules of Professional Conduct set forth in the "Nature of Misconduct" section of the Certification filed herein.

I. FINDING OF FACT

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

2. Ms. Nancy J. Somers (hereafter "Complainant") consulted the Respondent in June of 2005 concerning the possible entitlement to an increase in child support from her former husband. The Complainant paid the Respondent the sum of $250.00 for the consultation.

3. On July 11, 2005, the Complainant and Respondent agreed that Respondent would issue a subpoena for Complainant's former husband's income records in order to determine if seeking an increase in child support were feasible. It was agreed that the Complainant would pay Respondent the sum of $500.00 immediately, and that she would pay a like sum once the subpoenaed information was returned.

4. The Respondent told the Complainant that it would take one week to complete the subpoena; the Complainant promptly paid the Respondent, and provided him with material that Respondent had requested beyond what was provided during the June 2005 consultation.

5. Between approximately July 20, 2005, and the end of August, the Complainant repeatedly called the Respondent and left messages to which he did not respond. The Complainant placed another call to the Respondent one morning in August 2005, which the Respondent answered. When asked why he had not returned Complainant's earlier phone calls, the Respondent informed her that he was busy and lazy.

6. The Respondent then informed the Complainant that he was having a subpoena sent to her former husband's place of employment and that he would call when he received the information.

7. As of October 4, 2005, when her Complaint was submitted to the Virginia State Bar, the Complainant had heard nothing further from the Respondent.

8. On November 1, 2005, Bar Counsel mailed a copy of the Bar Complaint in this matter to 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 answers 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.

9. During his interview with a Virginia State Bar Investigator on February 8, 2006, the Respondent stated that he had filed a Motion to Modify Child Support on September 1, 2005, but had failed to notify the Complainant that he had done so.

10. He further advised the investigator, among other things, that he would contact the Complainant for an agreeable hearing date for the motion; that he would have a subpoena issued for the Complainant's former husband's financial records once the Respondent had a docketed case; that he could not have a subpoena issued until he had a docketed case; and that he would reimburse the Complainant the sum of $500.00 due to the delay and his lack of communication with her.

II. DISCIPLINARY RULE VIOLATIONS

RULE 1.1 Competence

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

RULE 1.2 Scope of Representation

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

RULE 1.3 Diligence

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

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.

A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.16 and Rule 3.3.

RULE 1.4 Communication

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

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

RULE 8.1 Bar Admission and Disciplinary Matters

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

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

III. DISPOSITION

Upon consideration of the foregoing, and argument of Bar Counsel and the Respondent, the Board recessed to deliberate. After deliberation, the Board reconvened and stated it had found by clear and convincing evidence that the Respondent had violated the following Rules of Professional Conduct: Rule 1.1 Competence, Rule 1.2 Scope of Representation, Rule 1.3 Diligence, Rule 1.4 Communication and Rule 8.1 Bar Admission and Disciplinary Matters.

Thereafter the Board received evidence of aggravation and mitigation from the Bar and the Respondent, including the Respondent's prior disciplinary record as VSB Exhibit 7, admitted without objection, consisting of two prior public reprimands for violations of Rule 1.3 Diligence, Rule 1.4 Communications, and Rule 8.1 Bar Admissions and Disciplinary Matters. The Respondent offered a draft report from a law office management consultant, which was admitted without objection as Respondent's Exhibit 1, relating to the terms imposed in a prior disciplinary proceeding. The Board found the report to be not relevant in this proceeding. Following argument by Bar Counsel and the Respondent, the Board recessed to deliberate what sanction to impose upon its findings of misconduct by the Respondent.

After due deliberation the Board reconvened and the Chair announced that, based upon the Respondent's prior disciplinary record exhibiting a course of continuing disregard for compliance with the Rules of Professional Conduct, the Board has determined to impose a sixty day suspension effective February 5, 2007. Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of sixty (60) days effective February 5, 2007.

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

It is further ORDERED that a certified copy of this order shall be served by the Clerk of the Disciplinary System upon the Respondent, Robert Joseph Hill at P.O. Box 190, Fairfax, Virginia 22038, his address of record with the Virginia State Bar and to Seth Guggenheim, Senior Assistant Bar Counsel at 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314.

The court reporter who recorded these proceedings is Dorothy J. Lewis of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222.

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

Entered this the 7th day of February, 2007.

The Virginia State Bar Disciplinary Board
Robert E. Eicher, 2nd Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
TONY CHARLES RUDY
VSB DOCKET NO. 07-000-0275

ORDER OF REVOCATION

THIS MATTER came to be heard on the 17th day of November 2006 before a duly convened Panel of the Board comprised of James L. Banks, Jr., First Vice Chair; Dr. Eric N. Davidson, lay member; William H. Monroe, Jr.; Thomas R. Scott, Jr. and Bruce T. Clark upon a Rule To Show Cause and Order of Suspension and Hearing entered herein on July 31, 2006. The Respondent, Tony Charles Rudy, having been duly notified of the time and place of the hearing did not appear. William O. Douglas Loeffler, who had previously noted an appearance on behalf of the Respondent, advised the Bar by letter received prior to the hearing that he was withdrawing from the matter and likewise was not in attendance. The Bar was represented by Seth M. Guggenheim, Assistant Bar Counsel.

Having received evidence presented by the Bar, the Board finds as follows:

That at all time pertinent to this matter, the Respondent, Tony Charles Rudy, was a licensed member of the Virginia State Bar, he having been first so licensed on October 11, 1995.

That the Respondent has plead guilty in the United States District Court for the District of Columbia to charges of Conspiracy to Defraud in violation of Title 18, United States Code, Section 371, Criminal No. 06-082(ESH). The charges to which the Respondent plead guilty arose in part from activities he engaged in while he was a staff member of Representative Thomas D. DeLay and in part for activities he engaged in as a lobbyist following his resignation from his position within the government.

That the Board finds pursuant to Part 6, Section IV, Paragraph 13.I.5.b. of the Rules of Court that the Respondent's acts as described above constitute a plead of guilty to a crime.

That the Respondent has offered no evidence to show why his license to practice law in Virginia should not be suspended or revoked by reason of the above.

Upon consideration of the above and recognizing the grievous nature of the offences the Respondent has pled guilty to, the Panel, following due deliberation, finds that the license of the Respondent, Tony Charles Rudy, should be REVOKED effective as of November 17, 2006, and it is so ORDERED.

