Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
Circuit Court				
Johnnie Eugene Mizelle	Suffolk, Va.	Five Year Suspension	December 14, 2007	2
Arlene Lavinia Pripeton	Fairfax, Va.	Sixty Day Suspension	December 22, 2007	4
Disciplinary Board				
Vincent Mark Amberly	Arlington, Va.	Admonition w/Terms	January 3, 2008	7
Andrew Ira Becker	Virginia Beach, Va.	Two Year Suspension	September 17, 2009	10
Jeffrey Frederick Bradley	Mount Sidney, Va.	Public Reprimand w/Terms	December 5, 2007	12
Gloria Salazar Calonge	Falls Church, Va.	Summary Suspension	January 24, 2008	n/a
Marshall L. Cohen	Punta Gorda, Fla.	Ninety Day Suspension	January 25, 2008	n/a
Stephen Thomas Conrad	Woodbridge, Va.	Consent to Revocation	December 14, 2007	n/a
Michael John Denney	Marshall, Va.	Three Year Suspension	December 14, 2007	16
Robert Lorenzo Kline III	Reisterstown, Md.	Revocation	December 14, 2007	21
Leslie Wayne Lickstein	Fairfax, Va.	Summary Suspension	January 24, 2008	n/a
John James McNally	Norfolk, Va.	Fourteen-day Suspension	December 15, 2007	22
Jerold Kay Nussbaum	Annapolis, Md.	Revocation	December 14, 2007	25
Steven Jeffrey Riggs	Santa Ana, Calif.	Revocation	January 25, 2008	n/a
Stanley David Schwartz	Arlington, Va.	Revocation	December 14, 2007	26
District Committees				
Kenneth Paul Mergenthal	Fredericksburg, Va.	Public Reprimand w/Terms	January 8, 2008	27
Stephanie Allette Pease	Abingdon, Va.	Public Reprimand w/Terms	December 14, 2007	30
Angela Dawn Whitley	Petersburg, Va.	Public Reprimand w/out Terms	December 26, 2007	32
Cost Suspension				
Timothy Martin Barrett	Yorktown, Va.	Disciplinary Board	December 20, 2007	n/a
Dennis Michael O'Keefe	Arlington, Va.	Disciplinary Board	January 23, 2008	n/a
James Bryan Pattison	Sterling, Kans.	Disciplinary Board	January 2, 2008	n/a
Isidoro Rodriguez	Annandale, Va.	Disciplinary Board	November 30, 2007	n/a
Salvage DeLacy Stith	Chesapeake, Va.	Disciplinary Board	December 5, 2007	n/a
Starr Ilene Yoder	Ivor, Va.	Disciplinary Board	January 10, 2008	n/a
Impairment Suspension				
Robert Joseph Hill	Fairfax, Va.	Indefinite Suspension by Reason of Impairmant	December 13, 2007	20
Interim Suspensions—Failure to Comply with Subpoena				
Edward Allen Malone	Arlington, Va.	Disciplinary Board	October 26, 2007	n/a
Gerard Raymond Marks	Christianburg, Va.	Disciplinary Board	December 26, 2007	n/a
Peter Campbell Sackett	Lynchburg, Va.	Disciplinary Board	January 22, 2008 Lifted January 24, 2008	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:
IN THE CIRCUIT COURT OF THE CITY OF SUFFOLK

VIRGINIA STATE BAR *EX REL*
FIRST DISTRICT COMMITTEE,
Complainant,
v.
JOHNNIE EUGENE MIZELLE, Respondent.
Case No. CL06-484
VSB DOCKET NUMBERS: 05-010-2813
05-010-3969

MEMORANDUM ORDER

On November 29, 2007, came the Virginia State Bar, represented by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Johnnie Eugene Mizelle, represented by Andrew M. Sacks, Esq., and presented a proposed Agreed Disposition endorsed by counsel and Mr. Mizelle, a copy of which is attached to and incorporated into this Order by this reference. The three Judges of the panel appointed by the Supreme Court of Virginia to hear this matter, the Honorable John E. Clarkson, Judge Designate, the Honorable Paul M. Peatross Jr., Judge Designate, and the Honorable Gary A. Hicks, Chief Judge Designate, convened telephonically to hear argument and consider the proposed Agreed Disposition. Having considered the argument and representations of counsel, the Three-Judge panel deliberated and voted to accept the proposed Agreed Disposition. As such, based on the Stipulations of Fact set forth in the Agreed Disposition, the Three-Judge panel

