Virginia State Bar Council to Review UPL Opinion 207 Concerning Whether it is the Unauthorized Practice of Law for a Social Worker to Assist Persons in Preparing Pleadings and Forms for Small Claims Court

On March 10, 2005 came the Virginia State Bar, by David P. Bobzien, its President, and Thomas A. Edmonds, its Executive Director and Chief Operating Officer, pursuant to the Rules for Integration of the Virginia State Bar, Part Six, Section IV, ¶ 10(g), and filed a Petition and Notice of Advisory Opinion Review requesting review and approval of Unauthorized Practice of Law Opinion 207, which opinion has been adopted by the Council of the Virginia State Bar.

Whereas it appears to the Court that the Virginia State Bar has complied with the procedural due process and notice requirements of the aforementioned Rule designed to ensure adequate review and protection of the public interest, now, therefore, upon due consideration of all material submitted to the Court, including an evaluation of the competitive effects of approving or disapproving the advisory opinion, it is ordered that Unauthorized Practice of Law Opinion 207 be approved as follows, effective immediately:

UPL Opinion No. 207

Whether it is the Unauthorized Practice of Law For a Social Worker to Assist Persons in Preparing Pleadings and Forms for Small Claims Court

You have requested a legal ethics opinion seeking an opinion as to whether Rule 5.5 of the Rules of Professional Conduct, prohibits an attorney training a non-attorney social worker to assist members of the general public in filling out warrants in debt, and other forms necessary for pro se representation, in Small Claims Court in Virginia. The Standing Committee on Legal Ethics referred this inquiry to the Standing Committee on the Unauthorized Practice of Law to determine whether the social worker is engaged in the unauthorized practice of law performing the activities described.

The applicable authority is found first in Virginia's definition of the practice of law:

Specifically, the relation of attorney and client exists, and one is deemed to be practicing law whenever—

(1) One undertakes for compensation, direct or indirect, to advise another, not his regular employer, in any matter involving the application of legal principles to facts or purposes or desires.

(2) One, other than as a regular employee acting for his employer, undertakes, with or without compensation, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business.

The Committee has previously opined that non-lawyer assistance to the general public in the completion of form documents or the providing of legal advice concerning the completion of the forms by non-lawyers constitutes the unauthorized practice of law. UPL Opinion 73.[1]

Finally, five of the nine existing Unauthorized Practice Rules consistently prohibit a non-lawyer from preparing legal documents. See UPR 2-104, 3-103, 4-103, 6-103(A)(5) and 9-103(B)(2) and (C) as well as UPCs 3-6, 3-7, 4-5, 4-6, 4-5 and 9-7.[2]

Applying this authority to your inquiry, the Committee concludes that the preparation of warrants in debt and other forms necessary for pro se representation ("legal instruments

FOOTNOTES

1 It is not the unauthorized practice of law for a nonlawyer to create legal form documents for sale to the general public but it is the unauthorized practice of law for a non-lawyer to assist the general public in the completion of such forms or provide legal advice concerning same. UPL Op. 73, January 18, 1985.

2 UPR 2 104. Preparation of Documents.
(A) A nonlawyer shall not, with or without compensation, direct or indirect, prepare or deliver legal instruments of any character except a lay adjuster may prepare a form of release or other document prepared or approved by his principal as to which the lay adjuster may fill in blanks supplying factual data.

UPR 3 103. Preparation of Documents.
(A) An agency may prepare statements of accounts and affidavits of facts relating to accounts and may file the same with personal representatives and trustees in bankruptcy.
(B) An agency shall not prepare a proof of claim or file such a claim as agent for the creditor with the bankruptcy court except to the extent it is permitted to do so by the Bankruptcy Rules.
(C) An agency shall not prepare for others any document which requires legal training or the application of legal principles to factual situations except as authorized under these Rules.
(D) An agency shall not use any letters or forms which threaten the institution of legal proceedings or simulate judicial process or notice of judicial process.

UPR 4 103. Preparation of Documents.
(A) A nonlawyer shall not, with or without compensation, prepare or draft, or cause his own lawyer to prepare or draft, for another, legal instruments of any character, including the filling out of a form for any will or trust, except:
(1) A nonlawyer may prepare forms of wills or trust of general application.

of any character") in Small Claims Court by a non-attorney social worker would be the unauthorized practice of law if the non-attorney social worker selects the forms for the litigant or advises the litigant as to which forms are appropriate based on the litigant's particular case; or provide any legal advice to the litigant. The social worker may assist the litigant with completion of the form document using language specifically dictated by the litigant.

The only assistance that a social worker, or any nonlawyer, may provide to a pro se litigant to complete form legal documents is direct translation of the document (if the litigant does not speak or read English) to the litigant's native language, direct transcription, or direct transcription and translation to English, of information necessary to complete forms as dictated by the litigant. The social worker may also provide general administrative instructions such as to how and where and when to file the forms with the appropriate court/tribunal.

In addition, the Committee notes that persons proceeding in Small Claims Court are required to represent themselves,[3] which raises a question of whether such limited assistance by a social worker under the direction of an attorney is permissible. However, this is a legal issue beyond the Committee's purview.

This opinion is based only on the facts you presented and is subject to review by Bar Council at its next regularly

FOOTNOTES (cont.) ——————————

(2) A nonlawyer, as an incident to the regular course of conducting his business, may submit to his customer's lawyer specimen language for inclusion in a legal instrument to be prepared by such lawyer, subject to acceptance, modification or rejection by such lawyer.

(3) A nonlawyer, as an incident to the regular course of conducting his business, may furnish his customer with routine forms or contracts of generally accepted application which do not go beyond the legitimate interest of the nonlawyer and do not involve a selection by the customer as between alternatives with materially different legal results not generally understood in the community. For example, the offering by a savings institution of a joint account with right of survivorship, a simple revocable trust account or a custodial account under the Virginia Uniform Gifts to Minors Act would normally not constitute the unauthorized practice of law.

UPR 6-103. Preparation of Legal Instruments.

(5) A settlement agent authorized to provide escrow, closing or settlement services for real estate transactions under the Consumer Real Estate Settlement Protection Act (CRESPA), Va. Code §§ 6.1-2.19, et seq. or the Real Estate Settlement Agent Registration Act (RESARA), Va. Code §§ 6.1-2.30, ***et seq***. or any other Virginia statute now existing or hereafter enacted may complete form documents and instruments selected by and in accordance with the instructions of the parties to the transaction.

UPR 9 103. Immigration Practice.

B) For purposes of UPR 9 103(A):

(2) "Represent" means to engage in "practice" or "preparation" as those terms are defined, respectively, in 8 CFR ''1.1(i) and (k), to wit: "practice" means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service . . .; "preparation" means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure or as 8 CFR Part 292 may be amended from time to time.

(C) The provisions of (A) and (B) above are not intended to prohibit an unauthorized nonlawyer from assisting an individual in the completion of forms which had been personally selected by the individual, to the extent that such assistance involves only the taking and transcription of dictation or the translation of such dictation into English. However, the referenced provisions are intended to prohibit such an unauthorized nonlawyer from selecting specific forms for completion or from advising the individual as to which forms are appropriate for completion and submission to the Service provided such activities require the use of legal knowledge and skill.

UPC 3 6. Statements of account and affidavits of facts relating to accounts and other matters are not legal instruments, and the preparation of the same by an agency is not the unauthorized practice of law. Such preparation does not require legal training or the application of legal principles; nor is the mere filing of such accounts or affidavits with personal representatives, trustees in bankruptcy and the like representing the interest of another before a tribunal.

UPC 3 7. A nonlawyer may properly act as a trustee in bankruptcy but may not prepare pleadings in the bankruptcy court except as authorized by the Bankruptcy Rules.

UPC 4 5. The preparation of legal instruments such as wills, codicils and trusts by a nonlawyer for another, with or without compensation, goes beyond the area of permitted advice incident to the regular course of a nonlawyer's business. There is nothing improper, however, in the submission of suggested forms for various types of wills or trusts to lawyers for present or prospective customers of a nonlawyer. Distributing forms of separate administrative or dispositive provisions setting forth the proper name of a fiduciary, a charity or the like is not improper.

UPC 4 6. Selecting or filling out a form of will or trust for another is an exercise in legal judgment. As an aid to a customer's lawyer, a nonlawyer may submit to such lawyer, and only to him, specimen language for technical provisions to be included in his client's will, codicil or trust; but such nonlawyer is not entitled to hold himself out as the responsible draftsman of such provisions.

UPC 4 7. Advice by a nonlawyer as to the use of his "standard form trust," "plain English trust," "mini trust," or the like constitutes the unauthorized practice of law when the provisions of such instrument go beyond the legitimate interest of the nonlawyer therein, seek to do more than the normal agency or deposit contract, or affect the legal rights of persons not parties to the contract. For example, the furnishing by a nonlawyer to his customer of a power of attorney which extends the authority of the attorney in fact to deal on behalf of his principal with all his principal's assets or accounts, whether or not maintained by that particular nonlawyer, goes beyond the area of that nonlawyer's legitimate interest.

UPC 9 7. The Virginia State Bar recognizes that certain nonlawyers may be authorized to practice before a federal immigration agency. However, nonlawyers who are not so authorized are limited to providing assistance to an alien resident for such limited services as translation of documents, and assistance in the transcription of documents or answers provided by the alien, for a fee commensurate with such limited services. However, the selection of appropriate immigration forms, the assistance to the alien in the information to be provided on such forms, and other related services by an unauthorized nonlawyer may constitute the unauthorized practice of law

3 § 16.1-122.4. Representation and removal; rights of parties. —

A. All parties shall be represented by themselves in actions before the small claims court except as follows:

cheduled meeting in February 2005, after the requisite period for public comment, in accordance with Part Six: Section IV: ¶ 10 (c)(iv) of the Rules of the Virginia Supreme Court. Should Council approve the Opinion, it will then be reviewed by the Supreme Court pursuant to Part Six: Section IV ¶ 10 (f)(iii).

A Copy,
Teste:
Clerk

FOOTNOTES (cont.) ————

1. A corporate or partnership plaintiff or defendant may be represented by an owner, a general partner, an officer or an employee of that corporation or partnership who shall have all the rights and privileges given an individual to represent, plead and try a case without an attorney. An attorney may serve in this capacity if he is appearing pro se, but he may not serve in a representative capacity.

2. A plaintiff or defendant who, in the judge's opinion, is unable to understand or participate on his own behalf in the hearing may be represented by a friend or relative if the representative is familiar with the facts of the case and is not an attorney.

LEGAL ETHICS OPINION 1816
MUST AN ATTORNEY COMPLY WITH THE CLIENT'S REQUEST NOT TO PRESENT A DEFENSE AT TRIAL WHEN THE CLIENT IS SUICIDAL?

You have presented a hypothetical involving an attorney's defense of a criminal defendant charged with capital murder. The client displays suicidal tendencies. He was suicidal before and during the time of the alleged crime. He has attempted to commit suicide not only prior to incarceration but also while in jail for the present charges. He has explained to the attorney that as those attempts were unsuccessful, he now intends to "commit suicide by state" by allowing the state to succeed in its efforts to have the death penalty imposed upon him. The client says that he does not believe that his actions necessarily meet all of the requirements for capital murder, since his actions were neither premeditated nor intentional. The client wants to plead not guilty and request a trial by jury because he believes that a jury is more likely to sentence him to death. In furtherance of that objective, the client has instructed the defense attorney not to present any evidence or defense during either the guilt or the penalty phases of the trial. The client has previously been evaluated for competency; the forensic psychologist concluded that the client met the legal standard for competency at that time. The defense attorney has developed evidence for both the guilt and penalty phases of the trial. This attorney does not believe that the client is making a rational, stable and informed decision since his actions are motivated by his suicidal tendencies.

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

1) Is the lawyer ethically bound by his client's instructions that the lawyer is not to present any evidence or argument during either the guilt or penalty phase of the trial?
2) What actions should the lawyer take if he believes that his client is not making an informed, rational and stable decision?
3) What action should the lawyer take if he believes that this client is pursuing an unlawful objective?

This committee first analyzed this phenomenon of criminal defendants electing execution in LEO 1737. That opinion involved a competent client requesting that the attorney refrain from presenting mitigating evidence at sentencing. The opinion acknowledged the difficulty of these situations as involving both moral and ethical issues for the attorney. Also adding to the complexity of the analysis of such situations are the constitutional issues regarding criminal defendants.[1]

FOOTNOTES

1 A distinction can be made between the questions of what decisions should all attorneys leave to their clients to comply with Rule 1.2's concept of scope and what decisions must any defense attorney leave to a criminal defendant to preserve that client's constitutional protections. This opinion addresses the first question, but of course any decisions of the latter variety would necessarily come within the category established by the first question. For discussion of those decisions derived from constitutional protections, such as the right to a jury trial, *see Jones v. Barnes*, 463 U.S. 745 (1983).

In LEO 1737, the analysis focused on the attorney's duty to pursue the lawful objectives of his client. The conclusion of that analysis was that

> Where the attorney has a reasonable basis to believe that the client's preference for the death penalty is rational and stable, the client's decision controls.

The present scenario differs from that of LEO 1737 in two ways. First, the client is asking the attorney to forgo the presentation of evidence not only at sentencing but also at the guilt phase of the trial. Second, while the client has been found competent, the attorney, in whole or in part because of the suicidal tendencies, does not consider his client able to make a rational decision about this important matter.

Is the ethical dilemma different for this attorney considering evidence for trial than for the LEO 1737 attorney, asked only to refrain from presenting mitigating evidence at sentencing? Your inquiry raises a question of the scope of the attorney's authority. Who gets to decide what, if any, evidence should be put forward—the attorney or the client? Rule 1.2 governs issues of scope. That rule, in pertinent part, states as follows:

> (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.

Comment One to the rule elaborates upon this distinction between means and objectives:

> Both lawyer and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by the law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the lawyer about the means to be used in pursuing those objectives. In that context, a lawyer shall advise the client about the advantages, disadvantages, and availability of dispute resolution processes that might be appropriate in pursuing these objectives. At the same time, a lawyer is not required to pursue objectives or employ means

> simply because a client may wish that the lawyer do so. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client-lawyer relationship partakes of a joint undertaking. In questions of means, the lawyer should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. These Rules do not define the lawyer's scope of authority in litigation.

As acknowledged in that Comment, distinguishing between means and objectives in a particular instance is not always easy to make.

The committee does not read Rule 1.2(a)'s list of four decisions that must be made by the client in criminal cases as an exclusive list. To the contrary, as quoted above, Comment One suggests other possible examples that could arise: "questions as to the expenses to be incurred and concern for third persons." The committee concludes that Rule 1.2 presents no exhaustive list of decisions that must be made by the client; rather, the rule and its comments provide a standard and guidance for that determination to be made on a case-by-case basis.

The Criminal Justice Section of the American Bar Association provides similar guidance for defense attorneys in the form of Standards. Pertinent here are paragraphs (a) and (b) of Standard 4-5.2, "Control and Direction of the Case," stating:

(a) Certain decisions relating to the conduct of the case are ultimately for the accused; others are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation include:

  (i) what pleas to enter;

  (ii) whether to accept a plea agreement;

  (iii) whether to waive jury trial;

  (iv) whether to testify in his or her own behalf; and

  (v) whether to appeal.

(b) Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced.

Thus, rather like Rule 1.2's delineation of decisions involving means as within the purview of the attorney, this standard places "strategic and tactical decisions" in that category.[2] The judicial decisions addressing this issue, frequently in the context of ineffective assistance of counsel claims, make similar distinctions. Courts have identified a number of decisions involving the basic objectives of the representation, and therefore in the purview of the client: whether to plead guilty[3], whether to waive a jury trial[4], whether to testify[5], whether to take an appeal[6], whether to be represented by counsel[7], what types of defenses to present[8], whether to submit a lesser-included-offense instruction[9], and whether to refrain from presenting mitigating evidence at sentencing10. In contrast, identified as tactical decisions of strategy, within the purview of the attorney, are which witnesses to call[11], how to conduct cross-examination[12], choice of jurors[13], which motions to file[14], whether to request a mistrial[15], whether to stipulate to easily provable facts[16], and when to schedule court appearances[17]. The judicial decisions provide two categories, which are consistent with the distinction made in Rule 1.2 between "objectives" and "means."

The answer to your first question involves this difficult distinction regarding the scope of the attorney/client relationship. Critical to that determination for the attorney in this hypothetical is the issue raised in your second question: what if the attorney does not believe his client is able to make an informed, rational and stable decision on this matter. The facts of the hypothetical suggest that the client has had repeated suicide attempts and is seeking to limit the representation in his case as just one more suicide effort.

A client's mental state is relevant to the scope determination discussed above. Specifically, Comment 2 to Rule 1.2 states as follows:

> In a case in which the client appears to be suffering mental disability, the lawyer's duty to abide

FOOTNOTES

2 As with Rule 1.2, the committee reads neither category presented in Standard 4-5.2 as establishing an exhaustive list; both paragraphs (a) and (b) use the word "include" before listing examples. Decisions not listed in that standard's examples could, depending on the character of the decision, belong to either category.
3 *See Jones v. Barnes*, 463 U.S. 745 (1963)
4 *Id.*
5 *Id.*
6 *Id.*
7 *See, e.g., U.S. v. Boyd*, 86 F.3d 719 (7th Cir. 1996).
8 *See, e.g. Meeks v. Berg,* 749 F.2d 322 (6th Cir. 1984); *State v. Hedges,* 8 P.3d 1259 (Kan. 2000); *State v. Debler,* 856 S.W.2d 641 (Mo. 1993); *People v. Frierson,* 705 P.2d 396 (Cal. 1985).
9 *People v. Segoviano*, 725 N.E.2d 1275 (Ill. 2000).
10 *See* LEO 1737 and cases cited therein.
11 *See, e.g., People v. McKenzie*, 668 P.2d 769 (Cal. 1983); *State v. Davis,* 506 A.2d 86 (Conn.1986).
12 *Id. and see, e.g., United States v. Claiborne*, 509 F.2d 473 (D.C. Cir. 1974).
13 *Id. and see, e.g., State v. Burnette*, 583 N.W.2d 174 (Wis. Ct. App. 1998).
14 *Id; and see Sexton v. French*, 163 F.3d 874 (4th Cir. 1998); *State v. Gibbs,* 758 A.2d 327 (Conn. 2000); *State v. Mecham*, 9 P.3d 777 (Utah 2000); *State v. Oswald*, 606 N.W.2d 207 (Wis. Ct. App. 1999).
15 *See, e.g., United States v. Washington*, 198 F.3d 721 (8th Cir. 1999).
16 *See Poole v. United States*, 832 F.2d 561 (11th Cir. 1987).
17 *New York v. Hill*, 528 U.S. 110 (2000).

by the client's decision is to be guided by reference to Rule 1.14.

Rule 1.14 addresses how an attorney's representation is affected when the client has impairment. That rule provides the following direction:

> (a) When a client's ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment or some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
>
> (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
>
> (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Thus, the committee opines that the answers to questions 1 and 2 for this attorney are inextricably linked. The committee concludes, based on both the facts and the particular questions asked in this request, that this attorney does consider that, as described in Rule 1.14(a), his "client's ability to make adequately considered decisions in connection with the representation is diminished," as contemplated in Rule 1.14(a). The facts state that a forensic psychologist evaluated the client and concluded that he is competent to stand trial. The committee suggests that the evaluation's conclusion does not necessarily remove this attorney and client from the application of Rule 1.14. The determination of competency to stand trial is specific enough such that a client may have been determined competent for trial but nonetheless under impairment with regard to making decisions involving the matter. Also, the facts do not state when the evaluation was done; if the client's mental state has deteriorated since that time, the attorney again should consider obtaining a new evaluation.

LEO 1737 suggests that for an attorney properly to follow a client's directive regarding an important decision, the attorney should have a reasonable basis to believe that the client is able to make a rational, stable decision. In contrast, the attorney in the present scenario believes that the client is unable to make such a decision. Accordingly, assuming the attorney has a rational basis for that belief, Rule 1.14 permits this attorney to take such protective action as is necessary to protect his client. Such action may properly include, but is not limited to, seeking further evaluation of the client's mental state, seeking an appointment of a guardian, and/or going forth with a defense in spite of the client's directive to the contrary. The precise steps appropriate will depend on the attorney's conclusion regarding the degree of the client's impairment.

Finally, your third question suggests that perhaps the attorney need not follow this client directive as it seeks an unlawful objective. The committee disagrees with that characterization. The imposition by the state of the death penalty is a lawful process, governed by constitutional parameters. A client's election preference for that penalty does not convert the imposition of that sentence to an unlawful act. As one commentator explained it, a client's preference for the death penalty is not "state-assisted suicide" as the state's imposition of the penalty is not a homicide[18]. In LEO 1737, the committee concluded that an attorney should respect a client's wishes to refrain from presenting mitigating evidence at the sentencing hearing, so long as the client was capable of a rational decision, even where that decision was "tantamount to a death wish." As the committee does not consider this client's objective "unlawful," the committee rejects the suggestion raised by the third question. However, as stated above, Rule 1.14 may nonetheless support this attorney disregarding this particular directive of his client should the attorney conclude, as discussed above, that his client cannot make "adequately considered decisions" regarding the representation such that protective action is needed.

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

Committee Opinion
August 17, 2005

LEGAL ETHICS OPINION 1817
WHAT SHOULD A CRIMINAL DEFENSE ATTORNEY DO WHEN HE IS THE CAUSE OF A MISSED APPEAL DATE?

You have presented a hypothetical in which an attorney represents a criminal defense attorney whose client has been convicted of a crime and appealed the crime to the proper court. The attorney failed to perfect the appeal properly; therefore, the court dismissed the appeal.

With regard to that hypothetical, you have asked the committee to opine as to what advice and/or assistance the attorney is ethically permitted to provide to the client.

FOOTNOTES

18 Bonnie, "The Dignity of the Condemned", 74 Va. L. Rev. 1363, 1375 (1988).

Specifically, may the attorney do any or all of the following:

1) Advise the client that he may have a right to file a petition for a writ of *habeas corpus*;

2) Advise the client of the time limit for filing a petition for a writ of *habeas corpus*;

3) Advise the client how and where to file the petition for a writ of *habeas corpus*;

4) Advise the client of possible language to include in a petition for a writ of *habeas corpus*;

5) Send the client a blank form of a petition for a writ of *habeas corpus*;

6) Send the client a petition for a writ of *habeas corpus* that the lawyer has drafted;

7) Send the client an affidavit executed by the attorney stating the circumstances of the client's case and suggesting that the client might wish to attach the affidavit to any petition for a writ of *habeas corpus* the client might file;

8) Advise the client of the possible legal effect of filing a petition for a writ of *habeas corpus* on other legal remedies or on his right to file future petitions for a writ of *habeas corpus*; and

9) Offer to assist the client in securing a new attorney to assist the client in pursuing legal remedies.