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

It is further ORDERED that attested copies of this Order be mailed to the Respondent, Tony Charles Rudy, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 4152 Calhoun Drive, Huntington Beach, CA 92649, and to Bar Counsel, Seth M. Guggenheim, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

This matter was reported by Valarie L. Schmit May, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

ENTER THIS ORDER THIS 17TH DAY OF NOVEMBER, 2006
VIRGINIA STATE DISCIPLINARY BOARD
James L. Banks, Jr., 1st Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD
IN THE MATTER OF
SALVAGE DELACY STITH
VSB DOCKET NO. 06-000-4273

ORDER OF RECOMMENDATION

This matter came on to be heard on January 26, 2007, before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, hearing room A. The Board was comprised of Joseph R. Lassiter, Jr., Acting Chair, Thomas R. Scott, Jr., H. Taylor Williams, IV, Sandra Lea Havrilak, and Stephen A. Wannall, lay member. Petitioner Salvage DeLacy Stith (hereinafter "Stith") *pro se*, was present. The Virginia State Bar appeared by its counsel, Paul D. Georgiadis, Assistant Bar Counsel. Proceedings in this matter were transcribed by Donna T. Chandler, a registered professional reporter, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether they had any personal or financial interest or bias which would interfere with or influence that member's determination of the matter. Each member, including the Chair, answered in the negative.

The Chair advised Stith and the Bar how the hearing would proceed and they were specifically advised that Stith had the burden of proving by clear and convincing evidence that he is a person of honest demeanor and good moral character and that he possesses the requisite fitness to practice law. Both sides were afforded an opportunity to raise any questions or objections they might have about the procedure as outlined by the Chair. Stith requested information about the background and experience of each member of the panel, which was provided. Stith objected to evidence being offered by the Virginia State Bar which predated the June 29, 2001, order of the Board recommending reinstatement. The Chair overruled the objection, stating that while the Board might chose to give greater weight to Mr. Stith's activities since the prior hearing, the Board was not bound by the 2001 opinion and, in fact, the Virginia Supreme Court had not followed the recommendation. In any event, the Petitioner's entire record is before the Board.

Prior to the Board hearing, the Clerk of the Disciplinary System provided notice to all interested parties by mail and press releases as required in Part Six, § IV, Paragraph 13(I)(9)(e). In response to that notice, the Board received two (2) letters in support of Stith's reinstatement, two (2) letters of support recommending that conditions be imposed on reinstatement, and five (5) letters in opposition to reinstatement. Stith testified on his own behalf at the hearing. The Bar called Barry W. Spear, Esquire, trustee in bankruptcy, as a witness.

VSB Exhibits 1 through 9 were admitted into evidence without objection. Virginia State Bar Exhibit 10, a published opinion of the U.S. District Court in a case involving Stith, was admitted over objection. Stith initially objected to Exhibits 11 through 22, but subsequently withdrew his objections.

I. BACKGROUND

Stith graduated from the University of Virginia School of Law in 1972 and was licensed to practice law in Virginia in 1973. From 1973 until June 24, 1994, Stith was engaged in the private practice of law, except during a three year suspension of his license during the period 1987–1990. Discipline against him included a private reprimand in 1978 for failure to perfect an appeal, an agreed disposition in 1983 whereby Stith agreed not to make loans to clients and not to endorse clients' names to settlement checks, a primate reprimand in 1984 for commingling funds and failure to properly maintain his trust account, a private reprimand in 1986 for mishandling a case, a public reprimand in 1987 for neglect of a divorce matter, the three year suspension in 1987 for making loans to himself out of his trust account, a public reprimand in 1993 for failure to perfect an appeal, and a twelve month suspension in 1993 for continuing to represent a client after he had been discharged by the client. While serving his one year suspension, Stith's license was revoked by the Board in 1994 following hearings on four complaints involving trust account violations and failure to perfect appeals. See VSB Exhibit 22.

On May 19, 1999, the Virginia Supreme Court denied Stith's petition for reinstatement as insufficient to support a referral to the Disciplinary Board. Stith filed a second petition for reinstatement, which was referred to the Board for hearing. On June 28, 2001, the Board entered an order

recommending reinstatement by a vote of 3 to 2, which included a dissenting opinion. On October 2, 2001, the Virginia Supreme Court denied the petition for reinstatement without opinion, and on October 30, 2001, the Virginia Supreme Court denied Stith's motion for reconsideration. This Third Petition for Reinstatement was filed June 16, 2006. On June 23, 2006, the Clerk of the Virginia Supreme Court referred the petition to the Virginia State Bar Disciplinary Board for recommendation.

II. FINDINGS

In accordance with Part Six, § IV, ¶13(I)(8)(b)(2), after revocation, the petitioner's license to practice law shall not be reinstated unless the petitioner proves by clear and convincing evidence as follows:

- Within five (5) years prior to filing the petition has attended sixty (60) hours of continuing legal education, of which at least ten (10) hours shall be in the area of legal ethics or professionalism;
- Has taken the Multi-State Professional Responsibility Examination 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 petitioner's misconduct;
- Has paid the Bar all costs previously assessed against him, together with any interest thereon … and
- Is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law.

In considering the final factors, the Board is guided by the factors set forth in *The Matter of Alfred Lee Hiss*, Docket No. 83-26, opinion dated May 24, 1984:

1. The severity of the petitioner's misconduct including, but not limited to, the nature and circumstances of the misconduct.
2. The petitioner's character, maturity and experience at the time of his disbarment.
3. The time elapsed since the petitioner's disbarment.
4. Restitution to clients and/or the Bar.
5. The petitioner's activities since disbarment including, but not limited to, his conduct and attitude during that period of time.
6. The petitioner's present reputation and standing in the community.
7. The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the petitioner.
9. The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.
10. The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.

Stith's Petition for Reinstatement states in paragraph 6, "Since his disbarment, Salvage DeLacy Stith, Sr. has kept abreast of the development in the field of law through legislative digests and the published opinions of the Court of Appeals and the Supreme Court of Virginia. Since his disbarment, Salvage DeLacy Stith, Sr. has received continuing education requirements as mandated." Stith testified that he has taken a Continuing Legal Education course at William and Mary Legal Institute. There was no documentary evidence from the MCLE Board or any other legal education provider evidencing that Stith had, in fact, attended sixty (60) hours of continuing legal education courses, of which ten (10) were in the

area of legal ethics or professionalism. However, the Bar did not contest the issue of whether Stith had taken the necessary MCLE courses, and this panel did consider this issue in determining its recommendation.

