Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Disciplinary Board				
Henry Leigh Adkins Jr.	Roanoke, Va.	Consent to Revocation	November 14, 2007	n/a
Henry St. John Fitzgerald	Arlington, Va.	Public Reprimand w/Terms	October 22, 2007	2
Robert John Harris	Lovettsville, Va.	Public Reprimand	November 2, 2007	5
Robert Lorenzo Kline III	Reiserstown, Md.	Disbarment	November 16, 2007	n/a
Victor Mba-Jonas	Adelphia, Md.	Indefinite Suspension	September 28, 2007	10
John James McNally	Norfolk, Va.	Fourteen-Day Suspension	December 15, 2007	n/a
James Bryan Pattison	Sterling, Kans.	Suspension	September 28, 2007	12
Bonar Mayo Robertson	Glen Dale, Md.	Indefinite Suspension	November 16, 2007	13
Stanley David Schwartz	Arlington, Va.	Suspension	November 26, 2007	n/a
District Committees				
Reuben Voll Greene	Richmond, Va.	Public Reprimand w/out Terms	October 18, 2007	14
Joseph Mark Gregory	Richmond, Va.	Public Reprimand w/Terms	November 5, 2007	16
Peter Campbell Sackett	Lynchburg, Va.	Public Reprimand w/Terms	October 12, 2007	18
Cost Suspension				
James Spaulding Powell	Golden, Colo.	Disciplinary Board	November 14, 2007	n/a
Karen Patricia Woolley	Upperville, Va.	Disciplinary Board	October 5, 2007 lifted October 26, 2007	n/a
Interim Suspensions—Failure to Comply with Subpoena				
Stephen Thomas Conrad	Woodbridge, Va.	Disciplinary Board	November 20, 2007	n/a
Edward Allen Malone	Arlington, Va.	Disciplinary Board	November 15, 2007	n/a

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

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

****Supreme Court of Virginia decision pending*

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
HENRY ST. JOHN FITZGERALD
VSB DOCKET NUMBER: 06-041-1450

ORDER OF PUBLIC REPRIMAND, WITH TERMS

This matter came on October 17, 2007, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, relative to the matters contained in the Subcommittee Determination (Certification) issued by the Fourth District Subcommittee, Section I, on the 13th day of June, 2007. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Dr. Theodore Smith, lay member, William E. Glover, Glen W. Hodge, John W. Richardson, and William H. Monroe Jr., presiding.

Kathleen M. Uston and Seth M. Guggenheim, representing the Bar, and the Respondent, Henry St. John Fitzgerald, *pro se,* presented an endorsed Agreed Disposition, dated October 15, 2007, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Theresa S. Griffith, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Henry St. John FitzGerald, (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On October 31, 2005, a complaint was filed against Respondent by George W. Dodge, attorney for the sole heir of the Estate of Rose Ward Sloan. Mrs. Sloan was Respondent's cousin whose estate he had agreed to administer, some two (2) years following her death, due to the fact that no one else had qualified to serve in that capacity.

3. In his complaint, Mr. Dodge alleged that, despite many phone calls from both him and the Commissioner of Accounts to Respondent, as of the date of the filing of the complaint, Respondent had not submitted the documents necessary to complete his First Accounting, originally due in December 2003.

4. On November 29, 2005, the complaint was forwarded to Respondent for his response. Respondent failed to respond. On January 5, 2006, the matter was referred for further investigation and on August 30, 2006, a summons and subpoena *duces tecum* were issued and duly served upon Respondent. Respondent did not appear on the date specified in, or otherwise respond to, the subpoena. Consequently, a Notice of Noncompliance and a Request for Suspension were thereafter filed and served upon Respondent, who finally contacted the Virginia State Bar in response to this Notice on September 19, 2006. Thereafter, on September 21, 2006, Respondent appeared at the Alexandria, Virginia, office of the Virginia State Bar with his file on Sloan Estate.

5. At that time, Respondent informed Virginia State Bar Investigator James W. Henderson that he had not yet filed a completed First Accounting as he continued to await certain statements from the bank as well as other financial documents. Respondent also informed Investigator Henderson that, at that point, the estate had been substantially distributed, leaving only $5,000.00 to $7,000.00 to be administered, and that he had hired a full-time assistant whose sole job would be to close out the Estate and complete all necessary filings. Respondent also represented to Investigator Henderson that he would thereafter issue weekly progress reports.

6. On October 10, 2006, Respondent wrote to Investigator Henderson to advise that he was still awaiting certain necessary documents from the bank. Since that date until June 13, 2007, Respondent communicated no further with the Bar, failed to issue any of the promised weekly reports on the progress of the estate, and failed to file the required Accounting with the Commissioner of Accounts.

7. As a consequence, Respondent was removed as Administrator of the Sloan Estate effective March 30, 2007. Mr. Dodge was appointed as Successor Administrator and on October 1, 2007, he filed the required First Accounting with the Commissioner of Accounts.

8. In Mr. Dodge's Accounting, certain Estate funds were listed as being unaccounted for, specifically the proceeds from an E-Trade account, a Riggs Bank Estate account, and a Wachovia Cap Account. On October 10, 2007, Respondent appeared at the Alexandria, Virginia, office of the Virginia State Bar with a cashier's check in the amount of $3,256.74, representing the full amount of the E-Trade Account, and the following day delivered a second cashier's check in the amount of $1,205.79, representing the full amount of the Riggs Bank Estate account. Respondent also has confirmed that the proceeds from the Wachovia Cap Account were used to purchase a $4,000.00 Certificate of Deposit, currently being held by Adams National Bank.

9. The above referenced cashier's checks were turned over to Mr. Dodge on October 11, 2007, and thus, at this point, all Estate funds are accounted for.

10. Respondent has been diagnosed with depression and Attention Deficit Disorder by Richard A. Ratner, M.D. and has been receiving active treatment for both of these conditions. Respondent also has demonstrated high legal ability over his many years of practice, has assisted in many Continuing Legal Education programs and publications of the Virginia State Bar, and served for many years on the faculty of the University of Virginia Trial Practice Institute.

In approving the Agreed Disposition, the Board gave due consideration to evidence furnished by and on behalf of the Respondent, to representations made by the Respondent, and to representations made by Bar Counsel. The Board finds as applicable mitigating factors contained in the *Standards for Imposing Lawyer Sanctions*, published by the American Bar Association, as follows:

a. absence of a dishonest or selfish motive;

b. personal or emotional problems;

c. full and free disclosure to disciplinary board [and] cooperative attitude toward proceedings;

d. character [and] reputation;

The Board finds by clear and convincing evidence that such conduct on the part of the Respondent constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

RULE 8.1 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;

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

It is hereby ORDERED that the Respondent shall receive a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard. The terms and conditions that shall be met by the Respondent are as follows:

1. The Respondent shall remain under the care of licensed psychiatrist Richard A. Ratner, M.D. (or, if Dr. Ratner becomes unavailable, such other mental health care provider as agreed upon by Respondent and the Virginia State Bar), and such other health care providers to whom Respondent might be referred by Dr. Ratner, until at least October 31, 2009, or such earlier time as the Respondent is discharged from Dr. Ratner's care with the concurrence of Bar Counsel. Respondent shall cooperate fully and comply with all treatment recommendations made by Dr. Ratner and such other health care providers during the said period. Such compliance shall include, but not be limited to, attending all further therapy, counseling, and evaluation sessions as may be required by Dr. Ratner and/or other health care providers to whom Respondent is referred by him, taking all medications as may be prescribed by Dr. Ratner or other health care providers to whom Respondent has been referred by Dr. Ratner, and submitting to such further testing, evaluation, and clinical assessments as may be required by Dr. Ratner and any health care providers to whom Respondent has been referred by Dr. Ratner.

2. The Respondent shall immediately provide Dr. Ratner, and all health care providers to whom Respondent has been referred by Dr. Ratner, a copy of the Order of the Disciplinary Board adopting these terms and a release that authorizes and directs Dr. Ratner and such other health care providers to furnish the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, with written reports that state whether, in the professional opinion of the health care provider writing the report, the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full-time private practice of law. Such reports shall detail the basis for such opinions rendered, and shall further state whether, to the best of the health care provider's knowledge, the Respondent is in compliance with paragraphs numbered 1, 2, and 3 of the Disciplinary Board Order entered herein. In the event a health care provider does not state that Respondent is in compliance with the terms hereof, such health care provider

shall nonetheless present written facts (*e.g.*, missed appointments, failure to take medication, failure to provide information required for continued treatment/assessments, and failure to pay a provider's bills) to the Virginia State Bar sufficient to permit Bar Counsel's assessment of whether Respondent is in compliance with the terms hereof. At a minimum, during the period that these terms remain in effect, Dr. Ratner (or his approved successors) shall furnish the Bar with such reports at quarterly intervals, commencing December 1, 2007. Notwithstanding the reporting schedule set forth above, Dr. Ratner (or his approved successors) shall notify the Bar immediately upon his assessment that the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full-time private practice of law.

3. The Respondent shall bear the cost and expense of compliance with the terms set forth herein, including, but not limited to, the cost of the assessments, therapy, counseling, medication, and all health care contemplated by the terms hereof, and the costs imposed, if any, by Dr. Ratner (or his approved successors) and all other health care providers in preparing and furnishing any and all reports submitted to the Virginia State Bar pursuant to the terms hereof.

4. The Respondent shall make arrangements to utilize the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to audit his law office practice policies, methods, systems, and procedures, including but not limited to his trust accounting policies and procedures. The Respondent shall follow with consistency all recommendations made to him by Ms. Johnston while such oversight is in progress. The Respondent shall grant Ms. Johnston access to his law practice from time to time, at her request, for purposes of ensuring that Respondent is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. The Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). The Respondent shall have discharged his obligations respecting the terms contained in this Paragraph 4 if he has fulfilled and remained in compliance with all of the terms contained herein through October 31, 2009. Ms. Johnston shall report to the Virginia State Bar no less than every six (6) months, commencing on March 1, 2008, and in such reports advise the Bar in detail of Respondent's compliance, or lack thereof, with Ms. Johnston's recommendations. Notwithstanding the reporting schedule set forth herein, Ms. Johnston shall make immediate report to the Virginia State Bar of any determination by her that the Respondent's law office management functions materially impair the Respondent's ability to practice law in compliance with the Rules of Professional Conduct. To implement the terms hereof, the Respondent shall immediately provide Ms. Johnston with a copy of the Order of the Disciplinary Board incorporating these terms and a release that authorizes and directs Ms. Johnston to furnish the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, with the information and reports referred to herein.

5. For the period between November 1, 2007, and October 31, 2009, the Respondent shall engage in no conduct that violates any provisions of Virginia Rules of Professional Conduct 1.1, 1.3, 1.15, 8.1, or 8.4, including any amendments thereto, and/or that violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this Paragraph 5 shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by any disciplinary tribunal that contains a finding that Respondent has violated one or more provisions of the disciplinary rules referred to above; *provided, however*, that the conduct upon which such finding was based occurred within the two-year period referred to above, and provided, further, that such ruling has become final.

6. Should the Respondent fail to comply with the terms set forth in the immediately preceding Paragraphs 1, 2, 3, 4 and 5, he shall receive a five (5) year suspension of his license to practice law in the Commonwealth of Virginia.

7. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a "show cause" proceeding pursuant to Part 6, § IV, ¶ 13 (I)(2)(g) of the *Rules of the Supreme Court of Virginia* will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein. Any show-cause proceeding will be considered a new matter, and under Part 6, § IV, ¶ 13(B)(8)(c)(1) of the *Rules of the Supreme Court of Virginia*, the Respondent will be assessed an administrative fee and costs of such show-cause proceeding.

It is further ORDERED that, pursuant to Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the *Rules of the Supreme Court of Virginia,* the Clerk of the Disciplinary System shall assess costs for this Agreed Disposition proceeding.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at 2200 Wilson Boulevard, Suite 800, Arlington, Virginia, 22201, his last address of record with the Virginia State Bar, and by regular mail to Assistant Bar Counsel Kathleen M. Uston, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

Entered this 22nd day of October, 2007

For the Virginia State Bar Disciplinary Board

William H. Monroe Jr., 2nd Vice Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTERS OF
ROBERT JOHN HARRIS
VSB DOCKET NUMBERS: 06-070-2740
06-070-2930
06-070-2972

ORDER OF PUBLIC REPRIMAND

These matters came on November 2, 2007, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Seventh District Committee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Sandra L. Havrilak, Michael S. Mulkey, John W. Richardson, Stephen A.Wannall, lay member, and William H. Monroe Jr., presiding. The proceedings were reported by Donna Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222.

Alfred L. Carr, representing the Bar, and the Respondent, Robert John Harris, Esq., presented an endorsed Agreed Disposition, dated November 2, 2007, reflecting the terms of the Agreed Disposition. Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

A. STIPULATION OF FACTS

1. At all times relevant hereto concerning VSB Docket Numbers 06-070-2740, 06-070-2930 and 06-070-2972, Robert John Harris (hereinafter the Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket Number 06-070-2740

2. In July of 2003, Complainant Andrew J. Francis hired Respondent to represent his legal interests in a matter concerning a mortgage company and a settlement company that closed a home loan for Mr. Francis. Mr. Francis paid Respondent a total of $550.00 in advance legal fees. During Respondent's interview with Virginia State Bar Investigator Donald L. Lange, he informed Investigator Lange that he placed Mr. Francis' advance legal fee payments in his pocket. He admitted that at the time he accepted Mr. Francis' fees, he did not have an attorney trust account or any method of keeping track of clients' funds that should have been held in trust. Respondent did not perform the record keeping or keep the books as required under Rule of Professional Conduct 1.15. Respondent used legal fees for his personal use before he earned them; thereby, commingling his client's advance legal fees with his personal funds. Mr. Francis did not sign a fee agreement with the Respondent. Respondent contends that he verbally informed Mr. Frances that he would be billed at $150.00 per hour for his legal services.

3. In November of 2004, Respondent filed suit on behalf of Mr. Francis in the Circuit Court of Frederick County, *Francis v. Lincoln Mortgage, et al.*, Case No. L04-168, alleging the defendants did not loan Mr. Francis enough money to pay off his existing debt. The defendants filed demurrers to the Motion for Judgment and the Court allowed Respondent to file an amended motion within twenty-one days, e.g., by December 16, 2006.

4. Respondent did not timely file the amended motion. Respondent filed the amended motion on or about February 25, 2006, approximately two months late. Defendants filed Pleas In Bar, respectively, alleging affirmative defenses, specifically contending that Mr. Francis' case should be dismissed with prejudice because Respondent filed the amended motion over two months late. Respondent non-suited the case to avoid permanently prejudicing Mr. Francis rather than have the case dismissed with prejudice due to his late filing of the amended motion.

5. Mr. Francis became dissatisfied with Respondent's representation and fired him. He asked Respondent for a refund of unearned advance legal fees and an invoice. Respondent did not refund any legal fees or provide an invoice to Mr. Francis. Mr. Francis consulted other attorneys for legal advice. Mr. Francis requested that Respondent send a copy of his file to Bradley Glenn Pollack, Esquire. Mr. Pollack informed Investigator Lange that the file Respondent mailed to him was missing several documents and informed Mr. Francis that he could not take the case until he received copies of those documents. Mr. Pollack contacted Respondent and eventually received copies of all the documents. However, Mr. Pollack informed Investigator Lange that he did not take the case because it was frivolous. Investigator Lange also interviewed Bruce E. Downing, Esquire, whom Mr. Francis consulted about his case. Mr. Downing informed Investigator Lange that after he reviewed the work Respondent had done for Mr. Francis, he believed that Respondent's pleadings were not well-written because he did not allege that the defendants owed any kind of legal duty to Mr. Francis. He further opined that the Court would have held that Mr. Francis should have known how much money he wanted to borrow and not closed on the home loan, and that he, Mr. Downing, would not have filed the case because it lacked a good-faith basis. However, Mr. Downing did not have the heart to tell Mr. Francis because, by the time he consulted with him, Mr. Francis had lost his home.

6. In March of 2006, after the Virginia State Bar notified Respondent Harris of the instant bar complaint, but before the re-filing statute of limitations ran on Mr. Francis' lawsuit, Respondent Harris re-filed the lawsuit.

B. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-2740 constitutes a violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

RULE 1.5 Fees

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

RULE 1.15 Safekeeping Property

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

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

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

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

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

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

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

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

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

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

RULE 1.16 Declining Or Terminating Representation

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

C. STIPULATION OF FACTS

VSB Docket Number 06-070-2930

7. In December of 2005, Complainant Randy E. Langford hired Respondent to assist him in overturning the suspension of his contractor's license and to seek a reduction of a $9,500 fine levied against him by the Virginia Department of Professional and Occupational Regulation. By check dated December 4, 2005, Mr. Langford paid Respondent $420.00 as an advance legal fee. In addition, Langford hired Respondent to defend him in a lawsuit filed by a former customer of Langford's renovation company that Mr. Langford listed as a creditor in a bankruptcy petition filed by Respondent on his behalf. Respondent informed Investigator Lange that, at the time he accepted Mr. Langford's advance legal fee, he did not have an attorney trust account, client subsidiary ledgers, or billing records.

8. Mr. Langford did not sign a fee agreement with Respondent. Respondent did not discuss billing or fee paying arrangements with Mr. Langford.

9. Respondent Harris drafted an Answer for Mr. Langford to file in a lawsuit against him filed by one of Mr. Langford's creditors. Mr. Langford signed and filed the Answer ghost-written by Respondent Harris. Respondent Harris informed Investigator Lange that he had ghost-written the pleading for Mr. Langford so Mr. Langford could buy time to come up with the money to pay Respondent before he would perform further legal services for Mr. Langford, which is a violation of Rule of Professional Conduct 8.4(c).

10. Later in December of 2005, Mr. Langford attempted to contact Respondent to discuss his case. Mr. Langford made several more attempts to contact Respondent by phone, but Respondent never returned Mr. Langford's calls. Mr. Langford had a cell phone number for Respondent that he continued to call and leave messages to request updates on the status of his case, but Respondent did not respond to his messages. Mr. Langford requested Respondent return his file to him. Respondent has not returned Mr. Langford's file to him.

11. Mr. Langford learned that, sometime after his last meeting with Respondent on December 4, 2005, Respondent moved his office from 583 West King Street, Strasburg, Virginia to 15 Loudoun Street, N.E., Leesburg, Virginia. Respondent did not inform Mr. Langford that sometime during late winter or spring of 2006, he again moved his office to Net Tech Center, 2281 Valley Ave., Suite 202, Winchester, Virginia. Respondent also did not inform the Virginia State Bar's membership department of his new office location as required by Part 6, Section IV, Paragraph 3 of the *Rules*. Sometime during spring or summer of 2006, Respondent again moved his office to Stone Manor, 13193 Mountain Rd., Lovettsville, Virginia.

12. On March 20, 2006, the VSB notified Respondent of the instant bar complaint and demanded that he respond within twenty-one days of said date. Respondent Harris did not respond to this bar complaint. He informed Investigator Lange that he just did not get around to responding to it.

D. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-2930 constitutes a violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

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

RULE 1.5 Fees

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

RULE 1.15 Safekeeping Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RULE 1.16 Declining Or Terminating Representation

(e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

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

E. STIPULATION OF FACTS

VSB Docket Number 06-070-2972

13. In March of 2004, Complainant Michael Allen Putman Jr. hired Respondent to represent him on criminal charges in the Circuit Court for the City of Charlottesville. Mr. Putman and his family paid Respondent an advance fee of $2,500.00. Respondent did not have an attorney trust account at the time Mr. Putman paid him. Respondent informed Investigator Lange that he just put the money into his pockets. Respondent commingled his client's funds with his personal funds and/or converted them for his personal use before he earned the advance fees. Respondent also informed Investigator Lange that he did not comply with the attorney trust account record-keeping requirements or keep the required books and records, subsidiary ledgers or billing records as required under Rule of Professional Conduct 1.15.

14. On October 18, 2005, Respondent appeared in court with Mr. Putman for a sentencing hearing, and Mr. Putman was sentenced to thirty days in jail. At the time of this sentencing hearing, Mr. Putman was serving time for another sentence under the home electronic monitoring system, which allowed him to continue to work outside his home. The Court ordered Respondent to provide an order for entry within ten days of October 18, 2005, allowing Mr. Putman to serve his thirty-day sentence by electronic monitoring at his home in Winchester, Virginia. Respondent did not file the order as directed by the Court in a timely fashion. Respondent Harris informed Investigator Lange that he did not file the Order with Judge Hogshire's court until after he had received the instant bar complaint. The Court entered the order on April 6, 2006, one week before Mr. Putman's release date of the prior sentence. If the court had not entered the order before Mr. Putman completed his prior sentence under the home electronic monitoring arrangement, he would have had to return to jail to serve the thirty-day sentence imposed on October 18, 2005, and lose his job.

15. On March 22, 2006, the VSB notified Respondent Harris of the instant bar complaint and demanded that he respond with in twenty-one days of said date. Respondent Harris did not respond to this bar complaint. He informed Investigator Lange that just did not get around to responding to it.

F. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-2972 constitutes a violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

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

RULE 1.4 Communication

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

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

MITIGATING FACTORS:

The Board, in accepting the Agreed Disposition for a Public Reprimand, considered several significant and powerful mitigating factors. In absence of such mitigating factors concerning the instant cases, a suspension of Respondent's license to practice law would be justified. The Board found that Respondent had served a sixty-day suspension imposed by another Board panel for matters of misconduct that occurred during the same time period as the three instant misconduct cases. The Board panel upon imposition of the sixty-day suspensions gave considerable weight to Respondent's personal and emotional problems concerning the death of his law-practice mentor and the severe and debilitating illness of his wife. In addition, the Board considered other mitigating factors such as Respondent's lack of a disciplinary record prior to the period when Respondent was experiencing the extraordinary personal and emotional problems, as well as the fact that Respondent's clients were not harmed as a direct result of his misconduct in the instant cases. Therefore, because the same mitigating factors are applicable here, and the Respondent had received a sixty-day suspension as discipline for misconduct that occurred during the same period of distress in his personal life, the Board accepts the Agreed Disposition for a Public Reprimand as a resolution to VSB Docket Nos. 06-070-2740, 06-070-2930 and 06-070-2972.