Conversely, you ask, would it be unethical as a dereliction of the attorney's duty to the client *not* to assist him in those ways in this situation.

The committee's analysis of these questions begins with the lawyer's duty to communicate with the client under Rule 1.4 of the Virginia Rules of Professional Conduct. Rule 1.4 requires the lawyer to keep the client reasonably informed of the status of a matter, to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, and to 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.

When counsel is notified by the court of a dismissal of the client's appeal of a criminal conviction, and the lawyer knows or is informed that the dismissal was caused by the lawyer's failure to timely file or perfect the appeal, there is an ethical duty under Rule 1.4 for the lawyer to notify the client of the dismissal of the appeal, the reasons for the dismissal and what rights or recourse the client has under those circumstances. This would include advising the client of the right to file a petition for a writ of *habeas corpus* alleging ineffective assistance of counsel; or a claim for legal malpractice based upon the lawyer's act or omission. If a lawyer fails to act on a client's case, the lawyer has a duty to promptly notify the client of this failure and of the possible claim the client may thus have against the lawyer, even if such advice is against the lawyer's own interests. *See Tallon v. Committee on Professional Standards*, 447 N.Y.S.2d 50 (1982); *In re Higginson*, 664 N.E.2d 732 (Ind. 1996); *Olds v. Donnelly*, 150 N.J. 424, 443, 696 A.2d 633, 643 (1997). For example, a lawyer who fails to file suit within the statute of limitations period must so inform the client, pointing out the possibility of a malpractice suit and the resulting conflict of interest that may require the lawyer to withdraw. Rest. (2d) of the Law Governing Lawyers § 20, cmt. (c). Even if the lawyer concludes that he must withdraw because of the conflict of interest, the lawyer must, under Rule 1.16 (d) take reasonable steps to protect the client's interests. This would include informing the client of possible actions that client might take and any deadlines within which such actions must be taken. Thus, in regard to your first three questions, the committee believes the lawyer has an ethical duty to:

1) Advise the client that he may have a right to file a petition for a writ of *habeas corpus*;

2) Advise the client of the time limit for filing a petition for a writ of *habeas corpus*; and

3) Advise the client how and where to file the petition for a writ of *habeas corpus*.

The resolution of the remaining issues you present trigger a tension between two competing and fundamental interests served in the Rules of Professional Conduct: an attorney's general ethical duties to protect his client's interests versus an attorney's specific duty to avoid impermissible conflicts of interest. There are limits on the nature and extent of the assistance an attorney can provide to a client whose interests may have been prejudiced by the attorney's own acts or omissions. An attorney cannot remain in a representation where doing so would involve an impermissible conflict of interest. Specifically, Rule 1.7(b), in pertinent part, prohibits the attorney from continuing with any representation where the lawyer's own interest may materially limit the representation unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation.

Until recently, this committee addressed such situations with the following inquiry: which takes precedence for the attorney—the duty to protect his client or the duty to avoid conflicts of interest? However, that dilemma has recently changed. As of July 1, 2005, new legislation in a sense resolves that quandary for the attorney in this context of the missed appeal by taking the choice out of his hands. Under

new Virginia Code §§ 19.2-321.1 and 19.2-321.2[1], when due to an attorney's error his client's appeal has never been filed or has been dismissed for failure to adhere to requisite time requirements, that attorney must cooperate with that client by preparing an affidavit to be filed with the client's motion for leave to pursue a delayed appeal. That affidavit must certify that the attorney, and not the client, is responsible for the error. *Id.* The committee concludes that this requirement significantly alters the application of Rule 1.7(b) to these situations. Specifically, the attorney no longer must wrestle with protecting himself versus protecting the client. The natural extension of this first issue, regarding what the lawyer may do to assist his client, is the latter issue raised with your hypothetical. Namely, while an attorney is permitted to provide the assistance of the sort delineated in the hypothetical, is the attorney actually ***required*** to do so?

Assisting the client with the logistics of the motion to accompany the required affidavit does not create the impermissible conflict of interest suggested in prior LEOs 1122 and 1558.[2] In LEOs 1122 and 1558, this committee addressed the potential conflict of interest when an attorney's own conduct becomes at issue in his client's case. In LEO 1122, the committee concluded that generally an attorney should not represent his own client in raising a claim of ineffective assistance of counsel as "he would have to assert a position which would expose him to personal liability." Similarly, in LEO 1558, the committee concluded that an attorney could not argue on behalf of a client that the attorney himself had improperly pressured the client into accepting a guilty plea. The committee found that the conflict between the attorney's need to pursue the interest of the client yet also protect himself meant that consent could not properly "cure" the conflict of interest. To the extent that those prior opinions are inconsistent with the assistance the lawyer is permitted, if not required, to provide under the new statute, they are overruled.

The natural extension of this first issue, regarding what the lawyer may do to assist his client, is the latter issue raised with your hypothetical. Namely, while an attorney is permitted to provide the assistance of the sort delineated in the hypothetical, is the attorney actually *required* to do so?

FOOTNOTES

1 Effective July 1, 2005.

2 Those opinions are in line with ethics opinions in many other jurisdictions around the country finding a conflict of interest where an attorney would need to question his own conduct to defend a client. *See*, e.g., Oregon Ethics Op. 2000-160; Pennsylvania Ethics Op. 98-42; Missouri Ethics Op. 120 (1997); Arizona Ethics Op. 96-03; California-San Diego Ethics Op. 1995-1; Nebraska Ethics Op. 90-1; Kentucky Ethics Op. 321 (1987). A reading of those opinions, as well as LEOs 1122 and 1558, reveals the nature of the conflict of interest for the attorney—that he would be torn between admitting his mistakes to protect the client and denying those mistakes to protect himself. Such a dilemma may in certain instances fail to survive an application of Rule 1.7(b); the conflict of interest would be too substantial to cure with consent. Virginia Code §§ 19.2-321.1 and 19.2-321.2 remove the present scenario from that result.

The answer to this issue returns to those general duties highlighted at the start of the opinion: the duty to diligently pursue the objectives of the client and the duty to terminate the representation in a way that protects the client. See Rules 1.3 and 1.16, respectively. For an attorney to decline to assist his current client's need to seek leave to pursue a delayed appeal would be a derogation of the original agreement with the client to defend against the criminal charges faced by the client. Similarly, for an attorney to withdraw from the representation leaving the client unadvised and unassisted with respect to the need for and availability of leave to pursue the delayed appeal, would violate that attorney's duty under Rule 1.16(d) to take practicable steps upon termination to protect a client's interests. The committee opines that as the new statute now lays to rest the conflict of interest concerns in the context of your hypothetical, the assistance in the outlined list must be pursued by the attorney.

Whether the attorney considers the defendant a current or a former client, that attorney must assist the defendant with his right to file for leave to pursue a delayed appeal. The precise steps required for a particular client will depend on the particular circumstances of that representation, such as whether the defendant is a current or former client, the amount of time remaining available, and the resources and sophistication of the defendant. The committee opines that the attorney in the hypothetical should not allow concerns regarding a potential conflict of interest to interfere with taking those steps warranted under Rule 1.3 and/or Rule 1.16 to assist this client.

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

Committee Opinion
August 17, 2005

LEGAL ETHICS OPINION 1818
WHETHER THE CLIENT'S FILE MAY CONTAIN ONLY ELECTRONIC DOCUMENTS WITH NO PAPER RETENTION?

You have presented a hypothetical involving an attorney with a practice concentrated in an area of administrative law. The practice includes representing clients before a federal agency. During the course of each representation, the attorney generates a large number of paper documents; also, a number of electronic documents are exchanged between the agency and the attorney. The attorney's clients have generally indicated a preference for, and in some cases, a requirement for the attorney to assist in minimizing the clients' file maintenance and storage costs by providing documents from the attorney to the client in an electronic format. Due to technological and economic trends, the attorney expects more clients to require that the attorney provide all documents in only an electronic format. Accordingly, the attorney proposes the following procedure:

1) Scan each paper document into an industry-standard electronic format for which free "reader" software is readily available;

2) Transmit the electronically formatted document to the client via e-mail, and

3) Subsequently destroy the paper document to prevent a disclosure of any confidence contained therein.

Under this process, paper documents would be destroyed only if the particular client consented to the destruction; otherwise, the attorney would provide the client with the paper documents. At the termination of the representation, upon client request, the attorney would provide to the client any retained paper documents and an electronic copy of the electronically formatted documents.

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

1) Must an attorney maintain a paper copy of a client's file during the representation?

2) May an attorney destroy paper documents in a current client's file once the client consents?

3) May an attorney request that a client provide such consent as a condition of the representation?

Your first question asks whether an attorney must maintain a client's file in the form of paper. The committee believes the answer is "no." The Rules of Professional Conduct do not contain a provision specifically directing what items a lawyer must keep in the client's file or in what form.[1] Rule 1.16's paragraphs (d) and (e) address what items in a client's file must be provided to the client, upon request at termination of the representation. However, they do not dictate the form in which such items must be kept.

In determining whether an attorney is meeting his ethical responsibilities for a particular client, it matters not generally what form the documents in the file take, but instead whether all the documents necessary for the representation are present in the file. This is not to say that there are not instances where a paper document might be required. There may be any number of circumstances where keeping an original paper document in the file is critical, for example, testamentary documents, marriage certificates, or handwriting exemplars, to name a few. Clients without access to computers would require the attorney to keep a paper file. As to file materials other than documents, such physical evidence, an attorney must always safeguard, maintain and account for such items. Any other instances where lack of a physical item may prejudice the interests of the client would also mean that an exclusively electronic file would not be permissible. The committee opines that there is not a *per se* prohibition against electronic files in all instances. However, when making decisions as to what to keep in the file and in what form, while an attorney may consider storage expediency, those decisions must be made such that the attorney's duties of competence, diligence, and communication are not compromised.[2] *See* Rules 1.1, 1.3, and 1.4. The preference for electronic storage cannot reduce a lawyer's obligation to fulfill these ethical duties for each client.

Your second question is whether the attorney can destroy paper documents with the client's consent. The committee's answer is generally "yes." As discussed above, the Rules of Professional Conduct do not specify the form of file maintenance. In line with the response to Question One, an attorney may ask for the client's consent to destroy the paper documents, retaining only the scanned version, so long as that procedure does not prejudice that client's interests. The attorney is in the better position to know in what circumstances there may be legal significance in keeping the paper versus the electronic version of file contents; the attorney's recommendation to the client should be consistent with that determination. In determining what to destroy or retain in the client's file, the attorney should be mindful of the committee's recommendations in LEO 1305 that before destroying a client's paper file the lawyer should review that file to make sure that any documents that may be of continued use or benefit to the client only if they are maintained in paper form are not destroyed. In deciding whether to destroy a paper document that was provided by the client to the lawyer, for example, the lawyer should consult with the client and obtain consent to destroy it, after it has been converted to an electronic document.

Your third question is whether the attorney can require, as a condition for representation, that each client consent to an "electronic-only" file. Again, the committee's answer is generally "yes," so long as the client's interests are not prejudiced by such a condition for representation. As with Questions One and Two, the committee concludes that there

FOOTNOTE ————————————

1 Note that Rule 1.15 does provide such direction for trust account records; however, there is no equivalent provision for client files.

FOOTNOTE ————————————

2 The Committee notes that an electronic storage system frequently brings with it a need for outside technical assistance and support. The Committee cautions that in such instance the attorney should be mindful of the requirements of Rule 1.6(b)(6), which permits an attorney to disclose:

> information to an outside agency necessary for statistical, bookkeeping, accounting, data processing, printing, or other similar office management purposes, *provided the lawyer exercises due care in the selection of the agency, advises the agency that the information must be kept confidential and reasonably believes that the information will be kept confidential.*

(Emphasis added).

is no *per se* prohibition against such a condition; nevertheless, if the choice to destroy a hard copy of a particular item would prejudice that client, then in that instance, the attorney should not require the client to agree to that destruction to obtain legal representation. Such a condition in that instance would violate Rule 1.3's directive not to "intentionally prejudice or damage a client."

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

Committee Opinion
September 30, 2005

LEGAL ETHICS OPINION 1819
CONFLICT OF INTEREST—LAWYER WORKING AS LOBBYIST RATHER THAN IN AN ATTORNEY CLIENT RELATIONSHIP

You have presented a hypothetical situation in which a lawyer works for a lobbying firm of which he is a co-owner with several non-attorneys. The lawyer does not have a private law practice. The lobbying firm provides lobbying services at the Virginia General Assembly as well as public relations services. The firm has a contract with customer A to provide lobbying services, with the purpose to oppose the legislative goals of B. Customer A believes that B's legislative goals would allow B to compete unfairly against A.

The engagement letter from the firm to customer A states that the firm will provide governmental services. The letter is silent regarding legal services. The letter does not state that no legal services will be provided and does not state that no confidential attorney/client relationship will be formed. The firm's website states that the lawyer "is an attorney with many years of experience in both business and government" who has "dealt successfully with many legal, governmental and other crises." The website describes that the firm provides "creative solutions when drafting legislation, monitoring and testifying before committees and lobbying legislators and other governmental officials."

The firm and the lawyer actively provided services to customer A, including numerous meetings with A and with other lobbyists, consultants and attorneys for A. In those meetings, the lawyer and his firm were privy to A's long term goals and short and long term business plans.

Customer A knew that the lawyer was an attorney. The lawyer would frequently preface remarks to A with comments like, "As a lawyer, I think you should emphasize these issues." Customer A believed that the lawyer's skills were one of the elements of governmental services to be provided by the firm, with the lawyer applying his legal knowledge and training to the facts of the situation.

Customer A's engagement with the firm ended with the end of the 2005 General Assembly session. The firm has informed A that B has now engaged the firm to provide it with governmental and public relations services, including lobbying on the exact same issue as the work done for A. The firm has told A that Rule 1.9 ("Conflict of Interest: Former Client") does not apply to the lawyer or the firm. Customer A has expressed concern about the lawyer's use of information acquired from A.

In the context of this hypothetical scenario, you have inquired as follows:

1) Is lobbying or providing governmental relations services at the Virginia General Assembly a non-legal ancillary business such as mediation?

2) Is the lawyer subject to the Rules of Professional Conduct, in circumstances where he and the firm did not make it clear that there was no attorney/client relationship to which the protections of the rules would apply?

3) If the lawyer is subject to the Rules of Professional Conduct, is the firm also subject to the Rules?

4) Can the firm or the lawyer now represent Customer B on the same or a substantially related matter in which B's interests are materially adverse to A's without A's consent?

Your initial question is whether the lobbying services provided by the firm are a non-legal ancillary business such as mediation. The phrase "non-legal ancillary business" is not a term of art from the Rules of Professional Conduct. However, this committee has discussed lawyers working in businesses ancillary to the practice of law in a number of opinions. Discussion of those opinions and the application of the ethics rules to lawyers with such businesses is discussed below in response to your other questions.

Your second question is whether the lawyer is subject to the Rules of Professional Conduct, where he did not make clear to his customer that no attorney/client relationship had been formed to which ethical protections would apply. In line with case law on the subject[1], the Committee has

FOOTNOTE ————————————

1 *See, e.g., In re Galahasini,* 786 P.2d 971 (Ariz. 1990) (suspending lawyer who failed to supervise lay employees working on contract for debt collections agency that used his law letterhead and name on door, answered business phone as if it were his law office, and improperly solicited client's using his name); *In re Unnamed Attorney,* 645 A.2d 69 (N.H. 1994) (lawyer disciplinary agency had authority to conduct random audits of financial records of lawyer's title insurance company or which lawyer was a majority shareholder); *In re Leaf,* 476 N.W.2d 13 (Wis. 1991) (suspending lawyer for referring clients to "life-style management" business in which lawyer had an interest without disclosing that interest to clients, for misrepresenting employment status of non-lawyer employee of business and for assisting non-lawyer in unauthorized practice of law).

consistently opined that lawyers remain subject to the authority of the Rules of Professional Conduct, even while working in other fields. *See* 1764 (attorney fee sharing with finance company); 1754 (attorney selling life insurance products); 1658 (employment law firm/human resources consulting firm); 1647 (employee-owned title agency); 1634 (accounting firm); 1579 (serving as fiduciary such as guardian or executor);1584 (partnership with non-lawyer); 1368 (mediation/ arbitration services); 1442 (lender's agent); 1345 (court reporting); 1318 (consulting firm); 1311 (insurance products); 1254 (bail bonds); 1198 (court reporting); 1163 (accountant; tax preparation); 1131 (realty corporation); l083 (non legal services subsidiary); 1016 (billing services firm); 187 (title insurance). Accordingly, the Committee opines that the scope of the Rules of Professional Conduct similarly extends to a lawyer working as a lobbyist for a lobbying firm.[2]

The Committee sees a need for clarification of this general proposition regarding the scope of the rules. While the rules do apply to this attorney's lobbying activities, the precise application will not necessarily be identical to that for the provision of legal services to a client. For example, the restriction on contact with a represented person created in Rule 4.2 applies only where "representing a client." In contrast, Rule 8.4's prohibition regarding certain criminal or deliberately wrongful acts could be violated without any client involved whatsoever. Thus, while an attorney's conduct is always subject to the authority of the Rules, the precise application will always depend on which rules are pertinent to the specific context in question.

The facts of the hypothetical scenario, for instance, give rise to a particular ethical issue: whether an attorney/client relationship was actually formed. This Committee has previously relied upon the following definition from the Unauthorized Practice Rules:[3]

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

Did this lawyer create an attorney/client relationship with Customer A? The facts suggest that the lawyer and A disagree on that point. The facts include a contract for lobbying services but also a website offering the expertise of a lawyer and customer advice expressly prefaced on that legal expertise. While neither the lawyer, nor the firm, may have intended to establish an attorney/client relationship, the Committee is sympathetic to A's impression to the contrary. When a lawyer establishes a relationship to provide other than legal services and the customer knows he is a lawyer, the lawyer must be cognizant of this opportunity for confusion. Unless the services clearly have no connection to legal training and expertise (e.g., a lawyer-owned restaurant), the lawyer should accept an affirmative duty to clarify the boundaries of the business relationship. The Committee suggests that such a duty is present in many nonlegal endeavors: for example, mediation, financial planning, and, as in the present hypothetical, lobbying services. This affirmative duty belongs on the part of the lawyer, rather than the customer, in that the lawyer is in the more informed position regarding the nature of his services and the details of the ethical rules.

Where a lawyer has failed to act on this duty and allowed for confusion regarding whether or not he and the customer are in an attorney/client relationship, the attorney may not be able to avoid the application of certain rules creating obligations and conflicts usually associated with attorney/client relationships. Specifically, a lawyer may find that for purposes of the protection of confidentiality under Rule 1.6 and for conflicts under Rules 1.7 and 1.9, a business customer may be deemed a legal client if the customer had a reasonable understanding in the situation that he was working with "his lawyer."

Whether or not Customer A has that sort of reasonable understanding, despite the lawyer's assertion to the contrary, could only be determined based on more detailed facts than provided in the hypothetical. Nevertheless, the Committee reads those facts provided as definitely giving rise to the possibility. Critical factors for that determination would include whether the lawyer held himself out as an attorney, whether he offered attorney/client confidentiality, and whether he provided any legal advice.

Your third question asks: if the lawyer is subject to the Rules of Professional Conduct, do the rules apply to the lobbying the firm as well? In the discussion of Question Two, above, the Committee responded that the lawyer is subject to the Rules while working as a lobbyist. However, this does not mean that the lobbying firm is also governed by the Rules. The scope of the Rules of Professional Conduct is conduct of members of the Virginia State Bar. The Rules do *not* extend to entities, including this lobbying firm. However, the Unauthorized Practice Rules *do* apply to the lobbying firm; while outside the purview of this Committee, the Committee notes that a non-legal entity cannot properly provide legal services to the public, even through an attorney employee. *See* UPL Op. ## 177, 57. The Committee also cautions the lawyer that Rule 5.4 ("Professional Independence of a Lawyer") precludes him from owning or working for an entity with non-lawyer owners if such entity provides legal services to the public. Under the limited facts provided in the hypothetical, the Committee has not concluded that legal services are being provided by the lobbying firm. Therefore, the Committee does not opine whether the lawyer, and this firm, crossed this impermissible line regard

FOOTNOTES ————————

2 Other states have also extended ethical responsibilities to lobbying work. *See, e.g.,* Maine Ethics Op. 158 (1997) ; Maryland Ethics Op. 95-25; Maryland Ethics Op. 93-19.

3 See Rules of Supreme Court of Virginia, Pt. 6, §I, Preamble.

ing the unauthorized practice of law. The Committee simply cautions that this attorney, in working for this lobbying firm, must be vigilant that he not assist his employer in improperly providing legal services to the customers. Were he to do so, he would not only be in violation of Rule 5.4 but also would be assisting the lobbying company in the unauthorized practice of law, a Class 1 misdemeanor pursuant to Virginia Code § 54.1-3904.

Your final question is whether either the firm or the lawyer can now represent Customer B in the same or a substantially related matter to the work done for A, absent A's consent. As the hypothetical includes the statement that the lawyer has no private practice of law, the Committee assumes that your question regarding representing Customer B is intended for the lobbying services of the firm and not legal representation.[4] As discussed with regard to Question 3, above, the Rules of Professional Conduct do not apply to the firm; therefore, this specific question regarding the firm's work for Customer B is outside the purview of this Committee.

FOOTNOTE ————————————

4 If this attorney *did* have a private practice in addition to his lobbying employment, he would need to be cognizant of Rule 1.7 (a)(1), which creates a concurrent conflict of interest where "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to … a third person." If he has any contractual duties of loyalty or confidentiality to Customer A from the lobbying contract, that contractual duty could constitute "responsibilities to … a third person" and trigger a potential conflict of interest were he to represent Customer B as a client of his law practice. The Committee notes that any such conflict under Rule 1.7 would be imputed, via Rule 1.10, to all members of the lawyers law firm.