Stith is required to prove that he had taken the Professional Responsibility Examination and received a scaled score of 85 or higher. Stith attached to his application as Exhibit C a certificate which evidences that he took the Multi-State Professional Responsibility Examination on August 14, 1998, and had a scaled score of 92. This score satisfies the necessary requirement.

Bar Counsel stipulated that Stith does not owe the Clients' Protection Fund any money. The Bar further stipulated that Stith has paid all costs previously assessed against him by the Bar together with any interest thereon.

In considering whether or not Stith is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law, the Board considered the factors set forth in the *Hiss* case as follows:

1. **The severity of the petitioner's misconduct including, but not limited to, the nature and circumstances of the misconduct.**

Stith's disciplinary record is serious. As noted above, Stith's license to practice law was revoked for trust account violations and failure to perfect appeals after numerous prior discipline for similar violations. The panel that revoked Stith's license specifically noted that it had considered Stith's cumulative acts of misconduct and prior suspensions in reaching its decision to revoke his license. However, it should also be noted that Stith's trust violations did not result in large losses to clients of the kind often seen in these proceedings, and that all defalcations were apparently made good.

2. **The petitioner's character, maturity and experience at the time of his disbarment.**

Stith was a mature lawyer at the time of his disbarment, not afflicted with issues normally associated with young lawyers or aging practitioners.

3. **The time elapsed since the petitioner's disbarment.**

Stith was revoked on June 24, 1994; however, he has not practiced law since October 1, 1993, when he was suspended for twelve (12) months by order of a 3-judge panel. Therefore, significant time has lapsed since Stith's disbarment.

4. **Restitution to clients and/or the Bar.**

Stith has made restitution to the clients and has paid back the Clients' Protection Fund for money paid on behalf of one of his cases. At this time, he does not owe any restitution.

5. **The petitioner's activities since disbarment including, but not limited to, his conduct and attitude during that period of time.**

Stith testified that he enjoys a good reputation. He admitted to friends and colleagues the problems that he had experienced and took responsibility for the actions that lead to his revocation. At the reinstatement hearing held on April 27, 2001, two (2) witnesses testified positively about Stith, stating that he was held in high regard in the community. The witnesses testified that he is known to tell the truth, "whether it hurt or felt good".

Unfortunately, Stith did not present any witnesses in support of his petition in the instant case. The panel would have benefitted greatly from testimony from even one of Stith's current colleagues at Elizabeth City State University in North Carolina. His record there since 1994 would appear to be very successful. Stith is a tenured associate professor. In 1994, he was employed at the University as a visiting professor. Subsequently, in 1998–1999, he was promoted to the rank of assistant professor and in the 2000–2001 school term he received tenure and was promoted to associate professor. In academic year 2005–2006, he was selected as the faculty senate president for a term of two (2) years. He also received a social science departmental teacher of the year award in 2005–2006.

Bar Counsel questioned Stith's lack of forthrightness in his response to the Bill of Particulars filed in this matter. Question 6 of the Bill of Particulars asked whether or not Stith had any civil judgments obtained against him or federal or state tax liens filed against him or any business in

which he had an ownership interest. Stith failed to identify the case of *FDIC v. Stith*, 772 F.Supp. 279 (E.D. Va. 1991), (VSB Exhibit #10). Stith, while employed at a federally insured bank, was found to have obtained a loan for himself but failed to book the loan, thereby contributing to a scheme that was likely to mislead banking authorities. This case was not mentioned by Stith in his Answers to the Bill of Particulars. In his defense, Stith stated that he simply failed to recall it.

Bar Counsel also questioned Stith's bankruptcy filings since his disbarment. From September 1993, through December 1998, Stith filed five (5) Chapter 13 bankruptcy petitions, none of which were pursued to discharge. The fifth Chapter 13 petition was dismissed with prejudice and Stith was directed not to refile for 180 days. Shortly after the deadline expired, Stith filed a sixth Chapter 13 petition, which was also dismissed with prejudice. Stith acknowledged that the purpose of the filings was to delay foreclosure proceedings by the Internal Revenue Service, a procedure he argues is a proper tactic[1]. (Exhibits 11-16).

Thereafter Stith filed a Chapter 7 bankruptcy in December 2001. He amended his petition on January 31, 2002. While Stith was in Chapter 7 bankruptcy proceedings as an individual, a corporation owned by Stith and his wife, Stith Investments, Inc., was also in bankruptcy. Considerable testimony was provided by the trustee in bankruptcy, Barry W. Spear ("Trustee"). Mr. Spear testified that it was his job to make sure that the debtor was complying with the rules and fully disclosed all of his assets and debts. According to Mr. Spear, several problems arose regarding an account receivable that Stith was in the process of collecting at the time he filed his Chapter 7 petition and amended Homestead Deeds that he filed in an attempt to retain the settlement funds. Stith filed a second amended homestead deed. VSB Ex. 4, wherein Stith attests to the fact that he had one (1) account receivable with George Leathers for $3,000.00 on February 18, 2002. In fact, Stith received $3,500.00, payment in full, on the Leathers account on February 13, 2002, five (5) days prior to filing his second amended Homestead Deed. Stith cashed the check and spent the money in violation of bankruptcy stay requiring him to turn all property over to the trustee. Furthermore, Stith, an experienced bankruptcy practitioner, settled the Leathers claim during a period of time when the trustee was supposed to be handling all assets and debts and should have been given an opportunity to settle the claim and determine if it could have been settled on better terms than those negotiated by Stith. (VSB Ex. 3). The Trustee further testified that Stith was not forthcoming regarding tax refunds and had attempted to claim more money that he was entitled.

As a result of Stith's filings, the Trustee filed Objections to the Discharge of the Debtor. One of the objections filed by the trustee was that Stith, in disposing of the Leathers claim, engaged in conduct to hinder, delay and defraud an officer of the estate charged with the custody of property under the Bankruptcy Code. The same allegations were raised regarding the 1999 and 2000 North Carolina State tax refunds.

