Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Timothy Martin Barrett	Yorktown, VA	24-Month Sanction	March 28, 2007	2
Khalil Wali Latif	Midlothian, VA	One-Year and One-Day Suspension with Terms	October 28, 2007	3
Disciplinary Board				
Andrew Ira Becker**	Virginia Beach, VA	Two-Year Suspension	June 1, 2007	9
Meek Daniel Clark	Richmond, VA	Five-Year Suspension	January 26, 2007	16
Jeffrey Ellis Gonzalez-Perez	Arlington, VA	90-Day Sanction	April 27, 2007	17
Catherine Ann Lee*	Mechanicsville, VA	Revocation	March 23, 2007	18
John Coury MacDonald	Fairfax, VA	Revocation	March 23, 2007	21
Dennis Michael O'Keefe	Arlington, VA	Revocation	March 23, 2007	27
Andrew Mark Steinberg	Woodbridge, VA	Revocation	May 18, 2007	28
Starr Ilene Yoder	Ivor, VA	One-Year Suspension	March 23, 2007	30
District Committees				
Yvette Anita Ayala	Richmond, VA	Public Reprimand with Terms	June 13, 2007	32
Cynthia Dawn Garris	Norfolk, VA	30-Day Sanction	April 3, 2007	34
Wilber Thurston Harville	Virginia Beach, VA	Public Reprimand with Terms	April 3, 2007	36
Alana Sherrise Powers	Norfolk, VA	Public Admonition without Terms	May 25, 2007	39
Tonja Michelle Roberts	Danville, VA	Public Reprimand with Terms	May 23, 2007	40
Karen Patricia Woolley	Upperville, VA	Public Reprimand	May 11, 2007	42

Interim Suspensions — Failure to Comply with Subpoena

Reuben Voll Greene	Richmond, VA	June 19, 2007	lifted July 12, 2007	n/a
Rebecca Louise Marquez	Arlington, VA	April 11, 2007	lifted April 26, 2007	n/a
Peter Campbell Sackett	Lynchburg, VA	May 15, 2007	lifted June 4, 2007	n/a

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

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

****Virginia Supreme Court decision pending*

VIRGINIA:
IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL.
SECOND DISTRICT COMMITTEE
Complainant
v.
TIMOTHY M. BARRETT, Respondent
VSB DOCKET NUMBERS 04-022-1309
04-022-2179

MEMORANDUM ORDER

Having been remanded to this Court by order of the Supreme Court of Virginia dated October 4, 2006 for consideration of an appropriate sanction for violations of Rules of Professional Conduct 4.4, 8.4(b), 3.1, and 3.4 (j), this cause came to be heard on March 28, 2007, by a duly convened, three-judge court consisting of the Honorable William H. Ledbetter, Retired Judge, the Honorable Randolph T. West, Retired Judge, and the Honorable William N. Alexander, Chief Judge Presiding. The Virginia State Bar appeared by its Assistant Bar Counsel Paul D. Georgiadis. The Respondent, Timothy M. Barrett, was present and appeared *pro se*. Upon the request of the Respondent and agreement of the bar and the Court, this matter was heard in the Circuit Court of York County. On March 28, 2007, the Court convened at 10:00 a.m.

Having previously filed a motion to dismiss, the Respondent argued his motion to dismiss based upon equal protection grounds. The bar opposed the motion. After considering the arguments of the parties, the Court

DENIED the motion, finding that the Respondent waived his argument by failing to raise it on appeal. The Court further found that its mandate is limited to considering the issue of the sanction as ordered by the Supreme Court. The Court further found that the Supreme Court already ruled on the issue when it held that "it would be manifest absurdity and a distortion of these rules if a lawyer representing himself commits an act that violates the rules but is able to escape accountability for such violation solely because the lawyer is representing himself and that the three rules at issue address acts Respondent took while functioning as an attorney." The Court also found that Respondent was representing himself and that the application of the Rules to him did not violate the Fourteenth Amendment of the United States.

Having previously filed a motion to in *limine* as to any new evidence, the Respondent argued said motion, which was opposed by the bar. The bar proffered that it wished to move into evidence Respondent's complete disciplinary record to include a sanction on May 23, 2006, for misconduct pre-dating the misconduct in the instant case. Having received and considered the arguments of the parties, the Court

DENIED Respondent's motion, finding that Pt. 6, Section IV, Paragraph 13(e) of the Rules of Court provided for the admission of material evidence in aggravation or mitigation. The Court found that under Paragraph 13(e) it would consider the evidence of the prior discipline, but would not allow further evidence by the bar.

Thereupon the Court received evidence of the Respondent's prior sanction imposed on May 23, 2006, of a suspension of twenty-six months and twenty-six days.

Thereupon the Respondent moved to limit the bar's sanction argument to no more than the six month suspension previously argued by the bar based upon judicial estoppel. The bar opposed the motion. Upon consideration of the arguments, the Court

OVERRULED Respondent's motion finding that judicial estoppel did not apply.

Thereupon the Respondent renewed his motion to strike the testimony of Hayden DuBay appearing on pages 298-300 of the transcript of the proceedings of August 12, 2005, as non-responsive. The bar opposed the motion. Having considered the arguments of counsel, the Court

OVERRULED the objection.

SANCTION

Having considered the arguments and evidence before it, the Court imposed a sanction of 12 months for the violations of Rules of Professional Conduct 4.4 and 8.4(d) previously found in VSB Docket No. 04-022-1309. For the violations of Rules of Professional Conduct 3.1 and 3.4(j) previously found in VSB Docket No. 04-022-2179, the Court imposed a second sanction of 12 months. The total sanction of a suspension of 24 months, effective March 28, 2007, shall run consecutive to— and not concurrent with— any prior suspension imposed against the Respondent.

The court reporter who transcribed these proceedings is Stefania Smith of Ron Graham & Associates, 5344 Hickory Ridge, Va Beach, VA 23455-6680.

ENTERED April 30, 2007.
William N. Alexander, II
Chief Judge Designate

VIRGINIA:
IN THE CIRCUIT COURT FOR THE COUNTY OF CHESTERFIELD

VIRGINIA STATE BAR
v.
KHALIL WALI LATIF
CASE NUMBER 07-769

ORDER
AGREED DISPOSITION
(1 YEAR AND 1 DAY SUSPENSION WITH TERMS)

On May 31, 2007, this matter came before the Three-Judge Court consisting of The Honorable Aundria Deloris Foster of the Seventh Judicial Circuit, designated as Chief Judge, The Honorable James E. Kulp, Retired Judge of the Fourteenth Judicial Circuit, and The Honorable Walter J. Ford, Retired Judge of the Eighth Judicial Circuit, which was empanelled by designation of the Chief Justice of the Supreme Court of Virginia pursuant to § 54.1-3935 of the Code of Virginia. The parties, the Virginia State Bar, by Assistant Bar Counsel Kathryn R. Montgomery, and the respondent Khalil Wali Latif ("Respondent"), by counsel Thomas H. Roberts, appeared telephonically and presented an Agreed Disposition for approval pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia. The proceedings were recorded by stenographic means by Donna Chandler of Chandler & Halaz, Inc., P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.
The Court, having reviewed the Agreed Disposition and having considered the statements of counsel, hereby approves the Agreed Disposition of the parties and hereby finds by clear and convincing proof the following:

Pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia, Assistant Bar Counsel Kathryn R. Montgomery and Respondent Khalil Wali Latif ("Latif" or "Respondent"), by counsel Thomas H. Roberts, hereby enter into the following Agreed Disposition:

I. FINDINGS OF FACT—FACTUAL STIPULATIONS

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

VSB DOCKET NUMBER 06-031-0572
COMPLAINANT: JUNIOUS MOTTLEY

2. On September 18, 2004, Complainant Junious Mottley was arrested on charges in Nottoway County of unlawful possession of a firearm and shooting into a dwelling.

3. Mr. Mottley retained Respondent to represent him on those charges and his grandmother paid Respondent. According to both Mr. Mottley and Respondent, the total amount paid was $2500.

4. Mr. Mottley understood from Respondent that the amount paid was a flat fee for representation through trial.

5. Respondent met with Mr. Mottley in jail, represented him in a bond hearing, investigated his case, met with witnesses, conferred with the commonwealth attorney in an attempt to resolve the case, prepared for hearings and trial, and appeared at a preliminary hearing on Mr. Mottley's behalf. A bench trial was set for December 22, 2004. On the date of the trial, after Respondent had prepared for the trial, Mr. Mottley requested and Respondent moved on his behalf for a jury trial and the matter was continued to January 31, 2005, for a jury trial.

6. On January 28, 2005, Respondent was suspended from the practice of law for two years. The suspension was imposed, effective immediately, following a show cause hearing before the Virginia State Bar Disciplinary Board. Respondent was present for the pronouncement of the sanction.

7. Subsequent to Respondent's suspension, new counsel was appointed for Mr. Mottley and his trial was continued to June 20, 2005.

8. Mr. Mottley asked Respondent for a refund and Mr. Mottley claims Respondent said he would refund a portion of his fee. Respondent denied this allegation.

9. Respondent did not refund any portion of his fee to Mr. Mottley or his grandmother.

[Applicable rule violations: Rule 1.15(c)(4) and 1.16(d)]

VSB DOCKET NUMBER 06-031-0876
COMPLAINANT: PHYLLIS SMITH

10. Respondent represented Complainant Phyllis Smith's son, Michael Jones, a/k/a Rakim Shabazz, for various charges related to a break-in occurring in Campbell County in September 2002.

11. Mr. Jones was found guilty of statutory burglary and sentenced in or about July 2004.

12. Respondent subsequently noted an appeal to the Court of Appeals of Virginia on Mr. Jones's behalf.

13. On January 21, 2005, the Court of Appeals denied the appeal.

14. On January 28, 2005, Respondent was suspended from the practice of law for two years. The suspension was imposed, effective immediately, following a show cause hearing before the Virginia State Bar Disciplinary Board. Respondent was present for the pronouncement of the sanction.

15. On February 4, 2005, Respondent, acting as legal counsel for Mr. Jones, filed a Petition for Rehearing by a Three-Judge Panel with the Court of Appeals of Virginia.

[Applicable rule violation: Rule 5.5(a)(1)]

VSB DOCKET NUMBER 06-031-2091
COMPLAINANT: PENNY TAYLOR

16. In November 2004, Complainant Penny Taylor's brother, James Moorefield, was charged in Cumberland County for manufacturing marijuana and unlawful firearms possession. Mr. Moorefield was later indicted on several firearms charges in the United States District Court for the Western District of Virginia.

17. Mr. Moorefield retained Respondent to represent him in the state and federal cases. Mr. Moorefield advised the Bar that Respondent's fee was $3500 per case; however, Respondent told the Bar his fee was $3500 total to handle both cases.

18. Mr. Moorefield's employer, BAWCO, Inc., paid Respondent $3500 by check dated December 16, 2004.

19. Respondent did not maintain a subsidiary ledger for his representation of Mr. Moorefield.

20. On January 5, 2005, Mr. Moorefield and Complainant Penny Taylor appeared for a hearing in federal court. Respondent had not made an appearance for Mr. Moorefield in federal court. On the way to federal court, Mr. Moorefield called Respondent, who returned Mr. Moorefield's call, and advised him that he had not been engaged to represent him in federal court, but that he would make an appearance upon admission to that court and thereforesaid he would not be present in federal court. At the hearing, Judge Moon advised Mr. Moorefield that Respondent was not admitted to practice in the Western District of Virginia.

21. After the hearing, Mr. Moorefield told Respondent what the judge had said. Respondent responded that he would take steps to be admitted.

22. On January 20, 2005, Mr. Moorefield and Respondent appeared in federal court on the federal charges. Respondent, however, was concerned that Judge Moon was biased against him, based upon statements made to him during the hearing, and that said bias might detrimentally impact his client, and therefore admonished Respondent for not being admitted to practice in the Western District of Virginia. Respondent withdrew from the representation and the court continued the hearing. Another attorney was later appointed to represent Mr. Moorefield on the federal charges.

23. After Respondent withdrew from the representation in federal court, he did not refund any portion of the $3500 fee paid, nor did Mr. Moorefield request a refund. At this time, Mr. Moorefield considered the $3500 paid as payment in full for Respondent's representation of him in the state court proceedings.

24. Respondent appeared at one hearing in Cumberland County on behalf of Mr. Moorefield.

25. On January 28, 2005, Respondent was suspended from the practice of law for two years. The suspension was imposed, effective immediately, following a show cause hearing before the Virginia State Bar Disciplinary Board. Respondent was present for the pronouncement of the sanction.

26. Thereafter, Respondent and Mr. Moorefield met and Respondent told him that attorney Bernice Turner would take over the Cumberland County representation. Mr. Moorefield agreed.

27. Respondent did not refund to Mr. Moorefield any portion of the $3500 fee paid, nor did he transfer any portion of that amount to Bernice Turner.

[Applicable rule violation: Rule 1.16(d)]

VSB DOCKET NUMBER 06-031-2272
COMPLAINANT: TYREE VAUGHAN

28. In October or November of 2004, Complainant Tyree Vaughan retained Respondent to represent him in Nottoway County on charges of assault and battery and destruction of property.

29. On or about November 5, 2004, Mr. Vaughan paid Respondent $1000 for the representation. Mr. Vaughan understood from Respondent this payment was a flat fee for representation through trial.

30. Respondent met with Mr. Vaughan numerous times, interviewed witnesses, and appeared at two hearings on Mr. Vaughan's behalf, (the second hearing Mr. Vaughan failed to appear and a capias was issued). Mr. Vaughan's trial was set for February 2005.

31. On January 28, 2005, Respondent was suspended from the practice of law for two years. The suspension was imposed, effective immediately, following a show cause hearing before the Virginia State Bar Disciplinary Board. Respondent was present for the pronouncement of the sanction.

32. In February 2005, while in court after having been found and arrested on the capias, Mr. Vaughan learned of Respondent's suspension when the Commonwealth's Attorney so advised the judge. Another attorney was then appointed by the Court to represent Mr. Vaughan.

33. Mr. Vaughan subsequently spoke with Respondent and requested a refund. Mr. Vaughan claims Respondent agreed to refund $600. Respondent agreed to refund $500. However, Respondent did not refund any money to Mr. Vaughan.

[Applicable rule violations: Rule 1.15(c)(4) and 1.16(d)]

VSB DOCKET NUMBER 06-031-3338
COMPLAINANT: VIRGINIA STATE BAR

34. On January 28, 2005, Respondent was suspended from the practice of law for two years. The suspension was imposed, effective immediately, following a show cause hearing before the Virginia State Bar Disciplinary Board. Respondent was present for the pronouncement of the sanction.

35. Prior to Respondent's suspension, he charged clients a flat fee of $709 to file a sole debtor Chapter 7 bankruptcy and a flat fee of $909 for a joint debtor Chapter 7 bankruptcy.

36. On January 28, 2005, Sharon Waters wrote Respondent a check in the amount of $909 to initiate a bankruptcy. The check number was 141.

37. Using a deposit slip dated January 28, 2005, Respondent deposited Ms. Waters' $909 check into his trust account, referencing the matter as #001280A. Respondent's bank credited his trust account with $909 on February 2, 2005.

38. On February 4, 2005, Respondent wrote himself a check from the trust account in the amount of $1025, and referenced $200 of that amount was for matter #001280A, Ms. Waters' case, which Respondent contended he earned while his license was not suspended.

39. On February 11, 2005, Respondent wrote himself a check from the trust account for $600, and referenced that $300 of that amount was for matter #001280A, Ms. Waters' case, which Respondent contended he earned while his license was not suspended.

40. On May 27, 2005, attorney Bernice Stafford Turner filed a bankruptcy petition for Ms. Waters. The filing fee of $209 was paid by either Respondent or Ms. Turner from the $909 Respondent had collected from Ms. Waters.

41. Other than the filing fee, Respondent did not refund to Ms. Waters or transfer to Ms. Turner any of the remaining funds Ms. Waters had paid Respondent.

42. On January 27, 2005, Andrew Woodson met with Respondent and wrote him a check numbered 1721 in the amount of $709 to initiate a bankruptcy. Prior to this meeting, Mr. Woodson had met with Respondent once, but had not provided him with any documentation needed for filing bankruptcy.

43. Using a deposit slip dated January 27, 2005, Respondent deposited Mr. Woodson's check into his trust account, referencing the matter as #00203A. Respondent's bank credited his trust account with $709 on February 4, 2005.

44. On February 4, 2005, Respondent wrote himself a check from the trust account in the amount of $1025, and referenced that $200 of that amount was for matter #00203A, Mr. Woodson's case, which Respondent contended he earned while his license was not suspended.

45. On February 11, 2005, Respondent wrote himself a check from the trust account for $600, and referenced that $300 of that amount was for matter #00203A, Mr. Woodson's case, which Respondent contended he earned while his license was not suspended.

46. On March 31, 2005, attorney Bernice Stafford Turner filed a bankruptcy petition for Mr. Woodson. The filing fee of $209 was paid by either Respondent or Ms. Turner from the $909 Respondent had collected from Mr. Woodson.

47. Other than the filing fee, Respondent did not refund to Mr. Woodson or transfer to Ms. Turner any of the remaining funds Mr. Woodson had paid Respondent.

48. As of April 29, 2005, Respondent's trust account had a balance of $4.31.

[Applicable rule violation: Rule 1.16(d)]

II. RULES OF PROFESSIONAL CONDUCT

Based upon the factual findings above, the Court finds by clear and convincing evidence that Respondent violated the following Rules of Professional Conduct. Assistant Bar Counsel and the Respondent stipulate to violations of the following Rules of Professional Conduct:

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 1.16 Declining Or Terminating Representation

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

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

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

III. DISPOSITION

It is hereby ORDERED that Respondent's license to practice law be suspended. Accordingly, Assistant Bar Counsel and Respondent Khalil Wali Latif tender to the Court for its approval the Agreed Disposition of a One-Year and One-Day Suspension, and that the suspension begin on with Terms as representing an appropriate sanction if these matters were to be heard in an evidentiary hearing by the panel. The parties agree that the suspension imposed herein would begin on or about October 28, 2007, and end October 29, 2008. The following terms apply:

1. Respondent Khalil Wali Latif shall remit the following amounts to the following persons by August 1, 2007:

- $750 to Gratna Taylor, grandmother of complainant and former client of Respondent Junious Mottley,
- $1250 to James Moorefield, brother of complainant Penny Taylor and former client of Respondent, made payable to "James Moorefield or Penny Taylor, Power of Attorney for James Moorefield" and mailed to Penny Taylor,
- $500 to complainant and former client of Respondent, Tyree Vaughan, and
- $400 to Lisa Scruggs, former client of Respondent and complainant in Virginia State Bar Docket Number 07-031-2414.