With respect to the lawyer, Rule 1.9, regarding conflicts involving former clients, does not prohibit the lawyer from providing lobbying services to Customer B so long as Customers A and B were solely lobbying customers and not legal clients, as discussed earlier in this opinion. The conflict that arises when a lawyer represents a client adverse to a former client in a substantially related matter is triggered when the lawyer provides legal representation to a new client in that matter. If the lawyer is not creating attorney/client relationships with these customers, Rule 1.9(a) is not triggered. However, if the lawyer has through representations made to these customers created a reasonable understanding that they are his legal clients, then he can only perform this new work for B if not in conflict with his former work for A, pursuant to Rule 1.9(a). Nevertheless, even if the lawyer's conduct in dealing with Customer A supported a reasonable belief held by Customer A that that an attorney-client relationship existed, a conflict under Rule 1.9 would not be imputed to the other employees of the lobbying firm since they are not lawyers and the lobbying firm is not a law firm. *See* Rule 1.10.

In sum, the ethical responsibilities flowing from this lawyer's work with the lobbying firm do derive from the Rules of Professional Conduct. The precise application of those provisions depends on the nature of the relationship between the lawyer and his customers and how it was presented to the customers. For a lawyer to avoid the confidentiality and conflict-avoidance duties of Rules 1.6, 1.7 and 1.9 with a business customer, he must ensure that the customer understands that he is not legally represented by the lawyer.

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

Committee Opinion
September 19, 2005

Legal Advertising Opinion A-0114: Communications to the Public Involving a Lawyer's Recognition by a Listing in a Publication Such as *The Best Lawyers in America*

On March 21, 2003 came the Virginia State Bar, by Bernard J. DiMuro, its President, and Thomas A. Edmonds, its Executive Director and Chief Operating Officer, pursuant to the Rules for Integration of the Virginia State Bar, Part Six, Section IV, ¶ 10(g), and filed a Petition and Notice of Advisory Opinion Review requesting consideration of Legal Advertising Opinion A-0114.

Whereas it appears to the Court that the Virginia State Bar has complied with the procedural due process and notice requirements of the aforementioned Rule designed to ensure adequate review and protection of the public interest, now, therefore, upon due consideration of all material submitted to the Court, including the revised version of the opinion filed July 14, 2005, it is ordered that Legal Advertising Opinion No. A-0114 be approved as follows, effective immediately:

Legal Advertising Opinion A-0114: Communications to the Public Involving a Lawyer's Recognition by a Listing in a Publication such as The Best Lawyers in America

Question Presented:

The question arises as to whether attorneys may advertise the fact that they are listed in a publication such as *The Best Lawyers in America*, and the extent to which communications containing such information may properly be the subject of characterization.

Answer:

Lawyers may advertise the fact that they are listed in a publication such as *The Best Lawyers in America*. A lawyer may include in the advertising additional statements, claims or characterizations based upon the lawyer's inclusion in such a publication, provided such statements, claims or characterizations do not violate Rule 7.1

Analysis:

The appropriate and controlling disciplinary rule relevant to the question presented here is Rule 7.1(a)(3):

Rule 7.1 Communications And Advertising Concerning A Lawyer's Services

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

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

S.Ct. of Virginia. R., Part Six, § II, Rule 7.1(a)(3).

Accordingly, attorneys may ethically communicate to the public information describing legitimate credentials. In fact, the widespread practice by Virginia attorneys of providing such information via resumes, firm brochures, Web site listings, print advertising, electronic media, or in-person communication is an example of the type of advertising by lawyers that serves the public interest. When furnished with this type of reliable, objective information, consumers of legal services are better able to make informed decisions concerning available legal services.

The publication *The Best Lawyers in America* is a reference work published biennially since 1983. The publisher is Woodward/White, Inc., of Aiken, South Carolina. The book is divided into lists of attorneys for all 50 states and the District of Columbia. Twenty-seven specialty areas of practice are identified, although listings for all 27 practice areas are not included for every jurisdiction. Within each jurisdiction, lawyers are listed alphabetically by practice specialty, city and last name, in that order. Selection of a lawyer for inclusion in the publication *The Best Lawyers in America* is based upon a peer-review process. Nominations for inclusion come from lawyers currently listed in the publication. All lawyers nominated are then subjected to a confidential peer-review process administered and supervised by the editorial staff of the publication. This process includes a ballot for each practice field and jurisdiction containing all lawyers nominated within that field and jurisdiction. Lawyers are not permitted to vote for themselves or other lawyers in their firm. All lawyers within a jurisdiction and practice area cast their ballots on a jurisdiction-wide basis. Although listed within each jurisdiction by city for convenience, votes are not cast on a city-by-city basis, but rather by all listed lawyers within that statewide jurisdiction and area of practice. The 9th Edition (2001–2002) listed approximately 14,000 lawyers nationwide. Over 350,000 evaluations were used in compiling the edition. The ballot used to select lawyers for listing in the publication included both a grading scale and blank space for commentary on each nominee.

The grading scale asked each voting lawyer to rate each nominee using the following scale: A-Excellent, B-Above Average, C-Average, D-Below Average, F-Poor, DK-Do Not Know, DKW-Do Not Know Work. Lawyers who did not receive a consensus of positive votes were not included. The editors of *The Best Lawyers in America* direct attorneys casting ballots, in rating the nominees, to be guided by this

question: "If you had a close friend or relative who needed a real estate lawyer (for example), and you could not handle the case yourself—for reasons of conflict of interest—to whom would you refer them?" The editors compile the list of lawyers to be included based on this peer review process which is conducted for each and every biennial edition.

The lists contained in the book change with each edition as lawyers are added or deleted. The 9th Edition contained over 480 Virginia lawyers listed in 20 practice areas. In the personal injury practice area, 96 Virginia lawyers were included, from 24 different cities. Lawyers pay no fee for inclusion in this publication and are under no obligation to purchase the book as a condition for inclusion. There is no financial benefit or quid pro quo of any kind between the listed lawyer and the publisher of *The Best Lawyers in America*. The publication enjoys respect from bar leaders and can be found in most law school libraries, and in numerous city, county and court libraries and libraries maintained by private law firms.

Based upon the foregoing, the Committee concludes that a lawyer may advertise the truthful fact that he or she or other members in his or her firm are listed in a publication such as *The Best Lawyers in America*. If, for whatever reason, a lawyer is de-listed by a publication such as *The Best Lawyers in America*, the statements or claims in the advertisement must accurately state the year(s) and/or edition(s) in which the lawyer was listed.

However, attorneys may not ethically communicate to the public credentials that are not legitimate. For example, if a particular credential or certification is based not upon objective criteria or a legitimate peer review process, but instead is available to any attorney who is willing to pay a fee, then the advertising of such credential or certification is misleading to the public and is therefore prohibited.

Similarly, characterizations that explain, and do not exaggerate the meaning or significance of specific credentials, or that merely provide descriptions of professional credentials in laymen's terms, or communicate a lawyer's credentials in a more effective or memorable manner, are permissible. Accurate, truthful characterizations of this type merely duplicate the same type of descriptions that attorneys commonly use when discussing their credentials with prospective clients in the course of in-person communication.

For example, in communicating the credential of an "A.V." rating by Martindale-Hubbell, an attorney may properly include the descriptive characterization that "A.V." represents "the highest rating" that particular service assigns. Similarly, an attorney recognized by the reference book *The Best Lawyers in America* may properly note that their inclusion means that they are among those lawyers "whom other lawyers have called the best." In referring to their membership in recognized organizations which utilize a legitimate process of peer review, such as The American College or The International Academy of Trial Lawyers, attorneys may properly include characterizations or descriptive phrases such as "it means a lot, when the recognition that you receive comes from your peers."

When including such characterizations or descriptions in brochures or other forms of public communication, attorneys should exercise discretion in their choice of language to make certain that the communication of objective information is not misleading by the manner in which the information is characterized. For example, as noted above, although an attorney may properly characterize inclusion in the reference work *The Best Lawyers in America* by stating that he or she is among those lawyers "whom other lawyers have called the best," an attorney may not properly characterize their inclusion with such statements as "since I am included in the book, that means that I am in fact the best lawyer in America." Attorneys must also use care in crafting language for advertising so as not to impute the credentials bestowed upon individual attorneys to the entire firm. For example, a law firm cannot make statements or claims that imply or suggest that the law firm has been rated "the best" in a practice area simply because some lawyers in the firm have been included in the publication *The Best Lawyers in America*. Such a statement or claim is also prohibited because *The Best Lawyers in America* only rates and lists individual lawyers, not law firms.

Rule 7.1(a)(3) prohibits communications that compare a lawyer's services with other lawyers, "unless the comparison can be factually substantiated." This provision is intended to prohibit misleading, unsubstantiated claims by lawyers that they are "the greatest" or "the best," or that their firm is the "premier" firm in Virginia. Any advertisement which makes statements or claims beyond the fact that the lawyer is listed in such a publication must comply with Rule 7.1.

Accordingly, lawyers who choose to communicate information to the public concerning their services are not merely permitted, but indeed are encouraged, to base their communications upon accurate, factual information describing legitimate credentials. This type of information is likely to assist consumers in making decisions with regard to available legal services. Descriptive characterizations of objective credentials are permissible, so long as the characterizations are accurate and truthful. Attorneys must take care that an otherwise permissible communication is not rendered unethical due to mischaracterization. Finally, although qualitative statements are permissible within a context that demonstrates their factual basis, the same types of qualitative statements when made in the absence of such context, may be prohibited as unsubstantiated comparisons of one lawyer's services with the services provided by other lawyers.

A Copy,
Teste:
Clerk

Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
John O. Iweanoge*	Washington, DC	Public Reprimand w/Terms	July 20, 2005	2
William P. Robinson Jr.	Norfolk, VA	Public Reprimand	June 15, 2005	4
Dwayne Bernard Strothers**	Suffolk	90 Day Suspension	Sept. 30, 2005	5
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Timothy Martin Barrett**	Virginia Beach	27 Month Suspension	Sept. 2, 2005	9
Michael Jackson Beattie	Fairfax	60 Day Suspension	August 24, 2005	10
Alberto Raoul Coll	Chicago, IL	One Hour Suspension	May 26, 2005	12
Todd Jay French	Richmond	Revocation	Sept. 23, 2005	n/a
James Anthony Granoski	Alexandria	10 Day Suspension	April 29, 2005	14
James B. Hovis	New York, NY	5 Year Suspension	Sept. 23, 2005	n/a
Jimmie Ray Lawson II	Collinsville	Revocation	June 24, 2005	16
William Madison McClenny Jr.	Cape Charles	Revocation	Sept. 1, 2005	n/a
Bruce Wilson McLaughlin	Leesburg	Recommended Reinstatement	Sept. 9, 2005	32
Nicholas Astor Pappas**	Fredericksburg	Six Month Suspension	July 22, 2005	35
Kenneth Dennis Sisk	Richmond	Revocation	August 31, 2005	n/a
Andrew Mark Steinberg	Woodbridge	30 Day Suspension	July 26, 2005	n/a
Troy Aurelius Titus	Virginia Beach	Revocation	Sept. 28, 2005	n/a
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District Committees				
Patrick Ross Bynum Jr.	Mechanicsville	Public Reprimand w/Terms	Sept. 19, 2005	42
Gregory Thomas Casker	Chatham	Public Admonition	Sept. 6, 2005	45
Julie Amarie Currin	Richmond	Public Reprimand w/Terms	June 27, 2005	47
Henry St. John Fitzgerald	Arlington	Public Reprimand	July 14, 2005	49
Brian Merrill Miller	Fairfax	Public Reprimand	July 25, 2005	51
Cost Suspensions				
Neil Edward Motter	Brandy Station		August 9, 2005	n/a
David Nash Payne	Hampton		August 9, 2005	n/a
James Arthur Winstead	Chesapeake		August 15, 2005	n/a
Interim Suspensions—Failure to Comply w/Subpoena				
Wade Anthony Jacobson	Richmond		July 12, 2005	n/a
Neil Edward Motter	Brandy Station		Sept. 26, 2005	n/a
David Ashley Grant Nelson	Charlotte Court House	Suspended June 24, 2005	Lifted June 27, 2005	n/a
Impairment Suspension				
Catherine Ann Lee	Sandston	Disciplinary Board	August 26, 2005	31

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

(**Editor's Note:** *Respondent has noted an appeal with the Virginia Supreme Court.*)
VIRGINIA:
IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

VIRGINIA STATE BAR, EX REL.
FOURTH DISTRICT—SECTION I COMMITTEE,
Complainant/Petitioner,
v.
JOHN O. IWEANOGE, ESQ.
Respondent.
Chancery No.: 05-145
VSB Docket Nos.: 04-041-1312 and 04-041-2657

MEMORANDUM ORDER

ON THE 20th day of July, 2005, this matter came before the Three-Judge Court empaneled on June 7, 2005, 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, consisting of the Honorable Rosemarie P. Annunziata, Senior Judge of the Court of Appeals of Virginia, the Honorable James E. Kulp, retired Judge of the Fourteenth Judicial Circuit, and the Honorable Burke F. McCahill, Judge of the Twentieth Judicial Circuit and Chief Judge of the Three-Judge Court.

Seth M. Guggenheim, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, John O. Iweanoge, Esquire, appeared, *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, which directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be revoked or suspended.

FOLLOWING presentation of the Bar's evidence, the Respondent made an oral motion to strike, which the Court took under advisement. Thereafter, the Respondent presented his evidence, at the conclusion of which the Court heard argument, retired to deliberate, and returned to issue its rulings and findings in open court.

The Court granted Respondent's motion to strike all of the evidence presented in the matter bearing VSB Docket Number 04-041-1312. Respecting the evidence presented in the matter bearing VSB Docket Number 04-041-2657, the Court granted Respondent's motion to strike the evidence related to Rule 1.3(a) of the Rules of Professional Conduct.[1] In granting the motion to strike related to the cited rule, the Court found that Respondent's alleged failure to appear for trial in the Arlington County Circuit Court was due to his having been confronted with an unexpected turn of events in federal court in the District of Columbia occasioned by the shortening of the voir dire process by the federal judge in a matter in which the Respondent was counsel. The Court also found that Respondent made efforts to comply with the Circuit Court's continuance policy and that he had in fact sent an attorney to the Circuit Court.

The Court also found by clear and convincing evidence, as follows:

1. At all times relevant to the matters giving rise to the proceedings before the Court, the Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

2. The Respondent engaged in a pattern of conduct in a case styled *Ignatius Nwafor v. Kay Coady*, At Law No. 03-211, in the Circuit Court for Arlington County, Virginia, whereby he authorized a nonlawyer employee to sign pleadings and endorse orders filed in the Circuit Court, including a motion for judgment, an order to compel answers to discovery, a uniform pretrial scheduling order, a certificate of filing plaintiff's answer to defendant's request for admissions, an answer to defendant's request for admissions, a certificate of filing plaintiff's answer to defendant's second set of requests for admissions, and an answer to defendant's second set of requests for admissions.

FOOTNOTE

1 **RULE 1.3 Diligence**

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

3. The Respondent's conduct violated Rule 1.1 of the Rules of Professional Conduct.[2] Rules 1:4 and 1:5 of the Rules of the Supreme Court of Virginia are in the Court's view clear and unequivocal in the sense that the obligation of the attorney is not delegable to a nonlawyer in terms of signing of pleadings.

4. The Respondent's conduct described herein also violated Rules 3.4(d),[3] 5.5(a), (b), and (c)(1),[4] 5.5(a)(2)[5], and 8.4(a)[6] of the Rules of Professional Conduct.

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that the Charge of Misconduct brought against the Respondent in VSB Docket No. 04-041-1312 be, and same hereby is, DISMISSED; and it is further

ORDERED that as to the Charge of Misconduct brought against the Respondent in VSB Docket No. 04-041-2657, 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 within thirty days following the date of entry of this Order certify in writing to Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, that Respondent has reviewed the Rules of the Supreme Court of Virginia and the Rules of Professional Conduct.

2. Respondent shall attend the Virginia Professionalism Course as soon as practicable, but not later than twelve months following the date of entry of this Order, and he shall promptly following such attendance provide evidence thereof to the aforesaid Bar Counsel.

Upon satisfactory proof furnished by Respondent to Bar Counsel, as aforesaid, that the above Terms have been complied with, in full, a PUBLIC REPRIMAND, WITH TERMS shall then be imposed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the alternative disposition of a sixty (60) day suspension of Respondent's license to practice law in the Commonwealth of Virginia shall be imposed in accordance with the procedure set forth in Part 6, § IV, ¶ 13.I.2.g. of the Rules of the Supreme Court of Virginia; and it is further

ORDERED that Bar Counsel be, and he hereby is, authorized and directed to make photocopies of Respondent's Exhibits A through D, inclusive, introduced into evidence at the time of the hearing, to transmit the originals thereof to the Respondent, and to file the photocopies with the Clerk of this Court, all of which actions have been accomplished as of the date hereof, as evidenced by the endorsements of Bar Counsel and the Respondent appearing below; and it is further

ORDERED that the terms and provisions of the Summary Order entered by this Court at the conclusion of the hearing conducted on July 20, 2005, be, and the same hereby are, merged herein; and 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 costs against the Respondent; and it is further

FOOTNOTES

2 **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.

3 **RULE 3.4 Fairness To Opposing Party And Counsel**
A lawyer shall not:
(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

4 **RULE 5.3 Responsibilities Regarding Nonlawyer Assistants**
With respect to a nonlawyer employed or retained by or associated with a lawyer:
(a) a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved[.]

5 **RULE 5.5 Unauthorized Practice Of Law**
(a) A lawyer shall not:
(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

6 **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[.]

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

AND THIS ORDER IS FINAL.
ENTERED this 19th day of August, 2005.
BURKE F. McCAHILL
Chief Judge of the Three-Judge Court

ROSEMARIE P. ANNUNZIATA
Judge

JAMES E. KULP
Judge

* * *

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL.
SECOND DISTRICT COMMITTEE
Complainant
v.
WILLIAM P. ROBINSON, JR.
Respondent
CL 05-211

ORDER OF PUBLIC REPRIMAND

Having been certified for hearing by the Second District Committee of the Virginia State Bar, and the Respondent, William P. Robinson, Jr., by counsel, having requested a hearing before a three-judge court pursuant to Virginia Code Section 54.1-3935, this cause came to be heard at 10:00 A.M. on April 18, 2005, by a duly convened, three-judge court consisting of the Honorable William A. Shelton, Retired Judge, the Honorable Alfred D. Swersky, Retired Judge, and Honorable Jonathan M. Apgar, Chief Judge. Assistant Bar Counsel Paul D. Georgiadis appeared for the Virginia State Bar. Michael L. Rigsby represented the Respondent, William P. Robinson. The Respondent was present.

Upon the joint motion of counsel, the Court amended the charges of misconduct as contained in the Certification dated December 6, 2004, a copy of which is attached hereto and incorporated herein. By said amendment, references to December 4, 2004 and December 30, 2004 in paragraphs 9 and 10 of the Certification were amended to December 4, 2002 and December 30, 2002.

Thereafter, the Court proceeded in this matter, which consisted of allegations of misconduct of Respondent failing to perfect three appeals before the Court of Appeals and the Virginia Supreme Court: the appeal of Salim Ra Louis; the appeal of Derek Allen Surrency; and the appeal of Donald Lee Williams, Jr.

After due deliberation, it was the unanimous opinion of the Court that the Virginia State Bar proved by clear and convincing evidence the allegations regarding lack of diligence, Rule 1.3(a), in Respondent's handling of the appeals of Derek Allen Surrency and Donald Lee Williams, Jr., as set forth in the attached Certification dated December 6, 2004.

It was the unanimous opinion of the Court that the Virginia State Bar failed to prove by clear and convincing evidence the remaining allegations as to Competence, Rule 1.1, in the appeals of Derek Allen Surrency and Donald Lee Williams, Jr.

It was the unanimous opinion of the Court that the Virginia State Bar failed to prove by clear and convincing evidence the allegations of misconduct as to Competence, Rule 1.1 and Diligence, Rule 1.3(a), in the appeal of Salim Ra Louis, as set forth in the Certification.

The Court then received evidence, including the testimony of Respondent and his prior discipline record, and heard argument concerning an appropriate disposition, and recessed to determine what sanctions, if any, to impose.

Accordingly, by unanimous decision, it is ORDERED that William P. Robinson be and is hereby REPRIMANDED by this Court.

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 of the Virginia State Bar shall assess costs.

The court reporter who transcribed these proceedings is Catherine Edwards, Ron Graham & Associates, 5344 Hickory Ridge, Virginia Beach, VA 23455-6680.

A copy *teste* of this order shall be served by the Clerk of this Court by certified mail, return receipt requested upon the Respondent, William P. Robinson, Jr., 256 West Freemason Street, Norfolk, VA 23510-1221, his address of record with the Virginia State Bar; by First Class U.S. Mail, postage pre-paid to Respondent's counsel, Michael L. Rigsby, Esquire, Carrell, Rice & Rigsby Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226 and by First Class U.S. Mail, postage pre-paid to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

ENTER: June 15, 2005
Jonathan M. Apgar, Chief Judge
Three-Judge Court

William R. Shelton, Retired Judge

Alfred D. Swersky, Retired Judge

* * *

(**Editor's Note:** *The Virginia Supreme Court granted a stay of suspension pending appeal.*)

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

VIRGINIA STATE BAR EX REL
FIRST DISTRICT COMMITTEE,
Complainant,
v.
DWAYNE BERNARD STROTHERS
Respondent.
Case No. CL05-102

MEMORANDUM ORDER

On August 4, 2005, a hearing in this matter was held before a duly convened three-judge court consisting of the Hon. James E. Kulp, Judge Designate, the Hon. Rosemarie P. Annunziata, Judge Designate, and the Hon. H. Thomas Padrick, Jr., Chief Judge Designate, presiding. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Dwayne Bernard Strothers, Esq. (Strothers), was present in person and represented by his counsel, Matthew P. Geary, Esq. The parties presented evidence and argument on whether Strothers violated the Rules of Professional Conduct as alleged in the Complaint and Certification filed by the Bar, and the panel retired to deliberate. Following its deliberations, the panel found by clear and convincing evidence the following:

I. FINDINGS OF FACT

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

The Thompson Complaint 04-010-1810

2. In October of 2002, one Dorothy Thompson (Dorothy) hired Strothers to pursue a divorce for her son, Edward Thompson (Edward). Edward was overseas in the military and had given Dorothy his power of attorney. Dorothy paid Strothers $750, which Strothers acknowledged was not placed in a trust account.

3. In June of 2003 Edward returned from overseas briefly and he and Dorothy met with Strothers. Strothers told them he had previously sent a separation agreement to Edward's wife, but could not provide the Bar with any evidence showing such a previous mailing. Strothers asked Dorothy and Edward for more money, including money for anticipated court costs. They paid Strothers an additional $800, none of which went into his trust account. Edward was shortly thereafter deployed to Iraq.