The trustee alleged that Stith did so with the intent to hinder, delay or defraud an officer of this estate charged with the custody of the property under the bankruptcy code. (VSB Ex. 7). As a result of the trustee filing objections to Stith's discharge, the Bankruptcy Court entered a consent order on August 16, 2002, wherein Stith agreed to pay $500.00 per month to the Trustee for all amounts due as to the Leather's claim and the North Carolina state refund taxes. After this order was entered, Stith made the first $500.00 payment with a check that was twice returned to the Trustee for insufficient funds. (VSB Ex. 9). This caused a default pursuant to the order and Stith was required to pay the total amount due and owing of $2,322.00 in order to complete the discharge in bankruptcy. On February 4, 2003, Stith did pay the total amount due in cash to the trustee.

At the same time that Stith and his wife were pursuing their Chapter 7 bankruptcy, their corporation was in Chapter 11 bankruptcy. The Trustee did not pursue the real estate that was allegedly in the family corporation. However, Stith testified that the land was conveyed from the corporation to Stith individually in order to enable him to obtain financing. Stith testified that he could not get a loan for the land while it was owned by a C-Corporation, so he transferred title to himself individually in order to borrow against the property. There is no disclosure in his Chapter 7 bankruptcy filing reflecting the ownership of this property, and the Trustee testified that he was not aware of it. Additionally, Stith acknowledged that he did not list it on his Chapter 7 bankruptcy filing, nor did he report any gain on his Schedule C income tax return. According to Stith, he did not consider the tax ramifications of the C-Corporation transferring the property to an individual. At the time of the hearing, he had not filed an amended tax return to correct this error. Stith's conduct in his bankruptcy proceedings causes the Board great concern regarding his conduct and attitude since the time of his disbarment and since his last reinstatement petition. In addition to the bad check given to the trustee in bankruptcy, Stith admitted that since 2003, he had other checks that were rejected for insufficient funds. These occurrences are of grave concern to the Board, since they reflect adversely on Stith's ability to manage a trust account appropriately. The aforesaid conduct, in the Board's opinion, reflects adversely on his demeanor and character and casts doubt on his fitness to practice law.

FOOTNOTES

1 It should be noted that since the 2001 hearing, Stith has apparently resolved all outstanding issues with the Internal Revenue Service.

6. **The petitioner's present reputation and standing in the community.**

As a result of the publications to the community there were nine (9) letters received commenting on Stith's petition for reinstatement. Two (2) were in favor of Stith being reinstated. Two (2) were in favor of conditional reinstatement, suggesting that he should not be permitted to handle client funds or to represent clients on appeals. Five (5) letters were received in opposition to his reinstatement. This Board did review the transcript from the 2001 hearing and it appears that two (2) witnesses testified to his good standing in the community at that time. No other evidence was offered on this fact. It is not possible for a law license to be reinstated with the conditions that restrict the licensee from handling criminal appeals on client funds.

7. **The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.**

Stith stated in Paragraph 6 of his petition that he "has received Continuing education requirements as mandated." In Paragraph 13 of the Bill of Particulars filed by the Bar, Stith is asked to "Describe in detail" his efforts to remain current in the law, including dates, location and title of CLE seminars or law school courses attended or taught since 1994. Stith testified that he had taken Continuing Legal Education courses at the William and Mary Institute that dealt with recent developments in the law. No certificates of completion or course descriptions were introduced into evidence. Stith testified that he had read the Rules of Professional Conduct and believes that he is familiar with them. However, Stith's answers to questions from the panel concerning costs his understanding of which can properly be advanced on behalf of a client, and his comments regarding a separate trust account for costs, indicate that Stith still does not have a clear understanding of trust accounting and what is required of him. This is of particular concern, given that his past pattern of misconduct frequently involved trust account violations.

8. **The sufficiency of the punishment undergone by the petitioner.**

The Board is mindful of Lord Mansfield's observation over 200 years ago that disbarment is not punishment. *Ex parte Brounsall*, 89 Eng. Rep. 138 (1778). In fact, Virginia does not subscribe to permanent disbarment, disbarment is not discipline, and the applicant for readmission bears a heavy burden of proving by clear and convincing evidence that he is fit to practice law. *In re: Edmonds Order of Recommendation*, VSB No. 95-000-1155 (1995). In this case, Stith has been revoked since June 1994 having last practiced law in October 1993. The Board considers the loss of Stith's license for thirteen (13) years to be sufficient punishment for his past misdeeds.

9. **The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.**

The petitioner appears to be sincere, frank and truthful in presenting and discussing factors related to his disbarment and petition for reinstatement. However, the Board does have concerns about petitioner's somewhat haphazard presentation of his petition for reinstatement, which is obviously of great importance to him. His hasty and incomplete responses to the Bill of Particulars, and in particular his failure to present evidence of objective criteria such as his CLE credits, as well as his failure to produce current testimony as to his standing in the community, raise concerns as to whether Stith recognizes the gravity of these proceedings.

10. **The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.**

The public's confidence or lack of confidence in the administration of justice should Stith's license to practice law be reinstated does not appear to be a significant concern in this case.

III. CONCLUSION

For the reasons stated above, the Board finds by unanimous vote that Stith has failed to prove by clear and convincing evidence that he possesses the requisite fitness to practice law. Therefore, the Board respectfully recommends to the Supreme Court of Virginia that the petition to reinstate the license of Salvage DeLacy Stith not be approved.

As required by Part Six, Section IV, paragraph 13.8.c.(5), the Board finds that the costs of this proceeding are as follows:

Copying invoices:	1,150.96
Witness Expense:	50.44
Court reporter fees:	1,161.00
Mailing fees:	142.43
Mailing notice:	368.95
Legal notices:	367.05
Administrative fee:	750.00
Total Costs	$ 3,990.83

IT IS ORDERED that the Clerk of the Disciplinary System shall forward this Order of Recommendation and the record to the Virginia Supreme Court for its consideration and disposition.

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System shall forward and attest a copy of this Order of Recommendation by certified mail, return receipt requested to Salvage DeLacy Stith, at his address of record with the Virginia State Bar, 4525 Miarfield Arc, Chesapeake, Virginia 23321, and delivery by hand to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803.