Time is of the essence with regard to payment of these amounts.

2. All terms previously agreed to and ordered by the Virginia State Bar Disciplinary Board in its Order of June 30, 2006, remain in effect.

If, however, Respondent fails to meet these terms within the time specified, Respondent agrees that Revocation is the alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Virginia State Bar Disciplinary Board will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

In consideration of this Agreed Disposition, the Virginia State Bar agrees to dismiss Virginia State Bar docket numbers 07-031-2414 (complainant: Scruggs) and 07-031-070375 (complainant: Stropp) by August 31, 2007, unless the parties agree, however, that these cases will not be dismissed if Respondent fails to timely comply with the terms set forth above. The Virginia State Bar is hereby ORDERED to comply with this agreement.

It is further ORDERED that this case, which includes Virginia State Bar docket numbers 06-031-0532, 06-031-0876, 06-031-2091, 06-031-2272, and 06-031-3338, is hereby DISMISSED.

It is further ORDERED that upon approval of this Agreed Disposition by the Court, the Clerk of the Disciplinary System shall assess the appropriate administrative fees, and the Clerk of the Circuit Court of Chesterfield County shall mail a certified copy of this Order to:

Khalil Wali Latif
P.O. Box 5300
Midlothian, VA 23112

Kathryn R. Montgomery
Assistant Bar Counsel
Virginia State Bar
707 E. Main Street
Ste. 1500
Richmond, VA 23219

Thomas H. Roberts, Esquire
105 South First Street
Richmond, VA 23219

Barbara S. Lanier, Clerk of the Disciplinary System
Virginia State Bar
707 E. Main Street
Ste. 1500
Richmond, VA 23219

Pursuant to Rule 1:13 of the Rules of Court, the Court dispenses with the requirement that all counsel of record endorse this Order. ENTERED THIS 12th DAY OF June, 2007.

Aundria Deloris Foster,
Chief Judge

Khalil Abdul Latif, fka Khalil Wali Latif
Respondent

Thomas H. Roberts
Counsel for Khalil Wali Latif

Kathryn R. Montgomery
Assistant Bar Counsel
Virginia State Bar

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ANDREW IRA BECKER
VSB DOCKET NUMBER 04-021-2662
04-021-3554
06-021-1176

ORDER AMENDED

THIS MATTER came before the Virginia State Bar Disciplinary Board pursuant certifications of a Subcommittee of the Second District Disciplinary Committee of the Virginia State Bar. The hearing was held on May 18, 2007, at 9:00 a.m., at the General Assembly Building, House Room D, 10 Capitol Square, Richmond, Virginia 23219. The Board consisted of Peter A. Dingman, Chair, Dr. Theodore Smith, Lay Member, William C. Boyce, Jr., Joseph R. Lassiter, Jr., and John W. Richardson. The Virginia State Bar was represented by Assistant Bar Counsel Edward L. Davis, and Mr. Becker was represented by Michael L. Rigsby. Mr. Becker was present as well. The proceedings were reported by Tracy J. Johnson of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222.

Chair Dingman convened the hearing at 9:00 a.m., both parties indicating they were ready to proceed. Chair Dingman polled the Panel as to whether any conflicts or biases existed that would prevent them from hearing the matter fairly and objectively. All members answered in the negative, including the Chair.

State Bar Exhibits 1 through 29 were admitted without objection, and the parties agreed to the admission of a stipulation of fact as well as rule violations. The parties stipulated to the following:

I. STIPULATIONS OF FACTS

1. During all times relevant hereto, except as otherwise noted, the Respondent, Andrew Ira Becker, was an attorney licensed to practice law in the Commonwealth of Virginia.

VSB DOCKET NUMBER 04-021-2662
COMPLAINANT: MICHAEL L. METZNER, ESQUIRE

2. On February 15, 2002, Mr. Becker entered into an agreement with the law firm of Marcus W. Corwin, P.A. of Boca Raton, Florida, to serve as local counsel for Corwin's client, National Satellite Sports, in some claims alleging the unauthorized exhibition of televised boxing matches by some Virginia businesses.

3. On March 15, 2002, Mr. Becker entered into a similar agreement on behalf of That's Entertainment, Inc., also proposed by the law firm of Marcus W. Corwin.

4. Attorney Michael L. Metzner of the Corwin law firm and Secure Signal, Inc. made the arrangements with Mr. Becker in these matters.

5. In furtherance of these agreements, on June 26, 2002, Mr. Becker filed suit in the United States District Court for the Eastern District of Virginia, Norfolk Division, against an establishment known as Night Moves. On August 26, 2002, he filed suit in the Alexandria Division against Coco's Sports Bar.

6. Mr. Becker notified Mr. Metzner about the filing of the lawsuits, and submitted quarterly status reports. By letter dated September 25, 2002, he informed Mr. Metzner that he had obtained service on Coco's, and by letter dated October 29, 2002, responded to Mr. Metzner's inquiry about costs. Telephonic contact was regular up until March 2003. Thereafter, Mr. Becker became unresponsive to Mr. Metzner's inquiries.

7. By order entered February 20, 2003, the U. S. District Court, Alexandria, dismissed the Coco's case without prejudice. The reason for the dismissal was the plaintiff's failure to comply with the court's instructions to file pleadings required for the entry of default judgment. Mr. Becker did not inform Mr. Metzner or the client about this development.

8. In the Night Moves case, Mr. Becker and opposing counsel endorsed a Stipulation of Dismissal of the case, which was filed in the U. S. District Court, Norfolk, on April 3, 2003, and subsequently entered by the court. Mr. Becker sought neither Mr. Metzner's nor the client's consent to dismiss the matter, and did not inform either of them about this action.

9. By facsimile dated October 9, 2003, Mr. Becker apologized to Mr. Metzner for the way that he handled the cases, saying that he had his "head in the sand," that he should have withdrawn from the Coco's case because of the distance involved and that he should have sought more help in the Night Moves case. He closed by saying that:

   Fortunately, as I am sure you know by now through your own efforts, no case was dismissed with prejudice and liability was actually established in the Coco's file.

   and

   I do stand ready to help in any way I can, including entering into a substitution of counsel order.

10. Thereafter, when Mr. Metzner inquired about the status of the cases, he received no response from Mr. Becker.

11. By letter dated October 15, 2003, sent by facsimile and regular mail, Mr. Metzner requested clarification from Mr. Becker about his letter of October 9, 2003, but Mr. Becker did not respond.

12. Mr. Becker having failed to respond, Mr. Metzner sent a second request by facsimile on November 5, 2003, attaching a copy of his previous request. Mr. Becker again failed to respond.

13. On November 12, 2003, Mr. Metzner left a telephone message for Mr. Becker to contact him, but Mr. Becker did not respond.

14. Mr. Becker having failed to respond again, Mr. Metzner made a third written request for an update by facsimile on November 25, 2003, but Mr. Becker did not respond.

15. On December 1, 2003, Mr. Becker's license to practice law in Virginia was suspended for a period of 120 days. This was by agreement between Mr. Becker and the Virginia State Bar, which was accepted by the Virginia State Bar Disciplinary Board on October 16, 2003.

16. Mr. Becker did not inform Mr. Metzner or anyone at the Corwin law firm about the pending suspension of his law license.

17. On August 18, 2004, having heard that Mr. Becker's license to practice law may have been suspended, Marcus W. Corwin wrote to Mr. Becker to inquire about whether he had been suspended from the practice of law. Mr. Becker did not respond.

18. Mr. Becker having failed to respond again, Mr. Corwin wrote to him a second time on August 30, 2004, but Mr. Becker did not respond.

II. STIPULATIONS AS TO RULE VIOLATIONS

(Metzner Complaint)

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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

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

RULE 3.4 Fairness to Opposing Party And Counsel

A lawyer shall not:

(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.

I. STIPULATIONS OF FACT (Continued)

VSB DOCKET NUMBER 04-021-3554
COMPLAINANT: VSB/ANONYMOUS

19. During 1999, East Coast Building Supply Corporation, trading as Lumber City, filed for protection under Chapter 11 of the United States Bankruptcy Code.

20. On January 4, 2000, the United States Bankruptcy Court for the Eastern District of Virginia, Norfolk Division, entered an order authorizing the employment of Becker, Russell & Becker, P.L.C. to serve as special collection counsel for Lumber City to collect its accounts receivable, and to prosecute its mechanic's lien rights.

21. During the course of the next 3–4 years, Mr. Becker collected on the accounts as ordered, withholding approximately sixty-five thousand dollars ($65,000.00) in attorney's fees while doing so.

22. Although the Order authorized Mr. Becker to deduct fees from collections prior to remittance, it also required him to submit a fee application to the Court for its review.

23. Mr. Becker having not done this, and with the time for concluding the case approaching, Lumber City's attorney chose to make the application herself.

24. By letter dated October 7, 2002, Lumber City's attorney asked Mr. Becker to provide as detailed an accounting as possible of his total collections and fees claimed so that Lumber City could make proper application to the court and finalize the case.

25. By letter dated December 18, 2002, Mr. Becker provided Lumber City's attorney with information concerning his collection efforts.

26. Lumber City's counsel found the information inadequate because it did not clearly show how much money Mr. Becker had collected for Lumber City.

27. Accordingly, on March 10, 2003, Lumber City's attorney filed a motion for the court to conduct a hearing to determine whether Becker, Russell & Becker should be allowed the compensation claimed by Mr. Becker.

28. After a series of hearings, Mr. Becker did not produce records acceptable to the court.

29. Thereafter, on January 7, 2004, the court entered an order requiring counsel for the debtor to engage the services of an independent certified public accountant to perform an audit/review of the receipts and disbursements of estate funds by Mr. Becker's firm to enable the court to make a reasoned determination as to the use and disposition of estate funds by the Becker firm.

30. On February 24, 2004, the accounting firm of BR Management Services filed its report, after having had to reconstruct Mr. Becker's ledgers.

31. On May 28, 2004, having found that the Becker firm violated each order entered by the Court with respect to employment, compensation, accounting and reporting by the Becker firm, and having found further that the inability of the Becker firm to account for

funds and collection matters turned over to it reduced the benefit to the estate, the United States Bankruptcy Court for the Eastern District of Virginia, Norfolk Division, entered an order permanently barring Mr. Becker from service as counsel before that court in any capacity, including the filing of proofs of claim, with leave to seek reinstatement after April 8, 2005.

32. The Court also ordered Mr. Becker to pay sanctions to the estate in the amount of $12,763.25.

33. Mr. Becker acknowledged to the bar's investigator that he did a "lousy job of accounting."

34. Notwithstanding the order, on June 3, 2004, one of Mr. Becker's associates filed a proof of claim in a bankruptcy matter that bore Mr. Becker's electronic signature.

35. As a result of the filing of this proof of claim, on August 3, 2004, the court entered a rule for Mr. Becker to appear on August 26, 2004, and show cause why he should not be held in contempt, barred from practicing before the court or other appropriate sanction for violation of a valid order of the court.

36. On August 26, 2004, the hearing commenced as scheduled. Mr. Becker, however, though duly noticed, did not appear. On September 1, 2004, the Court entered an order finding that Mr. Becker had violated the May 28, 2004, Order by signing a proof of claim that was filed with the Court, and imposed an additional sanction of $5,000.00 against Mr. Becker.

37. The Court also found Mr. Becker in violation of the May 28, 2004, order because he had not yet made the initial $1,000.00 payment on the sanctions order.

38. Mr. Becker explained to the bar that he did not intentionally fail to appear at the hearing, but that he overlooked it, and did not calendar it.

39. The presiding judge's clerk, however, called Mr. Becker after the hearing. Mr. Becker asked if he could file a motion to reconsider, and the Court informed him that he could. Mr. Becker, however, never did so.

40. By letter dated June 15, 2004, the bar informed Mr. Becker of this complaint and demanded that he furnish a response to the bar in accordance with Rule 8.1(c) of the Rules of Professional Conduct.

41. Mr. Becker, however, never filed a response and explained to the bar's investigator that he did not know why he did not respond to the bar complaint because he was aware of it.

II. STIPULATIONS AS TO RULE VIOLATIONS

(VSB/Anonymous Complaint)

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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

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

RULE 3.4 Fairness to Opposing Party And Counsel

A lawyer shall not:

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

RULE 8.1 Bar Admission and Disciplinary Matters

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

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

I. STIPULATIONS OF FACT (Continued)

VSB DOCKET NUMBER 06-021-1176
COMPLAINANT: GERALD A. HAINSWORTH

42. On or about January 12, 2004, Gerald A. Hainsworth obtained a default judgment against Shanna Kay Ferguson in the amount of $3,807.24.

43. The following year, having received no payment, Mr. Hainsworth hired Mr. Becker to collect the judgment, and sent him a check in the amount of $150.00 to cover expenses.

44. On July 11, 2005, Mr. Hainsworth inquired about the status of the matter by e-mail. Mr. Becker promptly replied, informing Mr. Hainsworth that he had opened a case file, that he had been trying to contact the debtor by telephone, but having been unable to contact her, would make a written demand.

45. On July 25, 2005, Mr. Becker sent a demand letter to the judgment debtor, although he did not inform his client at the time.

46. Mr. Becker's records also reflect automated searches for the judgment debtor on June 23, 2005, and April 25, 2006.

47. On September 12, 2005, having heard nothing further about the status of the matter, Mr. Hainsworth sent an e-mail inquiry to Mr. Becker. Mr. Becker, however, did not respond.

48. On September 19, 2005, Mr. Hainsworth sent another e-mail inquiry, asking about the status of the matter, and noting that his check had been cashed. Mr. Becker, however, failed to respond again.

49. Having received no response, on September 23, 2005, Mr. Hainsworth sent a third e-mail inquiry to Mr. Becker, who still did not respond.

50. On September 26, 2005, Mr. Hainsworth sent Mr. Becker a fourth e-mail inquiry that read:

    This is my fourth e-mail with no reply. I have left a message on your voicemail, which has also been ignored. If this e-mail goes without response I will be taking the issue to your governing body. Deplorable behavior from a supposed professional.
    Please advise . . . the check I sent you has been cashed but no word of progress from your office.

51. Nonetheless, Mr. Becker still did not respond to the e-mail or to Mr. Hainsworth's telephone message. Accordingly, on September 27, 2005, Mr. Hainsworth complained to the Virginia State Bar.

52. Mr. Hainsworth sent another e-mail inquiry to Mr. Becker on October 3, 2005, who responded this time on October 5, 2005, saying that he had been doing updated skip searches every thirty days but had not found a new address.

53. On October 14, 2005, the bar sent the complaint to Mr. Becker at his address of record with the Virginia State Bar, along with its standard cover letter demanding a response in accordance with Rule 8.1(c) of the Rules of Professional Conduct.

54. Mr. Becker did not respond to the bar complaint. Accordingly, on December 15, 2005, the bar referred the matter to the Second District Committee for a more detailed investigation and informed Mr. Becker by letter of the same date.

55. During an interview with Virginia State Bar Investigator Eugene L. Reagen on April 25, 2006, Mr. Becker explained that he did not respond to the bar complaint immediately because he wanted to consult with counsel, that he had every intention of hiring counsel who would submit an answer, and that he knew that he would be meeting with the bar's investigator.

56. In support of this position, Mr. Becker mentioned the fact that he had cancelled a previous appointment with VSB Investigator Reagan scheduled for January 26, 2006, in anticipation of hiring counsel. The bar, however, had already referred the matter for investigation on December 15, 2005, when Mr. Becker did not respond to the bar complaint.

57. By letter dated April 25, 2006, near the end of the bar's investigation, Mr. Becker informed his client of the work that he had done on his behalf and his inability to locate the debtor. He closed the letter by offering to continue working for Mr. Hainsworth or refund his $150.00 and apologized for "the inconvenience regarding communication."

58. On his client's request, Mr. Becker issued a refund.

II. STIPULATIONS AS TO RULE VIOLATIONS

(Hainsworth Complaint)

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

RULE 1.4 Communication

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

RULE 8.1 Bar Admission and Disciplinary Matters

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

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

SANCTION

Following the admission of the Stipulations, the hearing proceeded directly to the sanction phase.

The Bar offered one Exhibit in aggravation consisting of Mr. Becker's disciplinary record. Mr. Becker received a Dismissal *de minimus* on October 19, 1991, a 120-day Suspension with Terms effective December 1, 2003, and a Dismissal for Exceptional Circumstances effective April 26, 2007. The circumstances of the 1991 Dismissal *de minimus* were not apparent, however, a letter included in the Bar's Exhibit to the complainant in the matter indicates that the alleged misconduct was clearly not of sufficient magnitude to warrant disciplinary action and that the respondent had taken reasonable precautions against a recurrence of the same. The 2007 dismissal for exceptional circumstances involved Mr. Becker's failure to cooperate in responding to the Bar's subpoena duces tecum. Mr. Becker eventually responded although late. For this reason, the matter was dismissed for exceptional circumstances. The 2003 120-day suspension with terms, however, involved circumstances similar to those in this case. In summary, the case involved neglect relating to five separate complainants.

Mr. Becker called three witnesses during the sanctions phase: himself, Jency Collins, and Sidney Becker.

Mr. Andrew Becker testified that he originally began working as a lawyer with his brother, Jon Becker, in 1989. In 1999, Jon Becker became ill and left the practice on a medical disability. Andrew Becker, as a result, was thrust into an administrative position with no experience.

Mr. Becker also testified that his father died when he was ten years of age and that he has never been a person who sought help. He acknowledged that he cannot point to alcohol, drugs, or any substance abuse to explain his neglect.

Mr. Becker testified that he saw a psychologist, Dr. Siegel, for anxiety following his brother's illness and departure from the practice. He continues to visit Dr. Siegel periodically.

Mr. Becker also testified that he has not paid the bankruptcy sanctions imposed by the Federal Court.

Mr. Becker called Jency Collins to the stand. Ms. Collins testified that she has worked for Mr. Becker since January 2006 in a staff capacity. She said that she was aware of no neglect or failure to communicate complaints during her employment.

The next witness was Sidney Becker, the respondent's older brother. Sidney Becker testified that he has always been close to his brother, Andrew. When asked if he could provide any insight as to Andrew's apparently inexplicable behavior, Mr. Sidney Becker testified that he thought his brother developed a pattern of denial owing to their father's early death. He considers his brother a very likable and honest person.