UPON CONSIDERATION WHEREOF, the Virginia State Bar Disciplinary Board hereby ORDERS that the Respondent shall receive a Public Reprimand, effective November 2, 2007.

1. Pursuant to Part 6, Section IV, Paragraph 13.B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

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

It is further ordered that the Clerk of the Disciplinary System shall mail an attested copy of this order, by certified mail, return receipt requested, to the respondent, Robert John Harris, at his address of record with the Virginia State Bar, Stone Manor, 3193 Mountain Road, Lovettsville, Virginia 20180, and by regular mail to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

Entered this 7th day of November, 2007

For the Virginia State Bar Disciplinary Board

William H. Monroe Jr., 2nd Vice Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
VICTOR MBA-JONAS
VSB DOCKET NUMBER: 08-000-071969

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on September 28, 2007, upon a Rule to Show Cause and Order of Suspension and Hearing entered on September 5, 2007 ("Rule"). A duly convened panel of the Board consisting of William H. Monroe Jr., presiding, Paul M. Black, Russell W. Updike, John W. Richardson, and Stephen A. Wannall, lay member, heard the matter. Paul D. Georgiadis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("VSB"). Victor Mba-Jonas ("Respondent") did not appear. The

court reporter for the proceeding, Theresa S. Griffith, Chandler and Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, was duly sworn by the Chair.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by law. Part Six, § IV, ¶ 13(I)(7)(a) of the Rules of the Supreme Court of Virginia, *Disbarment or Suspension in Another Jurisdiction,* provides, in relevant part, that following the issuance of a show cause order and order of suspension, the Board shall serve upon the Respondent by certified mail a copy of the suspension or revocation notice, a copy of the Board's Order, and a notice fixing the time and place of a hearing to determine what action should be taken in response to the suspension or revocation notice and stating the purpose of the hearing. The Board finds that the VSB has complied with these requirements by forwarding a certified letter dated September 7, 2007, return receipt requested, to Respondent's address of record. The Respondent was called three times by the Clerk, and the Respondent neither answered the docket call nor appeared to defend his interests. Respondent did not file a response to the Rule as required by ¶ 13(I)(7)(b). The Chair opened the hearing by polling the Board members to ascertain whether any member had any personal or financial interest or bias that would interfere with or influence such member's determination, and each member responded that there were no such conflicts.

An opinion and order of the Court of Appeals of Maryland dated March 20, 2007, indefinitely suspending the Respondent's right to practice law in the State of Maryland was filed with the Rule.

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

Upon consideration of the matters before this panel of the Board, it is hereby ORDERED that, pursuant to Part 6, § IV, ¶ 13(I)(7) of the Rules of the Supreme Court of Virginia, the license of Respondent, Victor Mba-Jonas, to practice law in the Commonwealth of Virginia shall be, and is hereby, indefinitely SUSPENDED beginning September 28, 2007. Such suspension shall continue until Respondent presents satisfactory evidence to this Board that the Court of Appeals of Maryland has removed all impediments to Respondent's practice of law in the State of Maryland, and that Respondent has fully established his rights to practice law in that State.

It is FURTHER ORDERED that, as directed in the Board's September 28, 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, § 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 indefinite 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 give notice within fourteen (14) days of the effective date of the Summary Order and make such arrangements as are required within forty-five (45) days of the effective date of the order. The Respondent also shall furnish proof to the VSB within sixty (60) days that such notices have been timely given and such arrangements made for the disposition of matters.

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

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

It is further ordered that the Clerk shall send an attested copy of this Order and Opinion to Respondent, Victor Mba-Jonas, by certified mail, at his address of record, 8020 New Hampshire Avenue, Suite 130, Adelphia, MD 20783; and to Paul D. Georgiadis, Assistant Bar Counsel, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2803.

SO ORDERED, this 22nd day of October, 2007

For the Virginia State Bar Disciplinary Board

William H. Monroe Jr., 2nd Vice Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
JAMES B. PATTISON
VSB DOCKET NUMBER: 08-000-071973

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on September 28, 2007, upon a Rule to Show Cause and Order of Suspension and Hearing entered on September 5, 2007 ("Rule"). A duly convened panel of the Board consisting of William H. Monroe Jr., presiding, Paul M. Black, Russell W. Updike, John W. Richardson, and Stephen A. Wannall, lay member, heard the matter. Paulo Franco, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("VSB"). James B. Pattison ("Respondent") did not appear. The court reporter for the proceeding, Theresa S. Griffith, Chandler and Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, was duly sworn by the Chair.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System ("Clerk") in the manner prescribed by law. Part Six, § IV, ¶ 13(I)(7)(a) of the Rules of the Supreme Court of Virginia, *Disbarment or Suspension in Another Jurisdiction,* provides, in relevant part, that following the issuance of a show cause order and order of suspension, the Board shall serve upon the Respondent by certified mail a copy of the suspension or revocation notice, a copy of the Board's Order, and a notice fixing the time and place of a hearing to determine what action should be taken in response to the suspension or revocation notice and stating the purpose of the hearing. The Board finds that the VSB has complied with these requirements by forwarding a certified letter dated September 7, 2007, to Respondent's address of record. The Respondent was called three times by the Clerk, and the Respondent neither answered the docket call nor appeared to defend his interests. Respondent did not file a response to the Rule as required by ¶ 13(I)(7)(b). The Chair opened the hearing by polling the Board members to ascertain whether any member had any personal or financial interest or bias that would interfere with or influence such member's determination, and each member responded that there were no such conflicts.

Filed with the Rule was an opinion and order of the Supreme Court of the State of Kansas filed June 8, 2007, indefinitely suspending the Respondent's license to practice law in the State of Kansas. The Respondent failed to assert a defense as provided in Part 6, § IV, ¶ 13(I)(7)(b) of the Rules of the Supreme Court of Virginia. Accordingly, the Board must impose the same discipline imposed by the Supreme Court of the State of Kansas, to-wit: indefinite suspension of Respondent's license to practice law in the Commonwealth of Virginia.

Upon consideration of the matters before this panel of the Board, it is hereby ORDERED that, pursuant to Part 6, § IV, ¶ 13(I)(7) of the Rules of the Supreme Court of Virginia, the license of Respondent, James B. Pattison, to practice law in the Commonwealth of Virginia shall be, and is hereby, indefinitely SUSPENDED beginning September 28, 2007. Such suspension shall continue until Respondent presents satisfactory evidence to this Board that the Supreme Court of the State of Kansas has removed all impediments to Respondent's practice of law in the State of Kansas, and that Respondent has fully established his rights to practice law in that State.

It is FURTHER ORDERED that, as directed in the Board's September 28, 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, § 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 indefinite 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 give notice within fourteen (14) days of the effective date of the Summary Order and make such arrangements as are required within forty-five (45) days of the effective date of the order. The Respondent also shall furnish proof to the VSB within sixty (60) days that such notices have been timely given and such arrangements made for the disposition of matters.

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

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

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

SO ORDERED, this 22nd day of October, 2007

For the Virginia State Bar Disciplinary Board

William H. Monroe Jr., 2nd Vice Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
BONAR MAYO ROBERTSON
VSB DOCKET NUMBER: 08-000-072344

MEMORANDUM ORDER

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on November 16, 2007, before a duly convened panel of the Board consisting of William H. Monroe Jr., Vice Chair, presiding; Timothy A. Coyle; Thomas R. Scott Jr.; David R. Schultz; and Theodore Smith, lay member. Harry M. Hirsch, Deputy Bar Counsel, appeared on behalf of the Virginia State Bar ("Bar"). Bonar Mayo Robertson ("Respondent") appeared in person, *pro se*. The court reporter for the proceeding, Valarie L. Schmit May, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222, was duly sworn by the Chair. The Chair 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 came before the Board as a result of the Respondent being indefinitely suspended from the practice of law in the state of Maryland, effective August 3, 2007, by order entered by the Court of Appeals of Maryland of the same date. Pursuant to Rules of Court, Part Six, § IV, ¶ 13.I.7., a Rule to Show Cause and Order of Suspension and Hearing was entered by the Board on October 19, 2007, and properly served on the Respondent.

All legal notices of the date and place 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 suspension of a Virginia attorney in another jurisdiction. The rule states that the Board shall impose the same discipline as was imposed in the other jurisdiction unless the Respondent proves by clear and convincing evidence one or more of the following three grounds for an alternative, or no sanction, being imposed:

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

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

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

The following items were admitted into evidence as Board Exhibit #1 without objection: an affidavit of Barbara Sayers Lanier, Clerk of the Disciplinary System; the notice from the Clerk of the Disciplinary System sent by certified mail, return receipt requested, to the Respondent, dated October 24, 2007, with its enclosures including the Rule to Show Cause and Order of Suspension and Hearing of the Board entered October 19, 2007, and the order of the Court of Appeals of Maryland entered August 3, 2007.

The Respondent filed a response to the Rule to Show Cause and Order of Suspension and Hearing.

The Bar made a motion to declare the answer of the Respondent to the Rule to Show Cause and Order of Suspension and Hearing as having been filed late and therefore the Board must impose the same sanction as was imposed by the Court of Appeals of Maryland.

The following items were admitted as Bar Exhibit #2 without objection: an affidavit from Diana L. Balch, custodian of the membership records of the Virginia State Bar, with attachment.

The following items were collectively admitted as Bar Exhibit #4 without objection: an e-mail from the Respondent to Barbara Lanier dated November 8, 2007, with an unsigned document entitled "Response To Rule To Show Cause and Order Of Suspension and Hearing, and a signed document entitled "Response To Rule To Show Cause and Order Of Suspension and Hearing" with a certificate of service date of November 8, 2007, and on which is displayed a VSB Clerk's Office received date of November 14, 2007.

Copies of the following cases were collectively admitted without objection as Bar Exhibit #5: *Cummings v. Virginia State Bar*, 233 Va. 363 (1987); *In the Matter of Denny Pat Dobbins,* VSB Docket No. 04-010-1580 (2005); and *Robinson v. Virginia State Bar*, Record No. 052638, 2006, unpublished.

After receiving the evidence and hearing the 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 the answer filed by the Respondent was filed late. ¶ 13.I.7.b. and 13.E.1. The Respondent was required to file his response with the Clerk of the Disciplinary System within fourteen days of the service of the Rule to Show Cause and Order of Suspension and Revocation. This is a jurisdictional requirement. The Board finds by clear and convincing evidence that the Respondent did not file his response within the fourteen-day time period.

Accordingly, it is hereby ORDERED that Bonar Mayo Robertson's license to practice law in the Commonwealth of Virginia be, and hereby is, indefinitely suspended, effective November 16, 2007.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13.M. of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the indefinite 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 also shall make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. The Respondent shall give such notice within fourteen days of the effective date of the indefinite suspension, and shall make such arrangements as are required herein within forty-five days of the effective date of the revocation. The Respondent also shall furnish proof to the Virginia State Bar within sixty days of the effective date of the indefinite suspension 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 indefinite 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 ¶ 13.M. shall be determined by the Board, unless the Respondent makes a timely request for a hearing before a three-judge circuit court.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to the Respondent, Bonar Mayo Robertson, at his address of record with the Virginia State Bar, P.O. Box 157, Glen Dale, MD 20769, by certified mail, return receipt requested, and by hand delivery to Harry M. Hirsch, Suite 1500, 707 East Main Street, Richmond, VA 23219.