FINDS by clear and convincing evidence the conduct of the Respondent, Johnnie Eugene Mizelle, violates the following provision of the Rules of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Further, in accord with the terms of the Agreed Disposition, the Three-Judge panel

ORDERS that the license of the Respondent, Johnnie Eugene Mizelle, to practice law in the Commonwealth of Virginia is **SUSPENDED** for five (5) years, effective December 14, 2007. The Three-Judge panel further

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

ORDERS that pursuant to Part Six, Section IV, Paragraph 13(B)(8)(c) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs. The Three-Judge panel further

ORDERS that an attested copy of this Order be mailed, postage prepaid, to the Respondent, Johnny E. Mizelle, Esq., at 528 West Washington Street, P.O. Box 374, Suffolk, Virginia 23434-0374, his last address of record with the Virginia State Bar, to Respondent's Counsel, Andrew M. Sacks, Esq., at P.O. Box 3874, Norfolk, Virginia 23514-3874, and to Assistant Bar Counsel Richard E. Slaney, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

We ask for this:
Richard E. Slaney, Assistant Bar Counsel

Andrew M. Sacks, Esq., Respondent's Counsel

AGREED DISPOSITION

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13(B)(5)(c), the Virginia State Bar, by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Johnnie Eugene Mizelle, Esq., and his counsel, Andrew M. Sacks, Esq., hereby enter into the following Agreed Disposition arising out of the above-referenced matter:

I. STIPULATIONS OF FACT

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

The Greene Complaint 05-010-3969

2. In July of 2004, one Tammy Greene (Greene) hired Mizelle for divorce representation. By November of 2004, Greene owed Mizelle several hundred dollars in legal fees.

3. At a meeting in November of 2004, Greene told Mizelle she could not pay him until she received her tax refund. Greene claims Mizelle suggested Greene could reduce her bill by engaging in oral sex with him.

4. Subsequently, Greene went to the Suffolk police, who suggested she return to Mizelle's office carrying hidden audio and video recording equipment provided by them. In early December, Greene did so. Greene referenced what she claims was Mizelle's earlier offer, and Mizelle agreed he would reduce her bill if she engaged in oral sex with him. Mizelle contends that he had no such intentions, but only wanted to see why Greene was saying such things. Mizelle also left his side of his desk, sat next to Greene, and according to her, touched her breast. Despite the fact the police were monitoring the meeting, Greene made an excuse and abruptly left Mizelle's office.

5. Mizelle was charged with assault and battery and solicitation for prostitution. Pursuant to a plea agreement, Mizelle entered an Alford plea to the assault and battery charge, and the solicitation for prostitution charge was nolle prossed. As per the plea agreement ,Mizelle was given a 12-month suspended sentence and was ordered to pay costs.

6. As a result of the media coverage of the charges against Mizelle, several other women came forward and claimed Mizelle made similar suggestions and/or assaulted them, as follows:

Patricia Orr, who claims in 1997 she met with Mizelle in regard to charges against her husband, claims that Mizelle touched her inappropriately; said that if she was "nice" to him she wouldn't have to worry about legal fees; and that, when discussing possible legal action for a coffee burn she received, he asked her to show him the burn and made inappropriate, sexual comments when she complied.

Penny Heigl, who testified via deposition (prior to her death), that in 2000 while representing her Mizelle made inappropriate remarks to her and offered to discount the legal fees she owed him if she would accompany him to a hotel room.

Robin Patterson, who claims that in 2000 Mizelle was appointed as guardian *ad litem* in her divorce case; that he touched her inappropriately and made inappropriate remarks to her.

Lillian Matthews, who claims via affidavit that in the mid-1970s while representing her in a divorce, Mizelle suggested she engage in oral sex with him in return for a reduction in fees she owed him.

The Potter/Shannon Complaint 05-010-2813

7. In 2001, one Kelly Ann Shannon (Shannon) was facing criminal charges and Mizelle was appointed to represent her.

8. At their first meeting, Shannon claims Mizelle told her he recognized her and stated he heard she was skilled at providing oral sex. She claims he then asked her to approach him, pulled her to him, and put her hand on his genitals (over top of his pants). Shannon then left Mizelle's office.

9. Mizelle called Shannon several times, but Shannon did not return his calls.

10. On the day of Shannon's hearing, Mizelle approached her and told her she should plead guilty. Shannon refused to plead guilty and the hearing was continued. Later, Shannon got a letter saying the charges were nolle prossed.