Finally, two letters were submitted on Mr. Becker's behalf: one from Shari S. Patish, a lawyer in Chesapeake, Virginia, and one from Dr. William H. Simon, a doctor in Virginia Beach, Virginia. Both Ms. Patish and Dr. Simon expressed a high regard for Mr. Becker's personal integrity.

Following closing arguments, the Board withdrew to determine the appropriate sanction.

The Board finds several aspects of this case to be aggravating. Mr. Becker has a pattern of neglect as is evidenced not only by the multiple complainants but by the prior finding of misconduct. In addition, Mr. Becker is an experienced practitioner. Mr. Becker's neglect even extended to his initial failure to cooperate with the Bar in prosecuting this case.

Nevertheless, there are several mitigating factors of which the Board took note. There is no hint in this case of a selfish motive. This case in no way involves fraud, deceit, or dishonesty. The Board has no reason to question Mr. Becker's witnesses' high regard for his integrity. The Board also took note of the fact that Mr. Becker eventually was very cooperative with the Bar. The Bar had given notice of its intent to call numerous witnesses, some of whom would have come from out of state. Had the Bar done so, the hearing would probably have taken at least two days. Mr. Becker's eventual cooperation with the Bar served to benefit all, particularly the Bar's witnesses.

The Board remains puzzled as to the reason for Mr. Becker's pattern of neglectful behavior. While both Mr. Becker and his brother alluded to their father's death as a possible factor, neither witness was able to support the opinion very well. Notably, Mr. Becker has seen a psychologist for some time yet there was no testimony from the psychologist nor was there a letter which would indicate that Mr. Becker's neglect was in some way connected to his father's death. The Board simply is not persuaded that the death of one's father necessarily leads to such behavior, and in any case, the behavior must be addressed and corrected. After considering the evidence and the argument of the parties, the Board finds that an appropriate sanction is a two-year suspension, effective June 1, 2007.

DUTIES OF THE RESPONDENT

It is ORDERED that, as directed in the Board's Summary Order in this matter, a copy of which was served on Respondent by certified mail, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M., of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from June 1, 2007, the effective date of the Summary Order. All issues concerning the adequacy of the notice and arrangements required by the Summary Order and/or this Memorandum Order shall be determined by the Board.

It is further ordered pursuant to Paragraph 13.B.8.c.1 of the Rules of the Supreme Court of Virginia that the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is finally ordered that the Clerk of the Disciplinary System shall forward a copy of this order, by certified mail, return receipt requested, to the Respondent, Andrew Ira Becker, at his address of record with the Virginia State Bar, 4164 Virginia Beach Boulevard, Suite 200, Virginia Beach, Virginia 23452, by regular mail to Michael L. Rigsby, Respondent's Counsel, at Carrell, Rice & Rigsby, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226, and hand delivered to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

AMENDED and ENTERED this 11th day of June, 2007.

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

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
MEEK DANIEL CLARK,
VSB DOCKET NUMBER 07-000-2170

ORDER (SUSPENSION OF 5 YEARS)

On March 23, 2007, a duly convened 5-member panel of the Virginia State Bar Disciplinary Board consisting of Robert E. Eicher, Esquire, Chair, Dr. Theodore Smith, Lay Member, Joseph R. Lassiter, Jr., Esquire, William H. Monroe, Jr., Esquire, and Rhysa G. South, Esquire, met and heard the Agreed Disposition of the parties, Respondent Meek Daniel Clark ("Mr. Clark" or "the Respondent"), by counsel Michael L. Rigsby, and the Virginia State Bar, by Assistant Bar Counsel Kathryn R. Montgomery. 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 that would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Teresa McLean, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (telephone: 804-730-1222), after being duly sworn, reported the hearing and transcribed the proceedings. The Board considered the Agreed Disposition as a joint stipulation of the parties and thereafter pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of the Supreme Court of Virginia accepted the parties proposed Agreed Disposition as follows.

STIPULATION OF AGREED FACTS

1. On December 18, 2006, Mr. Clark pled NOLO CONTENDERE to taking Indecent Liberties with a Minor, in violation of Virginia Code Section 18.2-370, in the Circuit Court of the County of Chesterfield, Case No. CR06F01807-01. Mr. Clark received a sentence of five (5) years, suspended for ten (10) years and was placed under supervised probation for an indefinite period of time.

2. As a consequence of his plea of NOLO CONTENDERE, the license of M. Daniel Clark to practice law was suspended by the Virginia State Bar Disciplinary Board (the "Board") pursuant to the Rules of Court, Part 6, § IV, Paragraph 13.I.5.b. on January 26, 2007, and he was required to show cause why his license to practice law should not be revoked.

3. The incident that resulted in the plea of NOLO CONTENDERE occurred sometime between in or about June 1, 1976, and December 31, 1976, thirty (30) years before it was reported.

4. M. Daniel Clark cooperated fully, without counsel and without reservation, when the incident was made known to the Chesterfield County authorities in or about September 2006.

5 Mr. Clark has no history of criminal conduct of any kind.

6. Mr. Clark was licensed to practice law in Virginia on September 24, 1976, and practiced law continuously since that time without incurring a disciplinary record until his January 26, 2007, suspension.

7. Mr. Clark was not required to serve any active time in prison, but his freedom is limited by the breadth of his Conditions of Probation. The Conditions of Probation place no limitation on Mr. Clark's ability to work and he continues to remain gainfully self-employed.

STIPULATION OF AGREED DISPOSITION

Based on the foregoing, the parties stipulated that a suspension of Mr. Clark's license for a period of five (5) years was appropriate, with Mr. Clark liable for the payment of costs which the Clerk of the Disciplinary System shall assess against him.

III. DISPOSITION

The Board hereby approves the Agreed Disposition and ORDERS that:

The Respondent's license to practice law in the Commonwealth of Virginia be and hereby is suspended for a period of five (5) years beginning January 26, 2007.

It is further ORDERED that, as directed in the Board's January 26, 2007, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of suspension, 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 Building 3, Suite A, 10043 Midlothian Turnpike, Richmond, Virginia 23235-4856, by regular mail to Michael L. Rigsby, Respondent's Counsel, at Forest Plaza II, Suite 310, 7275 Glen Forest Drive, Richmond, Virginia 23226, and to Kathryn R. Montgomery, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 20th DAY OF April, 2007.

Robert E. Eicher, Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

JEFFREY ELLIS GONZALEZ-PEREZ
VSB DOCKET NUMBER 07-000-2848

ORDER

This matter came before the Virginia State Bar Disciplinary Board pursuant to Part Six, Section IV, Paragraph 13.I.7 of the Rules of the Supreme Court of Virginia,

"Proceedings Upon Disbarment, Revocation, or suspension in Another Jurisdiction". On March 28, 2007, the Disciplinary Board issued a Rule to Show Cause to Jeffrey Ellis Gonzalez-Perez in which it was alleged that Mr. Gonzalez-Perez's license to practice law in the District of Columbia had been suspended for a period of ninety (90) days, effective March 1, 2007, and in which Mr. Gonzalez-Perez was required to show cause why the Board should not impose the same discipline. The hearing was held on April 27, 2007, in Lewis F. Powell, Jr., U.S. District Courthouse, 1000 East Main Street, Tweed Courtroom, 4th Floor, Richmond, Virginia 23219, at 9:00 a.m. The Disciplinary Board Panel consisted of James L. Banks, Jr., 1st Vice Chair; David R. Schultz, John W. Richardson, Rhysa Griffith South, and Stephen A. Wannall (lay member). The Bar was represented by Assistant Bar Counsel Marian L. Beckett, and the Respondent did not appear and was not represented by counsel. The proceedings were recorded by Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227 (804) 730-1222. Chairman Banks convened the hearing and polled the Panel as to whether any conflicts or biases existed that would prevent them from hearing the matter fairly and objectively. All members answered in the negative, including the Chair.

It being apparent that Mr. Gonzalez-Perez was not present, Chair Banks asked the Clerk to call Mr. Gonzalez-Perez's name three times in the hall. The Clerk did so with no response.

Ms. Beckett then informed the Board that she had spoken with Mr. Gonzalez-Perez and that he did not plan to attend the hearing.

Evidence was then presented by the State Bar consisting of a certified copy of an Order of the District of Columbia Court of Appeals in which the Court suspended Mr. Gonzalez-Perez's license to practice law for ninety (90) days. The Virginia State Bar also introduced the Respondent's disciplinary record in Virginia as well as his Virginia State Bar membership status.

The Board finds as follows:

1. All notices required by the Rules of the Supreme Court were issued and properly served. Mr. Gonzalez-Perez's license to practice law was suspended by the District of Columbia Court of Appeals effective March 1, 2007.
2. The Court's ruling was final.
3. Mr. Gonzalez-Perez presented no evidence that would establish that (i) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process; (ii) the imposition by the Board of the same discipline, upon the same proof, would result in a grave injustice; or (iii) the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

Accordingly, the Board hereby suspends Respondent's license law in the Commonwealth of Virginia for period of (90) days under the same conditions as enumerated in the Order of the District of Columbia Court of Appeals, effective April 27, 2007.

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

COSTS

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent, Jeffrey Ellis Gonzalez-Perez, at his addresses of record with the Virginia State Bar, 2111 Wilson Boulevard, Suite 700, Arlington, VA 22201 and the alternate address at 2300 Lee Highway, #102, Arlington, Virginia 22201, by certified mail, return receipt requested, and by regular mail to Marian L. Beckett, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 7th day of May, 2007.

VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr., 1st Vice Chair

Editor's Note: Respondent has noted an appeal to the Supreme Court of Virginia.

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
CATHERINE ANN LEE
VSB DOCKET NUMBER 07-000-1918

ORDER OF REVOCATION

This matter came to be heard on Friday, March 23, 2007, at 9:00 a.m., before a duly convened panel of the Virginia State Bar Disciplinary Board pursuant to notice in the Tweed Courtroom on the 4th Floor of the Lewis F. Powell U.S. District Court Building at 1000 E. Main Street,

Richmond, Virginia. Peter Dingman served as chair of the panel. The remaining panel members were Sandra Havrilak, David R. Schultz, William E. Glover, and Stephen A. Wannall, lay member.

Valarie L. Schmit May, Court Reporter of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, 804-730-1222, after being duly sworn, reported the hearing and transcribed the proceedings. All required notices of the date and place of the hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. Mr. Dingman convened the hearing.

The Virginia State Bar was represented by Paulo Franco, Assistant Bar Counsel. The Respondent was present in person and by her counsel, Elliott P. Parks.

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 that would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

The matter came before the Disciplinary Board pursuant to The Rule to Show Cause and Order of Suspension and Hearing ("The Show Cause Order") entered January 4, 2007, by Peter Dingman, Chair, Virginia State Bar Disciplinary Board. The Show Cause Order issued after the Clerk of the Disciplinary System received written notification that the Respondent had been convicted of a "Crime" as defined by the Rules of Court, Part 6, Sec. IV, Par. 13.I.5. The Show Cause Order summarily suspended the Respondent's license to practice law pursuant to Rule 6, Sec. IV, Par. 13.I.5.b.

The Show Cause Order was modified by an Order entered January 21, 2007, continuing the hearing until February 23, 2007. By Order entered February 16th, 2007, the Disciplinary Board continued the hearing on the Rule to Show Cause until March 23, 2007.

At the commencement of the March 23, 2007, hearing, the Chair identified and reiterated the rulings of the Board contained in its prehearing order of February 16, 2007. In that Order, the Board found that the Respondent's plea was a position of law, not of fact, and that the Respondent would not be prevented, by the doctrine of judicial estoppel or otherwise, at the Show Cause hearing from denying the allegations contained in the Show Cause and presenting evidence in support of her position that she was, in fact, innocent of the Crime for which she made her *Alford* plea. In that same Order, the Board denied the motion of the Respondent that the Board require the Bar to prove the allegations that are the basis for the criminal conviction and that formed the basis for a subcommittee Certification of Misconduct. In pertinent part, the Order of February 16, 2007, states:

> "The Board concludes that, pursuant to provisions of Subpart (c) of Part 6, Section IV, Para. 13(I)(5), the Board, at the hearing on the Show Cause Matter, is mandated to issue an order continuing the suspension of the license of Respondent or revoking the license of Respondent upon a finding that Respondent has been found guilty or convicted of a Crime by a Judge. Respondent may offer such relevant evidence as she deems pertinent to show why the suspension of her license (imposed upon issuance of the Show Cause Order) should not be continued or her license revoked. The Bar shall respond as it deems appropriate, and Respondent may offer rebuttal to the Bar's case. The Board denies Respondent's request numbered (2) leaving the burden upon Respondent to show cause, if any she can, why the Board should not "continue the Suspension or issue an order of Suspension against Respondent for a stated period not in excess of five years; or issue an order of Revocation against Respondent."

The Chair explained the process to be the following in the hearing. The Chair stated to the Respondent that the Show Cause filed by the Bar and served upon the Respondent required the Respondent to show cause, if she could, as to why the Summary Suspension of her license should not be continued or her license revoked as the result of her conviction of a felony in the Henrico Circuit Court on or about November 1, 2006. The Respondent, therefore, had the burden of proof by clear and convincing evidence that the Summary Suspension of her license should not be continued or, alternatively, that she should not have her license to practice law in Virginia revoked. The Chair also informed the Bar that it would have an opportunity to present evidence in rebuttal.

Before the Respondent called her first witness, the Chair inquired as to whether any stipulations of fact had been made by and between the parties. The Counsel for the Bar and Counsel for the Respondent agreed that the Bar's Exhibits 1 through 35 had been offered for admission and should be admitted without objection. The Board received each of those exhibits into evidence collectively as Bar Exhibit No. 1. Those exhibits are referred hereinafter as Bar Exhibit 1 with an additional designation for the tab number for the document referred to within the Bar's exhibit. The Bar's additional Exhibits 36, 37 and 38 were then admitted by agreement collectively as Bar Exhibit 2. Counsel for the Respondent and Counsel for the Bar agreed to stipulate that Catherine Ann Lee, in the courtroom with her counsel, Mr. Parks, was the same person charged in the

indictment and convicted in the Conviction Order of the Circuit Court of Henrico County, each of those documents being an exhibit of the Bar and already admitted in evidence.

Following the discussion of exhibits, the Chairman inquired whether Counsel for the Respondent or Counsel for the Bar had any questions. Neither Counsel had questions. A Rule to Exclude Witnesses was made and granted. The witnesses in the courtroom were sworn. All were admonished not to discuss the case and then were sent out of the courtroom until the time of their testimony.

Elliott Parks, on behalf of Catherine Lee, made an opening statement that was followed by an opening from the Bar. Following the opening statements, Counsel agreed to a stipulation that the Bar had met its burden of showing that Catherine Ann Lee is the same person shown on the Record of Conviction of November 6, 2006, reflecting a conviction date of November 1, 2006, and contained in the record as Virginia State Bar Exhibit 4. Counsel for Lee further stipulated that the Bar had met its burden of proving that the Respondent, Catherine Ann Lee, has been convicted of a felony.

The Respondent then testified. The Respondent, who is currently not practicing law and whose license is suspended pursuant to a disability suspension, testified that she has suffered from substance (specifically including alcohol) abuse, but that she has abstained from alcohol and drugs for some period of time (beginning after the events to which she entered her *Alford* plea) and has received treatment and counseling. She also testified regarding difficulties with her marriage during the time period that resulted in the embezzlement charge against her in Henrico County. Respondent did not assert that her substance abuse and/or domestic difficulties were causal or mitigating factors regarding that theft crime, rather choosing to assert that she did not in fact steal from her law firm.

The Respondent explained that while she was working as an attorney at Coates & Davenport, she received payment for guardianship services that she deposited in her own account. Coates & Davenport later asserted to her that the fee had been earned while she was a partner and was required to be placed in the firm's account. Ultimately, the Respondent was charged with the felony of embezzlement under Va. Code § 18.2-111 and she entered an *Alford* Plea in the Circuit Court of Henrico County. The Respondent testified that the reason for the entry of her *Alford* Plea was to avoid any possibility of active incarceration in connection with the disposition of the charge. She stated that, "I entered the plea because I could not be away from my children." The Respondent testified that she understood that if she entered the plea, she would be a convicted felon.

On cross-examination, the Respondent maintained that the money received from the guardianship work was her money and not the firm's money, but was the product of work she did on her own and not for the firm. She conceded on cross-examination that she had used a portion of the money received from the guardianship to purchase a personal residence. She further testified that she did not pay the money back from her marital account.

The Respondent called, as her witnesses, John C. Moore and Thomas F. Coates, III. Through them, the Respondent introduced the civil complaint for damages filed against her in Hanover County by Coates & Davenport under the style of Coates & Davenport v. Catherine A. Lee and the "Amended and Re-stated Stockholder's Agreement" between the stockholders of Coates & Davenport, dated January 26, 1995. She also called Cam Moffit for the purpose of introducing Ms. Moffit's report of June 2, 2005, which was admitted as Respondent's Exhibit 3.

The Respondent then called Milton K. Brown, who had recommended her to be hired at Coates & Davenport while he was an attorney there. He testified that he watched her work and found her to be a "super" lawyer and that he had asked her to do a Will for his mother. Mr. Brown further testified that he had left the firm of Coates & Davenport in August or September of 1999.

At the conclusion of the Respondent's case, the Respondent rested. The Bar called no witnesses. Closing argument was then had on behalf of the Respondent. The Bar then made its argument and the matter was submitted to the Board for deliberation. The Board deliberated and returned a unanimous opinion that upon the Show Cause, the Respondent had failed to establish, by clear and convincing evidence, that the temporary suspension of her license should be terminated or to give a basis upon which her license should not be revoked pursuant to the Rules of the Supreme Court of Virginia.

The Chair announced that the Board was bound by the Rule that defined the felony of embezzlement as a crime requiring the suspension and possible revocation of the Respondent's license. The Board could not retry the criminal case, which resulted, regardless of the nature of the plea entered by the Respondent thereto, in a conviction of a felony involving the misappropriation of monies from the law firm where the Respondent was employed. The Board did not find from the evidence presented to it on behalf of the Respondent, or in the exhibits offered by the Bar and the Respondent, that the Respondent had shown cause for why she should not be Revoked. The Respondent stands convicted in a Court of competent jurisdiction of a crime that directly impacts on her honesty and integrity as a member of the Bar, and that conviction was not explained or justified by the Respondent. It was, therefore, the decision of the Board and it is hereby:

ORDERED that the license of Catherine A. Lee to practice law in Virginia should be, and is, revoked, effective March 23, 2007.