4. In November of 2003, Edward received from his now ex-wife a copy of a Florida divorce decree she obtained that month. Dorothy then wrote Strothers, asking for some response and indicating he had failed to respond to her previously, although Strothers denied receiving that letter. She thereafter filed her Bar complaint in December of 2003.

5. Strothers then filed a Bill of Complaint for divorce in Suffolk Circuit Court in January of 2004. He acknowledged to the Bar's Investigator he received a copy of the Florida decree with the Bar complaint in December of 2003. He remains counsel of record in the Suffolk case but has not pursued the matter further. Just before the start of the August 4, 2005 hearing, Strothers delivered a check to Dorothy representing a refund of the fees and costs paid to him.

   [Rules applicable: 1.1; 1.3(a); 1.4(a); 1.15(a); and 8.4(c)]

The Warren Complaint 04-010-3530

6. In May of 2002, Strothers was appointed to represent one Elijah Warren (Elijah) in a direct criminal appeal to the Court of Appeals of Virginia (the Court of Appeals).

7. Strothers timely filed a Petition for Appeal; however, at some point in May or June of 2002, Strothers was advised by Elijah's aunt, Vivian Warren (Vivian), that the Warren family hired a new lawyer, Charles Malone (Malone), to handle Elijah's appeal. Malone filed a Motion for Extension to File Petition for Appeal, which was not acted on by the Court of Appeals due to the fact Strothers was counsel of record and had already filed a timely Petition for Appeal. Strothers' Petition for Appeal was denied first by a single judge, and then by a panel of three judges.

8. Strothers then filed in the Court of Appeals a Petition for Rehearing En Banc, which was denied due to the fact the Rules of Court do not provide for rehearing en banc following denials by a single judge and a three-judge panel.

9. Subsequently, Strothers filed a Petition for Appeal with the Supreme Court of Virginia, which dismissed the Petition in an order dated June 11, 2003, due to Strothers' failure to file a Notice of Appeal and his failure to timely file the Petition for Appeal.

10. Strothers told the Bar Investigator he did not inform Vivian, Elijah or anyone in the Warren family of the dismissal by the Supreme Court of Virginia. He testified at the hearing he did inform Vivian of the dismissal when he saw her at a local restaurant; however, he acknowledged he did not advise her of the reason for the dismissal. Vivian testified and denied ever learning of the dismissal from Strothers.

    [Rules applicable: 1.1 and 1.4(a)]

II. NATURE OF MISCONDUCT

The above facts show violations of the following Rules of Professional Conduct of Virginia:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.15 Safekeeping Property

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

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

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;….

III. SANCTION

Following the announcement of its decision on the Rule violations, the parties presented evidence and argument on the type of sanction to be imposed. The panel retired to deliberate, and thereafter announced its decision to suspend Strothers' law license for 90 days, effective September 30, 2005. Accordingly, it is hereby

ORDERED that the law license of Dwayne Bernard Strothers be **SUSPENDED** for a period of 90 days commencing September 30, 2005. It is further

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

ORDERED that the Clerk of the Circuit Court shall send certified copies of this order to counsel of record and to the Clerk of the Disciplinary System. As stated in the Summary Order entered by the Court on August 4, 2005, it is further

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

such arrangements for the disposition of matters have been made. Issues concerning the adequacy of the notice and arrangements required shall be determined by the Disciplinary Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this paragraph.

Entered this the 21st day of September, 2005.
The Hon. H. Thomas Padrick, Jr., Chief Judge Designate

The Hon. Rosemarie P. Annunziata, Judge Designate

The Hon. James E. Kulp, Judge Designate

* * *

(**Editor's Note:** *The Virginia Supreme Court granted a stay of suspension pending appeal.*)

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

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

ORDER OF SUSPENSION

THIS MATTER first came on to be heard Friday, July 23, 2004, at 9:00 A.M., before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, Court Room A, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, 23219. The Board was comprised of Robert L. Freed (Chair), V. Max Beard (Lay Member), Russell W. Updike, William C. Boyce, Jr. and David R. Schultz. Proceedings in this matter were transcribed by Valarie L. Schmit, a registered professional reporter, P.O. Box 9349, Richmond, Virginia, 23227, telephone number (804) 730-1222. The court reporter was sworn by the Chair, who then inquired of each member of the Board as to whether any member had any personal or financial interest or bias which would interfere with or influence that members determination of the matter. Each member, including the Chair, answered in the negative; the matter proceeded. The Respondent, Timothy Martin Barrett, was represented by his counsel, Michael L. Rigsby, Esquire, and was present in person. The Virginia State Bar appeared by its counsel, Richard E. Slaney, Esquire.

The findings of fact found at the hearing of July 23, 2004, are set forth in the Order of the Disciplinary Board entered August 5, 2004. The Board determined that the Bar proved, by clear and convincing evidence, that Respondent violated Rules 3.1, 3.4(i), 3.4(j), 3.5(e), 4.3(b), and 8.4(b). Based upon its findings that Respondent was in violation of the rules set forth above, the Disciplinary Board suspended Respondent's license to practice law in the Commonwealth of Virginia for a period of three (3) years effective July 23, 2004. These determinations by the Board were appealed by Respondent to the Supreme Court of Virginia.

The Supreme Court of Virginia rendered its Opinion on April 22, 2005. The Court's opinion upheld the findings of the Disciplinary Board that Respondent violated Rules 3.1, 3.4(i), 3.5(e), and 3.4(j), in part. The Court's opinion reversed the findings of the Disciplinary Board that Respondent violated Rules 4.3(b), 8.4(b), and 3.4(j), in part. Because the Supreme Court's Opinion upheld in part and reversed in part the decision of the Disciplinary Board, it remanded the matter back to the Disciplinary Board to reconsider the three year suspension imposed upon Respondent.

On September 2, 2005, this matter came to be heard solely upon the issue of what sanction to impose upon Respondent for the violations affirmed by the Supreme Court of Virginia. The members of the Disciplinary Board consisted of Robert L. Freed (Chair), V. Max Beard (Lay Member), Russell W. Updike, William C. Boyce, Jr. and David R. Schultz. The Bar was represented by Richard E. Slaney, Esquire. The court reporter for this hearing was Dona T. Chandler, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, Telephone (804) 730-1222. The Respondent appeared and represented himself. The Chair polled the members of the Board as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the Board, to which inquiry each member responded in the negative.

On August 24, 2005, Respondent filed a Notice and Motion to Strike the Testimony of Ms. Valerie Jill Barrett from the record. Said Motion was overruled by the Chair, with all other Board members concurring in the decision.

On August 24, 2005, Respondent filed a Notice and Motion for Certain Board Members to Recuse Themselves on the Grounds of Lack of Impartiality. Said Motion was overruled by the Chair, with all other Board members concurring in the decision.

The remand being for the determination of sanction only, no additional evidence was received by the Board. The Board heard argument from the Bar and Respondent, and then recessed to deliberate what sanction to impose upon its finding of misconduct by Respondent for his violations of Rules 3.1, 3.4(i), 3.5(e), and 3.4(j), in part. After due deliberation, the Board unanimously determined that the rule violations merit a twenty-seven (27) month suspension of Respondent's license to practice law in the Commonwealth of Virginia, effective September 2, 2005.

Accordingly, it is ORDERED that the license to practice law in the Commonwealth of Virginia of Respondent, Timothy Martin Barrett, shall be suspended for a period of twenty-seven (27) months effective September 2, 2005.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar, being 295 Bendix Road, Suite 200, Virginia Beach, Virginia, 23452, by certified mail, return receipt requested, and by regular mail to Richard E. Slaney, Esquire, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia, 23219.

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

It is further ORDERED that Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the twenty-seven (27) month loss of 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 in his care in conformity with the wishes of his clients. Respondent shall give such notice within fourteen (14) days of the effective date of the suspension, and make such arrangements which are required within forty-five (45) days of the effective date of the suspension. The Respondent shall also furnish proof to the bar within sixty (60) days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System of 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 which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this subparagraph.

ENTERED this 14th day of September, 2005
Robert L. Freed, Chair
VIRGINIA STATE BAR DISCIPLINARY BOARD

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MICHAEL JACKSON BEATTIE
VSB Docket No. 04-022-1064

ORDER OF SUSPENSION OF 60 DAYS

These matters were certified to the Virginia State Bar Disciplinary Board ("Board") by a subcommittee of the Second District Committee, Section II. On August 24, 2005, this matter was presented by teleconference for approval of an agreed disposition to a duly convened panel consisting of Robert L. Freed, Esquire, Chair, Bruce T. Clark, Esquire, Gordon Peyton, Esquire, and Mr. Werner Quasebarth, lay member. Although scheduled to appear as a panelist, Carl Eason, Esquire was unable to appear due to a scheduling conflict. The Virginia State Bar appeared through its Assistant Bar Counsel, Paul D. Georgiadis, and the Respondent, Michael Jackson Beattie, who was present, appeared by counsel Stephen R. Pickard. The parties agreed to waive the requirement of a fifth panelist and agreed to proceed with the aforesaid panel of four.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶ 13.B.5.c., the Virginia State Bar, by Paul D. Georgiadis, Assistant Bar Counsel, and the Respondent, by counsel Stephen R. Pickard, entered into a proposed agreed disposition and presented it to the convened panel.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, verified that they had no conflicts.

I. FINDINGS OF FACT

1. At all times material to these allegations, Michael Jackson Beattie, hereinafter ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about September 5, 2002, Respondent filed an employment discrimination suit on behalf of Joyce Spangler against Colonial Ophthalmology ("Colonial") in the United States District Court for the Eastern District of Virginia, Newport News Division.

3. On or before September 27, 2002, Colonial hired attorney Ray Hogge and his law firm, Payne, Gates, Farthing and Rad to defend the suit.

4. On September 27, 2002, Hogge left a voice mail message on Respondent's voice mail with his name, his client's name, and his telephone number. On September 30, 2002, Hogge wrote a letter to Respondent confirming his representation of Colonial in this matter and offering to waive service of process. On November 4, 2002, Hogge left another voice mail message on Respondent's voice mail, this time requesting that Beattie agree to an extension of time for defendant's response and asking if there was a settlement demand. Respondent responded to none of these communications.

5. On November 7, 2002, Respondent moved for default judgment against Colonial.

6. On November 18, 2002, Respondent appeared before the Court on his motion for default judgment. Respondent did not notify either Hogge or Colonial, stating in his Certificate that "A copy has not been sent to opposing counsel because no attorney has entered an appearance in this case." At the start of the hearing, the Court questioned Respondent regarding any contact with counsel for defendant or any knowledge of representation. Respondent stated to the court that he had received two voice mail messages from a lawyer regarding the case, but that he did not know who the person was. He stated that the last call was about four weeks before the hearing.

7. On December 18, 2002, the Court entered an order granting default judgment to Spangler against Colonial, awarding damages of back and front pay, attorney's fees, and costs of $37,639.82.

8. On December 23, 2002, Hogge faxed Respondent requesting him to sign an agreed order setting aside the default judgment. Respondent replied for the first time to any of Hogge's communications when he replied within a letter to Hogge dated December 26, 2002, refusing to sign the order, chastising Hogge, offering practice pointers, and warning Hogge to "abstain from filing a frivolous motion to set aside the default judgment."

9. On January 17, 2003, Colonial filed a motion for relief from default judgment.

10. The Court set the matter for hearing for May 21, 2003, after advising and obtaining the agreement of Respondent. However, Respondent failed to appear for the schedule motion for relief and a motion for sanctions. The court issued a show cause order for Respondent to appear on July 2, 2003. On May 23, 2003, Respondent filed a letter stating that he had been before US District Judge Gerald Bruce Lee in Alexandria on May 21, 2003, at 2:00 p.m.

11. On August 13, 2003, the Court entered an order vacating the default judgment, indefinitely suspending Respondent from practice before the Court, and ordering payment of $5,000.00 sanctions. Said suspension order remains in effect. The Court found that Respondent made material misrepresentations to the Court.

12. As Respondent failed to pay the sanctions as ordered, the Court issued a show-cause order upon Respondent. In the course of proceedings before the Honorable Robert G. Doumar, on March 10, 2004, the Court held Respondent in contempt of court for his conduct before the Court and statements to the Court that included stating to Judge Doumar, "And you need to perhaps go to anger management classes."

13. Thereafter, Respondent has agreed to make periodic payments of the sanctions and is current in his sanctions payments.

II. NATURE OF MISCONDUCT

The Board finds that such conduct on the part of the Respondent violates Rules 3.3 (a)(1), 3.3(a)(4), 3.3(c), and 3.5 (f).

III. IMPOSITION OF SANCTION OF SUSPENSION OF 60 DAYS

The Board considered all evidence before it, considered the nature of the Respondent's actions, and considered the mitigating evidence in this matter. In mitigation, it found that during the relevant time period Respondent was suffering from an impairment which affected both his judgment and his ability to understand the significance of the proceedings. The Respondent is now controlling his disability through changes in his lifestyle and through appropriate professional treatment. The parties further note that Respondent has now served a two year suspension from the aforementioned court.

Pursuant to Part 6, Sec. IV, Para. 13.I.2.f.(2)(c) of the Rules of the Virginia Supreme Court, the Board ORDERS that the license of the Respondent, Michael Jackson Beattie, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for sixty (60) days, effective August 24, 2005.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M., of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from August 24, 2005, the effective date of this Order. All issues concerning the adequacy of the notice and arrangements required by the Order shall be determined by the Board, unless Respondent timely demands the matter be adjudicated by a three judge circuit court panel. Pursuant to Part 6, Sec. IV, Para. 13.B.8.c. of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is further ORDERED that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, Michael Jackson Beattie, Esquire, 9502 B Lee Highway Fairfax, VA 22031, his last address of record with the Virginia State Bar; by first class mail, postage prepaid, to his counsel of record, Stephen R. Pickard, Esquire, P.O. Box 1685, Alexandria, VA 22313-1685, and hand delivered to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, Eighth & Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219-2800.

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

ENTERED this 26th day of August, 2005
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ALBERTO RAOUL COLL
VSB DOCKET NO. 05-000-4245

ORDER OF SUSPENSION

THIS MATTER came on to be heard on Friday, June 24, at 9:00 A.M., in the Lewis F. Powell, Jr., U.S. Courthouse, Tweed Courtroom, at Tenth and Main Street, Fourth Floor, Richmond, Virginia, 23219, before a panel consisting of James L. Banks, Jr., Chair Designate, Glenn M. Hodge, Ann N. Kathan, Russell W. Updike and Dr. Theodore Smith, lay member.

The Virginia State Bar was represented by Noel D. Sengel, Senior Assistant Bar Counsel. Respondent appeared in person and with his counsel, Michael L. Rigsby.

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

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

This matter came before the Board on the Board's Rule to Show Cause and Order of Suspension and Hearing dated May 26, 2005.

Bar counsel made an opening statement and thereafter VSB Exhibits 1 and 2 were admitted without objection. Respondent's counsel made an opening statement and thereafter Respondent's Exhibits 1 through 12 were admitted without objection. Bar counsel did not call any witnesses. Respondent presented other evidence by witnesses testifying ore tenus.

I. FINDINGS OF FACT

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

1. At all times relevant hereto, the Respondent has been an associate member of the Virginia State Bar, in good standing, and his address of record with the Virginia State Bar has been 55 Washington Street, Newport, Rhode Island, 02840.

2. The Rule to Show Cause and Order of Suspension and Hearing was properly issued and duly served on the Respondent by certified mail on May 27, 2005, at his address of record with the Virginia State Bar.

3. That an Information was filed in the United States District Court for the District of Rhode Island on February 14, 2005, by Assistant United States Attorney, Lee H. Vilker, alleging that on or about December 12, 2003, in the District of Rhode Island and elsewhere, Respondent did knowingly and willfully make materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the Executive Branch of the United States, in that Respondent knowingly made materially false statements and representations to representatives of the United States Department of State and the United States Department of Defense concerning the purpose of his proposed visit to the nation of Cuba in violation of 18 U.S.C. § 1001.

4. That Respondent, pursuant to Rule 8.3 of the Virginia Rules of Professional Conduct, reported that he pled guilty on March 15, 2005, to a felony charge of violating 18 U.S.C. § 1001 in the United States District Court for the District of Rhode Island.

5. That a judgment was entered by the Honorable Ronald R. Laguex on June 7, 2005, finding that the Respondent had pled guilty to a felony charge of violating 18 U.S.C. § 1001.

6. That Respondent, who was born and raised in Communist Cuba and could not speak English, fled the country at the age of thirteen (13) at his parents' request and came to the United States after his father was imprisoned for his active opposition to Fidel Castro.

7. Respondent attended public schools in South Florida before earning a scholarship to Princeton University. After graduating from Princeton with honors, Respondent attended the University of Virginia Law School and received his law degree as well as a Ph.D. in Foreign Affairs and began teaching international law in 1982 at Georgetown University. Thereafter, Respondent was appointed to the Charles H. Stockton Chair of International Law at the Naval War College. Subsequently, Respondent served in the office of the Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict, where Respondent assisted in the development and use of Special Operations Forces around the world. After receiving the Distinguished Service Award from the Secretary of Defense, Dick Cheney, Respondent returned to the Naval War College where he ultimately became Dean in 1999.

8. In December, 2003, Respondent sought permission from the State Department to visit Cuba as he had done on numerous other occasions. When responding to a specific question on the written application required seeking such permission, Respondent indicated that the primary purpose of his visit was to visit a family member who was ill, which is deemed a legitimate purpose by the State Department. In actuality, Respondent visited a relative while traveling to Cuba but the primary purpose of his visit was to see a friend which is not deemed a legitimate purpose. Upon his return to the United States after his thirteen (13) day trip to Cuba, Respondent was interviewed by Federal Agents concerning the facts and circumstances surrounding his trip. During the interrogation, the Respondent acknowledged the actual reason for his trip and, in effect, admitted to making a misrepresentation on the application. As a result of such admission, federal authorities filed the Information on February 14, 2005, charging a violation of 18 U.S.C. § 1001. It appears, however, that the vast majority of such cases are handled through the mechanism of a civil fine.

9. A Plea Agreement was signed by the Respondent, his counsel and the Assistant United States Attorney in February, 2005. The Plea Agreement provided that the Respondent would plead guilty to the felony charge of 18 U.S.C. § 1001. At the sentencing hearing held before the Honorable Ronald R. Lagueux on June 7, 2005, the Plea Agreement was accepted by the court and the Respondent was fined $5,100.00 and given a one (1) year term of probation.

10. Following the guilty plea (and with full knowledge thereof), the Naval War College retained Respondent in his teaching position at the institution. In addition, Respondent has been offered and accepted a teaching position at the DePaul University College of Law subsequent to his guilty plea (with the full knowledge of such plea by the administration of DePaul University College of Law).

II. MISCONDUCT

Rule 8.4

It is professional misconduct for a lawyer to:

(b) Commit a criminal or deliberately wrong act that reflects adversely on the trustworthiness or fitness to practice law.

III. DISPOSITION

AFTER DUE CONSIDERATION of the evidence and the nature of the ethical misconduct committed by the Respondent, it is the unanimous opinion of The Board that the Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of one (1) hour, which suspension is effective May 26, 2005, midnight through 1:00 A.M., it is therefore;

ORDERED that the license of Respondent, Alberto Raoul Coll, to practice law in the Commonwealth of Virginia be, and the same hereby is, **SUSPENDED** for a period of one (1) hour, effective May 26, 2005, midnight through 1:00 a.m. and it is further;

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

ORDERED that the Clerk of the Disciplinary System will mail an attested copy of this Order to the Respondent's counsel, Michael L. Rigsby, at Carrell, Rice & Rigsby, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia, 23226, by certified mail, return receipt requested, and by regular mail to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia, 22314-3133.

ENTERED this 12th day of July, 2005
VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., Chair Designate

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JAMES ANTHONY GRANOSKI
VSB DOCKET NO. 05-000-3904

THIS MATTER came before the Virginia State Bar Disciplinary Board ("Board") for hearing pursuant to a Rule to Show Cause entered April 29, 2005, requiring James Anthony Granoski to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended because his license to practice law in the state of Florida was suspended for a period of ten (10) days effective May 17, 2003, by order entered by the Supreme Court of Florida. The Rule to Show Cause was duly noticed for hearing on May 20, 2005. The matter was heard on that date by a panel of the Board, consisting of James L. Banks, Jr., Acting Chair; W. Jefferson O'Flaherty, lay member; Glenn M. Hodge, Esquire, Ann N. Kathan, Esquire, and H. Taylor Williams IV, Esquire. The respondent, James Anthony Granoski (hereinafter "Mr. Granoski" or "Respondent"), was not present and was not represented by counsel, the case having been called by the Clerk of Court three times, no response having been made. The Virginia State Bar (hereinafter "the Bar") was represented by James S. Kulp, Assistant Bar Counsel. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Donna T. Chandler, RPR, RMR, of Chandler & Halasz, Inc., Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the court reporter for the hearing and, after having been duly sworn, did transcribe the proceedings.

Bar Counsel submitted an affidavit as Exhibit One dated May 19, 2005, stating the status of respondent's membership in the Virginia State Bar. The affidavit stated that Mr. Granoski is not in good standing, his license having been suspended April 29, 2005. Bar Counsel submitted a letter dated April 29, 2005, together with attachments addressed to respondent as Exhibit Two. The attachments included documents from the Supreme Court of Florida which suspended respondent's license to practice law in the State of Florida for ten (10) days. Also included was a rule to show cause and order of suspension and hearing issued by the Virginia State Bar Disciplinary Board on April 29, 2005, advising respondent that his license to practice law in the State of Virginia was suspended because of the suspension from the practice of law in Florida. The rule to show cause ordered respondent to appear before a panel of the Virginia State Bar Disciplinary Board on May 20, 2005, to Show Cause why the discipline imposed in Florida should not be imposed in Virginia. Bar Counsel submitted a letter and an Order entered May 13, 2005, by the Virginia State Bar Disciplinary Board changing the location of the hearing set for May 20, 2005, from the Virginia Supreme Court, Hearing Room A, to the State Corporation Commission, Courtroom A as Exhibit Three. Bar Counsel advised that he had spoken to Mr. Granoski the previous day and that Mr. Granoski was aware of the hearing set for May 20 and the change of venue. Bar Counsel having submitted all its evidence requested the panel to suspend respondent's license to practice law in the Commonwealth of Virginia for ten (10) days. Whereupon, the panel retired to deliberate.