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

ENTERED this 27th day of November, 2007

For The Virginia State Bar Disciplinary Board

William H. Monroe Jr., 2nd Vice Chair

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

IN THE MATTER OF
REUBEN VOLL GREENE
VSB DOCKET NUMBERS: 07-033-0066
07-033-0067

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITHOUT TERMS

On September 18, 2007, a hearing in this matter was held before a duly convened Third District Committee, Section III Subcommittee consisting of Dennis R. Kiker, Chair, Cullen D. Seltzer and Mary P. Hunton, lay person, to consider a proposed Agreed Disposition tendered to the Subcommittee Pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13.G.1.d.2. by Respondent and Bar Counsel. After considering the Agreed Disposition, the Subcommittee voted unanimously to accept the same.

Accordingly, pursuant to Part 6, Section IV, Paragraph 13.G.4 of the Rules of the Supreme Court of Virginia, the Third District Committee Subcommittee, Section IIII of the Virginia State Bar hereby serves upon the Respondent the following PUBLIC Reprimand:

I. FINDINGS OF FACT

VSB Docket Number 07-033-0066

1. At all times relevant hereto, Reuben Voll Greene ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Richard Robinson retained Mr. Greene to represent his interests on charges of twelve misdemeanor counts of cruelty to animals and twelve felony counts of organized dog fighting.

3. After a two-day trial, Mr. Robison was convicted of one felony count of organized dog fighting and six misdemeanor cruelty counts. Mr. Robinson was acquitted on the remaining eleven felony counts and six misdemeanor counts. He was sentenced on May 9, 2005.

4. On May 10, 2005, Respondent filed a Notice of Appeal.

5. On July 18, 2005, Respondent filed a Motion for Extension of Time to File Petition for Appeal and Appendix. In that Motion, Respondent states that the transcripts of sentencing and pre-trial motions were received by the Circuit Court on June 14, 2005, but the trial transcripts were not. Respondent advised both the court reporter and the Circuit Court clerk that the trial transcripts were not filed and that Respondent had never received a copy of the same in order to prepare a petition.

6. The Virginia Court of Appeals received the record of the proceedings on August 8, 2005.

7. On August 17, 2005, the Court of Appeals entered a Rule to Show Cause why the case should not be dismissed for failure to file the transcripts.

8. Respondent failed to respond to the Rule to Show Cause.

9. On September 8, 2005, the Court of Appeals dismissed Mr. Robinson's appeal.

VSB Docket Number 07-033-0067

1. At all times relevant hereto, Reuben Voll Greene ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent represented Cecil Johnson at trial on several criminal charges in the Circuit Court for the City of Richmond.

3. Mr. Johnson retained Mr. Greene to file the appeal, and Mr. Johnson's aunt paid a retainer of $4,500.00

4. On October 6, 2005, Mr. Johnson was tried and convicted by the Circuit Court for the City of Richmond of possession of heroin with intent to distribute and possession of marijuana while a prisoner.

5. The Richmond Circuit Court sentenced Mr. Johnson on January 23, 2006.

6. On January 23, 2006, Respondent filed a Notice of Appeal.

7. On April 12, 2006, the Court of Appeals received the record of the proceedings.

8. On April 25, 2006, the Court of Appeals entered a show cause requiring Respondent to Show Cause why the appeal should not be dismissed for failure to file the transcripts or a statement of facts.

9. On May 17, 2006, the Court of Appeals dismissed the appeal.

10. Mr. Johnson asked Respondent at various times what the status of the appeal was.

11. Respondent did not advise Mr. Johnson that the appeal was dismissed until December of 2006.

12. Respondent advised Mr. Johnson of his right to file to habeas corpus.

II. NATURE OF MISCONDUCT

Such conduct by Reuben Voll Greene 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.

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 representations.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a PUBLIC Reprimand, and the Respondent is hereby so reprimanded.

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

THIRD DISTRICT COMMITTEE, SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Dennis R. Kiker, Subcommittee Chair

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

IN THE MATTER OF
JOSEPH MARK GREGORY
VSB DOCKET NUMBER: 07-033-0379

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On November 1, 2007, a meeting in this matter was held before a duly convened Third District, Section III Subcommittee consisting of Dennis R. Kiker, Chair, Cullen D. Seltzer, and Mary P. Hunton, lay person, to consider acceptance of a proposed Agreed Disposition presented by the Respondent and Paulo E. Franco Jr., Assistant Bar Counsel.

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

I. STIPULATED FINDINGS OF FACTS

1. At all times relevant hereto, Joseph Mark Gregory ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on May 13, 1981.

3. Ms. Charlene Taylor met with Respondent on May 6, 2005, for a consultation about her loss due to an engine fire in her car. Ms. Taylor received Respondent's name from the Virginia Lawyer Referral Service.

4. During that meeting, Ms. Taylor provided Respondent with all her paperwork and the $35.00 fee for the referral.

5. Respondent stated that he would review the paperwork and get back with Ms. Taylor.

6. Ms. Taylor states that Respondent never did get back to her.

7. Ms. Taylor states that within the following two weeks she went to Respondent's office on several occasions and was told he was not available.

8. Months later, Ms. Taylor spoke with Respondent and he again told her he would look over her case and get back with her.

9. Ms. Taylor states that as in the previous instance, Respondent never did get back in touch with her.

10. Sometime in February or March of 2006, Ms. Taylor called Respondent and spoke with him. He promised to call back but never did. He never even left a voice mail.

11. Respondent has never written Ms. Taylor advising her that there is nothing he could for her in her case.

12. As of this date, Respondent has failed to return Ms. Taylor's original documents that she left with him back in 2005.

13. Respondent was sent a proactive letter from the office of Intake Counsel and on August 18, 2006, Respondent wrote back indicating that he would contact Ms. Taylor.

14. Respondent failed to respond to a second proactive letter sent from Intake Counsel.

II. STIPULATED FINDINGS OF MISCONDUCT

The foregoing factual allegations give rise to the following Charge of Misconduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, the Subcommittee of the Third District Committee, Section III, hereby issues the Respondent a Public Reprimand With Terms.

The terms to which Respondent shall be held are as follows:

1. Within ten (10) days of the date of the Public Reprimand, the Respondent provide proof to Bar Counsel that he has returned Ms. Taylor her file along with a letter of apology; and

2. Respondent provide proof to the satisfaction of Bar Counsel that he has put in place sufficient docketing controls for the prompt return of client phone calls and that in the event he is unable to contact them by phone that he follow up by letter; and

3. That the Respondent take four (4) additional hours of continuing legal education ("CLE") in the field of ethics that are in addition to and not in lieu of your required CLE credits.

The alternate disposition of these matters, should Respondent fail to comply fully with the foregoing terms, a Certification for Sanctions Determination.

In the event of the Respondent's alleged failure to meet one or more of the terms set forth above, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Third District Committee, Section III, and Respondent hereby waives any right he may have to have a three-judge panel consider imposition of the alternate disposition. At the hearing, the burden of proof shall be on the Respondent to show timely compliance with the terms, including timely certification of such compliance, by clear and convincing evidence. The Respondent agrees his prior disciplinary record may be disclosed to the Third District Committee, Section III.

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

THIRD DISTRICT, SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Dennis R. Kiker, Subcommittee Chair

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

IN THE MATTERS OF
PETER CAMPBELL SACKETT
VSB DOCKET NUMBERS: 07-090-2130
07-090-070324

SUBCOMMITTEE DETERMINATION
(Approval of Agreed Disposition for Public Reprimand with Terms)

On August 14, 2007, a duly convened Ninth District Subcommittee consisting of James R. McGarry, Esquire (Chair presiding), Tyler E. Williams, Esquire, and Frances J. Giles, lay member, met and considered these matters.

Pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia, the Ninth District Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Peter Campbell Sackett ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Reprimand with Terms:

VSB Docket Number 07-090-2130

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. The Virginia State Bar received real estate trust account overdraft notices from Respondent's bank, American National Bank and Trust Company ("American National Bank").

3. Specifically, on January 16, 2007, the American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3664 was presented in the amount of $750 and was paid, leaving a negative balance of $760.05.

4. Then, on January 17, 2007, the American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3619 was presented in the amount of $6,858.67 and was paid, leaving a negative balance of $1,542.05.

5. The bar's Investigation revealed that when he was notified of the overdrafts, Respondent made an appropriate deposit from his own funds and paid American National Bank's return fee.

6. In addition to the above-referenced overdraft notices, Larry Palmer, Clerk of the Lynchburg Circuit Court, called the Virginia State Bar on or about January 17, 2007, to report that Respondent gave him a bad check for real estate recording fees in the amount of $551. The check was returned for insufficient funds and marked "account closed."

7. Respondent explained he picked up the wrong checkbook from a closed trust account with Community First Bank. When notified of the problem, Respondent gave the Clerk a good check written on his American National Bank trust account.

8. During the course of the bar's Investigation, the bar's Investigator discovered instances since May 2006 in addition to the aforementioned overdrafts in which Respondent's real estate trust account had insufficient funds and negative balances.

9. Respondent informed the bar's Investigator he was responsible for maintaining his own trust account and general account.

10. Respondent admitted there have been instances when he has had insufficient funds in his trust account to pay checks he wrote from the account.

11. The bar's Investigator detected — and Respondent acknowledged — a deficiency in complying with required trust account procedures.

12. Respondent admitted he was not consistently doing monthly reconciliations of his trust accounts, and, in fact, was several months behind in his reconciliations.

13. In connection with this complaint, the bar issued Respondent a subpoena *duces tecum* demanding he provide his American National Bank trust account records for the period October 1, 2005, to the present. Respondent's failure to timely comply with this demand resulted in his administrative suspension from the practice of law for approximately three weeks (May 15, 2007, to June 4, 2007), until he produced such records that he had in response.

14. Respondent provided a check register entitled "Real Estate Trust Account" for the period January 6, 2005, to August 25, 2006. The check register shows negative balances between July 14, 2006, and August 24, 2006. These negative balances were corrected by subsequent deposits.

15. The bar's Investigator reviewed a second set of documents in response to the bar's subpoena *duces tecum*. These documents included handwritten client subsidiary ledgers and several pages of handwritten ledgers the bar's Investigator assumed were for real estate transactions. In part, the ledgers show deposits and disbursements but do not have dates or the complete name of clients. The handwritten ledgers are incomplete, again lacking the name of the client and sufficient information to identify the transactions. Additionally, no time records were provided to determine how and when Respondent earned a fee.

16. In connection with his review of the foregoing overdrafts, the bar's Investigator found no readily available evidence that clients had been harmed or that Respondent was using his trust account for purposes unrelated to client business.

[Rule 1.15]

VSB Docket Number 07-090-070324

FINDINGS OF FACTS

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

2. The Virginia State Bar received overdraft notices from Respondent's bank, American National Bank and Trust Company ("American National Bank"), regarding the same real estate trust account No. 13334 implicated in complaint VSB Docket number 07-090-2130.