11. Shannon's boyfriend, William Potter, filed the complaint against Mizelle.

12. Mizelle has been for many years a highly respected member of the Suffolk community, at one point serving as the city mayor. The parties anticipate a significant number of witnesses would be called to testify to his good works and respected character at the penalty phase of any hearing.

13. Mizelle has been a practicing attorney in Virginia since 1976. The only other discipline against him was a Dismissal with Terms in 1996 for conduct unrelated to the type of conduct alleged in this matter.

II. RULES OF PROFESSIONAL CONDUCT

Assistant Bar Counsel and the Respondent agree the above factual stipulation gives rise to a finding of violations of the following Rules of Professional Conduct:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to the Three-Judge Panel for its approval the agreed disposition of a five- (5) year suspension of Respondent's law license as representing an appropriate sanction if this matter were to be heard in an evidentiary hearing by the Three-Judge Panel. Upon acceptance by the Panel of this Agreed Disposition, the Respondent shall be given a five- (5) year suspension and these matters shall be closed. The Respondent also agrees his prior disciplinary record may be disclosed to the Panel.

Johnnie E. Mizelle, Esq.

Andrew M. Sacks, Esq.,
Respondent's Counsel

Richard E. Slaney,
Assistant Bar Counsel

VIRGINIA:
IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

VIRGINIA STATE BAR *EX REL*
FIFTH DISTRICT—SECTION III COMMITTEE,
Complainant,
v.
ARLENE LAVINIA PRIPETON, Respondent.
Case No. 2007-12572

ORDER OF SUSPENSION

This matter came before the Three-Judge Court empaneled on December 6, 2007, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the 1950 Code of Virginia, as amended. A written Agreed Disposition, dated December 18, 2007, was tendered by the parties to the Three-Judge Court, consisting of the Honorable James E. Kulp, retired Judge of the Fourteenth Judicial Circuit, the Honorable Stephen C. Mahan, Judge of the Second Judicial Circuit, and the Honorable Margaret Poles Spencer, Judge of the Thirteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

The Judges of the Three-Judge Court deliberated on December 19, 2007, and determined that the terms and provisions of the parties' Agreed Disposition should be accepted by the Court. Accordingly, the Court finds by clear and convincing evidence as follows:

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

2. On behalf of herself and other members of her extended family, Ms. Diana D. Taylor (hereafter "Complainant") consulted the Respondent in May of 2005 regarding a potential claim to set aside a court decree which quieted title to certain real property.

3. On or about June 23, 2005, the Complainant met with the Respondent, and retained her to file suit on behalf of the family members for the purpose of setting aside the court decree earlier entered respecting the real property in question. During the parties' meeting, the Complainant tendered to the Respondent, as payment for work performed and an advanced fee, twenty-two (22) checks totaling the sum of $3,000.00 from the individual family members whom the Respondent was engaged to represent.

4. Of the $3,000.00 received from the Complainant, the Respondent deposited the sum of $1,000.00 into her operating account, and placed the remaining $2,000.00 into her attorney trust account.

5. On July 1, 2005, the Respondent withdrew and applied to her own credit the entire sum of $2,000.00 that she had deposited into her attorney trust account. The Bar does not contend that Respondent did not perform services (research, review of file or otherwise) such that she did not earn the fees she transferred from her escrow account to her operating account.

6. When the Complainant met with the Respondent on June 23, 2005, the Complainant inquired if the Respondent could file suit prior to a scheduled Fairfax County Planning Commission hearing scheduled for July 13, 2005. The Respondent advised the Complainant that she believed a suit could be filed within a couple of weeks.

7. The Complainant left numerous telephone messages for the Respondent as the July 13, 2005, date approached, with no response. On July 13th, the Complainant left an urgent message for the Respondent. The Respondent returned the call and advised the Complainant that no suit had been filed. The Respondent sent via e-mail the proposed text of a statement that the Complainant could deliver to the Planning Commission as a registered speaker that same evening.

8. On July 14, 2005, the Complainant advised the Respondent that the Planning Commission decision was being postponed until September 29, 2005. During a phone conversation on or about August 5, 2005, the Complainant reminded the Respondent that suit must be filed before the September 29th Planning Commission decision. The Respondent identified a serious health issue confronting a family member, but nonetheless indicated that she thought she would be filing suit in mid-August. In point of fact, a close family member of Respondent was receiving hospice care at Respondent's home during this period of time. The Bar does not contend that filing suit to vacate before the date of the Planning Commission hearing was a legal prerequisite to the success of the suit.