DECISION

Upon due deliberation, the panel determined that the respondent, James Anthony Granoski, had failed to Show Cause why his license to practice law in the Commonwealth of Virginia should not be suspended for ten (10) days as the result of a suspension of his license to practice law in the State of Florida. The Panel Ordered that respondent's license to practice law in the Commonwealth of Virginia be suspended for a period of ten (10) days with the effective date of the suspension beginning April 29, 2005.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 10.M. shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being 8207 Doctor Craik Court, Alexandria, Virginia, 22306, by certified mail, return receipt requested, and by regular mail to James S. Kulp, Assistant Bar Counsel, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 26th day of July, 2005
VIRGINIA STATE BAR DISCIPLINARY BOARD
BY: James L. Banks Jr., Acting Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JIMMIE RAY LAWSON II, ESQUIRE
VSB Docket Nos: 04-090-1935, 04-090-2047, 04-090-2850, 04-090-3059, 05-090-2261, 05-090-2478, 05-090-2629, 05-090-2942, 05-090-2990, 05-090-3184

ORDER OF REVOCATION

THESE MATTERS came on to be heard on June 24, 2005, before a panel of the Disciplinary Board consisting of Karen A. Gould, Chair, Robert E. Eicher, David R. Schultz, William H. Monroe, Jr., and W. Jefferson O'Flaherty, Lay Member. The Virginia State Bar was represented by Kathryn R. Montgomery, Assistant Bar Counsel. The Respondent, Jimmie Ray Lawson, II, did not attend the hearing but was represented by his counsel, Gilbert K. Davis, who was in attendance. The Chair polled the members of the Board Panel as to whether any of them had any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Ms. Donna T. Chandler, a Registered Professional Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

These matters came before the Board on the District Committee Determinations for Certification by the Ninth District Committee. VSB Exhibits 1 through 40 were moved into evidence by the Bar and were admitted without objection. All required notices were properly sent by the Clerk of the Disciplinary System.

FINDINGS OF FACT RELEVANT TO ALL CASES

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

1. At all times material to these Certifications, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia. Respondent was licensed by the Virginia State Bar on April 16, 1998. Respondent has been a sole practitioner in the Martinsville, Virginia, area for approximately five (5) years.

FINDINGS OF FACT RELEVANT TO VSB DOCKET NOS. 04-090-1935, 04-090-2047, 04-090-2850 and 04-090-3059

2. On or about December 19, 2003, Respondent wrote a check from his trust account in the amount of $69,781.46, which was returned for insufficient funds. In a letter dated May 14, 2004, Respondent advised the Bar that the overdraft was due to an incorrect wire sent from his office to the law firm of Glasser & Glasser in the amount of $22,305.48 on July 28, 2003. (Applicable to VSB Docket No. 04-090-1935).

3. In December, 2003, Respondent wrote three checks from his trust account to the Henry County Circuit Court Clerk's Office which were returned for insufficient funds. The first check was written on or about December 19, 2003 in the amount of $105. The second and third checks were written on or about December 29, 2003 and were in the amounts of $90 and $241.20. In a letter dated May 14, 2004, Respondent advised the Bar that the overdrafts were due to an incorrect wire sent from his office to Glasser & Glasser in the amount of $22,305.48 on July 28, 2003. (Applicable to VSB Docket No. 04-090-2850).

4. On or about January 7, 2004, Respondent wrote three checks from his trust account in the amounts of $178, $202.60, and $305, which were returned for insufficient funds. In a letter dated May 14, 2004, Respondent advised the Bar that the overdrafts were due to an incorrect wire sent from his office to Glasser & Glasser in the amount of $22,305.48 on July 28, 2003. (Applicable to VSB Docket No. 04-090-2047).

5. On or about April 2, 2004, Respondent wrote four checks from his trust account in the amounts of $3,500, $3,500, $4,500, and $4,500, which were returned for insufficient funds. In a letter dated May 15, 2004, Respondent advised the Bar that the overdrafts were due to the failure of Jared Johnson, the manager of Club Matrix, a nightclub owned by Respondent, to deposit $16,000 into the trust account as instructed by Respondent. (Applicable to VSB Docket No. 04-090-3059).

6. In the summer of 2003, the Virginia State Bar notified Respondent by letter that it had received an overdraft notice from his bank regarding a check in the amount of $194,628.16 drawn on his trust account. By letter dated July 29, 2003, Respondent explained that the overdraft was caused by his office depositing funds in the wrong trust account. Respondent said his firm had a trust account dedicated to residential real estate closings under the Virginia Consumer Real Estate Settlement Protection Act and a trust account for all other purposes. As a result of this response, the Bar dismissed the complaint.

7. On May 13, 2004, the Bar's investigator interviewed Respondent regarding his trust account overdrafts occurring in December, 2003, and January, 2004. At that time, Respondent said he had one trust account that he used for all purposes, including residential real estate closings under the Virginia Consumer Real Estate Settlement Protection Act.

8. During this interview, Respondent also advised the Bar investigator that, in addition to his law practice, he is a sports promoter and investor in various businesses, including real estate, the recording industry, and nightclubs. Respondent said he owns and operates Laurel Properties, LLC, which he explained is a business that buys, sells, and rents homes. Respondent also said he owned and operated Club Matrix, LLC, a nightclub located in Nashville, Tennessee, which he closed in January or February, 2004, due to a shooting outside the club. He also said he owns and operates Villa Records, LLC, a music recording company. Respondent said he is the President of Villa Records and Shawn Wilson is the CEO.

9. Respondent further advised the Bar's investigator that he has never attempted to learn the requirements relating to trust accounts or how to manage a trust account.

10. Respondent has failed to create or maintain trust account records as required by Rule 1.15 of the Rules of Professional Conduct including, but not necessarily limited to, subsidiary ledger cards, cash receipts and disbursement journals, and reconciliations.

11. Respondent has commingled funds in his trust account. He has used his trust account for residential real estate closings governed by the Virginia Consumer Real Estate Settlement Protection Act, has deposited funds earmarked for investment purposes in the trust account, and has disbursed funds from his trust account for the following improper purposes: writing checks for payroll, paying for office repairs, loans, and investing his clients' money in various business transactions, including financing Villa Records, LLC, Club Matrix, LLC, and Laurel Properties, LLC.

12. From September 29, 2003 to January 14, 2004, Respondent made the following disbursements from his trust account (this listing is not exhaustive of all disbursements):

CHECK NUMBER	PAYEE	DATE OF CHECK	AMOUNT	MEMO
2050	Jimmie R. Lawson, II, Esquire (Respondent)	9/29/03	$15,000.00	"Villa Investment funds"
2051	Darrell Clark	9/29/03	$8,000.00	"Investment return"
2054	Laurel Properties, LLC	10/2/03	$5,000.00	"L.Properties"
2055	Shawn Wilson (Respondent's business partner)	10/2/03	$9,500.00	"Villa"
2056	Carol Matthews (Respondent's receptionist)	10/2/03	$8,500.00	"Villa"
2057	BB&T	10/2/03	$4,669.96	"Villa"
2059	Jimmie R. Lawson, II	10/7/03	$5,000.00	"Villa"
2061	Laurel Properties, LLC	10/8/03	$8,000.00	None
2062	Laurel Properties, LLC	10/15/03	$2,000.00	None
2063	Jimmie R. Lawson, II	10/14/03	$5,000.00	"Villa"
2065	Laurel Properties, LLC	10/15/03	$2,000.00	None
2066	Jimmie R. Lawson, II	10/19/03	$50,000.00	"Real Estate Inv."
2067	BB&T	10/19/03	$6,600.00	"Illegible/Bowe"
2076	BB&T	10/21/03	$37,000.00	"Club Matrix, LLC"
2078	Darrell Carter	11/3/03	$8,000.00	"Investment reimbursement"
2081	BB&T	11/9/03	$10,000.00	"Club Matrix"
2078	Darrell Carter	11/7/03	$8,000.00	"Final investment reimbursement"
2085	Laurel Properties	11/10/03	$5,000.00	None
2086	Jimmie R. Lawson, II	11/10/03	$5,000.00	"Villa/Riddick Bowe investment"

2087	Laurel Properties	11/12/03	$5,000.00	None
2088	Jimmie R. Lawson, II	11/14/03	$5,000.00	"Villa/Riddick Bowe investment"
2089	Carol M. Mathews	11/14/03	$242.89	"payroll"
2090	Tammy A. Koger	11/14/03	$446.16	"payroll"
2088	Jimmie R. Lawson, II	11/19/03	$5,000.00	"Villa/Riddick Bowe investment"
2093	Carol M. Mathews	11/21/03	$267.37	"Payroll"
2094	Jimmie R. Lawson, II	11/21/03	$5,000.00	"Villa/Riddick Bowe investment"
2095	Shawn Wilson	11/25/03	$5,000.00	"Villa"
2096	Shawn Wilson	11/25/03	$4,000.00	"Villa"
2099	Jimmie R. Lawson, II	12/3/03	$2,500.00	"Villa/Riddick Bowe investment"
2100	Allen Wyatt	12/5/03	$671.50	"Club Matrix"
2101	Tammy A. Koger (Respondent's paralegal)	12/5/03	$375.00	"Club Matrix"
2102	Jimmie R. Lawson, II	12/5/03	$3,000.00	"Villa/Riddick Bowe investment"
2105	BB&T	12/9/03	$13,211.09	"Spectrum Realty/Club Matrix"
2108	Jimmie R. Lawson, II	12/12/03	$4,000.00	"Club Matrix"
2112	Jimmie R. Lawson, II	12/16/03	$12,000.00	"Villa/Riddick Bowe investment"
2117	Club Matrix, LLC	12/23/03	$5,000	"Loan return/Riddick Bowe"
2137	Club Matrix, LLC	1/13/04	$5,000.00	"Matrix"
2139	Tammy Koger	1/14/04	$2,500.00	"Loan"

13. During the Bar's investigation of Respondent's trust account overdrafts, Respondent advised that he represented Riddick Bowe, former heavyweight boxing champion of the world, and that he had negotiated a deal with Kirk Kerkorian, the owner of the MGM Grand in Las Vegas, to have Bowe fight exclusively at the MGM Grand for three (3) years in exchange for $40 million dollars.

14. In his response to a subpoena for trust account records issued by the Bar, Respondent submitted a document dated July 25, 2003 and entitled "Confidential Compensation Agreement." The agreement purports to be between Respondent and his client, Riddick L. Bowe, Sr. The agreement provides for compensation to Respondent in the amount of three (3) million dollars in consideration of Respondent having "solicited, negotiated and consummated, as Client's power of attorney, a $40 million Dollar [sic] venue deal for Client, a professional boxer, with the MGM Grand, Las Vegas." The agreement further provides that the $3 million dollar compensation shall be paid in increments, with the first $625,000 being paid by November 15, 2003. The agreement further provides that Respondent shall invest the funds at his discretion in Villa Records, Club Matrix, and any other investments Respondent deems appropriate and that profits derived from the investments shall be split 50/50 between Riddick Bowe and Respondent.

15. Respondent submitted the "Confidential Compensation Agreement" with the intent to mislead the Bar in its investigation of Respondent's trust account overdrafts. The "Confidential Compensation Agreement" submitted by Respondent to the Bar is a fraud. Respondent did not negotiate an exclusive boxing deal with the MGM Grand for Riddick Bowe, Riddick Bowe did not agree to pay Respondent three (3) million dollars, and Riddick Bowe did not sign the contract.

16. In an attempt to mislead the Bar and continue the ruse regarding an exclusive boxing contract with the MGM Grand, Respondent submitted a letter to the Bar's investigator dated June 4, 2003 from himself as "CEO & President" of Split Decision Entertainment, LLC to Kirk Kerkorian, President of Tracinda Corporation and Richard Sturm, President of MGM Mirage Entertainment and Sports. In the letter, Respondent indicated that he represents Riddick Bowe, former heavyweight champion of the world, and that the correspondence constitutes a letter of intent and informal contract for Riddick Bowe to fight exclusively at the MGM Grand over a three year period in exchange for $40 million dollars. However, MGM Mirage Entertainment and Sports and Respondent did not enter into an exclusive boxing contract for Riddick Bowe to fight exclusively at the MGM Grand for $40 million dollars, or any amount of money.

17. On September 22, 2003, while incarcerated in federal prison, Riddick Bowe signed a general power of attorney appointing Respondent as his attorney-in-fact. The power of attorney provides, among other things, that Respondent has the

power to "compromise claims and institute, settle, appeal or dismiss litigation or other legal proceedings touching [Bowe's] estate or any part thereof, or touching any matter in which [Bowe] or [his] estate may be in anyway concerned." The power of attorney also provides that Respondent "shall incur no liability to [Bowe], [his] estate, [his] heirs, successors, or assigned for acting or refraining from acting hereunder, except for willful misconduct or gross negligence."

18. On September 25, 2003, Respondent completed and signed a Power of Attorney Affidavit with Bank of America Investment Services, Inc. In so doing, Respondent became the designated Attorney-in-Fact for the Riddick L. Bowe Revocable Trust, a brokerage account.

19. On October 2, 2003, the Riddick L. Bowe Revocable Trust wired $490,687.55 to Respondent's trust account. On October 9, 2003, on behalf of Riddick Bowe, Respondent wired $490,000.00 from his trust account to the Community Bank of Northern Virginia on behalf of the Gulick Group, a homebuilder, to pay penalties and late fees and to reinstate a real estate contract Riddick Bowe had signed with Gulick Group on February 7, 2002.

20. On October 3, 2003, the Riddick L. Bowe Revocable Trust wired $625,000.00 to Respondent's trust account. On one occasion, Respondent told the Bar's investigator that Mr. Bowe instructed him to take $300,000 of the $625,000 and pay it in cash to an individual named "Jay." Respondent said "Jay" later called him and said if he did not get the money, he would "send the dogs after [Respondent and Bowe]." Respondent said he refused to meet with "Jay" or give him any money.

21. Respondent also told the Bar's investigator that the $625,000 wired into his trust account was for investments Mr. Bowe asked him to make in real estate ventures, and that he invested the funds in Laurel Properties, Villa Records and Club Matrix. Respondent admits he lost $300,000 of Bowe's money in these investments. Between October 3, 2003 and October 31, 2003, Respondent made at least $123,600 in improper disbursements from his trust account. By October 31, 2003, Respondent had a balance of $129,341.65 in his trust account. During this time, Respondent was also depositing and disbursing client funds from his trust account for residential real estate closings and other matters related to his law practice.

22. Respondent has filed no IRS records for any investor or investment entity.

23. On June 12, 2004, Respondent and Riddick Bowe signed an agreement releasing Mr. Bowe as of June 5, 2004 from all contracts or agreements with Respondent, Split Decision Entertainment, LLC and Back on the Block Entertainment.

24. In June 2004, according to Respondent, Mr. Bowe demanded a refund of $480,000.00 or else "they could not do business together." Respondent then wrote the following checks:

CHECK NUMBER	PAYEE	DATE OF CHECK	AMOUNT	MEMO
3715	Riddick L. Bowe	6/24/04	$100,000.00	"partial reimbursement"
3717	Riddick L. Bowe	6/28/04	$100,000.00	"partial reimbursement"
3718	Riddick L. Bowe	6/28/04	$100,000.00	"partial reimbursement"

25. The checks listed above were returned for insufficient funds. At the time he wrote these checks, Respondent knew he had insufficient funds to cover them.

26. Respondent wrongfully took funds from his trust account that belonged to Mr. Bowe without his permission. In a Settlement Agreement ("Agreement") between Respondent and Mr. Bowe dated September 30, 2004, Respondent admitted that he wrongfully took $520,000.00 from his trust account that belonged to Mr. Bowe.

27. The Agreement provided that Respondent would repay Mr. Bowe the funds in installment payments in consideration for Mr. Bowe's agreement not to report Respondent to the Virginia State Bar or to law enforcement authorities.

CHARGES OF MISCONDUCT

Following closing argument at the conclusion of the evidence regarding the allegations of misconduct in matters numbered 04-090-1935, 04-090-2047, 04-090-2850 and 04-090-3059, the Board recessed to deliberate. The Board reviewed the foregoing findings of fact, the exhibits presented by Bar Counsel on behalf of the VSB and the testimony of each witness called to testify. After due deliberation the Board reconvened and stated its findings as follows:

The Board determined that the VSB failed to prove by clear and convincing evidence that the Respondent violated Rule 1.5 (a) (1)–(8) of the Virginia Rules of Professional Conduct. This rule deals with the reasonableness of attorney's fees and

provides several factors to be considered when a question is raised concerning such fees.
While it was argued that the fees charged and/or allegedly charged by Respondent in his representation of Mr. Bowe were unauthorized and even fraudulent, the Bar has offered no exhibit nor provided testimony from any witness that would prove any claim related to a violation of Rule 1.5 (a) (1)–(8) as regarding the reasonableness of any attorney fees charged.

The Board determined that the VSB had proved by clear and convincing evidence that the Respondent violated each of the following Virginia Rules of Professional Conduct:

RULE 1.8 Conflict of Interest: Prohibited Transactions

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

(h) A lawyer shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice, except that a lawyer may make such an agreement with a client of which the lawyer is an employee as long as the client is independently represented in making the agreement.

There is no question that the evidence submitted by the Bar clearly shows that the Respondent willingly and knowingly entered into both contractual and financial matters with his client, Mr. Riddick Bowe, in violation of the conflict of interest concerns expressed in Rule 1.8. The Respondent admitted to utilizing Mr. Bowe's funds as "investments" in ventures that were personal to the Respondent himself. These included transactions with a recording company, Villa Records, LLC, a night club, Club Matrix, LLC, in addition to alleged investments in other real estate transactions through an entity called Laurel Properties, LLC. Each of these LLC's were admittedly owned by the Respondent. (*See* paragraph 8 of the *First Amended Direct Certification* of the Ninth District Committee and Respondent's Answer admitting this allegation of ownership. *See also* VSB Exhibit 16 confirming Respondent's investment of his client's funds in these ventures as part of an alleged "Compensation Agreement.") The Board also considered the deposition testimony of Mr. Bowe wherein he testified that he never authorized the Respondent to invest funds in these LLC's. (*See* VSB Exhibit 24—deposition of Riddick Bowe, p.16, lines 6–12.)

Subsequently, a lawsuit filed by Mr. Bowe against the Respondent was settled under terms that called for the Respondent to return the funds taken from Mr. Bowe by the Respondent. In the Settlement Agreement, (see VSB Exhibit 3—"Settlement Agreement, Section 3, Forbearance), the Respondent violated Rule 1.8(h) when he required language that attempted to limit Respondent's liability for acts of malpractice and/or fraud inflicted upon Mr. Bowe by prohibiting Mr. Bowe from reporting such acts to the Bar or taking further action in the courts. Mr. Bowe also testified that the Respondent signed the proposed Settlement Agreement only after he agreed not to report him to the Bar or the police. (*See* VSB Exhibit 24, deposition of Riddick Bowe, pp.16–17, lines 24–5). It is interesting to note that Respondent did not honor the terms of the Settlement Agreement, providing settlement payments by checks that bounced. Eventually, the Court entered a Default Judgment in favor of Mr. Bowe for the full amount of damages sought in the Complaint.

Respondent was also charged with violating Rule 1.15:

RULE 1.15 Safekeeping Property

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

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

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

(c) A lawyer shall:

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

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

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

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

(d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book entry custody account), except in the following cases:

(1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:

(i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;

(ii) funds of $5,000.00 or less with respect to each trust or other fiduciary relationship;

(iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or

(iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55–58 through 55–67 are applicable;

(2) funds, securities, or other properties may be maintained in a common account:

(i) where a common account is authorized by a will or trust instrument;

(ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or

(iii) where (a) a computerized or manual accounting system is established with record keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney in fact.

(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 therefor.

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.

The evidence presented by the Bar relative to the allegations of Respondent's violations of Rule 1.15 and its subparts goes beyond clear and convincing. The Respondent was clearly guilty of issuing numerous checks from Respondent's trust account which were returned for insufficient funds. Despite the Respondent's contention that these returned checks were caused by innocent errors of office staff and/or business associates, it is blatantly apparent that the Respondent neither possessed the requisite knowledge needed to correctly administer his trust account, nor did he care. As a result, the Respondent utilized his trust account in such a way as to co-mingle funds of clients with other funds used for personal transactions and business operations.

The Board noted that Respondent admitted to the bar's investigator that he failed to create or maintain trust account records as required under Rule 1.15. An additional examination of the checks issued from the trust account of the Respondent clearly shows a co-mingling of funds and an improper use of the account for business operations and or personal purposes. (*See* VSB Exhibit 14—photocopies of checks issued from the Respondent's trust account). Moreover,

numerous overdraft notifications were received by the Bar from other counsel, BB&T Bank and the Honorable David V. Williams, Circuit Court Judge, City of Martinsville. (*See* VSB Exhibits 5, 6, 7, 9 and 11).

The explanations offered by the Respondent to explain these improper transactions are without merit and are wholly unacceptable to the Board. This is especially true in light of fraudulent conduct (discussed *infra*) in which the Respondent engaged against the interests of his client and in an effort to thwart the investigation of the Virginia State Bar.

Respondent was also charged with violations of Rule 8.1:

RULE 8.1 Bar Admission And Disciplinary Matters

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

(a) knowingly make a false statement of material fact;

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

Testimony offered by VSB Investigator, Clyde K. Venable, at the hearing described the Respondent as a man who initially appeared to be friendly, sincere and cooperative with the Bar and its investigation of the numerous instances of trust account violations. Despite the early appearances of cooperation and sincerity, however, Mr. Venable testified that he later came to understand and realize that the Respondent was intentionally trying to thwart the Bar's investigation through a series of lies, fabrications and misrepresentations.

The Respondent was asked to explain the allegation made by his client, Mr. Riddick Bowe, charging Respondent with the theft of $625,000. Mr. Bowe transferred these funds to the Respondent for purposes of securing a loan to complete the construction of a new home being built in Virginia. At the time of this transaction, Mr. Bowe was serving time in a federal correctional center and needed the services of the Respondent to prevent a foreclosure on the partially constructed residence.

The Respondent advised Mr. Venable that the payment of $625,000 by Mr. Bowe represented the initial portion of a three million dollar fee Respondent was entitled to receive pursuant to a "Confidential Compensation Agreement." (VSB Exhibit 16.) In this Agreement, Respondent was to receive the initial sum of $625,000 for having successfully "solicited, negotiated and consummated" a Contract and Letter of Intent with the MGM Grand hotel in Las Vegas (VSB Exhibit 18). Specifically, under the terms of the Agreement, Mr. Bowe (a former world heavy weight boxing champion) would be paid forty million dollars over a three year period to participate in professional boxing matches held exclusively on the MGM Hotel property. It is important to note that Mr. Bowe testified that he had no knowledge of any contractual deal with MGM and he also testified that he never signed a number of documents in the possession of the Respondent that somehow bore what appeared to be his signature.