It is further requested and ORDERED that, as directed in the Board's March 23, 2007, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13.M of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of 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 client. Respondent shall give such notice within 14 days of the effective date of the suspension, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

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

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent at her address of record with the Virginia State Bar, being 9113 Fox Hill Race Court, Mechanicsville, Virginia 23116, by certified mail, return receipt requested, and by regular mail to Elliott P. Park, Counsel for Respondent, Park and Company, P.C., Suite 300, 1011 East Main Street, Richmond, Virginia 23219-3537, and to Paul E. Franco, Jr., Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THE 24th DAY OF APRIL, 2007.

Peter A. Dingman, Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD OF THE
VIRGINIA STATE BAR

IN THE MATTER OF
JOHN COURY MACDONALD, ESQUIRE
VSB DOCKET NUMBER 06-051-4245

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board at the request of the Virginia State Bar for an expedited hearing pursuant to Paragraph 13.I.1.b of the Rules of the Supreme Court of Virginia. The matter was heard on March 23, 2007, in Courtroom A of the Worker's Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220. The Board consisted of James L. Banks, Jr., First Vice Chair, W. Jefferson O'Flaherty, Lay Member, William C. Boyce, Jr., John W. Richardson, and Thomas R. Scott. The Bar was represented by Seth M. Guggenheim, Senior Assistant Bar Counsel. Proper notice was given to the Respondent, John Coury MacDonald. The proceedings were reported by Jennifer L. Hairfield of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222.

Following the handling of two other matters on the Board's docket, the Respondent's case was called at approximately 10:30 a.m. Mr. MacDonald did not answer and his case was called three times in the adjacent hall with no response.

The hearing was then commenced with Mr. Banks polling the Board as to whether any conflict or bias existed that would prevent the member from hearing the matter fairly and objectively. All members answered in the negative, including Mr. Banks.

At this time, Mr. MacDonald appeared and, owing to the fact that Mr. MacDonald did not hear the Board's declarations of lack of bias, Mr. Banks, as a courtesy to Mr. MacDonald, directed the Board members to once again introduce themselves and to declare their lack of bias. All did so.

Mr. Banks offered Mr. MacDonald the opportunity to review the Bar's documentary exhibits, which were extensive. Mr. MacDonald declined this opportunity.

The Bar then, by way of opening statement, alleged violations of the following Disciplinary Rules: 1.3(a), 1.3(b), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 1.15(c)(3), 1.15(e)(2), 1.16(a), 1.16(d), 5.5(a)(1) and 8.4(b) and 8.4(c). Mr. MacDonald waived opening statement.

The Bar then began to present its case and moved all of its proffered exhibits into evidence. All were admitted without objection, save State Bar Exhibit #12, which was later admitted during the Bar's case in chief, without objection. Additional exhibits were admitted during the Bar's case, also without objection. Upon the conclusion of the Bar's case, the Bar rested, and Mr. MacDonald presented no evidence and rested his case. Following argument by the Bar and waiver of argument by Mr. MacDonald, the Board withdrew to deliberate.

I. FINDINGS OF FACT

The Board found the following to be matters of fact:

(1) At all times pertinent to this matter, Mr. MacDonald was a member of the Virginia State Bar.

(2) Mr. MacDonald's license to practice law in Virginia was suspended on October 11, 2006, for non-payment of annual dues and non-filing of his mandatory certification regarding liability insurance.

(3) Mr. MacDonald had not been reinstated as of this hearing.

A. THE RECEIVERSHIP

(4) As a result of information acquired during an investigation conducted by the State Bar, the State Bar petitioned the Circuit Court of Fairfax County for the appointment of a Receiver. The State Bar alleged, among other things, that it appeared as though Mr. MacDonald had abandoned his law practice, that there were defalcations from a trust held for Charlotte Sedam and an associated default judgment in the Fairfax County Circuit Court, as well as four pending felony charges alleging obtaining money by false pretenses.

(5) The Fairfax County Circuit Court granted the Bar's petition for appointment of a Receiver, and appointed Richard S. Mendelson, a lawyer and experienced receiver in Alexandria, Virginia.

(6) Following his appointment, Mr. Mendelson determined that Mr. MacDonald's office was in disarray, stacks of files were piled on a round table in Mr. MacDonald's office, and behind Mr. MacDonald's desk was a large amount of unopened mail, including mail from banks and the United States Internal Revenue Service.

(7) Upon inspection, Mr. Mendelson determined that some of this unopened mail was over a year old, including bank statements.

(8) Virtually every statement relating to Mr. MacDonald's trust account had checks for what appeared to be operating expenses, such as checks to Safeway, checks for office supplies, and checks made payable to Mr. MacDonald himself for round figures such as $500.00 or $1,000.00. In addition, there were numerous overdrafts.

(9) Mr. Mendelson also discovered a bank statement from SunTrust bank, admitted as the Bar's Exhibit #31, for an IOLTA Trust Account that was closed by the bank owing to overdrafts.

(10) Mr. Mendelson found among the files on the table thirty-eight (38) files dealing with trusts, some with unrecorded deeds for residential property and some with non-negotiated checks payable to various Circuit Courts for recordation of real property.

(11) Mr. Mendelson found several notifications of the termination of corporate status from the State Corporation Commission, of which the client had not been informed.

(12) Despite Mr. Mendelson's diligent efforts, he could find no subsidiary ledgers and was unable to determine what was owed to whom.

(13) Mr. Mendelson wrote two hundred fifty-seven letters, similar to the State Bar's Exhibit #11, which explained that Mr. MacDonald's law practice had been terminated and requesting the client to give information pertaining to monies owed, services not rendered, and so forth.

(14) Mr. Mendelson received numerous responses, among which were VSB Exhibit #12 in which Norma J. Edwards claimed that Mr. MacDonald was in possession of IRS documents and stock certificates that she wanted returned. In addition, Mr. MacDonald was still in possession of Mrs. Edwards's $2,500.00 fee.

(15) Mr. Mendelson received a response from Richard and Sharon Puckett in which Mr. and Mrs. Puckett claimed that they were owed money for work never performed.

(16) Many clients complained of lack of response from Mr. MacDonald as well as the loss of advanced fees.

(17) Mr. Mendelson continues to receive daily responses of a similar nature.

(18) Mr. Mendelson found among Mr. MacDonald's mail a letter from the Circuit Court for Baltimore City regarding a dishonored check drawn on SunTrust Bank in the amount of $3,345.00 dated 12/22/07 [sic].

(19) As a result of the letter from Baltimore City, Mr. Mendelson examined Mr. MacDonald's bank statements from November and December (VSB Exhibits #32 and #33) and determined that the trust account balance was zero when the check in question was written.

(20) Mr. Mendelson called the Court and determined that the dishonored check was written in order to record a Note relating to real property held by Nayana K. Talsania.

B. NAYANA K. TALSANIA MATTER

(21) Upon the death of Mrs. Talsania's husband, Mrs. Talsania hired Mr. MacDonald to help with his estate. In order to record a Note related to real property in Baltimore City, Maryland, Mr. MacDonald asked Mrs. Talsania to write two checks.

(22) Mrs. Talsania was aware that her personal checks would not be accepted by the Baltimore City Circuit Court but to this day does not know why Mr. MacDonald asked her to write two personal checks.

(23) The Note was dated October 16, 2006, and should have been recorded shortly thereafter.

(24) When Mrs. Talsania received no notification of the recording of the Note, she attempted to reach Mr. MacDonald by telephone. After many attempts to do so, Mrs. Talsania called the Virginia State Bar.

(25) Mrs. Talsania learned from the Virginia State Bar that Mr. MacDonald was suspended. Mrs. Talsania was never informed by Mr. MacDonald that he was suspended.

(26) In December of 2006, Mrs. Talsania was finally able to speak to Mr. MacDonald, who told her he would proceed with the recording of the Note. It was this attempt on Mr. MacDonald's part that resulted in the dishonored check in the Baltimore City Circuit Court.

C. THE CHARLOTTE SEDAM MATTER

(27) Mrs. Sedam became acquainted with Mr. MacDonald when Mr. MacDonald was hired to work for her husband, a lawyer, in 1992 or 1993.

(28) Mrs. Sedam's husband died in 1994 and Mrs. Sedam hired Mr. MacDonald to establish six Trusts relating to Mr. Sedam's estate. Four of the Trusts were to be in the names of Mr. and Mrs. Sedam's children, one Trust was to be for the children as a group, and one Trust was to be for Mrs. Sedam.

(29) As far as Mrs. Sedam has been able to determine, the first four Trusts were never established and Trusts five and six are still in existence.

(30) As of May 10, 2006, Mrs. Sedam had received no accountings on the Trusts and became suspicious. In a letter to Mr. MacDonald dated May 10, 2006, Mrs. Sedam demanded from Mr. MacDonald, among other things, a complete accounting (VSB Exhibit #20).

(31) In another letter dated June 8, 2006 (VSB Exhibit #21), Mrs. Sedam tells Mr. MacDonald that she has received no records and she once again requests these records.

(32) Once again, on June 19, 2006, Mrs. Sedam demanded records (VSB Exhibit #22) in a facsimile sent to Mr. MacDonald.

(33) Mrs. Sedam has never received any accounting.

(34) On June 19, 2006, Mrs. Sedam was able to speak with Mr. MacDonald by telephone. A record of the conversation appears in VSB Exhibit #23.

(35) In this conversation, Mrs. Sedam demands the accountings previously requested, and requests Mr. MacDonald to wire funds to her from the Trusts.

(36) Mr. MacDonald replied that he had taken all of the funds and there was nothing left for him to send. Mr. MacDonald stated that it was his intent to borrow the money from the Trusts and to repay the money but that plan "didn't work out." When Mrs. Sedam asked Mr. MacDonald how much money he had taken, Mr. MacDonald estimated between $85,000.00 and $100,000.00. He also admitted that he had done no accountings because he didn't want Mrs. Sedam to be aware of the defalcations.

(37) Despite the depletion of the Trusts, Mr. MacDonald claimed that he was within his rights to use the Trust money for his personal benefit because he was the Trustee. He denied that this was any form of fraud or theft. He also said that he would prepare Promissory Notes for the amount taken.

(38) When Mrs. Sedam accused Mr. MacDonald of using the money to purchase drugs, Mr. MacDonald did not admit the allegation but did say that part of his "recovery" was a ten-day trip to Cuba for which he was leaving that night.

(39) When Mrs. Sedam informed Mr. MacDonald that she would seek legal and professional redress, Mr. MacDonald replied, "I will see you in court. Thank you for calling."

(40) The Promissory Note to which Mr. MacDonald referred was found among Mr. MacDonald's files (VSB Exhibit #27). The Note is dated January 14, 2005. Mrs. Sedam never saw the Note until the day prior to this hearing, March 22, 2007.

(41) The Note was in no way discussed with Mrs. Sedam and was simply prepared by Mr. MacDonald, who inserted whatever terms he deemed appropriate. The Note does not mention any particular amount, but simply provides that Mr. MacDonald will repay the amounts "borrowed" on his own schedule but by January 14, 2015, at an interest rate of 7% per annum. The purported maker of the Note is "J. Coury MacDonald, an individual" and the purported holder of the Note is "J. COURY MACDONALD, TRUSTEE, as Trustee of The GKCJ Irrevocable Trust Number Five and/or Six." Mrs. Sedam has hired other counsel to assist her with these matters, and she has incurred in excess of $14,000.00 in legal expenses.

(42) The current value of the Trusts is zero dollars in cash, but the Trust still holds two small parcels of real estate.

(43) The Trusts were originally funded with approximately $900,000.00. Mrs. Sedam estimates that Mr. MacDonald has converted at least $300,000.00. She is unable to give a precise figure owing to the fact that she has never received any accountings, and is only able to estimate the amount of missing funds by subtracting the amounts received from the Trust from the amount deposited to the Trust.

(44) Regarding the real estate held by the Trust, it has been determined that the taxes have not been paid on the properties and that the insurance policies have lapsed.

D. MACDONALD'S TESTIMONY

(45) Mr. MacDonald was called as a witness by the State Bar and questioned about his bankruptcy filing of February 23, 2007.

(46) Mr. MacDonald acknowledges that he did not include the debt to the Baltimore City Circuit Court in his filing.

(47) Mr. MacDonald listed a $75,000.00 debt to Mrs. Sadem that Mr. MacDonald acknowledges was an estimate in that he has no records to support it.

(48) Mr. MacDonald testified that he has no income and that his statement in the bankruptcy petition in which he claims to have been "employed for three weeks" is false.

(49) Mr. MacDonald acknowledges that the people listed as dependents in his bankruptcy petition are his fiance's children.

(50) Mr. MacDonald acknowledges that no security was offered relating to the Promissory Note (VSB Exhibit #27).

(51) Mr. MacDonald acknowledges that he has been charged with four felonies in Fairfax County relating to withdrawals from automatic teller machines.

(52) Regarding the Promissory Note, Mr. MacDonald acknowledged that he drafted it and has no recollection of showing it to Mrs. Sadem.

(53) Mr. MacDonald admitted that the writing on the check register included in VSB Exhibit #27, which reveals several "loans" to JM, is his writing.

II. VIOLATIONS

RULE 1.3 Diligence

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

The Board finds that the Bar has proven a violation of this Rule by clear and convincing evidence. Mr. MacDonald's abandonment of his files and practice, his failure to record land transactions, his failure to provide accounts to his clients, and his failure to inform his clients of corporate revocations from the State Corporation Commission constitute a violation of this Rule.

(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.

The Bar has proven a violation of this Rule by clear and convincing evidence. Mr. MacDonald's failure to record land transactions is a violation of this Rule.

(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.

A violation of this Rule has been proven by clear and convincing evidence. Mr. MacDonald's failure to record land transactions, his defalcations, and the fact that his clients were required to hire other counsel, not the least example of which is Mrs. Sedam's expenditure in excess of $14,000.00 to her current counsel, constitutes violations of this Rule.

RULE 1.4 Communication

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

A violation of this Rule has been proven by clear and convincing evidence. Mr. MacDonald's abandonment of his practice and failure to keep his clients informed of matters relating to their legal interests constitutes a violation of this Rule.

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

The Bar has proven a violation of this Rule by clear and convincing evidence. Not only did Mr. MacDonald fail reasonably to explain a matter to a client, but in many cases he gave no explanations at all.

(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.

The Board finds that the Bar did not meet its burden with regard to this alleged violation.

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

The Bar has proven a violation of this Rule by clear and convincing evidence. Not only did Mr. MacDonald fail to render appropriate accounts to clients, but no such records existed from which Mr. MacDonald could possibly render such accounts.

(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.

(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.

This allegation has been proven by clear and convincing evidence. In the cases discussed in this hearing, no such summaries or accounts as required by this Rule were provided to the clients.

RULE 1.16 Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if:

(1) The representation will result in violation of the Rules of Professional Conduct or other law;

The Board does not find that a violation of this Rule has been proven by clear and convincing evidence.

(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).

A violation of this Rule has been proven by clear and convincing evidence. Mr. MacDonald took no action to notify his clients of his suspension of October 12, 2006.

RULE 5.5 Unauthorized Practice of Law

(a) A lawyer shall not:

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

The Board finds clear and convincing evidence of a violation of this Rule. When Mr. MacDonald consulted with Mrs. Talsania regarding the filing of her Note with the Baltimore City Circuit Court, he was aware that he was suspended from the practice of law, failed to tell Mrs. Talsania that he was suspended, and proceeded to attempt to file the Note.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

The Board finds proof of a violation of this Rule by clear and convincing evidence. Mr. MacDonald's frequent use of the funds in the Sedam Trusts for personal purposes does not constitute "loans" but embezzlement.

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

The Board does not find proof by clear and convincing evidence of a violation of this Rule.

III. SANCTION

In determining the appropriate sanction for these violations, the Board considered mitigating evidence offered by the Bar to the effect that Mr. MacDonald has no disciplinary record other than his interim suspension for failure to pay dues. Mr. MacDonald presented no evidence in mitigation. The record, however, is replete with evidence in aggravation. Mr. MacDonald abandoned his law practice and left his clients without representation. Mr. MacDonald made no effort to protect the interests of his clients. Following his suspension for failure to pay dues, Mr. MacDonald informed no one of his suspended status. Many of Mr. MacDonald's clients were damaged by his failure to inform them of the revocation of their corporate status by the State Corporation Commission, of tax issues, and of his failures to record matters relating to real estate transactions. Worse yet, Mr. MacDonald simply helped himself to at least $300,000.00 held in trust for Charlotte Sadem. Mr. MacDonald continues his fraudulent actions in the United States Bankruptcy Court.

Mr. MacDonald's conduct is reprehensible and cannot be tolerated. The only way to protect the public from Mr. MacDonald is to revoke his license to practice law in Virginia. It is so ordered effective March 23, 2007.

DUTIES OF THE RESPONDENT

It is ORDERED that, as directed in the Board's March 23, 2007, Summary Order in this matter, a copy of which was served on Respondent by certified mail, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M., of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from March 23, 2007, the effective date of the Revocation Order. All issues concerning the adequacy of the notice and arrangements required by the Summary Order shall be determined by the Board.

It is further ordered pursuant to Paragraph 13 B.8.c.1 of the Rules of the Supreme Court of Virginia that the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is finally ordered that the Clerk of the Disciplinary System shall forward a copy of this order, by certified mail, return receipt requested, to the Respondent, John Coury MacDonald, at his address of record with the Virginia State Bar, 4020 University Drive, Suite 207, Fairfax, Virginia 22030, and by regular mail to Seth M. Guggenhaim, Senior Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED this 12th day of April, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: James L. Banks, Jr., First Vice Chair

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
DENNIS MICHAEL O'KEEFE
VSB DOCKET NUMBER 07-000-2556

ORDER

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

The Rule to Show Cause and Order of Suspension and Hearing alleged that Mr. O'Keefe had been disbarred from the practice of law effective December 31, 2005, by Order of Disbarment, filed on January 31, 2007, by the United States Court of Appeals for the District of Columbia Circuit. A hearing was held before the Disciplinary Board on March 23, 2007, at 9:00 a.m., in the Worker's Compensation Commission Building, Courtroom A, 1000 DMV Drive, Richmond, Virginia 23220. The Disciplinary Board Panel consisted of James L. Banks, Jr., First Vice-Chair, William C. Boyce, Jr., W. Jefferson O'Flaherty (lay member), John W. Richardson, and Thomas R. Scott. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Dennis Michael O'Keefe, was not present and was not represented by counsel. The proceedings were recorded by Jennifer L. Hairfield, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn by the First Vice-Chair.