3. Specifically, on April 18, 2007, American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3669 was presented in the amount of $2,470 and was returned, leaving a balance of $22.49.

4. Then, on April 23, 2007, American National Bank notified Respondent that the item presented for payment exceeded the balance in his account. Check #3669 in the amount of $2,470 was presented again and was paid, leaving a negative balance of $9.51.

5. Upon interview by the bar's Investigator, Jane Baynes, Deputy Operations Manager for the American National Bank, said Respondent made a deposit on April 24, 2007, to cover the $2,400 overdraft, plus the $32 return check fee.

6. During the course of the bar's Investigation, the bar's Investigator discovered instances since May 2006 in addition to the aforementioned overdrafts in which Respondent's real estate trust account had insufficient funds and negative balances.

7. Respondent informed the bar's Investigator he was responsible for maintaining his own trust account and general account.

8. The bar's Investigator detected — and Respondent acknowledged — a deficiency in complying with required trust account procedures.

9. Respondent admitted there have been instances when he has had insufficient funds in his trust account to pay checks he wrote from the account.

10. Respondent admitted he was not consistently doing monthly reconciliations of his trust accounts, and, in fact, was several months behind in his reconciliations.

11. In connection with his review of the foregoing overdrafts, the bar's Investigator found no readily available evidence that clients had been harmed or that Respondent was using his trust account for purposes unrelated to client business.

[Rule 1.15]

NATURE OF MISCONDUCT

The foregoing Findings of Fact for VSB Docket Numbers 07-090-2130 and 07-090-070324 give rise to the following violations of the Rule of Professional Conduct:

RULE 1.15 Safekeeping Property

(c) A lawyer shall:

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

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish

compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

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

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

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

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

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

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

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

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

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

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

(5) Reconciliations.

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

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

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

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

SUBCOMMITTEE DETERMINATION

It is the decision of the Ninth District Subcommittee to accept the Agreed Disposition of the parties. Accordingly, a hearing is not necessary to resolve this matter and Respondent shall receive a Public Reprimand with Terms pursuant to Part Six, Section IV, Paragraph 13.G.1.d(3) of the Rules of the Supreme Court of Virginia. This Public Reprimand with Terms is public discipline under the Rules of the Supreme Court of Virginia. WHEREFORE, the Respondent is hereby issued a single Public Reprimand for the foregoing matters (VSB Docket Numbers 07-090-2130 and 07-090-070324) with the following Terms:

(1) Within fifteen days of the date of the Subcommittee Determination, Respondent shall confirm in writing review of Rule 1.15 of the Rules of Professional Conduct to Assistant Bar Counsel Scott Kulp, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800;

(2) Within thirty days of the date of the Subcommittee Determination, Respondent shall engage the services of a CPA (Certified Public Accountant) (a) who will certify familiarity with the requirements of Rule 1.15 of the Rules of Professional Conduct, and (b) who has been pre-approved by Assistant Bar Counsel to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent is in compliance with Rule 1.15, the CPA shall so certify in writing to Respondent and the Virginia State Bar. In the event the CPA determines Respondent is NOT in compliance with Rule 1.15, the CPA shall notify Respondent and the Virginia State Bar, in writing, of the measures Respondent must take to bring himself into compliance with Rule 1.15. Respondent shall provide the CPA with a copy of the Agreed Disposition at the outset of his engagement of the CPA.

(3) Respondent shall be obligated to pay when due the CPA's fees and costs for services (including provision to the bar and to Respondent of information concerning this matter).

(4) In the event the CPA determines that Respondent is NOT in compliance with Rule 1.15, Respondent shall have forty-five (45) days following the date the CPA issues a written statement of the measures Respondent must take to comply with Rule 1.15 within which to bring himself into compliance. The CPA shall then be granted access to Respondent's office, books, and records, following the passage of the forty-five (45) day period to determine whether Respondent has brought himself into compliance as required. The CPA shall thereafter certify in writing to the Virginia State Bar and to Respondent either that Respondent has brought himself into compliance with Rule 1.15 within the forty-five (45) day period or that he has failed to do so. Respondent's failure to bring himself into compliance with Rule 1.15 as of the conclusion of the forty-five (45) day period shall be considered a violation of the Terms set forth herein.

(5) Unless an extension is granted by the bar for good cause shown to accommodate the CPA's schedule, the Terms specified in paragraphs 2, 3, and 4, shall be completed no later than February 15, 2008.

(6) On or about February 2009, the CPA engaged pursuant to paragraph 2 shall reassess Respondent's attorney's trust account record-keeping, accounting, and reconciliation methods and procedures to ensure continued compliance with Rule 1.15 of the Rules of Professional Conduct. In the event the CPA determines that Respondent has NOT remained in compliance with this Rule, such non-compliance will be considered a violation of the Terms set forth herein.

If, however, ANY of the foregoing Terms are not met by the dates specified, this District Committee shall impose as an Alternate Sanction a Certification For Sanction Determination as defined by Part Six, Section IV, Paragraph 13.A of the Rules of the Supreme Court of Virginia and set forth in Part Six, Section IV, Paragraph 13.G.5.b. of the Rules of the Supreme Court of Virginia. If there is disagreement as to whether the Terms were fully and timely completed, the Ninth District Committee will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the Terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

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 SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

James R. McGarry, Esquire
Subcommittee Chair Presiding

UNAUTHORIZED PRACTICE OF LAW OPINION 212

WHETHER A NON-LAWYER SETTLEMENT AGENT CAN NEGOTIATE A DEBT ON BEHALF OF A DEBTOR

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 non-lawyer 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 non-lawyer 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.

Committee Opinion
October 16, 2007

VIRGINIA STATE BAR'S STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW IS SEEKING PUBLIC COMMENT ON PROPOSED UPL OPINION 213

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 Unauthorized Practice of Law (" UPL Committee") is seeking public comment on proposed Unauthorized Practice of Law Opinion 213, *Attorney on Associate Status Representing Multiple Ownership Interests in Negotiation and Drafting of Easement*.

This proposed opinion generally addresses whether a retired member of the Virginia State Bar who is on Associate membership status and who owns an undivided interest in a tract of land can verify the ownership of other undivided interests, negotiate and prepare an easement deed acting, not only for himself, but on behalf of the entirety, representing all interests, and reimburse expenses out of the sale of tax credits.

Pursuant to UPR 6-103 (A)(1), a non-lawyer can act for him/herself *pro se* and draft legal instruments related to a real estate transaction as long as he/she is the owner of the property or a party to the transaction involving the property but he/she cannot act not for anyone else. The language "affecting his property" in UPC 6-5 would allow the landowner to draft a legal instrument (such as an easement) which affects the piece of property he actually owns and to represent himself and his own interests in such a transaction but it does not authorize a non-lawyer to act on behalf of another landowner and affecting another landowner's property, even if the various pieces of property are all part of a whole. This language cannot be construed to broaden the scope of what a non-lawyer can do for another. This would be inconsistent with Rule 6 itself as well as with the Definition of the Practice of Law generally and would be considered the unauthorized practice of law.

Inspection and Comment

The proposed opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 AM and 4:30 PM, Monday through Friday. Copies of the proposed 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 http://www.vsb.org

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed opinion by filing ten copies with Karen A. Gould, the Executive Director of the Virginia State Bar, not later than **February 29, 2008.**

# # #

(DRAFT — October 16, 2007)

UNAUTHORIZED PRACTICE OF LAW OPINION 213 ATTORNEY ON ASSOCIATE STATUS REPRESENTING MULTIPLE OWNERSHIP INTERESTS IN NEGOTIATION AND DRAFTING OF EASEMENT

You have asked the Committee to opine as to whether the following activity is the unauthorized practice of law: A member of the Virginia State Bar ("VSB") is retired from practice and on Associate membership status.[1] He is the owner of an undivided interest in a tract of land and wants to proceed *pro se* to protect the tract under a conservation easement. In doing this he wants to verify ownership of other undivided interests, negotiate and prepare an easement deed on behalf of the entirety, representing all interests, and reimburse expenses out of the sale of tax credits.

Acting *pro se,* landowner/Associate member can do whatever he believes necessary to protect his *own* interests. His proposed action to be taken on behalf of any other owner's interests would be unauthorized practice of law. The controlling authority on this issue is Part 6, § I, Introduction, (B)(Definition of the Practice of Law in Virginia) and (C) (Definition of "Non-lawyer")Rules of the Virginia Supreme Court; Unauthorized Practice Rule ("UPR") 6-103 (A); Unauthorized Practice Consideration ("UPC") 6-5; Part 6, § IV, Para. 3(b) Rules of the Supreme Court of Virginia (Classes of Membership—Associate Members).

The language in the Introduction to Virginia's Unauthorized Practice of Law Rules and Considerations is clear:

> The right of individuals to *represent themselves* is an inalienable right common to all natural persons. *But no one has the right to represent another;* it is a privilege to be granted and regulated by law for the protection of the public. (Emphasis added.)

The Definition of the Practice of Law in the Commonwealth of Virginia states:

> 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
>
> * * *
>
> (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.
>
> * * *

FOOTNOTES

1 Part 6, § IV, para. 3(b) Rules of the Supreme Court of Virginia:

> Associate Members — Those persons who have heretofore or may hereafter be admitted to practice law in the courts of this state but who are not presently so engaged and all persons on the law faculties of any law schools of this state that have been approved by the American Bar Association may be come associate members of the Virginia State Bar upon application to the secretary and payment of the required dues. Associate members shall be entitled to all the privileges of active members except that they may not practice law, vote or hold office (other than as members of committees) in the Virginia State Bar.

While the individual described in the present inquiry is a member of the Virginia State Bar, these provisions (and restrictions) of the Rules apply to him because he holds only Associate membership status. *See* footnote 1 *supra*. Associate members "may not practice law" in any manner. For purposes of the practice of law, Associate members are essentially "non-lawyers," i.e. "any person… not duly licensed *or authorized* to practice law in the Commonwealth of Virginia." Part 6, § I (C) Rules of the Supreme Court of Virginia. In the inquiry presented, this individual is trying to organize all of the various ownership interests in a certain tract of land and negotiate and prepare on behalf of all of the interests a conservation easement to protect the land in its entirety. To do this would necessarily require at some point discussing with the other landowners what their respective legal rights were and explaining to them the need for and consequences of securing this easement, all of which constitutes legal advice. However, Part 6, § I (B)(1) of the Rules of the Supreme Court of Virginia states that such advice is deemed to be the practice of law only if it is provided *for compensation.* In this case, the landowner/Associate bar member would not be paid by these other landowners for his services so providing this advice would not, by itself, be unauthorized practice. Drafting the easement, however, would be preparing a legal instrument for another(s) and if the landowner/Associate member did that on behalf of all of the landowners he would be engaging in unauthorized practice whether he was paid for the service or not. Part 6, § I (B)(2) Rules of the Supreme Court of Virginia.

As to the drafting of the easement, the inquiry requests an interpretation and application of UPC 6-5, which is a comment to UPR 6-103 (A)(1). UPC 6-5 states:

> An individual, if he chooses to do so, may draw or attempt to draw legal instruments for himself *or affecting his property*. (Emphasis added.)