Further investigation by Mr. Venable revealed that the alleged contract and letter of intent with the MGM Grand was a fraud and had been fabricated by the Respondent as a means to mislead the Bar and prevent the Bar from learning that the Respondent had wrongfully directed Mr. Bowe's funds toward, among other things, the business interests described *supra* personally owned by the Respondent.

In an Affidavit supplied to the Bar by the Vice President and General Counsel of MGM Mirage Entertainment and Sports ("MGM"), the Bar was advised that MGM had not entered into any exclusive boxing arrangement with Riddick Bowe for forty million dollars or any amount of money. Additionally, the Bar was advised that MGM did not have any plans to enter into any type of contract for boxing entertainment with the Respondent as manager or agent for Riddick Bowe nor did MGM have any plans to pay the Respondent any amount of money for an exclusive boxing deal with Riddick Bowe. (*See* VSB Exhibit 19).

Respondent was charged with violating Rule 8.4:

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 as a lawyer;

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

Over and above the actions of the Respondent as previously described, the evidence presented by the Bar unequivocally showed that the Respondent was intentionally perpetrating acts upon his client(s) that were fraudulent and dishonest.

As a result of the numerous issues surrounding Respondent's trust account, the Bar, pursuant to section 54.1-3936 of the Code of Virginia, sought to permanently enjoin Respondent from the continuing practice of law and petitioned the Court to appoint a General Receiver to review Respondent's law practice and report his findings. (VSB Exhibit 27—Hearing transcript before the Circuit Court of Henry County, Collinsville, Virginia).

After hearing argument of counsel and the sworn testimony of witnesses, the Court issued a capias for the Respondent to be brought before the Court to explain why he should not be held in contempt for violating a prior Order of the Court that prohibited Respondent from writing checks from his IOLTA trust account and/or other bank accounts. The Court also issued an Order sought by the Bar appointing attorney, Alan H. Black, as Receiver for the Respondent.

Mr. Black was called as a witness at the hearing and testified that he conducted a review and examination of Respondent's law office. Mr. Black issued a preliminary report (VSB Exhibit 40) stating the following findings:

- The Receiver discovered numerous statements from lenders to multiple "owners" for the same property.
- There were many loans that had been closed wherein the prior mortgage and lien holders had not been paid and/or releases had not been obtained.
- Documents were found that contained signatures cut out from one document and taped onto another, Forged Power of Attorney, Releases authorizing Access to Records, and Waivers of Notice in divorce files.
- In general, the Receiver found evidence of forgery, fraud, embezzlement, theft and identity theft on the part of Respondent.

The Receiver's report went on to document numerous instances of specific case files involving the intentional, willful, deceitful and dishonest conduct of the Respondent.

DISPOSITION

Thereafter, the Board received evidence of aggravation from Bar Counsel, i.e., Respondent's prior disciplinary record (one Dismissal with Terms effective July 9, 2002 and the Summary Suspension effective February 8, 2005) and testimony from aggrieved clients who had past dealings with the Respondent. The Board recessed to deliberate what sanction to impose upon its finding of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanction imposed.

In light of the egregious and reprehensible conduct of the Respondent and the tremendous harm inflicted upon those who had the misfortune to retain his services, the Chair announced the sanction as being an immediate **REVOCATION** of the Respondent's license.

Thereafter, The Board felt it necessary to hear the remaining cases brought against the Respondent by the Bar, having been duly noticed for hearing and including the appearance of numerous other Complainants, some of whom had traveled significant distances in order to testify and present their cases.

It was agreed between Bar counsel and Respondent's counsel that the Complainants, if called to testify, would render testimony consistent with the *Findings of Fact* previously set forth by the Ninth District Committee certifications. Accordingly, the Board accepted the said *Findings of Fact* as follows:

FINDINGS OF FACT RELEVANT TO VSB Docket No. 05-090-2261

28. On or about December 3, 2004, Respondent acted as the settlement agent for a residential real estate closing involving Complainant Rebecca Whitner, who was the seller.

29. After closing, Respondent issued Complainant check number 10442 written on his trust account with BB&T in the amount of $151,567.50, which represented the sale proceeds. The deed was recorded.

30. Respondent deliberately misappropriated Complainant's funds. On or about December 9, 2004, Complainant received a notice from her bank that payment on check number 10442 had been stopped.

31. From December 9 through December 11, 2004, Complainant repeatedly and unsuccessfully tried to obtain the sale proceeds from Respondent.

32. Respondent blamed the bank for the error. After Complainant threatened legal action, on or about December 15, 2004, Respondent gave her three cashier's checks in the following amounts: $10,000, $20,000, and $85,000. He also gave her a check written from him trust account in the amount of $37,000 (check no. 10452).

33. On or about December 17, 2004, Complainant presented the $37,000 check to BB&T. At that time, Respondent had only $4021.85 in his trust account, and Complainant was denied payment.

34. Respondent later paid the remaining amount due from his trust account after Complainant again threatened legal action.

CHARGES OF MISCONDUCT

Respondent was charged with violating the following Rules of Professional Conduct in VSB Docket No. 05-090-2261:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

FINDINGS OF FACT RELEVANT TO VSB DOCKET Nos. 05-090-2478 and 05-090-2629

35. On or about November 23, 2004, Respondent acted as the settlement agent for a real estate closing involving buyer Thomas Burnette and seller Thomas Gravely. The sales price was $32,000. There was a deed of trust on the property for $28,848.51, which was to be satisfied at closing by Respondent. The seller was paid and deed was recorded on or about November 29, 2004.

36. Subsequently, Respondent did not pay off the deed of trust, but instead deliberately embezzled the funds.

37. In March 2005, Respondent was indicted for embezzlement (grand larceny) by a grand jury sitting in Henry County.

CHARGES OF MISCONDUCT

Respondent was charged with violating the following Rules of Professional Conduct in VSB Docket No. 05-090-2478 and 2629:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

FINDINGS OF FACT RELEVANT TO VSB DOCKET No. 05-090-2942

38. Kenneth Lewis, owner of Laurel Park Tire & Auto of Martinsville, Virginia, hired Respondent for debt collection work.

39. Mr. Lewis loaned Respondent between $325,000 and $350,000 to invest in various businesses after Respondent told him he could double his money. Respondent has never returned any funds to Mr. Lewis.

40. In 2002, Respondent obtained five (5) fraudulent loans in the name of Kenneth Lewis using various properties not owned by Respondent or Mr. Lewis as collateral. The loans obtained were:

LENDER	LOAN DATE	BALANCE DUE
Aurora Loan Company	4/1/2002	$80,901
HSBC/MC Mortgage Company	7/1/2002	$185,000
Mortgage Lenders USA	8/1/2002	$173,000
Option One Mortgage	3/1/2002	$76,003
Option One Mortgage	6/1/2002	$190,000

41. Respondent forged Kenneth Lewis' name on various documents. Respondent also created fraudulent powers of attorney and loan documents by using a genuine signature of Mr. Lewis and cutting and pasting it to another document.

42. Respondent has failed to repay the loans he took out in Kenneth Lewis's name.

CHARGES OF MISCONDUCT

Respondent was charged with violating the following Rules of Professional Conduct in VSB Docket No. 05-090-2942:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

FINDINGS OF FACT RELEVANT TO VSB DOCKET Nos. 05-090-2990 and 05-090-3184

43. Edward Dale Davidson retained Respondent to represent him on a personal injury matter. Mr. Davis had been in an automobile accident in February 2003 and had been hospitalized for a week with severe injuries, including a lost spleen.

44. Respondent did not meet with Mr. Davidson to discuss the case. Instead, Mr. Davidson met with Respondent's assistant, Tammy Koger, who said Respondent would take the case. During the representation, Respondent sent nothing to Mr. Davidson in writing, but told Mr. Davidson telephonically that he was working on the case.

45. In September 2004, Respondent settled Mr. Davidson's case for $80,000 without his client's consent. Farmers Insurance Company issued check #6259009162 dated September 23, 2004 in the amount of $80,000 payable to Edward Dale Davidson and his attorney, Jimmie R. Lawson, II.

46. Respondent forged Mr. Davidson's name to the check and embezzled the funds.

47. Respondent did not advise Mr. Davidson that his case had settled, and in fact, told him as late as December 2004 that "settlement negotiations were going well."

48. Mr. Davidson has not since spoken with Respondent. Respondent has not made any payment to Mr. Davidson, nor advised Mr. Davidson that he settled the case without his consent.

CHARGES OF MISCONDUCT

Respondent was charged with violating the following Rules of Professional Conduct in VSB Docket Nos. 05-090-2990 and 3184:

RULE 1.2 Scope of Representation

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

RULE 1.4 Communication

(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

(c) A lawyer shall:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

No evidence was offered on behalf of the Respondent in defense of any of the factual allegations presented in the above-stated cases numbered 05-090-2261, 05-090-2478, 05-090-2629, 05-090-2942, 05-090-2990 or 05-090-3184. Accordingly, The Board accepted the *Findings of Fact* presented in the Ninth District Committee's certification as proven.

DISPOSITION

Thereafter, the Board once again recessed to deliberate what sanction to impose upon its finding of misconduct by Respondent in each of the referenced cases. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction rendered in each of the above-referenced cases as being an immediate REVOCATION of the Respondent's license.

Accordingly, it is ORDERED that the license of the Respondent, Jimmie Ray Lawson, II, be, and hereby is, REVOKED, said revocation to take effect immediately.

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

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

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent at his address of record with the Virginia State Bar, being 2712 Virginia Avenue, P.O. Box 478, Collinsville, Virginia, 24078, by certified mail, return receipt requested, and by regular mail to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED the 2nd day of August, 2005
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Chair

VIRGINIA
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

In re: **CATHERINE ANN LEE**
VSB DOCKET No. 05-000-3966

IMPAIRMENT SUSPENSION ORDER

THIS MATTER came on to be heard upon proper Notice on August 26, 2005. Members of the panel for this hearing were J. Rudy Austin, Leonard L. Brown, Jr., Dennis R. Gallagher (lay member) Gordon P. Peyton, and Joseph R. Lassiter, Jr. (Acting Chair). Prior to the hearing the Chair inquired of each member of the panel whether any conflict of interest existed and each member responded on the record in the negative. Barbara Ann Williams, Bar Counsel, appeared for the Virginia State Bar (hereinafter "VSB" or "Bar"). The Respondent, Catherine Ann Lee, did not appear in person but was represented at the hearing by her attorney, Michael L. Rigsby. These proceedings were transcribed by Donna T. Chandler, RPR, RMR, RCR of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222.

The matter comes before the Board on the Bar's Petition for an Expedited Hearing on an Impairment Suspension pursuant to Part Six, Section IV, Paragraph 13.I.6. In April, 2005, the Bar initiated an investigation to determine whether Ms. Lee is impaired as defined in Paragraph 13 cited above. On April 29, 2005, the Bar filed a Petition for Disability Examination and Releases for various psychiatric, psychological and medical records. At a hearing on May 20, the matter was continued generally after Ms. Lee agreed to submit to an impairment examination and release of the requested records. Bar Counsel represented to the panel that Ms. Lee was indeed severely impaired, and introduced into evidence a copy of various reports and correspondence which establish Ms. Lee's disability. Counsel for Respondent advised the Board that Ms. Lee had recently admitted herself to a program designed for professionals suffering from alcohol and substance abuse addictions. Counsel urged the Board to continue the hearing until Ms. Lee completes her rehabilitation program and to then assess her disability.

The panel retired to consider the evidence. Having reconvened, the Board announced its finding and Ordered that Ms. Lee's license to practice law be suspended indefinitely, effective August 26, 2005, pursuant to Part Six, Section IV, Paragraph 13.I.6, until such time as she is able to prove by clear and convincing evidence that she is no longer impaired.

IT IS FURTHER ORDERED pursuant to Part Six, Section IV, Paragraph 13 (M) of the Rules of the Supreme Court of Virginia, the Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of her license to practice law in the Commonwealth of Virginia, to all clients for whom she is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in her care in conformity with the wishes of her clients. Respondent shall give such notice within 14 days of the effective date of the 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 date 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 her suspension, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

A copy teste shall be served by certified mail, return receipt requested, upon the Respondent, Catherine Ann Lee, Esquire, at Linda J. Woods, P.C., 103 East Williamsburg Road, Sandston, Virginia 23150-1634, and by regular mail to her counsel, Michael L. Rigsby, Esquire, Carrell Rice & Rigsby, 7275 Glen Forest Drive, Forest Plaza II, Suite 309, Richmond, Virginia 23226, and by hand to Barbara Ann Williams, Bar Counsel, at 707 East Main Street, Suite 1500, Richmond, Virginia, 23219.

ENTERED this 28th day of September, 2005.
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Joseph R. Lassiter, Jr.
Acting Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
BRUCE WILSON MCLAUGHLIN, PETITIONER
VSB Docket Nos. 01-000-0924 and 05-000-4620

ORDER OF RECOMMENDATION

On August 26, 2005, this matter came to be heard before a duly constituted panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, 1st Vice Chair, Dr. Theodore Smith, lay member, Robert E. Eicher, Glenn M. Hodge and Bruce T. Clark on a Renewed Petition for Reinstatement filed by Bruce W. McLaughlin to reinstate his license to practice law in the Commonwealth of Virginia.

Seth M. Guggenheim, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar. The petitioner was represented on record by Roger D. Groot, however Mr. Groot was unable to attend the hearing due to a conflict with a Circuit Court trial he was involved in on the day of the hearing. Prior to commencing the hearing, the Petitioner advised the Panel of Mr. Groot's conflict at which time the Petitioner waived his presence and elected to proceed acting *pro se*.

The hearing was reported by Teresa L. McLean, Court Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

This matter is governed by Paragraph 13.I.9.of the Rules of the Supreme Court, Part 6, § IV. Pursuant to such rules, the Petitioner has the burden of proving by clear and convincing evidence that his license should be reinstated.

The circumstances which bring the Petitioner before the Board this day are, to say the least, unusual. The Petitioner was originally licensed to practice law in the Commonwealth on August 26, 1980 and did so for approximately eighteen years. In 1998, the Petitioner was accused by his wife, with whom he was having marital difficulties, of sexually abusing their children. These accusations led to the filing of charges against him before the Circuit Court of Loudoun County and on November 19, 1998, following a lengthy jury trial, the Petitioner was convicted on several charges for which he was sentenced to serve thirteen years incarceration. On April 8, 1999, in response to the Petitioner's conviction, this Board issued a Rule to Show Cause and Order of Suspension and Hearing. This Order immediately suspended the Petitioner's license to practice law but did not state a termination date for such suspension. No hearing on such order was held.

Petitioner appealed his conviction. Pending the results of such appeal, he remained incarcerated in the Loudoun County Adult Detention Center. While there, the Petitioner related to the Panel that he was on three occasions assaulted by other inmates who regularly "marked" anyone convicted of molesting children. Petitioner's medical records and incident reports filed at the detention center were offered into evidence to corroborate Petitioner's story.

Thereafter, Petitioner's appeal was denied. Petitioner learned of this denial by letter he received on February 9, 2000. By coincidence, within hours of learning of the denial, Petitioner was taken from the detention center to the Loudoun County General District Court in order to permit him to testify against one of the inmates accused of assaulting him. At this time, Petitioner attempted to escape from custody by running from the courthouse. He was apprehended by an officer within one block of the court and returned to custody. Petitioner testified that his decision to run was "stupid" and "ill advised" and was motivated by his deep seated fear that his previous status with the other inmates as a child molester coupled with being labeled a "snitch" if he testified would place him in a more dangerous and perhaps even fatal situation if his incarceration in the detention center and Virginia prison system continued.

On July 27, 2000, Petitioner pled guilty to simple escape, a class six felony, for which he was sentenced to an additional five years of incarceration with two and one half of those years being suspended on condition of one year probation upon his release.

On January 9, 2001, the Virginia State Bar issued a second Rule to Show Cause and Order of Suspension based upon the Petitioner's conviction for escape. This order again suspended the Petitioner's license to practice but did not state a terminal date for such suspension. At the time the second order was entered, the Petitioner's original suspension of April 8, 1999 remained in effect. Before a hearing could be conducted in reference to the second Show Cause, the Petitioner filed a Petition to Surrender License in which he voluntarily agreed to surrender his license. He did so subject to an agreement with the Bar counsel then handling his case that he reserved the right to continue to contest the charges in VSB Docket

No. 99-000-2297, the matter in which his license was first suspended, after his conviction in the abuse case. On January 26, 2001, the Bar entered an order revoking Petitioner's license to practice law. This order was silent as to the effective date of such revocation. Copies of all of the above referenced orders issued by the Bar have been made exhibits in these proceedings.

Following the above series of events, the Petitioner filed a Writ of Habeas Corpus challenging his conviction in the abuse case. The basis of the Writ was his claim that there had been a failure of his trial counsel to use certain documents in cross examination, specifically notes prepared by the Petitioner's estranged wife which were allegedly used by her to coach the testimony of the Petitioner's young children. It was the Petitioner's contention that these notes show that his childrens' stories were not based upon actual experiences, but were the results of suggestions placed in their heads by their mother. The Writ also raised question concerning the failure of counsel to discover that transcripts prepared by the police of certain interviews with the Petitioner's children contained material variations between what the children had actually stated on the recorded tapes and what had been transcribed.

By letter opinion dated December 19, 2001, Petitioner's Writ was awarded. Thereafter, following an unsuccessful appeal of the granting of the Writ by the Commonwealth, Petitioner was granted a new jury trial in reference to the abuse charges in which trial he was found not guilty on all charges. As the time the Petitioner had served by that point on the abuse charges exceeded the active time called for on his escape charges, he was released on probation following his retrial. He thereafter successfully completed all requirements of his probation.

The abuse charges for which the Petitioner was first incarcerated have now been expunged from his record leaving his class six felony escape conviction as the only matter remaining on his record. The Panel also notes from the evidence presented that while the Petitioner was still incarcerated and before his habeas petition was granted, the Virginia Department of Social Services, which had originally ruled that the abuse allegations leveled against the Petitioner were "founded," overturned this determination at an appeals hearing and replaced it with a finding that such accusations were "unfounded". At this time, the Petitioner shares joint legal and physical custody of his children.

The Bar in its response to the evidence presented by the Petitioner accepted the factual presentation outlined above without challenge. The Bar also advised the Board that it had no objection to the granting of the Petitioner's petition and would not be placing any evidence in opposition to the same. At a subsequent point in the hearing, the Bar went so far as to join in requesting that the Board recommend the Petitioner's reinstatement.

The Board, in determining how to respond to the Supreme Court's referral of the Petitioner's Renewed Petition, is in part guided by the factors outlined by the Board *In the matter of Alfred L. Hiss*, Docket No. 83-26, opinion dated May 24, 1984. It is noted, however, that the Rules do not make consideration of all elements of Hiss mandatory. The guidelines that the Board considered in weighing the evidence in this matter are as follows:

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.

It is the opinion of the Board that some, but not all of the above tests apply to the circumstances at hand.

There is nothing before the Board which would indicate that the Petitioner, prior to the revocation of his license, was anything but a well respected and competent attorney. Indeed, the record would indicate that within his areas of practice, he was considered to be extremely competent and effective. Moreover, the Petitioner's disciplinary record in the eighteen years prior to the occurrences which bring him before the Board at this time was spotless.

Likewise, while the Board certainly does not condone the Petitioner's actions in escaping from lawful custody, the

Board feels that, when considered in light of the circumstances presented, such actions do not fall within a category of moral turpitude nor do they raise issues as to the Petitioner's honesty, character and ability to reenter the Bar as an effective lawyer adhering to the Rules of Professional Conduct.

One requirement of the rule for reinstatement was raised by the Petitioner and discussed at length between the Panel, the Petitioner and counsel for the Bar. Rule 6, § IV, paragraph 13. I.8.b(1) states in part that, "no petition may be filed sooner than five years from the effective date of the Revocation." The order officially revoking the Petitioner's license was entered on January 26, 2001, a date less than five years prior to the filing of the Renewed Petition which is now before the Board. Such order, however, failed to contain an effective date for the commencement of the revocation. It is also true that as a practical matter the Petitioner, by reason of the indefinite suspension entered on April 8, 1999, had been prevented from practicing for a period well in excess of the five years required by the rule.

There is some question as to whether the Board even needs to address this issue. This hearing is undertaken in response to a reference received by the Bar from the Virginia Supreme Court. It is reasonable to infer that the Court would not have referred this matter to the Disciplinary Board unless it was satisfied that all preliminary prerequisites of the petition had been met. Indeed, a prior petition filed in this matter was rejected by the Court without ever reaching the Board based upon the Petitioner's failure to comply with other statutory prerequisites which the Petitioner has since cured.

To the extent that the Board is requested to respond to this issue, it is recommended, in consideration of the specific facts of this case, that the interest of justice would best be served by a practical application of the rule, accepting the fact that the Petitioner's indefinite suspension commencing in April of 1999, when coupled with the revocation entered in 2001 which did not recite an effective date, constitutes a period in excess of the five years as required by the Rule.

Having considered the elements set forth in *Hiss*, the evidence presented at the hearing and the joining motion of counsel for the Bar supporting the Petitioner's request for reinstatement, the Board finds that the reinstatement of the Petitioner's license would be in the best interest of justice and the public. Indeed, the Board believes that reinstatement, in these circumstances, might enhance the confidence of the public in the administration of justice. It is therefore the unanimous recommendation of this Panel that the Petitioner's license be so reinstated.

One final issue was raised by the Petitioner arising from his unusual circumstances. The Petitioner holds the rank of Lieutenant Colonel in the United States Army Reserve with eighteen years of service. In two years, assuming he remains in the Reserves, the Petitioner will have served in the military twenty years thereby qualifying him for the retirement benefits associated with such a term of service. When the Petitioner was originally convicted, action was commenced by the military to discharge the Petitioner from the service, but such actions were stayed pending the outcome of his appeal, and his ultimate retrial.

In the time since the Petitioner's conviction was over turned in the second jury trial, the military has conducted its own hearings to determine whether the Petitioner may remain in the service. In those hearings, it was determined that there was no reason why he should be discharged based upon his character or his exemplary prior record. However, as the Petitioner served in the military as a JAG officer and, as his license to practice law had been revoked, thereby preventing him from serving as a JAG officer, it was determined under military regulations that his inability to continue to perform the duties required of him dictated that he must be discharged from the service.