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

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

The Bar introduced evidence of Mr. O'Keefe's disbarment in the form of the Disbarment Order of the United States Court of Appeals for the District of Columbia, effective December 31, 2005. The specification of charges against Mr. O'Keefe allege that Mr. O'Keefe had violated 11 rules of the District of Columbia Rules of Professional Conduct relating to client confidences, knowingly making false statement of material fact, the commission of perjury, and conduct involving dishonesty, fraud and deceit, all of which are violations of various disciplinary rules similar to the Virginia Rules of Professional Conduct. Those allegations were deemed to be admitted. Each of the four exhibits offered by the Virginia State Bar were received by the Panel and entered as evidence in the matter.

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

Therefore, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia be and hereby is revoked, effective March 23, 2007.

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the revocation of his license if he is handling any client matters at the time. If the Respondent is not handling any client matters on the effective date of his 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.

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent Dennis Michael O'Keefe at his addresses of record with the Virginia State Bar, 1522 North 22nd Street, No. 1, Arlington, Virginia 22209-1104, and 14528 Pebblewood Drive, North Potomac, Maryland 20878, by certified mail, return receipt requested, and by regular mail to Assistant Bar Counsel, Richard E. Slaney, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

ENTERED this 26th day of May, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By James L. Banks, Jr., First Vice-Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ANDREW MARK STEINBERG
VSB DOCKET NUMBER 07-000-1909

ORDER OF REVOCATION

THIS MATTER came on to be heard on May 18, 2007, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the Virginia Workers' Compensation Commission, Courtroom A, 1000 DMV Drive, Richmond, Virginia. The Board was comprised of Robert E. Eicher, Chair, Stephen A. Wannall, lay member, Thomas R. Scott, Jr., William H. Monroe, Jr., and Russell W. Updike. The proceedings were transcribed by Teresa L. McLean, a registered professional reporter, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether any of them had any personal or financial interest or any bias that would preclude, or reasonably could be perceived to preclude, their hearing the matter fairly and impartially. Each member, including the Chair, answered in the negative; the matter proceeded. The Respondent, Andrew Mark Steinberg, was present in person and proceeded *pro se*. The Virginia State Bar was represented by Alfred L. Carr, Assistant Bar Counsel.

The matter came before the Board as a result of the Respondent being disbarred from practicing law in the state of Maryland, effective November 6, 2006, by order entered by the Court of Appeals of Maryland. A Rule to Show Cause and Order of Suspension and Hearing was entered on January 4, 2007, and properly served on the Respondent.

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

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

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

(2) That the imposition of the Board by 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) Virginia State Bar Exhibit #1, an affidavit pursuant to § 8.01-391 of the Code of Virginia, as amended, executed by Barbara S. Lanier, Clerk of the Disciplinary System of the Virginia State Bar;

(2) Virginia State Bar Exhibit #2, an affidavit pursuant to § 8.01-390 of the Code of Virginia, as amended, executed by Diana L. Balch;

(3) Virginia State Bar Exhibit #3, the November 6, 2006, opinion from the Court of Appeals of Maryland, styled *Attorney Grievance Commission v. Andrew Mark Steinberg*; and,

(4) Respondent's Exhibit #1, a docket information sheet relating to *Attorney Grievance Commission of Maryland v. Andrew M. Steinberg;*

(5) Respondent's Exhibit #2, the Renewed Motion for [*sic*] to Vacate Default Judgment and for New Hearing filed in connection with the case of *Attorney Grievance Commission of Maryland v. Andrew M. Steinberg*;

(6) Respondent's Exhibit #3, a letter from Molly Q. Ruhl, Clerk of the Circuit Court of Montgomery County, Maryland;

(7) Respondent's Exhibit #4, an informational sheet relating to the case of *Attorney Grievance Commission of Maryland v. Andrew M. Steinberg*;

(8) Respondent's Exhibit #5, a Notice of Default Order dated December 9, 2005, relating to the case of *Attorney Grievance Commission of Maryland v. Andrew M. Steinberg*; and,

(9) Respondent's Exhibit #6, a Certificate of Service and Response to Request for Admission of Facts and Genuineness of Documents relating to the case of *Attorney Grievance Commission of Maryland v. Andrew M. Steinberg*.

The Respondent filed an answer to the Rule to Show Cause and Order of Suspension and Hearing and exhibits to such answer. The VSB filed a response to the Respondent's answer and objections to the Respondent's exhibits. The VSB's objection to the Respondent's answer was withdrawn by Bar Counsel.

The Respondent testified on his own behalf. After hearing the evidence and argument of counsel, the Board retired to deliberate in closed session. The Board reconvened in open session and the Chair announced that the Board found, by clear and convincing evidence, that Andrew Mark Steinberg had been disbarred from the practice of law in Maryland effective November 6, 2006, by order entered by the Court of Appeals of Maryland, that such order had become final, and that the Respondent failed to prove by clear and convincing evidence any of the three grounds that would permit this Board to impose any sanction other than revocation of his license to practice law.

Accordingly, it is hereby ORDERED that Andrew Mark Steinberg's license to practice law in the Commonwealth of Virginia be, and hereby is, revoked, effective May 18, 2007.

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 date of the revocation that such notices have been timely given and such arrangements made for the disposition of these matters.

It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System 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 the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Andrew Mark Steinberg, at his address of record with the Virginia State Bar, 3581 Sherbrooke Circle, Woodbridge, Virginia, 22192, by certified mail, return receipt requested, and by regular mail to Alfred L. Carr, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

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

ENTERED this 8th day of June, 2007.
VIRGINIA STATE BAR DISCIPLINARY BOARD

Robert E. Eicher, Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
STARR ILENE YODER
DOCKET NUMBER 07-000-2542

ORDER OF SUSPENSION

THIS MATTER came before the Board, pursuant to a duly served notice, issued according to Part 6, Section IV, Paragraph I.2.g. of the Rules of the Supreme Court of Virginia, requiring Starr Ilene Yoder ("Yoder") to show cause why the alternative disposition contained in the Disciplinary Board Order (Order of Public Reprimand with Terms) ("Order") dated October 10, 2005, should not be imposed for her failure to abide by the required terms.

A hearing was held at 9:00 a.m. on Friday, March 23, 2007, in the Virginia Workers' Compensation Commission, Courtroom A, 1000 DMV Drive, Richmond, VA 23220. The Virginia State Bar was represented by Assistant Bar Counsel Richard E. Slaney. Yoder did not appear, despite notice and her case being called both in the hearing room and the adjacent hall. The Bar proceeded in her absence.

The Board consisted of James L. Banks, Jr., 1st Vice-Chair, W. Jefferson O'Flaherty (lay member), William C. Boyce, Jr., John W. Richardson and Thomas R. Scott, Jr. The members of the Board were polled as to whether any conflict or bias existed that would affect their ability to hear this case fairly, and all including the Chair answered in the negative. The hearing was recorded and reported by Jennifer L. Hairfield, RPR, of the firm of Chandler and Halasz, P. O. Box 9349, Richmond, VA 24227, (804) 730-1222.

Assistant Bar Counsel Slaney made an opening statement after which the Bar introduced Exhibits A through I, inclusive, and rested. The Board then retired to deliberate its decision.

I. FINDINGS OF FACT

The Board finds the following to be matters of fact:

1. On October 10, 2005, the Board entered an Order in this matter imposing upon Yoder a Public Reprimand with terms ("Order") for several instances of misconduct relating to trust account violations.

Accountant Certifications (Term Two):

2. Term Two of the Order required Yoder to hire a certified public accountant to certify that Yoder's accounting procedures comply with Rules 1.15(a) and (f) and to file quarterly certifications thereafter for a period of two years.

3. Subsequently, the Bar brought a Motion to Impose Alternative Sanctions ("Motion") based in part on alleged deficiencies in and untimeliness of the accountant certifications. The Board dismissed the Motion but admonished Yoder that further noncompliance would not be tolerated.

4. On January 3, 2006, the Board wrote Yoder, suggesting the next quarterly accountant certification be filed by March 31 and quarterly thereafter.

5. The Bar received one quarterly accountant certification by facsimile dated May 3, 2006. No other quarterly accountant certifications have been received by the Bar.

Continuing Legal Education ("CLE") (Term One):

6. Term One of the Order required Yoder to attend six hours of CLE relating to trust account matters and the handling of trust funds within 12 months of the date of the Order.

7. On November 7, 2006, the Bar wrote Yoder asking about the status of both compliance with the CLE requirement and the quarterly accountant certifications.

8. On November 8, 2006, the Board received a letter from Yoder detailing the CLE hours she offered to satisfy the six-hour requirement. Yoder's offer included 2.5 hours previously used to satisfy the Mandatory Continuing Legal Education ("MCLE") requirements to remain in good standing, which was prohibited by the Order. Additionally, the form Yoder provided certifying her participation in an online program (Ethics 101) did not appear to be the type of form generated when an online program is completed.[1]

9. On November 27, 2006, the Bar wrote Yoder, addressing both the issue of the quarterly accountant certifications and the problems with the CLE hours she offered to satisfy Term One of the Order. The Bar required a reply by December 11, 2006.

10. The Bar received no reply from Yoder, and she failed to appear at the disciplinary hearing on March 23, 2007.

II. DISPOSITION

The burden is on Yoder to show cause why the alternative sanction should not be imposed. Yoder failed to meet her burden at all, let alone by a clear and convincing evidentiary standard. Accordingly, the alternative sanction of suspension of Yoder's license to practice law for one year and one day is hereby imposed effective March 23, 2007.

Yoder must comply with the requirements of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the suspension of her license if she is handling any client matters at this time. If Yoder is not handling any client matters on the effective date of her license 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 Disciplinary Board, unless Yoder makes a timely request for hearing before a three-judge court.

III. COSTS

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Yoder at her address of record with the Virginia State Bar, being Starr Ilene Yoder, 33061 Quaker Road, Ivor, VA 23866, by certified mail, return receipt requested, and by regular mail to Richard E. Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

VIRGINIA STATE BAR DISCIPLINARY BOARD
James L. Banks, Jr.,1st Vice-Chair

FOOTNOTES

1 The Board defers to the Bar as to whether it should investigate this matter further.

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

IN THE MATTER OF
YVETTE ANITA AYALA
VSB DOCKET NUMBER 06-033-2967

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On May 15-16, 2007, the Third District Committee, Section III, duly convened a hearing matter. The District Committee panel was comprised of David P. Baugh, Esquire, Marilynn C. Goss, Esquire, Dennis R. Kiker, Esquire, Dr. Frederick Rahal, Lay Member, and Cullen D. Seltzer, Esquire, Chair presiding.

The respondent, Yvette Anita Ayala, Esquire ("Respondent")[1] appeared in person represented by counsel, Charlotte P. Hodges, Esquire. The Virginia State Bar appeared through its Assistant Bar Counsel, Paulo E. Franco, Esquire. Chandler & Halasz, Inc. transcribed the proceedings.

The matter proceeded upon the Notice of Hearing and Charges of Misconduct issued on March 8, 2007, which set forth allegations that Respondent's conduct violated Rules of Professional Conduct 4.1, Truthfulness in Statements to Others, and 8.4(a), Wrongful Act Reflecting Adversely on Lawyer's Honesty, Trustworthiness, or Fitness to Practice Law, and 8.4(b), Conduct Reflecting Adversely on Lawyer's Fitness to Practice Law. The Chair polled each member of the hearing panel as to whether they had any personal or financial interest that might affect or reasonably be perceived to affect their ability to be impartial. Upon receiving answers in the negative, and upon the Chair affirming that he had no such interest, the Chair advised the parties of the hearing procedures.

The parties made opening statements, and the panel received evidence on behalf of the Bar. Thereafter, Respondent moved to strike the charges of misconduct, which motions the Committee denied after retiring to deliberate upon them. Respondent then introduced evidence, at the conclusion of which the parties made closing statements.

After deliberating and determining which charges of misconduct had been proven by clear and convincing evidence, the parties offered evidence and argument with respect to an appropriate sanction, at the conclusion of which the Committee deliberated to determine its sanction.

Pursuant to Part 6, Section IV, Paragraph 13.H.2(m) of the Rules of the Supreme Court of Virginia, the Third District Committee, Section III, hereby serves upon the Respondent the following Public Reprimand with Terms.

I. FINDINGS OF FACT

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In March of 2005, Respondent entered into a Property Settlement Agreement with Mr. Charles Richards, then her husband, which provided, among other things, that Respondent and Mr. Richards would retain possession and title to any personal property then in each party's possession.
3. Respondent, then a law clerk in the Circuit Court for Chesterfield County, drafted the March 2005 Property Settlement Agreement.
4. Among the pieces of personal property in Mr. Richards's possession at the time he and Respondent entered into the Property Settlement Agreement was a certain Isuzu Trooper automobile. Mr. Richards and Respondent intended that Mr. Richards should keep and own the Trooper. In addition, Mr. Richards agreed in the Property Settlement Agreement to refinance the Trooper in his name.
5. Following execution of the Property Settlement Agreement, Mr. Richards made all loan payments on the purchase loan for the Trooper until September of 2005 when he refinanced the Trooper with a loan in his own name. Chase Auto Finance did erroneously debit Respondent's bank account on two occasions for loan payments, but on both occasions, with the assistance of Mr. Richards, Respondent's bank account was re-credited the erroneously debited amounts.

FOOTNOTES

1 At the time the Misconduct in this matter occurred, Respondent's name was Yvette Ayala Jones. Respondent testified that she is the person named in the Notice of Hearing and Charge of Misconduct and that her name is now Yvette Anita Ayala.

6. In September of 2005, when Mr. Richards refinanced the Trooper in his name, Chase Auto Finance advised the Virginia Department of Motor Vehicles (DMV) that its lien on the title to the Trooper had been satisfied.

7. Because the Trooper, when it was first purchased during Respondent's and Mr. Richards' marriage, had been titled in Respondent's name, DMV mailed a new title, showing the Trooper was free of encumbrances, to Respondent.

8. Respondent received the new title from DMV within a few days of an adversarial and contentious child custody hearing involving Respondent and Mr. Richards.

9. When Respondent received the title from DMV, she realized that Mr. Richards had refinanced the Trooper in his name.

10. After receiving the title to the Trooper from DMV, Respondent did not sign the title to the Trooper over to Mr. Richards, consistent with the Property Settlement Agreement's requirement that Mr. Richards keep possession and title of the Trooper.

11. Instead, within a few days of receiving title to the Trooper from DMV, Respondent gifted the Trooper to her new husband, Mr. Jamani Jones, by signing the title over to him.

12. Within a few days of gifting the Trooper to Mr. Jones, even though she knew the Property Settlement Agreement gave the Trooper to Mr. Richards, Respondent and Mr. Jones traveled to Newport News where Mr. Richards was living for the purpose of retrieving the Trooper.

13. To aid in retrieving the Trooper, Respondent and Mr. Jones called the Newport News police department and an officer of that Department went to Mr. Richards's house.

14. Relying on the title that Respondent and Mr. Jones made available to the officer showing the Trooper to be titled in Mr. Jones' name, the Newport News police officer advised Mr. Richards that he was required to give the Trooper to Mr. Jones.

15. Mr. Richards told the police that the Trooper was his car because of the Property Settlement Agreement that he entered into with Respondent. Respondent did not tell the police that the Property Settlement Agreement gave the Trooper to Mr. Richards, but instead allowed the police to believe the title showing Mr. Jones as the owner was lawful and appropriate.

16. When a Newport News police officer told Respondent that she should consult with an attorney regarding the matter of who owned the Trooper, since Mr. Richards had said the car was his, Respondent told the officer that she was an attorney. When the officer asked to see her Virginia State Bar identification card, Respondent showed it to him.

17. Respondent and Mr. Jones retained possession of the Trooper for approximately five months and returned it to Mr. Richards only after he filed suit for its recovery. In settling Mr. Richards's suit, Respondent and Mr. Jones paid $500.00 for certain repairs to the Trooper and paid Mr. Richards $3,000.00.

18. At the time of the hearing in this matter, Respondent had been admitted to the Bar for less than two years. While Respondent had not previously acknowledged to the Bar that her actions were wrong or dishonest, at the hearing in this matter she did acknowledge that they were wrong and dishonest.

19. During the time that Respondent engaged in the conduct that gave rise to her wrongful taking of Mr. Richards's property, Respondent was in a state of considerable emotional tumult occasioned by the very difficult circumstances attendant to straining and unfortunate personal circumstances, including divorce and child custody disputes.

20. At the time of the hearing in this matter, Respondent enjoys the support of friends and family, including that of her law firm, a counselor who Respondent began seeing at the suggestion of her law firm, and Mr. Richards, the member of the public most immediately harmed by Respondent's misconduct.

II. NATURE OF MISCONDUCT

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

RULE 8.4 (b)

It is professional misconduct for a lawyer to:

* * * *

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

The Committee did not find a violation of Rule 4.1 or Rule 8.4(c) by clear and convincing evidence and dismissed those charges accordingly.

III. PUBLIC REPRIMAND WITH TERMS

It is the decision of the Committee to impose a Public Reprimand with Terms upon Respondent Yvette Anita Ayala and she is so reprimanded. The Term that the Committee imposes with this Public Reprimand is that Respondent shall complete six hours of ethics CLE within six months of the date of this Order which CLE hours shall be in addition to and separate from the twelve hours of CLE credit required to be performed each year by active status attorneys. Respondent shall certify to Bar Counsel, within six months of this Public Reprimand, that she has completed the Term specified herein.

Pursuant to Paragraph 13.H.2.a of the Rules of Court, and as required by that Rule, if Respondent fails to comply with the Term described in this Public Reprimand, the Committee shall impose the Alternative Disposition of a Certification For Sanction Determination.

Pursuant to Paragraph 13.B.8.c.1 of the Rules of Court, the Clerk of the Disciplinary System shall assess Costs, as defined by Paragraph 13.A. of the Rules of Court, against Respondent.

THIRD DISTRICT COMMITTEE, SECTION III
OF THE VIRGINIA STATE BAR

By Cullen D. Seltzer, Esquire
June 13, 2007
Third District Committee Chair, Section III

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

IN THE MATTER OF
CYNTHIA DAWN GARRIS
VSB DOCKET NUMBERS 07-021-0150
07-021-1350

Complainant: VSB/Anonymous

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On March 27, 2007, a duly convened Second District, Section I, Subcommittee of the Virginia State Bar consisting of Michael C. Moore, Esquire, Emanuel W. Michaels, Lay Member, and Paul K. Campsen, Esquire, presiding, considered an Agreed Disposition in the above-referenced matter. Upon due deliberation, the Subcommittee chose to accept the Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13(G)(1)(c)(1) of the Rules of the Supreme Court of Virginia, the Second District Subcommittee hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Cynthia Dawn Garris, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On June 28, 2006, Ms. Garris appeared in the Norfolk Circuit Court pursuant to her duties as a *guardian ad litem* in a child custody dispute. Trial lasted all day without resolution, and the court planned to continue the case to the following morning.
3. Ms. Garris told the court that she was not available the following day because of a commitment in another court. In reliance on Ms. Garris' representation, the court set the case for another day.
4. In reality, Ms. Garris had no court commitments the following day, but wanted to go on a preplanned shopping trip to Williamsburg with a friend.
5. When the court learned about this, it issued a rule for Ms. Garris to appear and show cause why the court should not hold her in contempt. It conducted the hearing on July 17, 2006, held her in contempt, and fined her $250.