UPR 6-103 (A)(1) states:

> Unless a party to the transaction, a non-lawyer shall not, with or without compensation, prepare for another legal instruments of any character affecting the title to or use of real estate.
>
> (1) A non-lawyer may prepare a deed for any real estate *owned by him.* A non-lawyer may prepare a deed of trust or deed of trust note for any real estate owned by him or in connection with any transaction to which he is party involving its purchase, sale, transfer or encumbrance. (Emphasis added.)

* * *

The key to this rule provision and the consideration is that the non-lawyer acting *pro se* must be the owner of the property or he/she must be a party to the transaction involving a piece of real estate and he/she can only act for him/herself, not for anyone else. The language "affecting his property" in UPC 6-5 would allow the landowner to draft a legal instrument (such as an easement) which affects the piece of property he actually owns and to represent himself and his own interests in such a transaction but it does not authorize a non-lawyer to act on behalf of another landowner and affecting another landowner's property, even if the various pieces of property are all part of a whole. This language cannot be construed to broaden the scope of what a non-lawyer can do for another. This would be inconsistent with Rule 6 itself as well as with the Definition of the Practice of Law generally.

This opinion is based only on the facts you presented and is subject to review by Bar Council at its next regularly scheduled meeting in June 2008, after the requisite period for public comment, in accordance with Part Six: Section IV: Paragraph 10 (c)(iv) of the Rules of the Virginia Supreme Court. Should Council approve the Opinion, it will then be reviewed by the Supreme Court pursuant to Part Six: Section IV Paragraph 10 (f)(iii).

VIRGINIA STATE BAR'S STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW IS SEEKING PUBLIC COMMENT ON PROPOSED UPL OPINION 214

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 Unauthorized Practice of Law (" UPL Committee") is seeking public comment on proposed Unauthorized Practice of Law Opinion 214, Non-Lawyer Representation, for Compensation, of a Party to Arbitration. This proposed opinion generally addresses whether it is the unauthorized practice of law for a non-lawyer Certified Public Accountant ("CPA") to represent a claimant in an arbitration proceeding before the National Association of Securities Dealers, Inc. ("NASD") against the Claimant's former brokerage firm and former stock broker. The CPA is not a licensed attorney in any jurisdiction and is not, and never has been an employee of the claimant.

In this proposed opinion, the UPL Committee concluded that the CPA is not a licensed attorney in any jurisdiction nor is he nor has he ever been an employee of the Claimant. He is independently offering to provide to customers from the public, services related to arbitration, including representation, and charging a fee for those services and representation. Among the services he is providing are counseling the client regarding potential legal claims against the brokerage company, drafting a statement of claim, drafting discovery requests and then representation at the hearing where he will introduce exhibits, conduct examination of witnesses, including expert witnesses, objecting to exhibits and making legal argument. Based on the Definition of the Practice of Law in the Commonwealth of Virginia, Part 6, § I of the Rules of the Virginia Supreme Court and the decisions of the Committee in UPL Opinions 92, 200 and 206, the conduct of this CPA is the unauthorized practice of law.

Inspection and Comment

The proposed opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 AM and 4:30 PM, Monday through Friday. Copies of the proposed 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 http://www.vsb.org

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed opinion by filing ten copies with Karen A. Gould, the Executive Director of the Virginia State Bar, not later than **February 29, 2008.**

# # #

(DRAFT — October 16, 2007)

UNAUTHORIZED PRACTICE OF LAW OPINION 214
NON-LAWYER REPRESENTATION, FOR COMPENSATION, OF A PARTY TO ARBITRATION

You have asked the Committee to opine as to whether it is the unauthorized practice of law for a Certified Public Accountant ("CPA"), who is not a licensed attorney in any jurisdiction, to represent a Claimant in an arbitration proceeding against the Claimant's former brokerage firm and former stock broker. The CPA is not, and never has been, an employee of Claimant. Among the services the CPA is providing to the Claimant are: counseling to the Claimant regarding potential legal claims against the brokerage company, drafting a statement of claim asserting the causes of action identified, drafting discovery requests, responding to discovery requests and objecting to discovery requests as appropriate. During representation at the hearing the CPA will introduce exhibits, conduct examination of witnesses, including expert witnesses, object to exhibits and make legal argument on behalf of the Claimant. The CPA is receiving compensation from the Claimant for his representation of Claimant in the arbitration proceeding. This arbitration proceeding is before the National Association of Securities Dealers, Inc. ("NASD").

The Definition of the Practice of Law in the Commonwealth of Virginia, Part 6, § I (B) states that "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 has issued three opinions addressing the issue of a "non-lawyer" representing a party in an arbitration proceeding. In UPL Opinion 92, the Committee found that:

> It is not the unauthorized practice of law for a non-Virginia-licensed attorney to present evidence and argue matters of law before an arbitration panel of the American Arbitration Association in Virginia in order to represent a client from the attorney's jurisdiction in a franchise contract dispute.

In UPL Opinion 200, the Committee addressed the issue of whether a non-Virginia/foreign attorney, licensed to practice law in Maryland, could represent a corporation in an arbitration proceeding held in Virginia. The Committee found that the foreign attorney could proceed with such representation and that it would not be unauthorized practice. The corporate client was an existing client, which the attorney represented elsewhere. An arbitration proceeding involving this client was set to take place in Virginia. The Committee determined that an attorney is "practicing law" in Virginia when representing a party in an arbitration proceeding but that an arbitration proceeding is not practice before a "tribunal." The Committee then applied the factors under Pt. 6, § I (C)(1)-(3) Rules of the Virginia Supreme Court, allowing for certain "temporary practice" by a foreign attorney:

> 1. Such foreign attorney must be admitted to practice and in good standing in any state in the United States; and
>
> 2. The services provided must be on an occasional basis only and incidental to representation of a client whom the attorney represents elsewhere; and
>
> 3. The client must be informed that the attorney is not admitted in Virginia.

The Committee concluded that the attorney satisfied these requirements and it would not be unauthorized practice of law for the foreign attorney to represent his client in the arbitration proceeding in Virginia.

In UPL Opinion 206 the Committee addressed the issue of whether it was the unauthorized practice of law for a non-attorney corporate officer to represent the corporation at an arbitration conducted in Virginia and determined that this would not be unauthorized practice.

> The definition of the practice of law allows "a regular employee acting for his employer" to provide legal advice and prepare legal documents for this employer. While the definition and Rule 1-101 prohibit a non-lawyer from representing the interests of or appearing on behalf of his employer or a corporation before "a tribunal," the definition of "tribunal" in UPC 1-1 does not include an arbitration proceeding. It follows, therefore, that a non-attorney officer of a corporation can represent that corporation and provide legal advice to the

> corporation/employer within the context of an arbitration proceeding.

UPL Op. 206 (Feb. 10, 2004).

The individual in the present inquiry is neither an attorney licensed in another jurisdiction coming into Virginia to handle a matter for a client the attorney represents elsewhere nor is the person or entity who is a party to the arbitration the regular employer of this individual. Rather, this individual is a CPA, in Virginia, not a licensed attorney in any jurisdiction, who appears to be independently offering to provide to customers from the public, services related to arbitration, including representation, and charging a fee for those services and representation. Based on the Definition of the Practice of Law in the Commonwealth of Virginia, in particular, subsection (1), and the decisions of the Committee in UPL Opinions 92, 200 and 206, the conduct of this CPA is the unauthorized practice of law.

Of note, in September 2006, the NASD, (n/k/a Financial Industry Regulatory Authority, Inc. ("FINRA")) filed with the Securities and Exchange Commission ("SEC") a proposed rule amendment relating to representation of parties in arbitration and mediation.[1] On September 26, 2007, the SEC entered an order approving the proposed rule amendment.[2] This rule amendment came about in light of decisions from two jurisdictions, Florida and California,[3] addressing the issues of out-of-state lawyer and non-lawyer representation of parties in arbitration and the expanding multi-jurisdictional practice of law in jurisdictions throughout the country generally. The changes in the rule (1) codified the current practice by explicitly stating that parties may represent themselves in arbitration; (2) codified current practice permitting multijurisdictional practice by attorneys in NASD Dispute Resolution to the extent permitted by state law and required that the attorney must be licensed to practice and in good standing in a U.S. jurisdiction; (3) allowed that parties may be represented by a person who is not an attorney unless applicable law prohibits such representation or the person is currently suspended or barred from the securities industry in any capacity or is currently suspended or disbarred from the practice of law; and (4) allowed an attorney to represent a client in NASD arbitration or mediation held in any U.S. location, regardless of where the attorney is licensed, the representation being subject to the applicable law of the particular jurisdiction.

While it is beyond the purview of the Committee to apply or interpret the rules of the NASD, it appears that the Committee's conclusion in this matter is consistent with the NASD's rule as amended regarding representation in NASD arbitration and mediation.

This opinion is based only on the facts you presented and is subject to review by Bar Council at its next regularly scheduled meeting in June 2008, after the requisite period for public comment, in accordance with Part Six: Section IV, ¶ 10 (c)(iv) of the Rules of the Virginia Supreme Court. Should Council approve the Opinion, it will then be reviewed by the Supreme Court pursuant to Part Six: Section IV, ¶ 10 (f)(iii).

FOOTNOTES

1 http://www.sec.gov/rules/sro/nasd.shtml: Notice: Rel. No. 34-55604

2 Id., Order Approving Proposed Rule Change as modified by Amendment Nos. 1 and 2 Thereto Relating to Representation of Parties in Arbitration and Mediation

3 *Florida Bar v. Rapoport,* 845 So. 2d 874 (Fla. 2003); *Florida Bar Re: Advisory Opinion on Nonlawyer Representation in Securities Arbitration,* 696 So. 2d 1178 (Fla. 1997); *Birbower, Montalbano, Condo & Frank v. Superior Court,* 949 P. 2d 1(Cal. 1998).

VIRGINIA STATE BAR'S STANDING COMMITTEE ON UNAUTHORIZED PRACTICE OF LAW IS SEEKING PUBLIC COMMENT ON PROPOSED UPL OPINION 215

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 Unauthorized Practice of Law ("UPL Committee") is seeking public comment on proposed Unauthorized Practice of Law Opinion 215, *In-house Counsel Based Outside Virginia Providing Legal Advice to Employer in Virginia.*

This proposed opinion generally addresses whether lawyers who are members of the legal department of a financial institution which is chartered under the laws of a state other than Virginia and who are based in offices outside Virginia and who are licensed in jurisdictions other than Virginia are (1) subject to required registration as corporate counsel under Rule 1A:5 of the Rules of the Virginia Supreme Court; and (2) engaging in unauthorized practice of law if they advise Virginia offices of the financial institution on Virginia law either from the lawyers' offices outside of Virginia or when they visit the Virginia offices in person.