9. On August 26, 2005, the Complainant learned from the Respondent that suit had yet to be filed. The Respondent never filed the promised suit. The Complainant engaged other counsel.

10. The Respondent retained the entire sum of $3,000.00 that had been paid to her, and failed to furnish the Complainant and/or any of the other clients with any work product beyond the text of the proposed statement to be delivered to the Fairfax County Planning Commission. The Respondent provided no accounting to the Complainant and/or any other client whose money the Respondent had retained as to the manner in which such fees had been earned. The Complainant and her counsel never requested any accounting or any files.

11. On December 16, 2005, Bar Counsel mailed a copy of the Bar Complaint in this matter to the Respondent, with a letter containing the following text:

> Pursuant to Rule of Professional Conduct 8.1(c), you have a duty to comply with the bar's lawful demands for information not protected from disclosure by Rule 1.6. Failure to respond in a timely manner to this and other lawful demands from the bar for information about the complaint may result in the imposition of disciplinary sanctions.
>
> **This letter constitutes a demand that you submit a written answer to the complaint within twenty-one (21) days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits.** [Emphasis in original.]

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

12. A Virginia State Bar investigator interviewed the Respondent in her offices on January 12, 2006. In an effort to determine if the Respondent had, in fact, earned the sum of $3,000.00 that had been paid to her, the investigator requested the Respondent's billing records in the instant matter. The Respondent advised the investigator that such records were with her accountant, but that she would obtain a copy of the records the following day, and that she would fax them to the investigator.

13. Having received no billing records from the Respondent, the investigator called her on January 17, 2006. The Respondent advised the investigator that her accountant had been out of town over the previous long weekend, but that the accountant would bring the billing records to the Respondent's office the next day, at which time the Respondent would fax them to the investigator.

14. The investigator received no records on the day promised, and he began calling the Respondent at least once per business day between January 19 and 31, 2006. At the times of such calls, the investigator was told either that the Respondent was busy and could not accept his call or that she was not in the office. The investigator left a message each time with the Respondent's secretary.

15. The investigator alerted Bar Counsel to the Respondent's failure to produce the promised billing records, and on February 9, 2006, Bar Counsel placed a call to the Respondent. The Respondent stated that the records were in the hands of her bookkeeper. Bar Counsel asked the Respondent for the name, address, and telephone number of the bookkeeper, and was informed that the bookkeeper was Olivia Newton, 9202 Christopher Street, Fairfax, Virginia 22032, whose telephone number was (703) 385-5710.

16. Bar Counsel immediately called the number given to him by the Respondent, and left a message on a recording device. Thereafter, on February 9, 2006, Bar Counsel received a call responsive to his message, from an individual who identified herself by a name other than Olivia Newton, and who stated that while she was a friend of the Respondent she had nothing to do with the Respondent's office or her billing. Later that same day, the Respondent faxed a summary of the timesheets compiled regarding the Complainant's legal matter and the actual timesheets pertaining thereto.

17. A Summons and Subpoena Duces Tecum was issued to the Respondent on February 15, 2006, which, *inter alia*, directed her to appear and to produce in the Bar offices on March 7, 2006, documents relative to services performed by Olivia Newton for the Respondent and/or her law firm.

18. On March 7, 2006, the Respondent appeared in the Bar offices, and stated to an investigator that no one does the Respondent's billing; that she does the billing herself; and that she had not done billing recently because she had not had the time to do so. The Respondent further stated that Olivia Newton does not exist, and conceded that she made up a name in response to Bar Counsel's question, and supplied Bar Counsel with her friend's address and phone number.

19. The Respondent asserts that were this matter to have been litigated, she would have testified that her ethical misconduct was attributable to her distress and state of mind occasioned by the death of her mother-in-law, for whom she had been caring.

THE THREE-JUDGE COURT finds by clear and convincing evidence that such conduct on the part of the Respondent, Arlene Lavinia Pripeton, Esquire, constitutes a 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.

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

RULE 1.4 Communication

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

RULE 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:

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

(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; [and]

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

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

UPON CONSIDERATION WHEREOF, the Three-Judge Court hereby ORDERS that:

1. The Respondent, Arlene Lavinia Pripeton, receive a sixty- (60) day suspension of her license to practice law in Virginia, effective December 22, 2007.