6. The presiding judge advised the Virginia State Bar that, but for her previous record of no difficulty, he would have been more severe in his punishment.

7. In response to the ensuing Virginia State Bar complaint, Ms. Garris furnished a copy of a Judicial Nominations Questionnaire that she submitted to the Judicial Nominations Committee of the Norfolk Portsmouth Bar Association on December 29, 2005.

8. Question 24 read:

   Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or are you now the subject of a complaint to any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

9. In her answer to question 24, Ms. Garris mentioned three matters then under investigation that subsequently led to public discipline in March 2006, but negligently failed to mention a prior disciplinary matter that had become final less than two months earlier on November 2, 2005.

10. Ms. Garris acknowledged to the bar that she failed to mention this case on the questionnaire, but showed where she mentioned the same case on an identical questionnaire that she submitted previously in March 2005. Although she failed to mention the case on the second questionnaire, she discussed the case during the subsequent judicial interview.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal;

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. PUBLIC REPRIMAND WITH TERMS

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

1. The Respondent, Cynthia Dawn Garris, is placed on disciplinary probation for a period of one (1) year, said period to begin March 27, 2007, the date that this Subcommittee approved the Agreed Disposition. Ms. Garris will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such one-year probationary period. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of the alternate sanction, a Thirty-Day Suspension of the Respondent's license to practice law in the Commonwealth of Virginia, to be imposed by the Virginia State Bar Disciplinary Board. The alternate sanction will not be imposed while Ms. Garris is appealing any adverse decision that might result in a probation violation.

2. In addition to Continuing Legal Education (CLE) requirements imposed on all members of the Bar, the Respondent shall, on or before March 30, 2008, complete an additional six hours of CLE, not less than three hours of which shall be in courses eligible for ethics credits as

determined by the Virginia State Bar Mandatory Continuing Legal Education Board (MCLE), and the Respondent shall certify to the Bar Counsel not later than March 30, 2008, that this term has been satisfied. The certification to the Bar Counsel may utilize MCLE Form #2, but shall be sent to the Bar Counsel and not to MCLE.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified above, this District Committee shall **certify the case to the Virginia State Bar Disciplinary Board where this matter shall be presented as an Agreed Disposition for the alternate sanction: The suspension of the Respondent's law license for a period of thirty (30) days, effective immediately upon the entry of the Order of Suspension by the Disciplinary Board.**

The imposition of the alternate sanction will not require a hearing before the District Committee, the Virginia State Bar Disciplinary Board or a three-judge court on the underlying charges of misconduct stipulated to in the Agreed Disposition if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of the Agreed Disposition shall be determined by the Second District Committee of the Virginia State Bar.

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

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Paul K. Campsen, Esquire
Committee Chair

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

IN THE MATTER OF
WILBER THURSTON HARVILLE
VSB DOCKET NUMBER 05-021-0435

Complainant: Mr. and Mrs. Gary G. and LaJane J. Boley

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On March 28, 2007, a duly convened Second District, Section I, Subcommittee of the Virginia State Bar consisting of Mary M. Kellam, Esquire, Michael S. Brewer, Lay Member, and Robert W. McFarland, Esquire, presiding, considered an Agreed Disposition in the above-referenced matter. Upon due deliberation, the Subcommittee chose to accept the Agreed Disposition.

Pursuant to Part Six, Section IV, Paragraph 13(G)(1)(c)(1) of the Rules of the Supreme Court of Virginia, the Second District Subcommittee hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Wilber Thurston Harville, was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Gary G. and LaJane J. Boley (the Boleys) were in the business of cleaning, sandblasting and painting fuel tanks, primarily at military bases, with gross receipts in the millions of dollars. From about August 2001 to April 2004, Mr. Harville provided legal services to the Boleys and their business entities.

3. Two of the Boleys' business entities were Mid-Atlantic Tank Inspection Services (MATIS) and InterSpec.

4. MATIS ceased doing business in 2001 because of financial trouble. This led to the Boleys' creation of a second entity, InterSpec.

The WrightHawk Matter

5. During 2002, InterSpec served as a subcontractor for a project at Columbus Air Force Base, Mississippi. The Boleys and InterSpec worked as a subcontractor to WrightHawk, which was a subcontractor to Environmental Chemical Corporation. According to the Boleys, InterSpec completed the work in August 2002.

6. The Boleys allege that, although InterSpec completed the project and the general contractor paid WrightHawk for the work done by InterSpec, Wright Hawk in turn failed to pay the funds over to the Boleys or InterSpec, causing several subcontractors to sue the Boleys and/or InterSpec for unpaid invoices.

7. The Boleys claimed $158,858 in unpaid invoices, and asked Mr. Harville to collect the money from the bonding company, Western Surety-CNA (CNA). Accordingly, on March 18, 2003, Mr. Harville sent a demand letter to CNA, and sent the copies of the invoices on March 26, 2003.

8. In May 2003, CNA refused the demand.

9. CNA having denied the claim, Mr. Harville contacted a Mississippi attorney, Randolph Lipscomb, about suing CNA on the bond in an appropriate Mississippi court.

10. The Boleys inquired about the status of the matter. By e-mail dated July 26, 2003, Mr. Harville explained:

> *Wrighthawk – This has taken a back seat to the IT matter in recent weeks, although I did attempt to make contact on Friday with the potential Mississippi counsel. My records show that even though we had discussed the Wrighthawk matter earlier, you did not turn the matter over to me until March, when I prepared a demand package and conducted a series of conversations with CNA which lasted until early May when CNA finally refused our demand.*

11. Mr. Harville never sent the file to the Mississippi attorney, and never followed up on his contact.

12. In August 2003, the one-year statute of limitations set forth in the bonding contract expired.

13. Meanwhile, the Boleys continued to inquire of Mr. Harville by e-mail about the status of the matter:

On December 19, 2003, they wrote:

> *WE received a 'DEFAULT JUDGMENT" against InterSpec due to you not pursuing the Columbus case. Not only does it reflect badly on InterSpec's credit, but it has additional charges of about $5,000 plus another $5,500 in attorney's fees. This is plain inexcusable.*

On March 8, 2004, they wrote:

> *LaJane and I are serious about the MS case. So much so that we will not be paying out any money until we see some action from the folks in MS ...We haven't quit, but we are not sure if you ever started on the MS claim.*

And finally on April 16, 2004, they wrote:

> *What is the status of WrightHawk?*

14. Mr. Harville responded by e-mail on April 19, 2004:

> *I'll try to have a conversation will (sic) the fellow in Mississippi tomorrow.*

15. Hearing nothing further about the matter, on May 4, 2004, Ms. Boley corresponded directly with Mr. Lipscomb by e-mail. She also telephoned Mr. Lipscomb and was advised he had no file and that he only vaguely remembered talking to Mr. Harville. She informed Mr. Harville of this by e-mail on May 11, 2004.

16. Ms. Boley contacted another Mississippi attorney on her own, Jason Weeks, and furnished him with the records on July 9, 2004.

17. By letter dated July 13, 2004, Mr. Weeks advised Ms. Boley that in his opinion InterSpec's claim against WrightHawk was time barred by 40 U.S.C. 3133, which provides that an action on a payment bond on a federal project cannot be brought more than one year after the day on which the last of the labor was performed or material was supplied. The date of the last invoice having been September 6, 2002, the claim may have been time barred the year before.

18. Mr. Weeks also opined that InterSpec could bring a claim for breach of contract against WrightHawk, which had a three-year statute of limitations. By then, however, WrightHawk was out of business.

19. The Boleys allege that the letters from Mississippi counsel and CNA were the first notice to either of the Boleys that their $158,858 putative claim against CNA was time barred after one year.

20. In or about December 2003, the Boleys learned that CPI, a subcontractor hired by the Boleys, had obtained a default judgment in Mississippi against InterSpec for unpaid invoices.

Service as Registered Agent for MATIS

21. Although MATIS ceased doing business in 2001, the Boleys did not dissolve the business because it had accounts receivable that they wanted to pursue. Mr. Harville was their counsel in complex litigation brought on behalf of MATIS.

22. Mr. Harville also served as registered agent for MATIS in 2001.

23. Mr. Harville, however, did not prepare or file the annual reports with the State Corporation Commission or attend to the annual fees due for calendar years 2002 and 2003. Mr. and Mrs. Boley did not ask Mr. Harville to continue serving as Registered Agent for MATIS for calendar years 2002 or 2003. Further, MATIS being non-operational, Mr. Harville's opinion was that no reason existed to file any documents with the State Corporation Commission.

24. Mr. Harville explained to the bar that filing the annual report was not a duty he agreed to as registered agent, that the next annual report did not get filed because by then the Boleys did not have the $85 filing fee.

25. According to the Boleys, however, Mr. Harville agreed to make the annual filings with the SCC. They also said that they would have paid the annual fees if Mr. Harville had advised them about them.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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

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

III. PUBLIC REPRIMAND WITH TERMS

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

(1) that, on or before April 30, 2007, the Respondent shall obtain materials published by Virginia CLE regarding written fee agreements with clients and shall develop a form or forms to be used in his practice, clearly setting forth the terms of the engagement, including all objectives for his clients, submitting the same to the Bar Counsel for approval, on or before May 16, 2007;

(2) that, on or before April 30, 2007, the Respondent shall obtain a printed receipt, to be used in his practice, reflecting all funds received from his clients, and the purpose of said funds, submitting the same to the Bar Counsel for approval, on or before May 16, 2007;

(3) that, in addition to Continuing Legal Education (CLE) requirements imposed on all members of the Bar, the Respondent shall, on or before January 30, 2008, complete an additional six hours of CLE, not less than three hours of which shall be in courses eligible for ethics

credits as determined by the Virginia State Bar Mandatory Continuing Legal Education Board (MCLE), and the Respondent shall certify to the Bar Counsel not later than February 15, 2008, that this term has been satisfied. The certification to the Bar Counsel may utilize MCLE Form #2, but shall be sent to the Bar Counsel and not to MCLE.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified above, this District Committee shall impose a **Certification to the Virginia State Bar Disciplinary Board for Sanction Determination,** as mandated by the Rules of Court, Part Six, Section IV, Subparagraph 13.G.4 (b).

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

SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Robert W. McFarland, Esquire
Subcommittee Chair

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

IN THE MATTER OF
ALANA SHERRISE POWERS
VSB DOCKET NUMBER 07-022-0958

DISTRICT COMMITTEE DETERMINATION (PUBLIC ADMONITION WITHOUT TERMS)

On May 17, 2007, a hearing in this matter was held before a duly convened Second District Committee panel consisting of Debra Cooney Albiston, Attorney at Law, Jeffrey Laurence Marks, Esquire, Paula Michelle Brody Bruns, Attorney at Law, Bobby Wayne Davis, Esquire, Mr. William W. King, lay member, and Megan Elizabeth Furlich Burns, Attorney at Law, Chair.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.l.(2) of the Rules of the Supreme Court of Virginia, the Second District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Admonition Without Terms:

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Alana Sherrise Powers, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In a sentencing hearing at the Norfolk Circuit Court on May 26, 2006, Respondent's client, Randy Demond Cherry, was sentenced to two years for Possession of a Firearm by a Convicted Felon. At that time, the Court appointed Respondent to represent Mr. Cherry in the appeal of said conviction.
3. On May 30, 2006, Respondent opened a file for the Cherry appeal and began preparing the appeal, including arguments for the brief.
4. The Court entered its written sentencing order on June 6, 2006.
5. Respondent made efforts to ascertain the date of entry of the order by going to the Clerk's office on June 15, 2006, and June 27, 2006. In each instance, the Clerk's office was unable to find the order, and Respondent was unable to determine whether and when the sentencing order was entered.
6. On July 5, 2006, at approximately 3:00 p.m., Respondent traveled to the Clerk's office and found the June 6, 2006, sentencing order.
7. Respondent prepared the Notice of Appeal and mailed via First Class U.S. Mail the notice of appeal at or around 10:00 p.m. at the main post office, shortly before the last mail pick-up.
8. At this time, Respondent, along with other office-sharing attorneys, employed an office receptionist.
9. At this time, Respondent's office building had a Federal Express pick-up box in the lobby that had a last daily pick-up at 6:30 p.m.

10. Respondent's office was approximately 100 yards from the Norfolk Circuit Court Clerk's office.
11. The Notice of Appeal was not filed at the Clerk's office until July 7, 2006, outside of the 30-day deadline of Rule 5A:6.
12. After the Virginia Court of Appeals dismissed the appeal on August 11, 2006, Respondent wrote to Mr. Cherry at the Norfolk City Jail on August 16, 2006. Therein, Respondent advised Mr. Cherry of the defaulted appeal and advised him of the available options of a delayed appeal that she could file for him or of a petition for a writ of habeas corpus.
13. Receiving no response or direction from Mr. Cherry, Respondent took no further steps in her appointed representation.

II. NATURE OF MISCONDUCT

Such conduct by Alana Sherrise Powers constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

III. PUBLIC ADMONITION WITHOUT TERMS

Accordingly, it is the decision of the Second District Committee to impose a Public Admonition Without Terms and Alana Sherrise Powers is hereby so admonished.

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

SECOND DISTRICT COMMITTEE—SECTION II
OF THE VIRGINIA STATE BAR

By: Megan Elizabeth Furlich Burns
Chair

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

IN THE MATTER OF
TONJA MICHELLE ROBERTS
VSB DOCKET NUMBER 06-090-3155

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On March 16, 2007, a hearing in this matter was held before a duly convened Ninth District Committee panel consisting of John M. Perry, Jr., Esq., Chair Presiding; Mark B. Holland, Esq.; Philip G. Gardner, Esq.; Tyler E. Williams, III, Esq.; Frank A. Wright, Jr., Esq.; Theodore Bruning, Jr., lay member, and John E. Crowder, lay member.

Respondent appeared in person *pro se*. Scott Kulp appeared as counsel for the Virginia State Bar. Tammy Pacheco, RPR, with Cavalier Reporting and Videography, was sworn as the court reporter.

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

The parties made opening statements, and the panel received testimony from Albert E. Rhodenizer, Jr., VSB Investigator; Mr. Ronald W. Williams, Esq.; Mr. William Watkins, Complainant; and from Respondent. The panel received Virginia State Bar Exhibits 1-7 without objection. After the parties' evidence was completed, the panel received closing arguments, and the panel then adjourned to deliberate whether any of the Charges of Misconduct had been proven by clear and convincing evidence.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.l.2.d of the Rules of the Supreme Court of Virginia, the Ninth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant to this matter, Respondent Tonja Michelle Roberts (hereinafter "the Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia, and she was active and in good standing to practice law in the Commonwealth of Virginia.

2. Complainant William Watkins (hereinafter "Mr. Watkins") was involved in an automobile accident on February 21, 2003.

3. Shortly thereafter, Mr. Watkins consulted with Respondent who agreed to take his case on a contingency fee basis.

4. Mr. Watkins provided Respondent with his hospital bills, and he went to see a chiropractor from whom he incurred additional medical bills.

5. Respondent conveyed a settlement offer to Mr. Watkins in June 2004, but Mr. Watkins declined to accept it.

6. Respondent then filed a Motion for Judgment on Mr. Watkins's behalf on February 22, 2005.

7. Thereafter, Mr. Watkins was unable to reach Respondent by telephone or at her office, resulting in his consultation with another attorney, Mr. Ronald Williams, in December 2005.

8. On Mr. Watkins' behalf, Mr. Williams attempted to reach Respondent for a status report on Mr. Watkins' case. Mr. Watkins testified that he called Respondent's office and even tried to reach Respondent through her father's law office, but he was unable to get a response from Respondent.

9. Mr. Watkins mailed Respondent letters dated December 6, 2005, December 7, 2005, December 22, 2005, and January 10, 2006, without response.

10. With Mr. Williams' assistance, Mr. Watkins filed a bar complaint against Respondent at the end of March 2006.

11. While the bar's Investigation revealed that the lawsuit was still pending, it had not been served on the defendants within 12 months pursuant to Va. Code § 8.01-275.1.

12. Respondent failed to obtain service of the lawsuit on the defendants, and she failed to communicate the problem to Mr. Watkins.

13. Respondent's last communication with Mr. Watkins was in November 2005.

II. NATURE OF MISCONDUCT

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

III. PUBLIC REPRIMAND WITH TERMS

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

> [1] Respondent shall file a motion for leave to withdraw as Mr. Watkins's counsel and shall diligently bring the motion to hearing within 30 days of the bar's mailing of this Determination to her. Respondent shall mail a copy of the motion to Mr. Watkins; [2] Respondent shall attend at least three (3) hours of MCLE-approved Continuing Legal Education in the area of law office management within 90 days of the bar's mailing of this Determination to her. If such course is not available within 90 days, Respondent shall attend the next available course; [3] No later than 30 days after completion of the Continuing Legal Education course, Respondent shall both establish a calendar/docket control system for her law practice, including reminders and ticklers, and consult with John J. Brandt, Esquire, 1-800-215-7854, approved Independent Risk Manager for the Virginia State Bar, for the purposes of discussing changes to her law office management practices [Mr. Brandt's full description is listed on the Virginia State Bar's Web site, *vsb.org.*]; and [4] Respondent shall certify in writing her compliance with all of these Terms to Bar Counsel within 30 days of her compliance.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the foregoing Terms are not met by the date specified, this District Committee shall impose a Certification For Sanction Determination.

IV. Alternative Sanction

If the foregoing Terms are not met by the dates specified, this District Committee shall impose a Certification For Sanction Determination as defined by Part 6, Section IV, Paragraph 13.A of the Rules of the Virginia Supreme Court and set forth Part 6, Section IV, Paragraph 13.H.2.p.2 of the Rules of the Supreme Court of Virginia.