In response to this decision, the Petitioner filed an injunction action in the Federal District Court for the Western District of Pennsylvania seeking to stay the Army's actions pending the outcome of this hearing and pending the ultimate ruling of the Court in this matter. It is the Petitioner's hopes that he may be reinstated in a timely enough fashion to prevent his discharge based solely upon the status of his license to practice law.

In reference to this hope, the Petitioner has asked the Board to make a recommendation to the Court concerning another requirement of Part 6, § IV, Paragraph 13.I.8.b(3). Under the Rule, should the Court decide to permit the Petitioner's reinstatement, his return to full privileges would still be conditioned upon him retaking and passing the written portion of the Virginia State Bar exam. Such exam will not be offered until December of this year, which the Petitioner fears will be too late to save his military career. Because of this, the Petitioner has asked this Panel in the interests of equity and justice to recommend to the Court that it waive this requirement of the Rule.

While the members of the Panel are sympathetic to the Petitioner's plight in this matter, they believe they lack the authority to grant his request for a favorable recommendation as this is an issue outside the scope of the reference made to the Board by the Court. The Panel does, however, commend Petitioner's request to the Court for its consideration and favorable disposition, if the Court deems it within its power to so act.

As required by Paragraph 13I.8.b.(2) of the Rules of Court, Part 6 § IV, the Board finds the costs of the proceeding to be as follows:

Copying:	$136.38
Transcript/Court Reporter:	$331.50
Mailing of Notice of Hearing:	$369.21
Publication Cost:	$114.31
Administrative Fee:	$750.00
Total:	$1701.40

It is ORDERED that the Clerk of the Disciplinary System forward this Order of Recommendation and the record herein to the Virginia Supreme Court for its consideration and disposition.

It is further ORDERED that the Clerk forward an attested copy of this Order of Recommendation by certified mail, return receipt requested, to the Petitioner, Bruce Wilson McLaughlin at his address of record with the Virginia State Bar, Apartment 202, 1110 Huntmaster Terrace, Leesburg, Virginia 20176 with copies by regular mail to his counsel of record, Roger D. Groot, 619 East 25th Street, Buena Vista, Virginia 24416-2227 and to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Alexandria, Virginia 22314-3133.

Entered this 9th day of September, 2005
Peter A. Dingman, First Vice Chair

(**EDITOR'S NOTE:** *Respondent has noted an appeal to the Virginia Supreme Court.*)

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
NICHOLAS ASTOR PAPPAS
VSB DOCKET NO. 03-060-2734

ORDER

This matter came on to be heard on April 22, 2005, before a panel of the Virginia State Bar Disciplinary Board (the "Board") composed of Peter A. Dingman, chair, David R. Schultz, Nancy C. Dickenson, Robert E. Eicher, and Theodore Smith, lay member.

The Virginia State Bar ("VSB") was represented by Barbara A. Williams, Bar Counsel. Nicholas Astor Pappas (the "Respondent") appeared and was represented by Michael L. Rigsby. Tracy J. Stroh, Registered Professional Reporter, of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804) 730-1222), having been duly sworn by the Chair, reported the hearing and transcribed the proceedings.

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

The matter came before the Board on a Subcommittee Determination (Certification) of the Sixth District Committee of the VSB and upon the Respondent's answer thereto.

Bar Counsel and counsel for the Respondent stated that they were prepared to proceed. Counsel for the Respondent waived an explanation of the hearing procedure. Bar Counsel and counsel for the Respondent waived opening statements.

Bar Counsel offered VSB Exhibits 1 through 20, and they were admitted without objection. Bar Counsel called John W. Hartel to testify as a witness for the VSB, and counsel for the Respondent conducted cross-examination. Bar Counsel rested the VSB's case-in-chief.

The Respondent then testified on his own behalf, and Bar Counsel conducted cross-examination. VSB Exhibit 21 was admitted over objection by counsel for Respondent.

Bar Counsel's cross-examination elicited that the Respondent's client, Rochelle McCarl, had signed a retainer agreement with the Respondent which the Respondent had not produced in response to Bar Counsel's discovery. The Respondent testified that he had given his file to his former attorney, David Ross Rosenfeld. Bar Counsel represented that Mr. Rosenfeld had not produced the retainer agreement.

Bar Counsel moved for a continuance of the hearing in order to obtain the retainer agreement since the date signed is a material fact. Counsel for the Respondent objected to a continuance.

The Board retired to a closed session to deliberate. The Board reconvened in open session, and the Chair announced that the Board granted Bar Counsel's motion for continuance and thereupon continued the hearing to July 22, 2005, at 9:00 o'clock A.M. in Courtroom A at the State Corporation Commission.

This matter came on to be again heard on July 22, 2005, before the same panel of the Virginia State Bar Disciplinary Board. The chair of the panel stated that the court reporter had been sworn at the original hearing, and that she remained under oath.

The chair noted that at the original hearing, he and the other panel members had answered that they did not have any personal or financial interest or any bias which would preclude, or could be perceived to preclude, their hearing the matter fairly and impartially. The chair inquired whether their answer remained the same, and the chair and each member of the panel affirmed the answer given on April 22, 2005.

Bar Counsel offered two sets of stipulations of fact as VSB Exhibits 22 and 23, which were admitted without objection.

Bar Counsel noted that Randy Poe testified at his deposition on July 19, 2005, that he had not authorized the Respondent to enter a guilty plea for him at the hearing on June 22, 2005, on the charge of driving under the influence of alcohol. Bar Counsel then moved to amend paragraph 5 of the certification from the subcommittee of the Sixth District Committee in VSB Docket No. 03-060-2734 to insert the word "allegedly," so that paragraph 5 would read: "Mr. Poe had moved to Tennessee and did not appear for the DUI hearing, but Mr. Pappas appeared and, allegedly with Mr. Poe's consent, entered a guilty plea on his client's behalf." Counsel for the Respondent objected to such amendment of the certification; his objection was overruled; and Bar Counsel was granted leave to amend.

Bar Counsel offered the transcript of the deposition testimony of Randy Poe as VSB Exhibit 24. Counsel for the Respondent objected to the admission into evidence of Randy Poe's testimony appearing in the transcript on page 16, line 23, through line 25 on page 18. The objection was overruled, and VSB Exhibit 24 was admitted in its entirety.

Counsel for the Respondent offered the deposition testimony of Rochelle J. McCarl as Respondent Exhibit 1, and the transcript thereof was admitted without objection.

Bar Counsel resumed the cross-examination of the Respondent. Bar Counsel offered VSB Exhibits 25, 26, 27, 28, 29, 30, 31, and 32, which were admitted without objection. Bar Counsel also offered VSB Exhibit 33, and counsel for the Respondent objected. The objection was overruled, and VSB Exhibit 33 was admitted. Board Exhibit 1 was admitted without objection. Bar Counsel's cross-examination concluded, and counsel for the Respondent did not conduct re-direct examination of the Respondent.

Counsel for the Respondent rested following the Respondent's testimony. Bar Counsel did not present rebuttal evidence. Thereupon, Bar Counsel and Counsel for the Respondent presented closing argument. Bar Counsel represented that the VSB withdrew the certification of a violation of Rule 4.3(b).

I. Findings of Fact

Upon consideration of the foregoing, the Board finds that the following facts have been proved by clear and convincing evidence, to wit:

1. At all relevant times, the Respondent has been a lawyer duly licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been 411 Chatham Square Office Park, Fredericksburg, Virginia 22405.

2. The Respondent was properly served with notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and (I)(a) of the Rules of the Supreme Court of Virginia.

3. The complainant in this proceeding was John W. Hartel.

4. On December 7, 1999, Rochelle McCarl signed an engagement letter hiring the Respondent to represent her in a personal injury claim against Keith Atkins. Ms. McCarl was injured on August 15, 1999, when the automobile in which she was a passenger overturned and ejected her. Mr. Atkins was the operator of the automobile. Among the injuries for which Ms. McCarl sought compensation were allegedly severe facial injuries.

5. The Respondent sent a letter to Omni Insurance Company, dated April 19, 2000, requesting any recorded statements given by Ms. McCarl in connection with Mr. Atkins' automobile accident.

6. The Respondent sent a demand letter, dated July 14, 2000, to Mr. Atkins' liability carrier.

7. By letter dated August 25, 2000, Ms. McCarl authorized the Respondent to accept Mr. Atkins' liability policy limit of $25,000 in settlement of her personal injury claim against Mr. Atkins.

8. The Respondent represented Kenneth R. Poe on a summons for driving under the influence ("DUI") as a result of Mr. Poe's automobile accident on February 25, 2000. Ms. McCarl, who was living with Mr. Poe, was a passenger in the automobile and sustained facial injuries when it overturned and ejected her.

9. Mr. Poe's summons for DUI had a return day of March 14, 2000, in the General District Court of the City of Fredericksburg, Virginia.

10. Ms. McCarl referred Mr. Poe to the Respondent, who was then representing Ms. McCarl in her personal injury claim against Keith Atkins. Mr. Poe and Ms. McCarl met with the Respondent in early March of 2000 before the return day of March 14, 2000, on the summons for DUI. Mr. Poe had no money at the time, and the Respondent said they would talk about a fee at their next meeting.

11. At the initial meeting among the Respondent, Mr. Poe, and Ms. McCarl, a laceration Ms. McCarl suffered to her forehead in Mr. Poe's automobile accident was visible. The Respondent suggested that photographs should be taken of her injury.

12. Mr. Poe took photographs of Ms. McCarl's laceration on her forehead, and he and Ms. McCarl met with the Respondent and delivered the photographs to him some time during the third or fourth week of March 2000. At that meeting, the subject of the Respondent's fee for representing Mr. Poe came up. The Respondent said that if a suit was filed with Mr. Poe's insurance company, he could take his fee from the amount recovered, and that Mr. Poe would owe nothing personally. Also at the meeting with Mr. Poe and Ms. McCarl, the Respondent discussed filing a claim for Ms. McCarl's personal injuries, telling Mr. Poe and Ms. McCarl that, because of their personal relationship, he would "go after the insurance company" but not Mr. Poe. Mr. Poe did not understand from the Respondent that he would be the named defendant. Mr. Poe understood from the Respondent that if the Respondent sued Allstate, his carrier, the Respondent would have him named as a policy holder but that nothing would become of him because everything would be going through Allstate. The Respondent did not mention punitive damages to Mr. Poe.

13. Trial of Mr. Poe's summons for DUI was continued on the March 14, 2000, return date to June 22, 2000.

14. Mr. Poe and the Respondent discussed a plea to the summons for DUI. Mr. Poe said that he was going to plead not guilty unless the Commonwealth could prove that he was the driver of the automobile. There was no discussion of the effect of a guilty plea on a suit brought by Ms. McCarl against Mr. Poe for personal injuries.

15. Mr. Poe and Ms. McCarl moved from Virginia to New Jersey in late April–early May 2000 and from New Jersey to Tennessee in August or September 2000 where they continued to live together. Mr. Poe never spoke with the Respondent after moving from Virginia, did not know the DUI was set for trial on June 22, 2000, and therefore did not appear, did not instruct Mr. Pappas to enter a guilty plea, and did not learn he had been convicted on a guilty plea entered by the Respondent until 2005 when Mr. Poe sought to get a Tennessee operator's license. Ms. McCarl was in contact with the Respondent after she and Mr. Poe moved from Virginia.

16. In a letter dated June 26, 2000, addressed to Randy Poe, P.O. Box 283, Franklinville, NJ 08322, the Respondent stated that he had entered a plea of guilty to the DUI charges "pursuant to your instructions" and explained the court's disposition. Mr. Poe did not have a post office box address and did not see the letter until the day before his deposition in this matter on July 18, 2005.

17. Ms. McCarl signed an agreement on September 26, 2000, calling for the Respondent to represent her in "Personal Injury McCarl v. Poe."

18. In a letter dated July 7, 2000, from the Respondent to the Virginia Department of State Police, the Respondent stated "I represent Rochelle McCarl who was involved in [the Poe accident,] and requested any photographs of the scene."

19. In a letter dated July 7, 2000, from the Respondent to the Virginia State Police, the Respondent stated "I represent Rochelle McCarl in an action for personal injuries sustained [in the Poe accident]."

20. On December 9, 2001, Ms. McCarl, then residing in Tennessee, sent an e-mail message to Althea, who was Althea Burnett, an employee in the Respondent's office, stating "I was talking to Nick [the Respondent] about another case and decided to have him look into the Allstate deal [Poe's carrier], he made initial contact to let them know he was handling my case and shortly after, I moved. . . ." The e-mail also states that "we had numerous contacts through e-mail." The Respondent did not produce any e-mail messages from Ms. McCarl except for the one on December 9, 2001.

21. Ms. McCarl's testimony in the deposition transcript exhibited with the Respondent's Motion for Reconsideration in the Circuit Court of Fredericksburg, Virginia, was that after Mr. Poe's accident on February 28, 2000, she first met with Mr. Pappas about her injuries a month or two after the accident, but that she was not entirely sure about the timeframe. In her affidavit of March 5, 2003, exhibited with the Respondent's Motion for Reconsideration in the Circuit Court of the City of Fredericksburg, Virginia, Ms. McCarl stated that she contacted the Respondent in August of 2000 to discuss her case against Mr. Poe. Ms. McCarl's affidavit was prepared by the Respondent with assistance from his counsel at the time. In McCarl's deposition in this matter on July 14, 2005, she testified that she did not recall whether she had any conversation with the Respondent about the contents of the affidavit before signing it. She was asked whether it was her testimony that she had no conversations with the Respondent about her injuries in the Poe accident on February 28, 2000 until August 15, 2000. She answered that was not her testimony because she did not recall.

22. On or about September 5, 2000, the Respondent sent a draft of a Waiver for Mr. Poe to his counsel, David Ross Rosenfeld, for review and changes. The Waiver was for Mr. Poe to sign waiving any conflict arising from the Respondent's representation of Ms. McCarl against Mr. Poe. Mr. Rosenfeld consulted with the Respondent and re-drafted the Waiver, based on information the Respondent provided him. The Respondent approved Mr. Rosenfeld's re-draft. Mr. Rosenfeld understood from the Respondent that the attorney-client relationship between the Respondent and Mr. Poe had ended and that the Respondent had not consulted with or advised Ms. McCarl regarding a possible claim against Mr. Poe prior to the termination of the Respondent's attorney-client relationship with Mr. Poe.

23. The Respondent mailed the Waiver to Mr. Poe's address in Tennessee where he and Ms. McCarl lived. She got the mail there. Mr. Poe confirmed his signature and his filled in date of September 27, 2000, opposite his signature. Mr. Poe did not recall reading or signing the Waiver, explaining that at the time he was going through a divorce and signing papers related to it. Though the waiver is notarized, Mr. Poe did not appear before a Notary. Mr. Poe did not mail the Waiver to the Respondent; Ms. McCarl did the mailing.

24. The Respondent did not have any conversation with Mr. Poe about the Waiver before or after it was signed.

25. The Waiver does not mention a claim for punitive damages against Mr. Poe. Nor does it mention a suit against him in excess of his liability policy limits on coverage.

26. On February 27, 2002, the Respondent filed a motion for judgment on behalf of Ms. McCarl against Mr. Poe in the Circuit Court of the City of Fredericksburg, Virginia, alleging Mr. Poe's negligence and intoxication in the automobile accident and claiming compensatory damages of $250,000, which exceeded Mr. Poe's policy limits, and punitive damages of $250,000.

27. Mr. Poe's liability carrier appointed John W. Hartel to defend Mr. Poe in the suit brought on behalf of Ms. McCarl.

28. On March 4, 2003, following a hearing, the Circuit Court of the City of Fredericksburg, Virginia, entered an order recusing the Respondent from the representation of Ms. McCarl against Mr. Poe. On March 31, 2003, following a hearing, the court denied the Respondent's motion for reconsideration.

29. There were conflicts between the testimony of the Respondent and Ms. McCarl, on the one hand, and Mr. Poe, on the other hand, in material respects. The deposition testimony of Mr. Poe is credible. Ms. McCarl's deposition testimony was marked by uncertainty and speculation. The Respondent's testimony ore tenus, if not evasive in material respects, was marked by inconsistency and vagueness.

30. A current or former client's consent to a conflict of interest in an adverse representation is required to be consent after consultation. Consultation is defined in the Rules of Professional Conduct as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." Without consultation, a client's consent to a conflict of interest is not an informed consent and thus is no consent at all.

31. Loyalty is an essential element in the lawyer's relationship with a client.

32. Lawyers have superior knowledge and experience in addressing conflicts of interest with clients, current or former, and such clients justifiably may rely on their lawyer to be honest, candid, and thorough in eliciting consent to an adverse representation of another client.

33. A client's consent to a representation adverse to the client's interests, whether in litigation or otherwise, is required to be elicited before the adverse representation commences.

II. Misconduct

The remaining charge in the Certification is a violation of Rule 8.4 of the Rules of Professional Conduct, as follows:

It is professional misconduct for a lawyer to:

***

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

III. Disposition

Upon consideration of the foregoing, following deliberation in closed session, the Board reconvened in open session and the Chair announced the Board's determination that the VSB had proved by clear and convincing evidence the Respondent's violation of Rule 8.4(c) of the Virginia Rules of Professional Conduct, as charged in the Certification.

IV. Sanction

The Board called for evidence in aggravation or in mitigation of the misconduct found. Bar Counsel presented the Respondent's prior disciplinary record as VSB Exhibit 34, consisting of a Dismissal with Terms on May 19, 1997, and May 6, 1999, respectively, and a Private Reprimand with Terms on May 16, 1999, and November 9, 1999, respectively.

Counsel for the Respondent presented the testimony of David Lee Coman, the Director of Social Services for King George County, Virginia. The Respondent testified on his own behalf. Bar Counsel and Counsel for the Respondent then presented argument.

Following deliberation in closed session, the Board reconvened in open session, and the Chair announced the Board's decision that the Respondent's license to practice law in the Commonwealth of Virginia should be SUSPENDED for a period of six (6) months effective July 22, 2005.

Accordingly, it is ORDERED that the license of the Respondent, Nicholas Astor Pappas, to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of six (6) months, effective July 22, 2005.

It is further ORDERED that Respondent, as directed in the Board's summary order in this matter, dated July 22, 2005, 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 client. Respondent shall give such notice within fourteen days of the effective date of the suspension, and make such arrangements as are required herein within forty-five days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within sixty 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 the suspension, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

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

It is further ORDERED that the Clerk of the Disciplinary System shall deliver an attested copy of this order to the Respondent at his address of record with the Virginia State Bar, 411 Chatham Square Office Park, Fredericksburg, Virginia 22405, by certified mail, return receipt requested, by first class mail to Respondent's counsel, Michael L. Rigsby, Esquire, Carrell Rice & Rigsby, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226, and by hand to Barbara Ann Williams, Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Enter this Order this 10th day of August, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Peter A. Dingman, Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ROBERT JOEL ZAKROFF
VSB DOCKET NO. 06-000-0153

ORDER OF REVOCATION

THIS MATTER came on to be heard on September 23, 2005, before a panel of the Disciplinary Board consisting of Peter A. Dingman, First Vice Chair, William C. Boyce, Jr., William M. Moffet, Russell W. Updike and W. Jefferson O'Flaherty, lay member. The Virginia State Bar was represented by Marian L. Beckett, Assistant Bar Counsel. The Respondent, Robert Joel Zakroff, appeared in person and represented himself. The Chair polled the members of the Board panel as to whether any of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Valarie L. Schmit, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, phone number (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on a Rule to Show Cause and Order of Suspension and Hearing entered by the Board on August 29, 2005.

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

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

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

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

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

The following items were admitted into evidence:

1. The 196 page transcript of day 1 of the hearing in the matter of *Attorney Grievance Commission v. Robert Joel Zakroff* in the Circuit Court for Montgomery County, Maryland held on May 17,2004.

2. The 90 page transcript of day 2 of the same hearing held on May 18, 2004.

3. The 226 page transcript of day 3 of the same hearing held on May 19, 2004.

4. The 137 page transcript of day 4 of the same hearing held on July 15, 2004.

5. The 147 page transcript of day 5 of the same hearing held on September 13, 2004.

6. The 25 page pleading entitled Respondent's Exceptions and Recommendations filed by Respondent's counsel in the Maryland disciplinary proceeding with the Court of Appeals of Maryland on or about January 21, 2005 taking exception to the findings of fact and conclusions of law filed by the Honorable Durke G. Thompson, Judge of the Circuit Court for Montgomery County, Maryland.

7. The 56 page opinion of the Court of Appeals of Maryland filed June 23, 2005, ordering the disbarment of Robert Joel Zakroff in the state of Maryland.

8. The 6 page Motion for Reconsideration filed by Respondent with the Court of Appeals of Maryland requesting that the Court of Appeals of Maryland reconsider its June 23, 2005 Order disbarring him.

9. The Order of the Court of Appeals of Maryland denying Respondent's Motion for Reconsideration.

Mr. Zakroff testified on his own behalf.

After hearing the evidence and the argument of Respondent and the Virginia State Bar, the Board found by clear and convincing evidence that the license of Robert Joel Zakroff to practice law in the State of Maryland has been revoked and that such action has become final. The Board also found that Respondent failed to prove by clear and convincing evidence any of the three grounds which would permit this Board to impose any sanction other than revocation. Specifically, he did not establish by clear and convincing evidence that the Maryland proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process. Mr. Zakroff was represented by counsel throughout the Maryland proceeding. He and his counsel were present and had an opportunity to present evidence and argument on Respondent's behalf at a multi-day hearing. He, through his counsel, had an opportunity to and did file exceptions to the findings of fact and conclusions of law submitted to the Court of Appeals of Maryland by Judge Thompson at the conclusion of a six day hearing. The Court of Appeals of Maryland after considering those exceptions, as well as exceptions filed by the Attorney Grievance Commission of Maryland, issued a 56 page opinion in which it set out its reasons for ordering Respondent's disbarment in the state of Maryland. Respondent filed a motion for reconsideration with the Court of Appeals, which was denied. Clearly, Respondent had notice of the Maryland proceeding and he had an opportunity to be heard in that proceeding.

Respondent did not prove by clear and convincing evidence that imposition by the Board of revocation of his Virginia license upon the same proof as was established in the Maryland proceeding would result in a grave injustice. The Court of Appeals of Maryland found that he was guilty of serious, extensive and willful trust account violations over an extended period of time and was at times as much as $421,000.00 out of trust. It cannot be said that the imposition of the sanction of revocation by this Board upon the same proof would result in a grave injustice.