In this proposed opinion, the UPL Committee concluded that a non-Virginia-licensed attorney does not have to apply for certificate or registration pursuant to Rule 1A:5 of the Rules of the Virginia Supreme Court, if that attorney is not located physically in Virginia as his/her base for employment as in-house counsel, corporate counsel, general counsel, etc. The UPL Committee also concluded that these lawyers are not engaged in the unauthorized practice of law, pursuant to Part 6, § I (B)(1) of the Rules of the Virginia Supreme Court, when they provide advice and counsel to their *regular employer* regarding Virginia law, even when the branch of the financial institution is located in Virginia. Should these lawyers have to prepare documents in either situation, again, they are providing this legal service only to their regular employer which is permitted under Part 6, § I (B)(2). Furthermore, these lawyers fall within the scope of the temporary practice provisions of Part 6, § I (C), and are therefore not engaged in the unauthorized practice of law.

Inspection and Comment

The proposed opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 AM and 4:30 PM, Monday through Friday. Copies of the proposed 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 http://www.vsb.org

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed opinion by filing ten copies with Karen A. Gould, the Executive Director of the Virginia State Bar, not later than **February 29, 2008.**

# # #

(DRAFT — October 16, 2007)

UNAUTHORIZED PRACTICE OF LAW OPINION 215
IN-HOUSE COUNSEL BASED OUTSIDE VIRGINIA PROVIDING LEGAL ADVICE TO EMPLOYER IN VIRGINIA

The Committee has been asked to opine as to whether lawyers who are members of the legal department of a financial institution which is chartered under the laws of a state other than Virginia and who are based in offices outside Virginia and who are licensed in jurisdictions other than Virginia are (1) subject to required registration as corporate counsel under Rule 1A:5 of the Rules of the Virginia Supreme Court; and (2) engaging in unauthorized practice of law if they advise Virginia offices of the financial institution on Virginia law either from the lawyers' offices outside of Virginia or when they visit the Virginia offices in person.

The controlling authority is Rule 1A:5, Rules of the Virginia Supreme Court and the Practice of Law in the Commonwealth of Virginia, Part 6 § I, (B) and (C), Rules of the Supreme Court of Virginia.

Rule 1A:5 of the Rules of the Virginia Supreme Court, Virginia Corporate Counsel & Corporate Counsel Registrants provides:

> Notwithstanding any rule of this Court to the contrary, after July 1, 2004, any person employed in Virginia as a lawyer exclusively for a for-profit or a non-profit corporation, association, or other business entity, including its subsidiaries and affiliates, that is not a government entity, and the business of which consists solely of lawful activities other than the practice of law or the provisions of legal services ("Employer"), for the primary purpose of providing legal services to such Employer, including one who holds himself or herself out as "in-house counsel," "corporate counsel," "general counsel," or other similar title indicating that he or she is serving as legal counsel to such Employer, shall either (i) be a regularly admitted active member of the Virginia State Bar; (ii) be issued a Corporate Counsel Certificate as provided in Part I of this rule and thereby become an active member of the Virginia State Bar with his or her practice limited as provided therein; or (iii) register with the Virginia State Bar as provided in Part II of this rule; provided, however, no person who is or has been a member of the Virginia State Bar, and whose Virginia License, at the time of application, is revoked or suspended, shall be issued a Corporate Counsel Certificate or permitted to register under this Rule.

Part I and Part II of this rule set out the certification and registration requirements for lawyers admitted to practice in U.S. jurisdictions *other than Virginia* or in a country other than the United States (Part II only):

> **Part I: Virginia Corporate Counsel**
>
> (a) A lawyer admitted to the practice of law in a state (other than Virginia), or territory of the United States, or the District of Columbia may apply to the Virginia State Bar for a certificate as a Virginia Corporate Counsel ("Corporate Counsel Certificate") to practice law as in-house counsel in this state when he or she is employed by an Employer in Virginia.
>
> * * *
>
> **Part II: Corporate Counsel Registrants**
>
> (a) Notwithstanding the requirements of Part I of this rule, any lawyer as defined in the Introduction and Part I(a) of this rule may register with the Virginia State Bar as a "Corporate Counsel Registrant." A person admitted to the practice of law only in a country other than the United States, and who is a member in good standing of a recognized legal profession in that country, the members of which are admitted to practice law as lawyers, counselors at law, or the equivalent, and are subject to effective regulation and discipline by a duly constituted professional body or public authority, may also register under Part II of this rule.
>
> * * *

A Virginia-licensed attorney does not have to apply for certificate or registration pursuant to this rule nor does a non-Virginia-licensed attorney if that attorney is not located physically in Virginia as his/her base for employment as in-house counsel, corporate counsel, general counsel, etc.

The Definition of the Practice of Law in the Commonwealth of Virginia states:

> 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. (Emphasis added).
>
> * * *

Part 6, § I (B) Rules of the Supreme Court of Virginia. Paragraph (C) of Part 6, § I defines a "non-lawyer" and sets out the limits of temporary practice by a non-Virginia lawyer in Virginia:

* * *

(C) Definition of "Non-lawyer." The term "non-lawyer" means any person, firm, association or corporation not duly licensed or authorized to practice law in the Commonwealth of Virginia. However, the term "non-lawyer" shall not include foreign attorneys who provide legal advice or services in Virginia to clients under the following restrictions and qualifications:

(1) Such foreign attorney must be admitted to practice and in good standing in any state in the United States; and

(2) The services provided must be on an occasional basis only and incidental to representation of a client whom the attorney represents elsewhere; and

(3) The client must be informed that the attorney is not admitted in Virginia.

A lawyer who provides services not authorized under this rule must associate with an attorney authorized to practice in Virginia.

Nothing herein shall be deemed to overrule or contradict the requirements of Rules of this Court regarding foreign attorneys admitted to practice in the courts of the Commonwealth of Virginia including the association of counsel admitted to practice before the courts of this Commonwealth.

A lawyer who provides services as authorized under this rule, or who is admitted *pro hac vice* under Rule 1A:4 shall, with regard to such services or admission, be bound by the disciplinary rules set forth in the Virginia Code of Professional Responsibility.

Failure of the foreign attorney to comply with the requirements of these provisions shall render the activity by the attorney in Virginia to be the unauthorized practice of law.

* * *

In the inquiry presented, the lawyers involved are members of a financial institution's legal department and are all based in offices outside of Virginia and are licensed to practice law in other U.S. jurisdictions other than Virginia, in particular, the jurisdictions where their offices are located. In this posture, they are not subject to the requirements of Rule 1A:5. The certificate and registration requirements of this rule apply only to lawyers not licensed in Virginia who are working *in Virginia* as corporate counsel, in-house counsel, general counsel, etc.

When these lawyers provide advice and counsel regarding Virginia law to employees of the financial institution employer located in branches in Virginia, they are not engaged in unauthorized practice. When they are providing the advice either from their offices outside of Virginia or when they visit the branches in-person in Virginia, this constitutes advising their *regular employer* which is permitted under Part 6, § I (B)(1) of the Rules of the Virginia Supreme Court. Should they have to prepare documents in either situation, again, these lawyers are providing this legal service only to their regular employer which is permitted under Part 6, § I (B)(2). These lawyers also fall within the scope of the temporary practice provisions of Part 6, § I (C). They represent the employer elsewhere and have occasion to have to come into Virginia in relation to that representation. This occurs only on a temporary or occasional basis. Nothing in this inquiry suggested that these lawyers were attempting to appear before any tribunal in Virginia on behalf of the employer, which would require association with Virginia-licensed counsel.

Finally, two earlier opinions from the Committee, UPL Opinions 93 and 99 are also instructive on the issues presented in this inquiry. In these opinions the Committee found that it was not the unauthorized practice of law for a non-Virginia-licensed attorney to prepare legal documents for a Virginia client relating to a Virginia matter when the attorney did so from his/her office in the jurisdiction where he/she was licensed. Similarly, if an attorney is providing legal advice to or on behalf of a Virginia client while located in his/her licensing jurisdiction, this will not be the unauthorized practice of law in Virginia. The Committee cautions that an attorney licensed other than in Virginia must also be aware of any applicable rules and/or limitations of his/her licensing jurisdiction and/or the jurisdiction where he/she is practicing regarding the practice of another jurisdiction's law where the attorney is not licensed.

VIRGINA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 30th day of November, 2007.

It is ordered that the Rules heretofore adopted and promulgated by this Court and now in effect be and they hereby are amended to become effective February 1, 2008.

Amend Rule 5:6 to read as follows:

Rule 5:6. Forms of Briefs and Other Papers.

(a) Briefs, appendices, motions, petitions, and other papers may be printed using a computer word-processing program, typewritten, or prepared by a mechanical duplication process. All such papers shall be produced on 8 1/2 x 11 inch white paper and the margins shall be at least 1 inch at the sides, top, and bottom. Page numbers may appear in the top or bottom margin, but no text, including footnotes, is permitted in the one inch margins. Except by leave of Court, all pleadings and briefs, including footnotes, must be in at least 14 point type, must use Courier, Arial, or Verdana font, and only one side of the paper may be used. Pleadings and briefs shall not be reduced and must be double spaced except for quotations and footnotes. Carbon copies are prohibited except where specifically authorized by these Rules and otherwise by permission of a Justice of this Court.

(b) All briefs and appendices shall be bound on the left margin in such a manner as to produce a flat, smooth binding. Spiral binding, acco fasteners, and the like are not acceptable. The caption (with the name of the appellant stated first) and the record number of the case shall be stated on the front cover of all briefs and appendices and, in addition, the names, Virginia bar numbers, addresses, telephone numbers, facsimile numbers, and e-mail addresses, if applicable, of counsel submitting the brief shall be placed on the front cover of all briefs. The appendix may be produced using both sides of the page. Page limits for pleadings and briefs do not include the cover page, index, table of citations, table of authorities, or the certificate.

(c) No appeal shall be dismissed for failure to comply with the provisions of this Rule 5:6; the Clerk of this Court may, however, require that a document be redone in compliance with this Rule.

Amend portions of Rule 5:20A to read as follows:

RULE 5:20A. Denial of Appeal; Petition for Rehearing.

Except for petitions for rehearing filed by pro se prisoners, or with leave of Court, the petition shall be filed as a PDF document attached to an e-mail addressed to scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due.

The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14 point type or larger, must be double-spaced, must comply with Rule 5:6, and must not exceed a word count of 3,000. The petition must include a certificate of service to counsel for the appellee and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to file the petition by e-mail, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

* * *

Amend portions of Rule 5:26 to read as follows:

Rule 5:26. Briefs.

(a) *Length.* – Except by permission of a Justice of this Court, neither the opening brief of appellant, nor the brief of appellee, nor a brief amicus curiae shall exceed 50 typed or printed pages. No reply brief shall exceed 15 typed or printed pages. Page limits under the Rule do not include appendices.

* * *

(d) *Copies.*–Twelve copies of each brief (including a brief amicus curiae) shall be filed in the office of the Clerk of this Court and three copies shall be mailed or delivered to opposing counsel on or before the day on which the brief is filed. Three copies of the brief amicus curiae shall be mailed or delivered to counsel for all parties and to any other counsel amicus curiae. An electronic copy of any brief and appendix shall also be filed with the clerk contemporaneous with the brief. The electronic copy can be filed on disc, CD, or by e-mailing to scvbriefs@courts.state.va.us. Although Word documents are preferred, Word Perfect or PDF are acceptable. All briefs shall contain a certificate evidencing such mailing or delivery and the method of transmission to the clerk for filing.

* * *

Amend Rule 5:27 to read as follows:

Rule 5:27. Opening Brief of Appellant.