Pursuant to Part Six, Section IV, Paragraph 13.b.8.c.(1) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

NINTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By John M. Perry, Jr.
Chair

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

IN THE MATTER OF
KAREN PATRICIA WOOLLEY, ESQUIRE
VSB DOCKET NUMBER 05-070-4572

SUBCOMMITTEE DETERMINATION PUBLIC REPRIMAND

On the 4th day of May, 2007, a meeting in this matter was held before a duly convened a subcommittee of the Seventh District Committee consisting of Joseph W. Richmond Jr., Esq., Minor Eager, and Thomas J. Chasler, Esq., presiding.

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

I. FINDINGS OF FACT

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

2. Respondent Woolley represented Virginia Ramirez in a divorce case in which Ms. Ramirez was the Defendant. During her representation of Ms. Ramirez, Respondent Harris filed an Answer and Crossbill to Plaintiff's Bill of Complaint for Divorce forty-six (46) days after Plaintiff properly served Ms. Ramirez, i.e., twenty-one (21) days late. Although Plaintiff's counsel answered Respondent's pleading and the parties exchanged discovery, the Court proceeded to adjudicate the divorce as a no fault matter and granted the divorce as if it were uncontested.

3. Upon Plaintiff's motion for summary judgment, the Court found that since the divorce had been pending for over a year, Respondent Woolley had had time to correct the late filing by seeking leave of the Court for an extension to file a late response. Respondent Woolley argued that a serious health problem had prevented her from filing a timely response, but the Court found this unpersuasive.

4. Respondent Woolley then paid Ms. Ramirez $40,000.00 in exchange for a executed release from any malpractice liability stemming from her failure to timely file the Answer and Crossbill on Ms. Ramirez's behalf. However, the release stated that should Ms. Ramirez prevail on appeal, she would reimburse Respondent Woolley the $40,000.00. This created a conflict of interest for Respondent Woolley under Rule of Professional Conduct 1.8.

5. Respondent Woolley contacted Spencer Dean Ault, Esq. for assistance with the appeal and he agreed to provide limited help to her. Mr. Ault agreed only to draft the pleadings for Respondent Woolley to file in the case. He drafted a petition for appeal and forwarded it to Respondent

Woolley for her review and filing. However, Respondent Woolley did not file the petition for appeal because she contends that she did not receive the brief. On April 15, 2005, the Court of Appeals dismissed the appeal because Respondent Woolley had failed file a petition.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct/Disciplinary Rules 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 1.8 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.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, provided the client remains ultimately liable for such costs and expenses; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

III. PUBLIC REPRIMAND

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

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Proceedings Based Upon Paragraph 13.M.

On May 2, 2007, COLD approved a proposed amendment requiring disbarred and suspended attorneys to notify the Clerk of the Disciplinary System when they have no clients to notify of their revocations or suspension pursuant to Paragraph 13.M. The subparagraph also has been revised to establish a procedure for a show cause resulting from failure to comply with the requirements of Paragraph 13.M.

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

* * *

M. Duties of Disbarred or Suspended Respondent

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

1. A Respondent whose License has been suspended or revoked shall within:

   a. 14 days after the effective date of such Suspension or Revocation give written notice of his or her Suspension or Revocation to:

      (1) all clients for whom he or she was handling legal matters and all attorneys and the presiding Judge or Judges or third party neutral in any pending legal matter in which the Respondent was counsel for a party on the effective date of the Suspension or Revocation; or

      (2) advise the Clerk of the Disciplinary System in writing that the Respondent had no clients for whom he or she was handling legal matters on the effective date of the Suspension or Revocation;

   b. 45 days after the effective date of such Suspension or Revocation make appropriate arrangements for the disposition of legal matters then in his or her care in conformity with the wishes of his or her clients; and,

   c. 60 days after the effective date of such Suspension or Revocation file with the Clerk of the Disciplinary System proof that such notices have been timely given, and such arrangements have been timely made for the disposition of matters.

2. For purposes of applying or interpreting this subparagraph M, the following rules apply:

   a. Unless a stay of a Suspension is granted by this Court, the effective date of a Suspension or Revocation shall be the effective date of the Summary Order or Memorandum Order imposing the Revocation or Suspension issued by the Board or a three-Judge Circuit Court pursuant to Va. Code Section 54.1-3935 unless otherwise stated in the order.

   b. If a stay of a Suspension is granted by this Court the effective date of the Suspension shall be as finally determined upon termination of the appeal.

3. The Board or a three-judge Circuit Court shall decide all issues concerning the adequacy and timeliness of the notices and arrangements required by subparagraph M and may impose a Revocation or additional Suspension for failure to comply with the requirements of subparagraph M.

4. Procedure to Show Cause Upon Alleged Failure to Comply

   a. Whenever it appears that the Respondent has failed to comply with the requirements of subparagraph M, Bar Counsel shall serve notice requiring the Respondent to

show cause why the Board should not impose a Revocation or additional Suspension for said alleged failure.

b. Within 15 days after service of the notice to show cause, the Respondent shall:

(1) file an answer that shall be conclusively deemed to be a consent to the jurisdiction of the Board; or

(2) file an answer and a demand that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code §54.1-3935; and simultaneously provide available dates for a hearing to be scheduled not less than 30 nor more than 120 days from the demand.

Upon such answer, demand and provision of available dates as specified above, further proceedings before the Board shall terminate, and Bar Counsel shall file the Complaint required by Va. Code §54.1-3935.

c. If the Respondent fails to file an answer, or file an answer, a demand and available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

d. The Board shall set a date, time, and place for the hearing, and the Clerk of the Disciplinary System shall serve notice of such hearing upon the Respondent at least 21 days prior to the date fixed for the hearing.

* * *

Comments or questions should be submitted in writing to Thomas A. Edmonds, Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, no later than October 1, 2007. The Virginia State Bar Council will consider the proposed amendments when it meets on October 19, 2007, in Norfolk, Virginia.

Provision of Available Dates

On June 6, 2007, the Standing Committee on Lawyer Discipline approved proposed amendments to the Rules of Court, Part Six, Section IV, Paragraph 13, which clarify when a Respondent must provide available dates for scheduling of a hearing.

13. PROCEDURE FOR DISCIPLING, SUSPENDING, AND DISBARRING ATTORNEYS

* * *

H. District Committee Proceedings

1. Pre-Hearing Matters

a. Charge of Misconduct

* * *

(2) After the Respondent has been served with the Charge of Misconduct, the Respondent shall, within 21 days after service of the Charge of Misconduct:

(a) file an answer to the Charge of Misconduct, which answer shall be deemed consent to the jurisdiction of the District Committee; or

(b) file an answer to the Charge of Misconduct and a demand with the Clerk of the Disciplinary System that the proceedings before the District Committee be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing ~~to be scheduled~~ not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the District Committee shall terminate, and Bar Counsel shall file the ~~C~~complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a jurisdictionally specific time deadline for the hearing to be held.

* * *

4. Perfecting an Appeal from District Committee's Determination

a. By the Respondent

(1) Notice of Appeal; Demand

Within ten days after service on the Respondent of the District Committee Determination, ~~notice is mailed of a District Committee's issuance of an Admonition, with or with Terms, or a Public Reprimand, with or without Terms, a Respondent~~ the Respondent may file with the Clerk of the Disciplinary System either a notice of appeal to the Board or a notice of appeal and

a written demand that further Proceedings be conducted ~~in a Circuit Court~~ pursuant to Va. Code § 54.1-3935. In either case, the Respondent shall send copies to the District Committee Chair and to Bar Counsel.

Upon such demand, further proceedings before the Board shall terminate, and Bar Counsel shall file the complaint required by Va. Code §54.1-3935. The hearing shall be scheduled as soon as practicable.

If the Respondent fails to file a demand, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

* * *

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

* * *

I. Board Proceedings

1. Pre-Hearing Matters

a. Procedure on Certification to the Board

(1) After a Subcommittee or District Committee certifies a matter to the Board, and the Respondent has been served with the Certification, the Respondent shall, within 21 days after service of the Certification:

(a) file an answer to the Certification with the Clerk of the Disciplinary System, which answer shall be deemed consent to the jurisdiction of the Board; or

(b) file an answer to the Certification and a demand with the Clerk of the Disciplinary System that the proceedings before the Board be terminated and that further proceedings be conducted pursuant to Va. Code §54.1-3935; and simultaneously provide available dates for a hearing ~~to be scheduled~~ not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall terminate, and Bar Counsel shall file the ~~C~~complaint required by Va. Code §54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a jurisdictionally specific time deadline for the hearing to be held.

* * *

b. Expedited Hearings

* * *

(5) At least five days prior to the date set for hearing, the Respondent shall either:

(a) file an ~~formal~~ answer to the petition with the Clerk of the Disciplinary System, which answer shall be conclusively deemed ~~to be a~~ consent to the jurisdiction of the Board; or

(b) file an answer and a demand with the Clerk of the Disciplinary System that proceedings before the Board be terminated and that further proceedings be conducted pursuant to ~~Article 6 of Chapter 39 of Title 54.1 of the Code of Virginia~~ Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing not less 30 days nor more than 120 days from the date of the Board order. ~~whereupon~~

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file ~~a~~ the complaint ~~under~~ required by Va. Code § 54.1-3935~~;~~. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a jurisdictionally specific time deadline for the hearing to be held. ~~Failure to file such demand within the time prescribed herein shall be a conclusive waiver of the right to subsequently file such demand.~~ If any order of summary Suspension has been entered, such Suspension shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it.

If the Respondent fails to file an answer, or an answer and a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

~~(6) If proceedings continue before the Board, the conduct of the hearing shall be as provided herein. If proceedings continue pursuant to Va. Code § 54.1-3935, the court designated pursuant to that section shall conduct the hearing provided for therein no more than 60 days from the date of filing of the complaint. If any order of summary Suspension has been entered, such Suspension shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it.~~

* * *

5. Proceedings upon First Offender Plea, Guilty Plea or Adjudication of a Crime

a. Plea under First Offender Statute

* * *

(3) If the Attorney elects to have further proceedings conducted pursuant to ~~Article 6, Chapter 39, Title 54.1 of the Code~~ Va. Code § 54.1-3935, the Attorney shall file a demand with the Clerk of the Disciplinary System ~~therefor~~ not later than ten days prior to the date set for the Board hearing, and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a jurisdictionally specific time deadline for the hearing to be held.

If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

* * *

b. Guilty Plea or Adjudication of a Crime

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

The hearing shall be set not less than 14 or more than 30 days after the date of the Board's order. Upon written request of the Respondent, the hearing may be continued until any probation ordered by a court has ended or after sentencing has occurred. Upon receipt by the Board of a certified copy of a notice of appeal from the conviction, proceedings before the Board shall, upon request of the Respondent, be continued pending disposition of such appeal. The Board shall, upon request of the Respondent, hold an interim hearing and shall terminate such Suspension while the probation, sentencing, or appeal is pending, if the Board finds that such Suspension, if not terminated, would be likely to exceed the discipline imposed by the Board upon a hearing on the merits of the case.

Upon presentation to the Board of a certified copy of an order setting aside the verdict or reversing the conviction on appeal, any Suspension shall be automatically terminated and any Revocation shall be vacated, and the License shall be deemed automatically reinstated. Discharge or Dismissal of a guilty plea or termination of probation shall not result in the automatic termination of the Suspension or vacation of the Revocation. Nothing herein shall preclude further proceedings against the Respondent upon Charges of Misconduct arising from the facts leading to such conviction.

~~c.~~(2) Procedure

The procedure applicable to Proceedings related to Misconduct shall apply to Proceedings relating to guilty pleas or Adjudication of a Crime~~,~~. ~~except that~~

I~~i~~f the Respondent elects to have further Proceedings conducted pursuant to Va. Code § 54.1-3935, the Respondent shall file ~~the Respondent's~~ a demand with the Clerk of the Disciplinary System ~~herefore~~ not later than ten days prior to the date set for the hearing before the Board,~~.~~ and simultaneously provide available dates for a hearing not less than 30 nor more than 120 days from the date of the demand.

Upon such demand and provision of available dates as specified above, further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by Va. Code § 54.1-3935. The hearing shall be scheduled as soon as practicable. However, the 30 to 120 day time frame shall not constitute a jurisdictionally specific time deadline for the hearing to be held. The order of Suspension issued by the Board shall remain in effect until the court designated under Va. Code § 54.1-3935 enters a final order disposing of the issue before it.

If the Respondent fails to file a demand, and provide available dates, as specified above, the Respondent shall be deemed to have consented to the jurisdiction of the Board.

~~If the Respondent files a demand that the Proceedings before the Board be terminated, and that further Proceedings be conducted by a three-judge Circuit Court, the order of Suspension issued by the Board shall remain in effect until the three-judge Circuit Court issues its ruling, subject, however, to the provisions of Va. Code § 54.1-3935.~~

~~d.~~(3) Action by the Board at the Hearing
If the Board finds at the hearing that the Respondent has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, an order shall be issued, and a copy thereof served upon the Respondent in which the Board shall:

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

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

* * *

Comments or questions about the rules should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than October 1, 2007. The Virginia State Bar Council will consider the proposed amendment when it meets on October 19, 2007, in Norfolk, Virginia.

No Appeal from Disciplinary Board Decision When Sanction Pursuant to Agreed Disposition

On January 3, 2007, the Standing Committee on Lawyer Discipline approved a proposed amendment to the Rules of Court, Part Six, Section IV, Paragraph 13, which would negate an appeal of a Disciplinary Board sanction resulting from an agreed disposition. The proposed language is identical to similar existing language that applies to the imposition of a sanction by a district committee.

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

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

* * *

J. Appeal from Board Determinations

* * *

7. Appeal from Agreed Sanction Prohibited. No appeal shall lie from any sanction to which the Respondent has agreed.

* * *

Comments or questions about the rules should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than October 1, 2007. The Virginia State Bar Council will consider the proposed amendment when it meets on October 19, 2007, in Norfolk, Virginia.

Appeal of District Committee Determination Imposing Discipline

On June 6, 2007, the Standing Committee on Lawyer Discipline approved proposed amendments to the Rules of Court, Part Six, Section IV, Paragraph 13, which correct inconsistencies in the language dealing with an appeal from a district committee.

13. PROCEDURE FOR DISCIPLINING, SUSPENDING, AND DISBARRING ATTORNEYS

* * *

H. District Committee Proceedings

* * *

2. Hearing Procedure

* * *

n. Notice to the Respondent and Bar Counsel of District Committee Decision

If the District Committee issues a Dismissal, the Chair shall promptly provide written notice to the Complainant, the Respondent and Bar Counsel of such Dismissal and the factual and legal basis therefor.

If the District Committee issues a Public Reprimand, with or without Terms~~,~~; ~~or~~ an Admonition, with or without Terms~~,~~; a Dismissal *De Minimis*; or a Dismissal for Exceptional Circumstances, the Chair shall promptly send the Complainant, the Respondent and Bar Counsel a copy of the District Committee's Determination.

If the District Committee finds that the Respondent failed to comply with the Terms imposed by the District Committee, the Chair shall notify the Complainant, the Respondent and Bar Counsel of the imposition of the alternative disposition.

If the District Committee has elected to certify the

Complaint, the Chair of the District Committee shall promptly mail to the Clerk of the Disciplinary System a copy of the Certification. A copy of the Certification shall be sent to Bar Counsel, Respondent and the Complainant.

o. ~~Issuance of Public Reprimand or Admonition~~ <u>District Committee Determination Finality and Public Statement</u>

Upon the expiration of the ten-day period after ~~notice~~ <u>service on the Respondent</u> of a District Committee~~'s~~ <u>D</u>~~d~~etermination ~~is mailed~~, if <u>either</u> <u>a</u> <u>n</u>~~N~~otice of <u>a</u>~~A~~ppeal or <u>a notice of appeal and a written demand that further Proceedings be conducted before a three-judge Circuit</u> ~~shall issue the Public~~ <u>Court pursuant to Va. Code Section 54.1-3935</u> has not been filed by the Respondent, the District Committee ~~Reprimand, with or without Terms, or Admonition, with or without Terms, to the Respondent.~~ <u>Determination shall become final and</u> <u>t</u>~~T~~he Clerk of the Disciplinary System shall issue a public statement as provided for in this Paragraph for the dissemination of public disciplinary information.

* * *

4. Perfecting an Appeal from District Committee's Determination

a. By the Respondent

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

* * *

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

* * *

Comments or questions about the rules should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than October 1, 2007. The Virginia State Bar Council will consider the proposed amendment when it meets on October 19, 2007, in Norfolk, Virginia.

UNAUTHORIZED PRACTICE OF LAW OPINION

VIRGINIA STATE BAR'S STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW IS SEEKING COMMENT ON UPL OPINION 212

Pursuant to Part Six: Section IV, Paragraph 10(c)(iii) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on the Unauthorized Practice of Law ("UPL Committee") is seeking public comment on proposed UPL Opinion 212, *Whether a Non-Lawyer Settlement Agent Can Negotiate a Debt on Behalf of a Debtor.*

This proposed opinion addresses the question of whether negotiation alone is the unauthorized practice of law. The dispositive question is whether there is an exercise of legal judgment within the context of the negotiation by a nonlawyer on behalf of another. The Committee concluded that "negotiation" alone, is not, per se the unauthorized practice of law, and in this case there were no facts presented indicating an exercise of legal judgment or expertise.

Inspection and Comment

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

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the advisory opinion by

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Inspection and Comment

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

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the advisory opinion by

filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **September 24, 2007.**

DRAFT May 9, 2007

Unauthorized Practice of Law Opinion 212

You have asked the Committee to opine as to whether the conduct in the following scenario is the unauthorized practice of law: Debtor owes Creditor $20,000.00. Creditor reduced his claim to judgment several years ago and filed a lien for this judgment in the real estate records against Debtor's property. When Debtor tried to refinance a mortgage, his non-lawyer settlement agent discovered the judgment lien. Debtor does not want to pay the full amount of the lien. Can the lay settlement agent attempt to negotiate a lower payoff for Debtor under these facts? Assuming the same facts, does it make a difference if the claim had not been reduced to judgment? Again, assuming the same facts, what if Debtor does not live in one of the parcels being financed, i.e. the property is commercial property?

The controlling authority for this inquiry is found in Part 6, § I (B) Rules of the Supreme Court of Virginia, Definition of the Practice of Law in the Commonwealth of Virginia:

> ***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 his possession and use of legal knowledge or skill.
>
> ***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.
>
> (3) One undertakes, with or without compensation, to represent the interest of another before any tribunal—judicial, administrative, or executive—otherwise than in the presentation of facts, figures, or factual conclusions, as distinguished from legal conclusions, by an employee regularly and bona fide employed on a salary basis, or by one specially employed as an expert in respect to such facts and figures when such representation by such employee or expert does not involve the examination of witnesses or preparation of pleadings.
>
> (4) One holds himself or herself out to another as qualified or authorized to practice law in the Commonwealth of Virginia.