Entered this 2nd day of March, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Joseph R. Lassiter, Jr., Acting Chair

DISTRICT COMMITTEES

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DAVID LOUIS KONICK, ESQUIRE
VSB DOCKET NOS. 06-070-0783 and 06-070-2264

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On the 20th day of February, 2007, a meeting in this matter was held before a duly convened subcommittee of the Seventh District Committee consisting of Joseph W. Richmond, Jr., Esquire, Minor Eager, Lay Member, and Samuel R. Walker, Esquire, presiding. Pursuant to Part 6, § IV, ¶ 13(G)(1)(d) of the Rules of Virginia Supreme Court, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition of a PUBLIC REPRIMAND, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, David Louis Konick, Esq. ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about April 28, 2005, Patricia M. Davis, Clerk of the Combined District Courts for Rappahannock County, Virginia, placed an employment advertisement in the local newspaper for a vacant position in the court Clerk's Office.

3. On or about May 4, 2005, Respondent Konick telephoned the Clerk's office and spoke with Ms. Davis about the vacant part-time position. Ms. Davis contends that Respondent made an obscene, lewd, profane, and lascivious statement to her containing profane language and strong sexual overtones. Ms. Davis, after having recognized Respondent Konick's voice on the telephone, asked Respondent Konick whether he had any business with the Clerk's office. In response, Respondent just repeated the above statement to Ms. Davis. Ms. Davis told Virginia State Bar Investigator William H. Martin, II, that no one else witnessed Respondent's telephone call.

4. However, on or about May 9, 2005, Ms. Davis discussed Respondent's telephone call with Peter H. Luke, the Rappahannock County Commonwealth's Attorney. Mr. Luke informed Ms. Davis she could either forget about the telephone call or swear out a warrant for Respondent Konick's arrest.

5. On August 16, 2005, the General District Court of Rappahannock County convicted Respondent Konick of using obscene, vulgar, profane, lewd, lascivious or indecent language to make an obscene suggestion or proposal to, or threaten an illegal or immoral act with the intent to coerce, intimidate or harass another over the telephone or citizens band radio, in violation of Virginia Code § 18.2-427 (VCC Code TEL-3245-M1).

6. Respondent Konick appealed his misdemeanor conviction to the Rappahannock County Circuit Court. A Circuit Court jury then convicted Respondent Konick of violating the same Virginia Code section. After this jury convicted Respondent Konick, it imposed a fine of $2,000.00 upon Respondent Konick. Respondent Konick did not appeal the Circuit Court conviction.

7. Respondent Konick categorically denies that he used any profane words. However, he does not deny making the telephone call or that the call had sexual overtones. Respondent contends that he intended his telephone call to Ms. Davis to be a joke because he and Ms. Davis often engaged in off-color banter. Respondent contends that he extended an apology to Ms. Davis for his inappropriate and unprofessional behavior**.**

II. NATURE OF MISCONDUCT

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee that a PUBLIC REPRIMAND shall be imposed, and this matter shall be closed. Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
Samuel R. Walker, Chair/Chair Designate

SUPREME COURT OF VIRGINIA APPROVED PART 6, SECTION II, RULE 4.2, COMMENT [3] OF THE RULES OF THE SUPREME COURT OF VIRGINIA

On April 13, 2007, the Supreme Court of Virginia approved, effective immediately, amendment to Part 6, Section II, Rule 4.2, Comment [3] of the Rules of the Supreme Court of Virginia. This comment simply codifies a well-settled application of the rule. The purpose of Rule 4.2 is to protect persons represented by counsel, preserve the attorney-client relationship, protect clients from overreaching by other lawyers, and reduce the risk that confidential or damaging information will be disclosed to an adversary. ABA Formal Ethics Op. 95-396 (1995) (Rule 4.2 prohibits such communication even if the represented person initiates the communication); *Polycast Tech. Corp. v. Uniroyal Inc.*, 129 F.R.D. (S.D.N.Y. 1990) ("no contact" rule prevents lawyers from eliciting "unwise statements" from opponents, protects privileged information, and facilitates settlements by allowing lawyers to conduct negotiations).

Given the purpose of Rule 4.2, it does not matter whether the communication is initiated by the lawyer or the represented person. A lawyer who is contacted by a person the lawyer knows to be represented by counsel must immediately advise the represented person that the lawyer cannot communicate directly with the represented person, urge the represented person to contact his or her lawyer, and terminate the communication. The lawyer cannot allow the represented person to continue talking without the consent of the other lawyer representing that person. *Inorganic Coatings, Inc. v. Falberg,* 926 F. Supp. 517 (E.D. Pa. 1995) (lawyer accepted a telephone call from a represented person his client intended to sue and participated in a ninety-minute conversation during which the caller tried to head off the imminent lawsuit; lawyer disqualified and ordered to produce his notes of the call).

The Comment [3] was also amended to add language that a lawyer who is contacted by a represented person for a "second opinion" or replacement counsel does not violate Rule 4.2 by communicating with that person. This position had been expressed in some earlier advisory opinions interpreting former DR 7-103(A)(1).

Rule 4.2. Communication with Persons Represented by Counsel.

[1-2] *ABA Model Rule* Comments not adopted.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this Rule. A lawyer is permitted to communicate with a person represented by counsel without obtaining the consent of the lawyer currently representing that person, if that person is seeking a "second opinion" or replacement counsel.

SUPREME COURT OF VIRGINIA APPROVED AMENDMENTS TO PART 6, SECTION IV, PARAGRAPH 16 OF THE RULES OF THE SUPREME COURT OF VIRGINIA

On April 13, 2007, the Supreme Court of Virginia approved, effective July 1, 2007, amendments to Part 6, Section IV, Paragraph 16 of the Rules of the Supreme Court of Virginia. The changes authorize the VSB to begin collecting with each active member's dues an additional $25 to be earmarked for the Clients' Protection Fund. It is anticipated that this assessment will be collected for approximately eight years and then discontinued when the fund reaches an actuarially sound level of $9,000,000.

16. CLIENTS' PROTECTION FUND.— The Council may establish a Clients' Protection Fund for the purposes of reimbursing all or part of losses sustained by a client or other person or entity to whom a fiduciary duty is owed as a result of dishonest conduct of a member of the Virginia State Bar. The Board shall be appointed by Council, and shall receive, hold, manage, invest and distribute funds appropriated to it by Council or otherwise received, in accordance with procedures established by Council.