Lastly, he did not prove by clear and convincing evidence that the same conduct which the Maryland proceeding found that he had committed would not be grounds for disciplinary action in Virginia or for the same discipline in Virginia.

Accordingly, it is hereby ORDERED that Robert Joel Zakroff's license to practice law in the Commonwealth of Virginia be, and hereby is, revoked, effective September 16, 2005.

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

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System 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, 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 the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at his address of record with the Virginia State Bar, being Robert Joel Zakroff, 4337 Montgomery Avenue, Bethesda, Maryland 20814-4423, by certified mail, return receipt requested, and by regular mail to Marian L. Beckett, Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED this 27th day of September, 2005.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Peter A. Dingman, First Vice Chair

DISTRICT COMMITTEES

VIRGINIA:
BEFORE THE THIRD DISTRICT COMMITTEE, SECTION III, OF THE VIRGINIA STATE BAR

IN THE MATTER OF
PATRICK ROSS BYNUM, JR.
VSB DOCKET NO. 05-033-0149

DISTRICT COMMITTEE DETERMINATION
(Public Reprimand with Terms)

On September 13, 2005, a hearing in the above-styled matter was held before a duly convened panel of the Third District Committee, Section III, consisting of lay members Andrew J. Gibb and Mary P. Hunton, and attorneys Dennis R. Kiker, Cullen D. Seltzer, and John D. Sharer, Chair and presiding officer.

Patrick R. Bynum, Jr., the Respondent, appeared and represented himself. Barbara Ann Williams, Bar Counsel, appeared as counsel for the Virginia State Bar. The court reporter was Tracy Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227; (804) 730-1222.

I. Findings of Fact

The Respondent and Bar Counsel stipulated to the following facts, which the District Committee accepted:

1. The respondent, Patrick Ross Bynum, was admitted to the practice of law in the Commonwealth of Virginia on September 21, 1972.

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

3. On November 6, 2001, the Circuit Court of Hanover County appointed Mr. Bynum to represent the complainant, Dedric Morris, on habitual offender charges.

4. The charges were tried in the Hanover Circuit Court on December 18, 2001, and Mr. Morris was convicted.

5. Mr. Morris was subsequently sentenced to serve three years in the state penitentiary, but that sentence was suspended contingent upon his service of twelve months in jail.

6. Mr. Morris had served less than one month in jail when he was released on bond pending an appeal of the habitual offender conviction.

7. Mr. Bynum unsuccessfully appealed Mr. Morris's conviction to the Virginia Court of Appeals and the Supreme Court of Virginia.

8. Mr. Morris contends that because he did not receive a letter from Mr. Bynum dated May 5, 2003, indicating that the Supreme Court of Virginia had denied the appeal, he failed to surrender himself to authorities to resume serving his sentence.

9. Meanwhile, Mr. Morris was convicted of other crimes, which precipitated a show cause hearing with regard to his suspended sentence.

10. At a hearing held in Hanover Circuit Court on April 26, 2004, Mr. Morris was found to have violated the terms of his probation; his suspended sentence was revoked; and he was ordered to serve the three year suspended sentence in the state penitentiary plus the remaining time on his one year jail sentence.

11. Mr. Morris advised Mr. Bynum in writing that he wanted to move the court to reconsider the sentence.

12. A letter to Mr. Morris from Mr. Bynum dated May 3, 2004, states: "Enclosed find a copy of the 'motion for reconsideration aid [*sic*] to reduce sentence' recently filed with the court. I will advise you as soon as I have received a hearing date on this matter."

13. In a letter postmarked May 5, 2004, Mr. Morris advised Mr. Bynum that the reconsideration motion was not enclosed with Mr. Bynum's letter of May 3rd, noted that he had noted an appeal pro se and requested Mr. Bynum to come talk to him, send him the hearing transcript and seek an appeal bond.

14. Mr. Morris wrote Mr. Bynum again on May 25, 2004, inquiring about the time table for appeals, requesting an appeal bond and asking Mr. Bynum to contact him as soon as possible.

15. In a letter to Mr. Morris dated June 2, 2004, Mr. Bynum advised Mr. Morris to withdraw his appeal so the Circuit Court could consider the motion to reduce and promised Mr. Morris that he would file a bond motion and contact him "in the next few days to discuss your case."

16. Enclosed with Mr. Bynum's June 2nd letter was a copy of a "Motion to reduce sentence," which Mr. Bynum represented in his May 3rd letter to Mr. Morris had been "recently filed with the court."

17. The certificate of service appended to the sentence reduction motion is dated June 19, 2004.

18. The Hanover County Circuit Court has no record of a sentence reduction motion being filed in Mr. Morris' case on June 19, 2004, or any time before that date.

19. On June 11, 2004, Mr. Morris wrote Mr. Bynum and again requested him to file a bond motion.

20. During June 2004, Mr. Morris complained to Mr. Bynum, the Hanover County Circuit Court Clerk, the Deputy Clerk of the Court of Appeals that Mr. Bynum was not communicating with him.

21. In a letter to Mr. Morris dated July 6, 2004, Mr. Bynum stated, "I am still attempting to obtain a court date in Hanover County. I will contact you in the next few days."

22. On July 6, 2004, no motion was pending before the Hanover County Circuit Court in Mr. Morris' case.

23. In a letter to Mr. Bynum dated July 14, 2004, Mr. Morris complained that what Mr. Bynum was telling him was "not adding up," reiterated his previous requests for bond, the hearing transcript and a "face to face" meeting with Mr. Bynum.

24. On or about July 15, 2004, Mr. Morris filed a bar complaint against Mr. Bynum.

25. On July 16, 2004, Mr. Bynum filed a motion for an appeal bond.

26. The court granted the motion at a hearing on July 19, 2004, and Mr. Morris was released on $2,500.00 bond.

27. In a letter dated July 28, 2004, in response to an inquiry from Mr. Morris concerning his appeal, the Deputy Clerk of the Court of Appeals reminded Mr. Bynum of his duty as court appointed counsel to communicate with and for Mr. Morris.

28. By letter dated October 27, 2004, Mr. Morris advised the Deputy Clerk that he had written Mr. Bynum twice and never heard anything from him.

29. The Deputy Clerk wrote Mr. Bynum on October 28, 2004, reminding him again of his duties as Mr. Morris' court appointed counsel.

30. Mr. Bynum filed a motion to amend the sentencing order in the Hanover County Circuit Court on November 10, 2004.

31. The motion was heard on November 22, 2004, at which time the court granted the motion and corrected the April 26th ruling.

32. The court entered an order correcting the show cause order on December 12, 2004.

II. Findings of Misconduct

Based upon the stipulation between the Respondent and Bar Counsel, and its own independent assessment of the pre-filed exhibits and oral testimony presented during the hearing, the Third District Committee, Section III, determined that the Bar had proven by clear and convincing evidence that the Respondent's conduct violated the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

* * *

RULE 1.4 Communication

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

* * *

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

III. Imposition of Sanction

Based upon the Findings of Fact and Findings of Misconduct, it is the decision of the Third District Committee, Section III, to impose a Public Reprimand with Terms upon the Respondent. The Respondent is hereby so reprimanded and the following terms imposed. Within ten days of the issuance of the Committee Determination (Public Reprimand with Terms), the Respondent shall serve a copy of the determination upon each of the three attorneys with whom he practices in his partnership and promptly certify in writing to Bar Counsel that he has done so.

If the Respondent fails to comply with one or more of the foregoing terms, Bar Counsel may notice a show cause hearing before the Third District Committee, Section III. The only issue to be decided at that hearing will be the sufficiency of his compliance with the terms imposed. If the Third District Committee, Section III, finds that the Respondent has not complied with one or more of the terms imposed, this matter shall be certified to the Disciplinary Board pursuant to Paragraph 13.I. of the Rules of Court for imposition of an appropriate sanction.

This Public Reprimand with Terms shall be made part of the Respondent's disciplinary record. Pursuant to Part Six, Section IV, Paragraph 13.B.8.c. of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess the appropriate administrative fees and costs.

THIRD DISTRICT COMMITTEE, SECTION III, OF THE VIRGINIA STATE BAR
John D. Sharer, Chair

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

IN THE MATTERS OF
GREGORY THOMAS CASKER
VSB Docket Nos.: 05-090-2912 and 05-090-3790

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Admonition)

On August 9, 2005, a duly convened Ninth District Subcommittee consisting of Paul J. Feinman, Esquire (Chair presiding), Mark B. Holland, Esquire, and Theodore Bruning, lay member, met and considered these matters.

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

I. *In the Matter of Gregory Thomas Casker*
VSB No. 05-090-2912

FINDINGS OF FACT

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

2. Respondent was court-appointed to represent Travis Lamonte Price who was convicted of assault and battery. On or about August 26, 2004, Respondent mailed a notice of appeal and moved for an appeal bond. On or about October 14, 2004, Respondent received notice that the Court of Appeals had received the file from the trial court.

3. On or about December 2, 2004, Mr. Price's appeal was dismissed by the Court of Appeals for failure to file a petition for appeal.

4. Respondent failed to notify Mr. Price (a) that his appeal had been dismissed, (b) of the reasons for the dismissal, and (c) of any recourse he might have to revive the appeal.

5. The Bar's Investigator was unable to locate Mr. Price, and it was presumed that he was no longer incarcerated.

[Rules 1.3(a), 1.4(a) & (b)].

II. *In the Matter of Thomas Gregory Casker*
VSB No. 05-090-3790

FINDINGS OF FACT

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

2. Respondent was court-appointed to re p resent Jerry Santonya Davis who was convicted of a probation violation and sentenced to 1 year and 9 months imprisonment. Respondent filed a notice of appeal to the Court of Appeals on November 16, 2004.

3. The Court of Appeals dismissed the appeal on March 1, 2005 because the notice of appeal was not timely filed in the trial court.

4. Respondent failed to notify Mr. Davis (a) that his appeal had been dismissed, (b) of the reasons for the dismissal, and (c) of any recourse he might have to revive the appeal.

5. Mr. Davis informed the Bar's Investigator that he has no interest in a habeas corpus proceeding as his release date is one year away.

[Rules 1.3(a), 1.4(a) & (b)].

NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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

SUBCOMMITTEE DETERMINATION

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

WHEREFORE, the Respondent is hereby issued a single Public Admonition for the foregoing matters (VSB Docket Nos. 05-090-2912 and 05-090-3790).

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

NINTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR
By: Paul J. Feinman, Esquire
Subcommittee Chair Presiding

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

IN THE MATTERS OF
JULIE AMARIE CURRIN
VSB Docket Nos.03-033-3310 and 04-033-3665

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On June 27, 2005, a meeting in this matter was held before a duly convened Third District, Section III Subcommittee consisting of Dr. Frederick Rahal, Renee Hicks, Esq. and John D. Sharer, Esq., Chair Presiding. Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District, Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times material to these matters, the Respondent, Julie Amarie Currin (Currin), was an attorney licensed to practice law in the Commonwealth of Virginia.

The Estate Litigation 03-033-3310

2. On or about February 1, 2001, the Complainant, Sharon Mays (Mays), signed a Retainer Agreement for Currin to represent her as the personal representative of the estate of Mays' husband, Larry S. Mays, Sr. (the Estate). The Retainer Agreement contains a non-refundable fee provision (prohibited by Rule 1.5 and Legal Ethics Opinion 1606).

3. Currin, who had little experience in Probate law, proceeded in the following manner:

   (a). Shortly after being hired, Currin filed a Petition for Emergency and Permanent Injunction and Specific Performance on behalf of the Estate against Olive Britt (Britt), claiming Britt agreed to sell Larry S. Mays, Sr. (Larry) certain real property. Currin filed suit knowing there was no written sales contract between Larry and Britt. The Court denied the Petition, noting there was no written contract or any other facts taking the case outside of the statute of frauds. Currin filed nothing further until about two years later, when she attempted to amend the petition or, in the alternative, to take a nonsuit. About a month later, for the first time, and in response to a Plea at Bar filed by Britt, Currin asserted a constructive trust. Thereafter, Currin withdrew from the representation.

   (b). During the course of Currin's representation, Mays sold four parcels of real estate even though she lacked authority to do so. Currin was aware of those sales but did not obtain the court order necessary for Mays to sell any real property. Successor counsel for Mays had to petition the court for such authority nunc pro tunc.

4. During the course of the Estate litigation, Mays gave Currin a check for $3,000, $2,000 of which was to be held as payment for an expert witness. After Currin withdrew, she failed to forward the $2,000 to successor counsel, claiming all escrowed monies were exhausted. Currin would testify Mays agreed to allow Currin to apply the $2,000 to past due legal fees. Mays would testify there was no such agreement.

[Rules applicable: 1.1; 1.5(a); 1.15(a) and (c)]

The Expungement Matter 04-033-3665

5. Mays also hired Currin to expunge from her record a charge of assault and battery in Hanover County.

6. Currin filed a Petition for Expungement but incorrectly referenced a non-existent charge of obstruction of a law enforcement officer. As a result of that petition, the Hanover Circuit Court entered an order on October 16, 2002 expunging the non-existent charge from Mays' record.

7. Thereafter, the Hanover Clerk's office discovered the discrepancy and contacted Currin by telephone in October of 2002, and in August and October of 2003.

8. In March of 2004, Mays was arrested on an unrelated matter and learned the assault and battery charge was still on her record.

9. The Hanover Clerk's Office wrote Currin on April 20, 2004, again explaining the discrepancy and referencing the prior contacts to her.

10. At the request the Court, the Clerk's Office prepared and the Court entered a corrected order on May 4, 2004.

11. Currin never took any steps with the Court to correct the discrepancy. Currin would testify she advised Mays of the problem at some point prior to termination of representation. Mays would testify Currin never told her of any problem.

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

II. NATURE OF MISCONDUCT

Assistant Bar Counsel and the Respondent agree the above factual stipulation could give rise to a finding of a violation of the following Disciplinary Rules:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.5 Fees

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

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

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

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

(4) the amount involved and the results obtained;

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

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

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

(8) whether the fee is fixed or contingent.

RULE 1.15 Safekeeping Property

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

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

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

(c) A lawyer shall:

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

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to accept the Agreed Disposition in this matter and to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of these complaints. The terms and conditions are:

that within 60 days of the date the Public Reprimand with Terms is issued, you (a) revise your retainer agreement to eliminate the non-refundable provision; and (b) read the book *Lawyers And Other People's Money* by Frank A. Thomas, III, and summarize the key points of that book in two written paragraphs to be provided to Assistant Bar Counsel; and that you certify you have done these things, in writing, within 90 days of the date the Reprimand is issued, to Assistant Bar Counsel Richard E. Slaney.

If the terms and conditions are not met by the specified dates, this Subcommittee shall certify these matters to the Disciplinary Board under Paragraph 13.I.4 of the Rules of Court.

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

THIRD DISTRICT SUBCOMMITTEE, SECTION III
OF THE VIRGINIA STATE BAR
by John D. Sharer, Subcommittee Chair

VIRGINIA:
BEFORE THE FOURTH DISTRICT—SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
HENRY ST. JOHN FITZGERALD, ESQ.
VSB Docket No. 04-041-3107

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND

On July 6, 2005, a meeting in this matter was held before a duly convened Fourth District—Section I Subcommittee consisting of Mary Ellen Craig, Esq., William P. Bock, lay member substituting from the Fourth District—Section II Committee, and David Alan Sattler, Esq., presiding, to review an Agreed Disposition reached by the parties.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13.G.1.d.(3), the Fourth District—Section I Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant Henry St. John FitzGerald, Esq. (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. The Respondent qualified, on his own motion, before the Clerk of the Arlington County, Virginia, Circuit Court on August 27, 2002, as Administrator of the Estate of Rose Ward Sloan, his deceased cousin, who had died in December, 2000, without a will, and whose estate had not been administered.

   An Administrator of an estate is not required to be an attorney and Respondent was not serving as attorney for any client in connection with the Estate.

3. A First Account was due to be filed with the Commissioner of Accounts on December 19, 2003. The account not having been filed with the Commissioner, he wrote to the Respondent on January 5, 2004, instructing the Respondent to file the Account within 30 days.

4. After 30 days had elapsed without the required Account having been filed, the Commissioner issued a summons to the Respondent on February 13, 2004, and caused it to be served by the Sheriff of Arlington County, Virginia. The summons required the Respondent to produce before the Commissioner "a full statement of all receipts and disbursements, as such Administrator, accompanied by the vouchers, since August 27, 2002, within thirty days of the date of the service of this SUMMONS upon the fiduciary."

5. The Respondent failed to comply with the summons, which had been served on March 4, 2004. On April 6, 2004, the Commissioner again wrote to the Respondent, and requested that he file the First Account by April 15, 2004. The Respondent again failed to respond. On April 20, 2004, the Commissioner reported these events to the Court, and sought entry of an Order directing the Respondent to show cause why he failed to file the First Account, why he should not be fined, held in contempt of court, and removed as Administrator of the said Estate.

6. The Respondent filed a First Account on or about June 3, 2004, but such account was incomplete. As of May 16, 2005, the First Account has not been revised, as required.

7. A beneficiary of the Estate petitioned the Court for Respondent's removal as Administrator based upon, among other things, the Respondent's failure to make a court-ordered distribution of assets. On or about June 30, 2004, the Respondent presented a check to the beneficiary's counsel in the sum of $15,000.00. Due to a Reclamation Order issued by the U. S. Treasury, seizing approximately $19,500.00 from the Estate's bank account without other notice to Respondent, for retirement benefits deposited into Rose Ward Sloan bank account eighteen months prior to Respondent's appointment as Administrator, that $15,000.00 check was drawn against insufficient funds. The Respondent could have known, had he been diligent in following the monthly balances in that account reported by the bank, that such check would not be honored if presented to the bank on which it was drawn.

8. The Respondent engaged certified public accountants to complete the accountings for the Estate, but has failed to timely deliver to those certified public accountants the documents required by them to prepare required accountings. The Respondent failed to meet deadlines established by the Commissioner's office. Such failures include a December 3, 2004, deadline, to which the Respondent agreed with the Commissioner of Accounts and the beneficiary's attorney, for making final distribution of the assets of the Estate and for filing a final accounting. Adjudications of certain matters set for hearing were deferred on successive occasions based upon promises and representations made to the Commissioner by the Respondent.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

Although not representing any client as Administrator, Respondent nevertheless should have acted with reasonable diligence and promptness in carrying out his duties as Administrator.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, Henry St. John FitzGerald, Esquire, and he is so reprimanded.

IV. COSTS

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

FOURTH DISTRICT—SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By David Alan Sattler
Chair/Chair Designate

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

IN THE MATTER OF
BRIAN MERRILL MILLER, ESQ.
VSB Docket No: 04-053-2586

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND

On July 22, 2005, a meeting in this matter was held before a duly convened Fifth District—Section III Subcommittee consisting of Kathleen L. Farrell, Esq., Joyce S. Stoney, lay member, and H. Jan Roltsch-Anoll, Esq., presiding, to review an Agreed Disposition reached by the parties.

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

I. FINDINGS OF FACT

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

2. On or about July 23, 2002, Laura S. Lorence (hereafter "Complainant") retained the Respondent to represent her, as plaintiff, in a landlord-tenant suit that Complainant had instituted in the Fairfax County, Virginia, General District Court on a *pro se* basis against her tenant and the cosigner of the tenant's lease.

3. The Respondent represented the Complainant at trial, and judgment was entered in the Complainant's favor on August 23, 2002, for possession of the rental premises, rent in the sum of $359.89, and court costs.

4. An appeal to the judgment was noted and an appeal bond was posted by the tenant and/or the cosigner with the Clerk of the Fairfax County, Virginia, Circuit Court in the sum of $2,612.00. A trial date for the appeal was originally set for December 5, 2002, but was continued to January 9, 2003. Pending appeal, the Respondent filed a written opposition to a motion filed by the tenant's counsel and responded to discovery propounded by the tenant's counsel.

5. On January 8, 2003, the Respondent injured his back. Due to the nature of his injury, the Respondent could not attend the trial of the matter set for the following day and, accordingly, contacted the Court and the tenant's counsel, who consented to have the matter removed from the Court's trial docket for January 9, 2003.

6. The Respondent failed to take any further action in the matter following January 9, 2003. The Complainant left telephone messages for the Respondent on February 6, June 23, October 17, and October 20, 2003, to which he made no response. The Complainant wrote to the Respondent on September 15, 2003, to which letter he made no response. The Respondent did not communicate with the Complainant until February of 2004, following her institution of a Complaint with the Virginia State Bar.

7. The Circuit Court entered an Order on June 19, 2003, directing the Clerk to disburse bond proceeds in the sum of $359.89 to the Complainant in care of the Respondent and in the sum of $2,186.11 to the tenant. The Respondent did not take any action on the Complainant's behalf to oppose distribution of the bond proceeds to the tenant.

8. The Respondent failed to prosecute Complainant's claim for damages against the tenant and/or co-signer discovered and assessed following the tenant's vacation of the premises, to which the proceeds of the bond could have been applied. Moreover, the Respondent failed to forward the sum of $359.89 to the Complainant following its disbursement to him by the Clerk of the Circuit Court. The Respondent did not advise the Complainant that the aforesaid payment Order had been entered, and the legal implications thereof.

9. The Respondent eventually contacted the Complainant in mid-February, 2004, by sending her a copy of his letter to Virginia State Bar in response to a Bar Complaint that the Complainant had filed. The Respondent at that time offered to resume services to the Complainant or otherwise "honor her request for her file," which file he had not to that point returned to the Complainant.

10. An investigation into these matters conducted by the Virginia State Bar revealed that in negotiating a resolution of subject matter of the Bar Complaint, the Respondent presented the Complainant with a written agreement containing confidentiality provisions, and reciting as consideration for the undertakings contained therein Complainant's "full, complete and permanent withdrawal and dismissal of any and all complaints, present and/or future, or other investigations that may be or will be underway that the [Complainant] may have initiated with the Virginia State Bar with regard to Brian M. Miller . . ."

11. The Respondent also dictated to the Complainant for presentation to the Virginia State Bar the contents of a letter respecting suspension of the Bar's investigation of the Complaint she had filed.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

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

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

(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

(c) A lawyer shall:

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

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

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

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

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

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[.]

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Brian Merrill Miller, Esquire, and he is so reprimanded.

IV. COSTS

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

FIFTH DISTRICT — SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By H. Jan Roltsch-Anoll
Chair/Chair Designate