The Committee does not believe that "negotiation" alone is per se the unauthorized practice of law. The dispositive question, applying the definition of the practice of law, is whether there is an exercise of legal judgment within the context of the negotiation by a nonlawyer on behalf of another. So long as the settlement agent is only negotiating "numbers" and not offering the customer legal advice nor making a legal argument on the person's behalf to the creditor, or holding out as qualified to practice law or attempting to represent the debtor within the context of a matter before a tribunal, it is not unauthorized practice.

The requestor set out three possible contexts in which this negotiation would take place: 1) when a claim had been reduced to judgment and was a lien against the property; 2) when a claim had not yet been reduced to judgment but was an outstanding debt; and 3) when there was a debt or a judgment and the property being refinanced was commercial property (i.e. debtor does not live on the property). The Committee's opinion and analysis do not change with the change of context or circumstances. The dispositive issue still will be whether there is an exercise of legal judgment or skill and will depend on the specific facts and circumstances of each case. The information presented in the inquiry does not include details as to the substance of the nonlawyer settlement agent's communication with the creditor, only that there was negotiation for a lower payment. There are no other facts upon which to make a determination as to whether there was any exercise of legal judgment or skill or holding out as authorized to practice law. Consequently, the Committee's finding, that negotiation with a creditor for payment of a debt, in and of itself, does not constitute the practice of law, applies to each scenario of this inquiry.

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

REQUIRED NOTIFICATION TO THIRD-PARTY CLAIMANTS OR JUDGMENT CREDITORS WHEN A SETTLEMENT CHECK IS SENT TO THEIR ATTORNEY OR REPRESENTATIVE

On March 22, 2007, the Virginia State Bar's Public Protection Task Force approved adoption of a new statute that would require an insurer or its representative to notify a third-party claimant or judgment creditor when a check in settlement of their claim is sent to the third-party claimant's or judgment creditor's attorney or representative. The Virginia State Bar Council will consider the proposed amendment when it meets on October 19, 2007, in Norfolk, Virginia.

Proposed Notification Statute:

Notice of settlement payment in excess of five thousand dollars by insurer to an attorney or other representative of a claimant or judgment creditor

(a) Upon the payment of the sum of five thousand dollars ($5,000) or more in settlement of any third-party liability claim or judgment, where the claimant or judgment creditor is a natural person, the insurer, or its representative, shall mail to the claimant or judgment creditor notice of such payment at the same time payment is made by the insurer to an attorney or other representative of the claimant or judgment creditor.

(b) The notice required pursuant to subsection (a) of this section shall be mailed to the last known address of such claimant or judgment creditor as furnished by such claimant's or judgment creditor's attorney or representative at or prior to the time of settlement.

(c) For purposes of this section, "written notice" may be satisfied by providing to the claimant or judgment creditor a copy of the cover letter sent to the claimant's or judgment creditor's attorney or other representative that accompanied the settlement payment.

(d) Nothing in subsection (a), (b) or (c) of this section shall (1) create any cause of action or proceeding for any person or entity against an insurer based upon a failure to provide notice as required by this section or a defective notice, (2) establish a defense for any party to any cause of action based upon a failure to provide notice as required by this section or a defective notice, or (3) invalidate or in any way affect the settlement for which the payment was made by the insurer.

* * *

Comments or questions about the proposed notification statute should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than October 1, 2007.

LEGAL ETHICS OPINION 1832
POTENTIAL CONFLICT OF INTEREST WHEN PROSPECTIVE CLIENT SPEAKS ONLY WITH THE SECRETARY AND HAS NO DIRECT CONTACT WITH THE LAWYER

You have presented a hypothetical request in which a year ago, a woman, Ms. X, called a lawyer's office for an initial consultation. Ms. X communicated only with the lawyer's secretary, who scheduled an appointment for Ms. X to meet with the lawyer. Ms. X called the secretary a second time and advised the secretary that the lawyer had previously represented her ex-husband's sister. The secretary advised the lawyer of Ms. X's relationship to that former client. Prior to Ms. X's second call, the ex-husband had made an appointment to meet with the lawyer. The lawyer advised the secretary that he would not take Ms. X's case. The lawyer agreed to represent the ex-husband regarding petitions filed by Ms. X.

Ms. X now objects to that representation. Ms. X says she told the secretary "all the facts" about her case. Despite Ms. X's claim that she told the secretary all about her case, the lawyer and his secretary maintain they are in possession of no confidential information about Ms. X.

With regard to this hypothetical scenario, you have asked the Committee to opine as to whether it is ethically permissible for this lawyer to continue to represent the ex-husband against Ms. X. Resolution of your question involves a determination of whether this lawyer has a conflict of interest in representing the ex-husband after his office acquired information from Ms. X. The source of the conflict of interest is the lawyer's duty of confidentiality under Rule 1.6.[1] As set out below, the Committee believes that Ms. X's communication with the secretary is information the lawyer is obligated to keep confidential under Rule 1.6. Thus, any information obtained from Ms. X could not be used by the lawyer in representing the ex-husband.

Based on the facts you present, there was no agreement, express or implied, that the lawyer would undertake representation of Ms. X.[2] However, Ms. X's contact with the law firm via the secretary does raise ethical obligations with respect to any confidential information given the secretary.

In prior opinions, the Committee has stated that a person who consults with a lawyer may reasonably expect that confidential information a person shares with a lawyer is protected under Rule 1.6, even if the lawyer and client do not agree to a professional engagement. *See* LEO 629 (1984) (A lawyer who learns confidences during a professional discussion at a social engagement may not reveal the contents without the client's consent); LEO 1453 (1992) (potential client's initial consultation with lawyer creates reasonable expectation of confidentiality which must be protected even if no lawyer-client relationship arises in other respects); LEO 1546 (1993) (wife who had initial consult with lawyer during which confidential information was disclosed precluded another lawyer in the same firm from representing husband in divorce).

In LEO 1794 (2004), the Committee observed that the ethical obligation to protect confidential information of a prospective client encourages people to seek early legal assistance and such persons must be comfortable that the information imparted to a lawyer while seeking legal assistance will not be used against them. That Ms. X in the present scenario never retained the lawyer and never became a client does not relieve the lawyer of this duty of confidentiality.

There is, however, a significant factual difference between the present scenario and that of LEO 1794. In LEO 1794, the prospective client actually meets with the lawyer. In contrast, in the present scenario, the prospective client speaks only with the secretary and has no direct contact with the lawyer. The question then is whether the duties of Rule 1.6 are triggered by the provision of information to support staff rather than to a lawyer.

While the secretary in your scenario is not governed by the Rules of Professional Conduct applicable to lawyers, Rule 5.3 (b) imposes a duty on the lawyer to ensure that the secretary's conduct is compatible with the professional obligations of the lawyer. Comment [1] of that rule adds that: "[a] lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, *particularly regarding the obligation not to disclose information relating to representation of the client* . . . ." (emphasis added).

The Committee applied these ethical precepts in LEO 1800. In that opinion, the Committee analyzed whether the conflicts rules apply when a firm hires the secretary of the law firm representing the opposing party in a litigation matter. The opinion concludes that Rules 1.7 and 1.9 apply exclusively to lawyers, not to support staff. However, that conclusion did not end the discussion or the lawyer's duties in that situation. The opinion looked to Rule 5.3, which governs a lawyer's duty to supervise

FOOTNOTES

1 Rule 1.6 would require the lawyer and the secretary to preserve the confidentiality of any confidences and secrets Ms. X claims to have imparted to the secretary. A lawyer has an ethical duty to ensure that non-lawyer employees comply with the duty of confidentiality. Rule 5.3.

2 Whether or not a lawyer-client relationship was created is a legal issue outside the purview of the Committee. However, the Restatement (3d) of the Law Governing Lawyers, § 14 (2000) offers some guidance:

> A relationship of client and lawyer arises when:
> (1) a person manifests to a lawyer the person's intent that the lawyer provide legal services for the person; and either:
> (a) the lawyer manifests to the person consent to do so; or
> (b) the lawyer fails to manifest lack of consent to do so and the lawyer knows or reasonably should know that the person reasonably relies on the lawyer to provide the services; or
> (2) a tribunal with the power to do so appoints the lawyer to provide the services.

See also LEO 1546 (1993) holding that a prospective client's initial consultation with an attorney creates an expectation of confidentiality that would conflict the firm if it later represented the opposing party in the same matter.

support staff so that staff conduct is consistent with the lawyer's ethical responsibilities. In other words, lawyers are required to train support staff to preserve client confidences and secrets.

In LEO 1800, the Committee opined that the lawyer in the hiring firm is directed to screen the secretary from the matter so that the secretary will not disclose information regarding the former employer's client to the lawyer. For prospective clients to feel comfortable divulging information about their legal matters to law firms, those clients need assurance that the information will remain confidential, regardless of which individual at the firm does the intake interview and/or initial consultation. Without screening procedures, information obtained by support staff is imputed to the lawyers in a firm.

Returning to analysis of the present scenario, your facts state that Ms. X claims to have "told everything" to the secretary, but the lawyer and the secretary claim to have no confidential information. Further, when the secretary advised the lawyer of Ms. X's relationship to a former client, the lawyer advised that he had already agreed to represent the husband and that he would not represent Ms. X.

The Committee believes that LEO 1800 offers appropriate guidance in your scenario. To avoid the imputation of confidential information to the lawyer, and possible disqualification, the lawyer has an ethical duty to establish a screen between the secretary and lawyer as to Ms. X and the ex-husband's case. The lawyer must instruct the secretary that she cannot reveal to the lawyer any confidential information obtained from Ms. X. To preserve information protected by Rule 1.6, the lawyer must use another staff person in lieu of the secretary for any work performed relating to the representation of the ex-husband against Ms. X and should send a written communication to Ms. X or her lawyer that these measures have been taken.

In the event that the ethics "screen" is breached and the lawyer learns confidential information communicated by Ms. X to the secretary, the lawyer may find it necessary to withdraw from representing the ex-husband. The lawyer's duty of confidentiality to Ms. X may materially limit the lawyer's representation of the ex-husband, since he would be foreclosed from using any information Ms. X may have given the secretary. *See* Rule 1.7 (a)(2) (a conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or *a third person* or by a personal interest of the lawyer) (emphasis added). Even assuming that Ms. X is not a "client" or "former client" she is a third person to whom the lawyer owes a duty of confidentiality which may "materially limit" the lawyer's representation of the ex-husband. Whether such a conflict exists depends, of course, upon the extent that the "screen" was breached and the nature of the information actually learned by the attorney.

For the protection of clients, the law firm, and public, the Committee recommends that the firm train non-lawyer support staff to minimize confidential information obtained from prospective clients before they can perform the necessary conflicts analysis.

In rendering this opinion the Committee continues to reiterate its position that if confidential information learned by one lawyer in a firm results in disqualification that disqualification is imputed to all lawyers in the firm and a screen can only be used to cure a client conflict with client consent, pursuant to Rule 1.7 (b). Exceptions exist for conflicts that are carried with a departing lawyer pursuant to Rule 1.10 and government lawyers pursuant to Rule 1.11.

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

Committee Opinion
May 10, 2007

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON LEGAL ETHICS OPINION 1840

Pursuant to Part Six: Section IV, Paragraph 10(c)(iii) of the Rules of the Supreme Court of Virginia, the Virginia State Bar's Standing Committee on Legal Ethics ("Committee") is seeking public comment on proposed advisory Legal Ethics Opinion 1840; *Can a Lawyer Representing a Settlement Company Facilitate That Company's Practice of Re-deeding Property Through a Relocation Intermediary Without Proper Recordation?*

This proposed opinion generally addresses whether a lawyer representing a settlement company can facilitate that company's practice of re-deeding property through a relocation intermediary without proper recordation. The relocation company is acting as the contract seller in purchasing real estate on behalf of their client's employees who have been transferred and agrees to purchase the employee's real estate. The seller executes an original deed to the relocation company. The relocation company does not record the original deed and enters into contract to sell property. The relocation company then drafts and substitutes a new front page for the deed, advising the settlement agent that the proceeds are to be made payable to the relocation company, not the grantor of the deed. The lawyer realizes that the relocation company should have recorded the original deed and paid applicable fees. Can the lawyer facilitate the relocation company's practice of not recording the first deed but a fraudulent constructed second deed and preparing legal documentation that does not accurately reflect the true chain of title to the real estate?
In this proposed opinion, the Committee concluded that this clearly involves fraud and is a violation of the Rules of Professional Conduct.

Inspection and Comment

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

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed advisory opinion by filing ten copies with Thomas A. Edmonds, the Executive Director of the Virginia State Bar, not later than **September 24, 2007.**

(DRAFT — JUNE 5, 2007)

LEGAL ETHICS OPINION 1840
CAN A LAWYER REPRESENTING A SETTLEMENT COMPANY FACILITATE THAT COMPANY'S PRACTICE OF RE-DEEDING PROPERTY THROUGH A RELOCATION INTERMEDIARY WITHOUT PROPER RECORDATION?

In this hypothetical real estate Lawyer A has been asked to handle a real estate settlement of property, involving Relocation Company's ("Relocation") sale of property to purchaser. Relocation routinely purchases real estate on behalf of some of their client's employees who have been transferred and as a benefit of employment the company, through Relocation, agrees to purchase the employee's real estate.

Relocation purchases the real estate from Seller and Seller executes a deed to Relocation. Relocation does not record this original deed and then enters into a contract and sells the same real estate to Buyer. Lawyer B for Relocation drafts a deed for this transaction by preparing a new "page one" that contains the name of Buyer but uses the signature page of the original deed between Seller and Relocation. This is routine practice for Relocation and Lawyer B as it relates to these types of transactions for their client's employees.

Relocation advises Lawyer A that the proceeds of the sale are to be payable to Relocation (not the grantor of the deed). Lawyer A recognizes that Relocation should have recorded the original deed and paid all applicable recording fees and taxes and that seller's warranties under the original deed were made to Relocation, not the buyer.

The question posed involves whether or not this is unethical for Lawyer A to facilitate Relocation's practice of not recording the first deed and preparing legal documentation that does not accurately reflect the true chain of title to the real estate. What are Lawyer A's ethical obligations as to the chain of title and is Lawyer A obligated to report Lawyer B's conduct?

There are two principal issues involved with these facts. The first issue involves the failure of Relocation to properly record the chain of title of said property and pay all applicable recording fees and taxes. The facts you provide indicate that Lawyer B clearly knew that he was substituting a second front page over the original deed thereby misrepresenting the actual conveyance of the property. The committee believes that this conduct clearly involves fraud and is a violation of the Rules of Professional Conduct. A lawyer cannot knowingly assist a client in committing fraud. Rule 1.2 (c)[1]

When the client's course of conduct has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is not permitted to reveal the client's wrongdoing, except where permitted by Rule 1.6. However, the lawyer is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. Rule 1.2 Comment [10]. In this scenario Lawyer A must counsel the client as to any past fraudulent conduct and cannot continue with this closing knowing that Lawyer B and Relocation's offered deed is fraudulently constructed and does not legally reflect the chain of title and deeds in this conveyance.

The second issue involves the misconduct of Lawyer B, who is employed by Relocation and has advised Relocation in this course of conduct and misrepresentation. Whether Lawyer A has a duty to report Lawyer B under Rule 8.3 (a)[2] is based upon a two-prong test: first, a lawyer must have information indicating that another lawyer has committed a violation of the Rules of Professional Conduct. Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on that lawyer's fitness to practice law. Rule 8.4(c).[3] Since the committee has opined above that Lawyer B's conduct involved fraud the committee believes that the first prong of the test has been met.

FOOTNOTES

1 RULE 1.2 Scope of Representation

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

2 RULE 8.3 Reporting Misconduct

(a) A lawyer having reliable information that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness to practice law shall inform the appropriate professional authority.

3 RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Second, the lawyer in possession of information regarding the conduct of another lawyer must determine whether the misconduct "raises a substantial question as to that lawyer's fitness to practice law in other respects." Following the analysis used in LEO 1522[4], the committee is of the opinion that Lawyer B's knowing failure to record the first deed and thereby fraudulently substituting a second front page on the deed does raise a substantial question as to the lawyer's fitness to practice law in other respects and thereby triggers Lawyer A's duty to report, unless there are additional mitigating circumstances.[5]

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

FOOTNOTES

4 LEO 1522 involved a similar fact pattern in that a lawyer knowingly stated an incorrect consideration on a deed for the purpose of avoiding the payment of the grantor's tax on a higher amount and the committee found that lawyer to have made a false statement of fact in violation of DR 7-102(A)(5) and DR 1-102(A)(4), which trigged the requestor's duty to report under DR 1-103(A). LEO 1522 analysis was based upon DRs 1-102(A)(4), 1-103(A) and 7-102(A)(5) which are substantially the same as Rule 8.4, 8.3 and 3.3(a)(1).

5 The Committee cautions that this conduct may involve criminal conduct in altering a document that was attested to and notarized, however that involves a legal analysis.

PROPOSED AMENDMENT

INCREASE CRESPA SURETY BOND FROM $100,000 TO $200,000

On March 22, 2007, the Virginia State Bar's Public Protection Task Force approved a proposed amendment to Va. Code Section 6.1-2.21 to increase the CRESPA surety bond from $100,000 to $200,000. The Virginia State Bar Council will consider the proposed amendment when it meets on October 19, 2007, in Norfolk, Virginia.

* * *

Comments or questions about the proposed amendment should be submitted in writing to Thomas A. Edmonds, Executive Director of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219, no later than October 1, 2007.

Clients' Protection Fund Board Petitions Paid

On May 18, 2007, the Clients' Protection Fund Board approved payments to eight claimants. The matters involved three attorneys.

Attorney/Location	Amount Paid	Type of Case
Serguei Danilov, McLean	$300.00	Unearned retainer/Divorce
James F. Parkinson, III, Deceased	$442.92	Embezzlement/Real estate matter
James F. Parkinson, III, Deceased	$499.00	Embezzlement/Real estate matter
Dwayne B. Strothers, Suffolk	$6,500.00	Unearned retainer/Child custody/Child neglect case
Dwayne B. Strothers, Suffolk	$3,359.87	Embezzlement/Unpaid medical bills from personal injury settlement
Dwayne B. Strothers, Suffolk	$2,300.00	Unearned retainer/Child Custody/Child support
Dwayne B. Strothers, Suffolk	$1,500.00	Unearned retainer/Divorce
Dwayne B. Strothers, Suffolk	$1,600.00	Unearned retainer/Divorce
Total	**$16,501.79**	