Effective July 1, 2007, each active member of the Virginia State Bar shall be assessed a required fee of $25 for the Clients' Protection Fund on the bar's annual dues statement. The fee shall be in addition to each member's annual dues as prescribed in Part 6, Section IV, Paragraph 11 of these rules, and it shall be paid on or before the 31st day of July each fiscal year.

All monies collected under this Paragraph 16 shall be accounted for and paid into the State Treasury of Virginia and transferred by the bar from the Treasury to the Clients' Protection Fund. The bar shall report annually on or about January 15 to the Supreme Court of Virginia on the financial condition of the Clients' Protection Fund, and the assessment will be discontinued whenever directed by the Court.

Failure to comply with the requirements of this Paragraph 16 shall subject the active member to penalties set forth in Part 6, Section IV, Paragraph 19 of these rules.

SUPREME COURT OF VIRGINIA APPROVED AMENDMENTS TO PART 6, SECTION IV, PARAGRAPH 19 OF THE RULES OF THE SUPREME COURT OF VIRGINIA

On April 13, 2007, the Supreme Court of Virginia approved, effective July 1, 2007, amendments to Part 6, Section IV, Paragraph 19 of the Rules of the Supreme Court of Virginia. The changes increase the delinquency and reinstatement fees for VSB members who do not discharge their membership obligations in a timely manner. These fees result in delinquent members paying a larger share of the costs of operating the Membership and MCLE Departments of the bar.

19. PROCEDURE FOR THE ADMINISTRATIVE SUSPENSION OF A MEMBER.—Whenever it appears that a member of the Virginia State Bar has failed to comply with any of the Rules of Court relating to such person's membership in the bar, the Secretary-Treasurer shall mail a notice to the member advising of the member's noncompliance and demanding (1) compliance within sixty (60) days of the date of such notice and (2) payment of a delinquency fee of $50, for each Rule violated, provided, however, that the delinquency fee for an attorney who does not comply with the timely completion requirements of Paragraphs 13.2 and 17 (C) of these rules shall be $100, and the delinquency fee for an attorney who does not comply with the certification requirements of Paragraphs 13.2 and 17 (D) of these rules shall be $100. The notice shall be mailed by certified mail to the member at his last address on file at the Virginia State Bar.

In the event the member fails to comply with the directive of the Secretary-Treasurer within the time allowed, the Secretary-Treasurer will then mail a notice to the member by certified mail to advise (1) that the attorney's membership in the bar has been suspended and (2) that the attorney may no longer practice law in the Commonwealth of Virginia or in any way hold himself or herself out as a member of the Virginia State Bar. Thereafter the attorney's membership in the Virginia State Bar may be reinstated only upon showing to the Secretary-Treasurer (1) that the attorney has complied with all the Court's rules relating to his or her membership in the bar and (2) upon payment of a reinstatement fee of $150 for each Rule violated, provided, however, that the reinstatement fee for an attorney who was suspended for noncompliance with Paragraphs 13.2 and 17 of these rules shall be $250, and shall increase by $50 for each subsequent such suspension, not to exceed a maximum of $500.

Whenever the Secretary-Treasurer notifies a member that his or her membership in the bar has been administratively suspended, the Secretary-Treasurer shall also (1) advise the Chief Judges of the circuit and district in which the attorney has his or her office, as well as the clerks of those courts and the Clerk of the Supreme Court, of such suspension and
(2) publish notice of the suspension in the next issue of the *Virginia Lawyer Register*.

An administrative suspension shall not relieve the delinquent member of his or her annual responsibility to attend continuing legal education programs or to pay his or her dues to the Virginia State Bar.

AMENDMENTS TO MCLE OPINION 13 AND REGULATION 103

MCLE Opinion 13 (Legal Ethics)

The MCLE Board proposes to amend the penultimate paragraph of MCLE Opinion 13 (Legal Ethics) by clarifying how certain types of continuing legal education courses are evaluated to determine whether they qualify for credit in the area of legal ethics or professionalism. The Board has noticed over the past few years a proliferation of course providers that have requested ethics credits for courses that teach substantive areas of the law, such as attorney/client privilege and the work product doctrine. Several course providers and Bar members maintain that since attorney/client privilege and the work product doctrine are specifically mentioned in the body of and Comments to Rule 1.6 of the Rules of Professional Conduct, courses that examine these issues should qualify for ethics credits.

The MCLE Board has considered that input, as well as the definition of a "qualified ethics course" found in MCLE Regulation 101 (q). In that regulation, the Board is directed to allow ethics credits for courses that are "devoted to one or more topics embraced in recognized formulations of rules of professional conduct or codes of professional responsibility applicable to attorneys and/or to the systems and procedures which have been established for enforcement and interpretation of those rules or codes." In order for a portion of a course to so qualify, the rule requires that the "ethical topic" must be "the primary focus of the segment."

Currently, MCLE Opinion 13 provides that programs dealing with litigation tactics or strategy, rules of evidence and rules of procedure will not be approved for ethics credits. Attorney/client privilege and the work product doctrine, while mentioned in the Rules of Professional Conduct, are generally topics that focus on litigation, evidentiary and trial issues. The MCLE Board seeks to clarify this paragraph of Opinion 13 to allow ethics credits for courses that deal with substantive areas of the law such as attorney/client privilege and the work product doctrine, but ***only*** if the focus of these courses is on "applicable rules of professional conduct or codes of professional responsibility." The amended provision provides clear guidance as to how these courses can obtain ethics credits and sets forth more clearly how the MCLE Board has historically approached the question of whether these courses should be afforded ethics credits.

MCLE Regulation 103 (a) (Standards for Approval of Programs)

The MCLE Board proposes to amend this section of its regulations to make it clear that it may not approve a course for credit even though that course is presented by an accredited sponsor previously designated as such pursuant to Regulation 105. In other words, accredited sponsors must still present courses that comply with all the criteria for approval of MCLE courses, and their courses will not automatically be accorded credit in instances where they do not comply. Regulation 105 contains clear language to this effect, and the MCLE Board determined that Regulation 103 (a) should be similarly unambiguous.