The form and contents of the opening brief of appellant shall conform in all respects to the requirements of the petition for appeal set forth in Rule 5:17(c), except that references shall be to the pages of the appendix rather than the pages of the record. In addition, the opening brief shall contain the signature (which need not be in handwriting) of at least one counsel, counsel's address, Virginia bar number, telephone number, facsimile number, e-mail address, if applicable, and a certificate (which need not be signed in handwriting) that there has been compliance with Rule 5:26(d).

Amend portions of Rule 5:28 to read as follows:

Rule 5:28. Brief of Appellee.

The brief of appellee shall contain:

* * *

(f) The signature (which need not be in handwriting) of at least one counsel and counsel's address, Virginia bar number, telephone number, facsimile number, and e-mail address, if applicable.

* * *

Amend Rule 5:29 to read as follows:

Rule 5:29. Reply Brief.

The reply brief, if any, shall contain argument in reply to contentions made in the brief of appellee. No reply brief is necessary if the contentions have been adequately answered in the opening brief of appellant. The reply brief shall comply with Rule 5:17(c)(1) and shall contain the signature (which need not be in handwriting) of at least one counsel and counsel's address, Virginia bar number, telephone number, facsimile number, e-mail address, if applicable, and a certificate (which need not be signed in handwriting) that there has been compliance with Rule 5:26(d).

Amend portions of Rule 5:39A to read as follows:

Rule 5:39A. Rehearing Petition.

* * *

(b) Except for petitions filed by pro se prisoners, or with leave of Court, the petition for rehearing shall be filed as a PDF document attached to an e-mail addressed to scvpfr@courts.state.va.us and will be timely filed if received by the clerk's office on or before 11:59 p.m. on the date due. The petition must be formatted to print on a page 8 1/2 x 11 inches, must be in 14 point type or larger, must be double-spaced, must comply with Rule 5:6, and must not exceed a word count of 3,000. The petition must include a certificate of service to opposing counsel and the certificate shall specify the manner of service and the date of service. The petition must also include a certificate of compliance with the word count limit. The petition will be considered filed on the date and time that it is received by scvpfr@courts.state.va.us. If the petition does not meet the requirements of this rule as to format, the clerk shall so notify counsel and provide a specific amount of time for a corrected copy of the petition to be filed. A person who files a document electronically shall have the same responsibility as a person filing a document in paper form for ensuring that the document is properly filed, complete, and readable. However, if technical problems at the Supreme Court result in a failure to timely receive the electronically filed petition for rehearing, counsel shall provide to the clerk of the Court on the next business day all documentation which exists demonstrating the attempt to email the petition, any delivery failure notice received in response to the attempt, and a copy of the petition for rehearing.

* * *

A Copy,
Teste:

PROPOSED AMENDMENTS TO PART 6, SECTION IV, PARAGRAPH 5, RULES OF SUPREME COURT OF VIRGINIA

On July 2, 2007, President Howard W. Martin, Jr., appointed a task force to examine the current size of the Virginia State Bar Council and consider recommending changes in Paragraph 5. This provision governs the circumstances under which a circuit qualifies for additional representation on Council beyond the one Council member guaranteed for each of the 31 circuits.

The size of the elected component of Council grew from 40 members in the late 1970s to 60 members by the early 1990s, when Paragraph 5 was last amended to increase the number of active members required for an additional seat in a given circuit from 300 to 400. At that time all circuits were grandfathered so that no circuit lost any Council representation. This change arrested the size of Council until quite recently, when additional seats were added in Circuits 19 and 20.

At its meeting on September 20, 2007, the task force concluded that action should be taken to prevent Council from growing further in the foreseeable future in order to keep it a policy-making body of reasonable size where all members have an opportunity to speak and participate during meetings. It was also agreed that the current arrangement under which all circuits are guaranteed at least one member of Council should be retained.

Accordingly, the task force voted with one member absent and one no vote, to recommend that the number of active members required for an additional seat in a circuit again be increased from 400 members to 500 members or major fraction thereof. In addition, the task force voted to change the date in the grandfather clause of the paragraph from July 1, 1992 to July 1, 2008, the anticipated effective date of the proposed rule changes. This will preserve the three additional seats that have been added since 1992 in Circuits 19 and 20, as well as any that may be added during the 2007–2008 bar year in any circuit.

The proposed rule change will be considered by the Council of the Virginia State Bar at its next meeting on March 1, 2008, and the proposed change is published below for comment. Any member of the bar having comments about the proposed change may direct those to: Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219-2800 no later than February 1, 2008.

5. THE COUNCIL. — The powers of the Virginia State Bar shall be exercised by a Council composed of at least thirty-seven members in addition to the President, President-elect and Immediate Past President, as ex officio members, elected and appointed as follows:

At least one active member from each of the thirty-one judicial circuits, elected for a term of three years by the members of the bar of each circuit, and nine members appointed by the Supreme Court of Virginia from the active members of the bar of the state at large. The Court shall appoint the at-large members to serve for a term of three years and, further, shall appoint in such a manner as to ensure that three members are appointed annually. A person who has served two successive full three-year terms as an elected or appointed member of Council shall not be eligible for election or appointment to a third successive term.

For each additional judicial circuit, whenever created, there shall be a member of the Council, who shall be an active member of the bar of that circuit. An election shall be held in such circuit within sixty (60) days after the creation of such circuit or as soon thereafter as may be feasible in the manner provided at Paragraph 6. The Council at its meeting next thereafter shall determine the length of the term of the first member from that circuit so that, as nearly as possible, the terms of one-third of the members of the Council expire each year.

Any circuit having as of the ~~15th~~ 1st day of March in any year more than ~~400~~ 500 active members in good standing who are domiciled or principally practice their profession in such circuit shall be entitled to one additional member of the Council for each additional ~~400~~ 500 members or major fraction thereof. In the event that the membership in a circuit as of March ~~15~~ 1 is such that it is no longer entitled to one or more additional members, the term of such additional member[s] of the Council shall end at the expiration of the term for which the member[s] was elected. Provided, however, that the number of Council members from each circuit as of July l, ~~1992~~ 2008, shall not be reduced unless the active membership in the circuit first increases to the number which will sustain its allocation of Council members as of July l, ~~1992~~ 2008, under the above formula, and subsequently falls below that number.

Whenever a judicial circuit shall be abolished, the term of any member of the Council from that circuit shall end forthwith.

The President of the Young Lawyers Conference shall serve as an ex officio member of the Council.

The Chair of the Conference of Local Bar Associations shall serve as an ex officio member of the Council.

The Chair of the Senior Lawyers Conference shall serve as an ex officio member of the Council.

VIRGINIA STATE BAR'S
STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON LEGAL ETHICS OPINION 1841

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 1841, *Can a Member of the Town's Governing Body Represent Clients Charged with Violations of the Town's Code?*

This hypothetical involves a lawyer who is a member of a local town's governing body. The locality recently adopted a Virginia statute as local law and incorporated it into the locality's Traffic Code. This lawyer has now been retained by a defendant charged under the locality's Traffic Code, who is challenging the constitutionality of the provision. The question presented is whether there is a per se prohibition against the lawyer representing a client challenging a town ordinance.

Based on the application of Rule 1.11(b), the Committee opines that this lawyer participated "personally and substantially" in the adoption of the town ordinance. Therefore, the lawyer would have to gain the consent of both the private client, and the government agency regarding the potential conflict in order to represent the client in challenging the town ordinance. If the lawyer survives the potential exclusion of Rule 1.11(b), the lawyer must then analyze the effect of Rule 1.7. The Committee opines that the lawyer may continue the representation with complete disclosure to the client, and client consent as long as the lawyer reasonably believes that he can provide competent and diligent representation that is not materially limited by his responsibilities to a third person or a personal interest.

Inspection and Comment

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

Any individual, business or other entity may file or submit written comments in support of, or in opposition to, the proposed advisory opinion by filing ten copies with Karen A. Gould, the Executive Director of the Virginia State Bar, not later than **February 29, 2008**.

###

(DRAFT — November 29, 2007)

LEGAL ETHICS OPINION 1841
CAN A MEMBER OF THE TOWN'S GOVERNING BODY REPRESENT CLIENTS CHARGED WITH VIOLATIONS OF THE TOWN'S CODE?

This hypothetical involves a lawyer who is a member of a local town's governing body. The locality recently adopted a Virginia statute as local law and incorporated it into the locality's Traffic Code, which they routinely do when new statutes are adopted annually by the General Assembly. Normally, these statute revisions are adopted by the town's governing body *in toto* and not individually screened or adopted piecemeal. The lawyer, as a member of the body, voted in favor of the adoption.

The lawyer has now been retained by a defendant charged under this same provision of the locality's Traffic Code who is challenging the constitutionality of this provision. Is it improper for the lawyer to continue this representation when it involves a direct attack on the locality's Traffic Code?

The analysis starts with the application of Rule 1.11 (b)[1] which prohibits a lawyer from representing a private client in a matter in which he has participated "personally and substantially" as a public official unless both the client and the agency consent. The concern here is misuse of the public office for the benefit of the private client. Given the facts in this hypothetical, the Committee is of the opinion that this lawyer participated "personally and substantially" in the adoption of this town ordinance.

In the current hypothetical the Committee finds that there is no *per se* prohibition under Rule 1.11(b) against the lawyer representing a client challenging a town ordinance. As per the rule, the lawyer would have to get the consent of both the private client and the government agency, after full disclosure and consultation regarding the potential conflict. Whether or not the lawyer is successful in acquiring such consent from the government agency depends upon many factors outside the purview of this Committee.

Once the lawyer survives the potential exclusion of Rule 1.11(b), the lawyer must analyze the effect of Rule 1.7. Specifically, under Rule 1.7(a)(2), a conflict of interest exists whenever, "there is significant risk that the representation of one or more clients will be materially limited by … a third person or by a personal interest of the lawyer." Rule 1.7(a) creates neither a blanket prohibition nor a blanket approval for this type

FOOTNOTES

1 Rule 1.11(b) states as follows:

> Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the private client and the appropriate government agency consent after consultation. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
>
> (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of the fee therefrom; and
>
> (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

2 Rule 1.7(b) states as follows:

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

of scenario. A case-by-case determination is necessary. Rule 1.7(b)[2] provides the circumstances under which a lawyer may continue the representation of a client despite conflicts that arise under Rule 1.7(a).

In this hypothetical, the lawyer needs to consider the affect of his public service on such representations and determine whether his role on the town's governing body creates a "significant risk that the representation … will be materially limited by the lawyer's responsibilities to a third person or by a personal interest of the lawyer." Even if the lawyer has responsibilities to a third party or personal interests that may materially limit his responsibilities to the client; the lawyer may continue the representation with complete disclosure to the client and client consent if the lawyer reasonably believes that he can provide competent and diligent representation. Rule 1.7(b).

One way the representation of the criminal client might be materially limited is if the lawyer, as a member of the public body, went on record as supporting the very town ordinance he seeks to challenge. The inconsistent positions could undermine the lawyer's credibility and weaken his effectiveness as an advocate. Under those circumstances, the lawyer may not be able to meet the requirement of Rule 1.7(b) and continue the representation.

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