MCLE OPINION 13
LEGAL ETHICS

The Virginia Supreme Court has required by Rule of Court that each active member of the Virginia State Bar complete a certain minimum amount of continuing legal education "in the area of legal ethics or professionalism." MCLE Regulations provide that an approved course or program may provide credit toward this requirement by addressing "topics embraced in recognized formulations of rules of professional conduct or codes of professional responsibility applicable to attorneys." The board has encountered instances where it has received applications for approval of ethics credits for topics which do not objectively pertain to or specifically address rules of professional conduct or codes of professional responsibility specifically applicable to attorneys.

The following are examples of some of the topics and types of courses which DO NOT qualify for ethics credits:

Ethics in Government
Programs or components which, although presented to attorneys, focus on standards of conduct applicable to non-attorney employees including those dealing with:

i) the ethical standards applicable to governmental employees, federal legislators, governmental contractors;

ii) United States' employees' compliance with the President's Executive Order requiring a standard of conduct higher than the bare ethical rules might require;

iii) educating the government attorney in these standards to enable that attorney to better advise a legislative and/or executive branch client on the applicable standards.

Medical Ethics
Programs or components which, although presented to lawyers, focus on:

i) an analysis or the application of medical ethics, "bioethics," or "biomedical" ethics;

ii) statutory options involving "living wills," the right to die, and "informed consent";

iii) educating the lawyer in these subjects to enable that lawyer to better advise a client.

Ethics of other Professions
Programs or components which although presented to lawyers, focus on:

i) an analysis or the application of ethical standards governing members of a profession other than the legal profession, e.g. ethics for museum administrators, accountants, realtors, architects, engineers, chemists, etc.;

ii) educating the lawyer in these standards to enable that lawyer to better advise a client on the applicable standards.

Business or Corporate Ethics
Programs or components which, although presented to lawyers, focus on:

i) an analysis or the application of ethical standards appropriate for executives, corporate officers and employees;

ii) educating the lawyer in these standards to enable that lawyer to better advise a client on the applicable standards.

~~Litigation Tactics~~ Rules of Procedure, Rules of Evidence and Litigation Tactics
Programs or components which focus on rules of procedure, rules of evidence or substantive areas of the law, such as attorney/client privilege and the work product doctrine~~, and rules of procedure and not on~~ unless the focus of the programs or components also provides a substantial treatment of applicable rules of professional conduct or codes of professional responsibility. In particular, malpractice prevention programs or components which focus primarily on malpractice litigation, tactics, or strategy will not be approved for ethics credit. Programs or components devoted to or including these topics may meet the requirements for general MCLE credit. The board is of the opinion that such topics do not fulfill the requirement for continuing legal education in the area of legal ethics or professionalism. The board will therefore not assign ethics credits to such topics.

[Paragraph 17.C.(1) of Section IV, Part Six, Rules of the Supreme Court of Virginia and MCLE Regulations 101(q), 101(r) and 103(d)]. (12/92)
Amended effective /07

Regulation 103
STANDARDS FOR APPROVAL OF PROGRAMS

(a) Subject to the provisions of Regulation 105 (d), ~~A~~a course is approved for credit if it has been specifically approved by the Board or is presented by an accredited sponsor previously designated by the Board under the provisions of Regulation 105. A course is approved for credit in the area of legal ethics or professionalism if and to the extent specifically approved by the Board. Subject to the provisions of Regulation 105 (d), ~~A~~a course presented by an accredited sponsor is also approved for credit in the area of legal ethics or professionalism if and to the extent so represented by such sponsor.

VIRGINIA STATE BAR'S
STANDING COMMITTEE ON LEGAL ETHICS
SEEKING PUBLIC COMMENT ON
LEGAL ETHICS OPINION 1838

Pursuant to Part Six: Section IV, Paragraph 10(c)(iii) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed advisory Legal Ethics Opinion 1838, *Can An In-House Counsel for a Corporation Provide Legal Services To A Sister Corporation and Can That Corporation Collect Reimbursement For Those Services From the Sister Corporation.*

This proposed opinion addresses whether a lawyer employed by Corporation A can provide legal services to Corporation B, when Corporation A and Corporation B are owned by the same parent corporation. The second issue involves whether that lawyer's time/fees can be recouped for legal services rendered to Corporation B. The principal issues involve conflicts of interest, client confidences and secrets, division of fees with non-lawyers and lay entities billing for the provision of legal services.

In this opinion, the Committee concluded that while the lawyer may provide legal services to both Corporation A and B, the lawyer must be mindful of his obligation to protect each client's confidences and secrets and properly address any conflicts between Corporation A and Corporation B. Also, any funds collected from Corporation B for the lawyer's services must be for the actual costs Corporation A incurs in employing that in-house counsel.

Inspection and Comment

The proposed advisory opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 AM and 4:30 PM, Monday through Friday. Copies of the proposed advisory opinion can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at 804-775-0557, or can be found at the Virginia State Bar's Web Page at http://www.vsb.org.

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed advisory opinion by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **June 20, 2007**.

(DRAFT—April 3, 2007)

LEGAL ETHICS OPINION 1838
CAN AN IN-HOUSE COUNSEL FOR A CORPORATION PROVIDE LEGAL SERVICES TO A SISTER CORPORATION AND CAN THAT CORPORATION COLLECT REIMBURSEMENT FOR THOSE SERVICES FROM THE SISTER CORPORATION?

In the facts you present, Corporation A is one of several privately held corporations in a Group, all of which are directly or indirectly owned exclusively by a single corporate entity. Corporation B is another member of the Group; Corporation A and Corporation B do not own any part of each other, but are commonly owned by the same parent company.

Patent Lawyer is employed by Corporation A to draft and prosecute patent applications in order to patent protect the discoveries/inventions that Corporation A has acquired. Corporation B has needs for legal advice regarding patent infringement and/or validity regarding patents held by third parties.

Based upon these hypothetical facts you present the following questions for determination by the Committee:

Whether Patent Lawyer employed by Corporation A can provide legal services to Corporation B with Corporation A's consent?

Whether Patent Lawyer's time/fees can be recouped by Corporation A from Corporation B for legal services rendered to Corporation B?

The principal issues here involve conflicts of interest, client confidences and secrets, division of fees with non-lawyers and lay entities billing for the provision of legal services. As a general proposition, a lay corporation may not employ a lawyer to provide legal services to third parties such as customers of Corporation A. *Richmond Ass'n of Credit Men v. Bar Assoc.*, 167 Va. 327, 189 S.E.2d 153 (1937).

However, it seems clear that Patent Lawyer can provide legal services to Corporation B as long as Patent Lawyer provides those services to Corporation B directly, independently and free of any conflicts of interest and with the consent of Corporation A.

Since the lawyer in question is a regular, active member of the Virginia State Bar, he is authorized to practice law generally and may represent clients other than his employer, Corporation A. *See* UPL Op. 211 (2006) (Virginia lawyer serving as corporate counsel does not need separate law office to provide legal services to *pro bono* clients). In the facts you present, Corporation A has authorized the lawyer to provide legal services to an affiliated entity, Corporation B. *See* Rule 1A:5 Virginia Corporate Counsel & Corporate Counsel Registrants ("Employer" includes: for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates …).

While there is nothing inherently wrong with lawyers performing legal services for one party at the request of another party, it must always be clear who the lawyer's client is and to whom counsel owes undivided loyalty and confidentiality. While the interests of the two corporate clients may be identical, the lawyer owes undivided loyalty and independent professional judgment to both. Communications between Corporation B and the Patent Lawyer rendering the services must be direct and not shared with Corporation A without Corporation B's consent. If confidences of Corporation B are acquired by Patent Lawyer while providing legal services, such confidences must be held inviolate. Rule 1.6. Discharging this duty of confidentiality to Corporation B may require Patent Lawyer to work off-site, at a physically separate office, rather than on the premises of Corporation A.

The lawyer must preserve the confidences of the subsidiary corporation and may disclose them only with the informed consent of the subsidiary. Rule 1.6.

Patent Lawyer must be able to exercise independent professional judgment on behalf of Corporation B free of any interference or direction from Corporation A.[1] Where a lawyer is employed by multiple organizations, a written agreement may help define the relationship between the lawyer and those organizations so as to prevent misunderstanding in his respective roles and further define the scope of the representation.[2]

If the lawyer has other interests that may limit the representation, the lawyer must obtain the client's consent after consultation; provided, however, that independent of such consent, the lawyer reasonably believes that he or she will be able to provide competent and diligent representation to each affected client. [3]

FOOTNOTES

1 RULE 1.8 Conflict of Interest: Prohibited Transactions

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
  (1) the client consents after consultation;
  (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
  (3) information relating to representation of a client is protected as required by Rule 1.6.

2 RULE 1.2 Scope of Representation

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

(b) A lawyer may limit the objectives of the representation if the client consents after consultation.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

(d) A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.

(e) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

3 RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  (1) the representation of one client will be directly adverse to another client; or
  (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:
  (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  (2) the representation is not prohibited by law;
  (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  (4) the consent from the client is memorialized in writing.

Patent Lawyer needs to be mindful of his duties of independent professional judgment under Rule 1.8 (f)(2) when determining whether or not he can provide legal services to Corporation A and Corporation B under such an arrangement. If Patent Lawyer finds that he is compromising client confidences, diligence or independence in representing either client corporation, the lawyer needs to address these issues in order to maintain his representation of both clients. The most appropriate time to deal with this issue is at the onset of the representation with a letter of representation that outlines who the lawyer would continue to represent, if either, in the event of a conflict. Corporation A cannot direct Patent Lawyer's loyalties or representation of B, which may include even the allocation of time spent between Corporation A and B in order for Patent Lawyer to provide diligent and competent representation to both.

The second question regarding whether the time/fees involved in sharing Patent Lawyer with Corporation B can be recouped by Corporation A is answered in LEO 480.[4] LEO 480 states that it is improper for a lawyer's corporate employer or parent company to charge and collect legal fees for work done by its corporate lawyer unless the fee is simply a reimbursement to the corporate employer for the actual cost of the legal work provided by the lawyer. The "actual cost" of the legal work can include the costs the corporation incurs to employ the lawyer based upon the services provided; however, there cannot be any direct or indirect profit for legal services provided. In other words, corporate counsel cannot be used to generate profits for an employer, as that would be considered fee splitting with a non-lawyer and a violation of Rule 5.4(a).[5]

Among the problems Rule 5.4 seeks to prevent, the most important is interference by lay persons with a lawyer's practice. The involvement of non-lawyers, such as corporate employers, in the legal process is of

FOOTNOTES

4 LEO 480 analysis was based on DR 3-102 which is substantially the same as Rule 5.4.

5 RULE 5.4 Professional Independence Of A Lawyer

(a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that:
  (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
  (2) a lawyer who undertakes to complete unfinished legal business of a deceased, disabled, or disappeared lawyer may pay to the estate or other representative of that lawyer that portion of the total compensation that fairly represents the services rendered by the deceased, disabled or disappeared lawyer;
  (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
  (4) a lawyer may accept discounted payment of his fee from a credit card company on behalf of a client.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
  (1) a nonlawyer owns any interest therein, except as provided in (a)(3) above, or except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
  (2) a nonlawyer is a corporate director or officer thereof; or
  (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

concern because the lawyer's independent professional judgment can be impaired by the influence and control of non-lawyers who, by definition, are not subject to the same ethical mandates regarding independence, conflicts of interest, confidentiality, fees and other important provisions of the profession's code of conduct. "[F]ee splitting between lawyer and layman … poses the possibility of control by the lay person, interested in his own profit, rather than the client's fate…." *Emmons, Williams, Mires & Leech v. State Bar,* 6 Cal. App. 3d 565, 573-74, 86 Cal. Rptr. 367, 372 (1970). ABA Formal Opinion 95-392 concluded that while a corporation should be free to require its lawyers to reimburse its costs of employing in-house counsel when the lawyers do work for others, a corporation may not reap profits from the work of its in-house lawyers as that is part of the reasons Rule 5.4 was adopted.[6]

The Committee concludes that while Patent Lawyer may provide legal counsel to both Corporation A and Corporation B, the lawyer must be mindful of his obligation to protect each client's confidences and secrets, properly address any conflicts or issues between Corporation A and Corporation B, and any funds collected from Corporation B for the lawyer's services can be no more than reimbursement to Corporation A for the actual costs Corporation A incurs in employing that in-house counsel.

This opinion is advisory only and not binding on any tribunal.

FOOTNOTES

6 In addition, Corporation A, a lay corporation, cannot bill or collect legal fees as such activity constitutes the unauthorized practice of law. UPL Ops. 88, 91 and 94.