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

3. 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; and it is further

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

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

ENTERED this 19th day of December, 2007

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

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
VINCENT MARK AMBERLY
VSB DOCKET NUMBER: 06-053-1488

AMENDED ORDER OF ADMONITION WITH TERMS

THIS MATTER came on to be heard on the 16th day of November, 2007, before a panel of the Disciplinary Board consisting of James L. Banks Jr., Chair, Glenn M. Hodge, John W. Richardson, Michael S. Mulkey, and Thaddeus T. Crump, Lay member. The Virginia State Bar was represented by Seth M. Guggenheim. The Respondent, Vincent Mark Amberly, appeared both personally and by his attorney, Timothy J. Battle. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias that would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Tracy J. Johnson, court reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board of the District Committee Determination for Certification by the Fifth District Committee.

I. FINDINGS OF FACT

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

2. Martin B. Katz (hereafter "Complainant") instituted two lawsuits against the Respondent's clients in the Fairfax County, Virginia, General District Court. The Complainant and Respondent appeared in that Court on September 19, 2005, a return date on one of the cases.

3. In open Court on September 19, 2005, the Respondent handed the Complainant a copy of a Motion to Consolidate, and presented argument thereon to the Court. The Respondent stated to the presiding judge that the Respondent would be filing a Counterclaim, but he did not furnish a copy of the Counterclaim to the Court or to the Complainant on the occasion of the court appearance. Following their court appearance, the Respondent filed the Motion to Consolidate and a Counterclaim with the Clerk of the Court. The Counterclaim contained no certificate of service.

4. Later that same day, September 19, 2005, the Complainant requested a copy of the Counterclaim during a telephone call with the Respondent. On September 20, 2005, the Respondent sent the Complainant an e-mail, stating, among other things, that "I will forward to you a hard copy of the Counterclaim that we filed with the Court yesterday," and "I will be in touch with you shortly regarding the further status of the case."

5. On September 26, 2005, the Complainant sent the Respondent an e-mail stating, among other things, that he had not received the Counterclaim from the Respondent.

6. On September 30, 2005, the Respondent sent the Complainant an e-mail stating as follows:

> Attached please find the Counterclaim that we filed on behalf of the Trent Group, Inc. The details in this document are sufficient to constitute a Bill of Particulars, and put you on notice of your clients [sic.] claim against you.

7. On September 30, 2005, the Respondent mailed to the Complainant a copy of the Counterclaim containing the following certificate of service, signed by the Respondent:

> I HEREBY CERTIFY that on the 19th day of September, 2005, a true and correct copy of the foregoing Counterclaim, was attempted delivery by hand to Martin B. Katz at the Courthouse, but he refused delivery, on the 30th of September, 2005, a true and correct copy of the foregoing Counterclaim, was delivered to Martin B. Katz, 9822 Hill Street, Kensington, MD 20895, and via electronic transmission or e-mail to the Plaintiff Martin Katz.

8. The Respondent made representation as contained in the foregoing certificate of service in open court on October 6, 2005, in response to Complainant's motion to dismiss the Counterclaim.

9. The Respondent's statements in the certificate of service that he attempted hand delivery of the Counterclaim to the Complainant, and that the Complainant refused such delivery, were false, and were made by the Respondent with knowledge of their falsity.

10. Despite the fact that Respondent did not furnish the Complainant with a copy of the Counterclaim before September 30, 2005, despite the contents of telephone conversations and e-mails between the Complainant and the Respondent wherein Complainant sought a copy of the Counterclaim and the Respondent promised to provide it, and notwithstanding the representation in the certificate of service set forth above, the Respondent made the following representation in a letter to Bar Counsel dated December 19, 2005:

> On September 30, 2005, the day after the deadline the court had set of service my client's Bill of Particulars for the Counterclaim, Mr. Katz and I discussed whether or not I would be filing a Bill of Particulars and would instead rely upon the facts in the Counterclaim that I had given to him on the return day September 19th. At that time, Mr. Katz advised me that he had never received a copy of the Counterclaim. I told him that we had discussed the Counterclaim on numerous occasions and that I had handed it to him at the September 19th hearing, but he claimed that he never received it. I immediately sent him a copy of the Counterclaim via e-mail, as well as a copy via first class mail. ***

11. Respondent's representations to Bar Counsel, set forth above, were misleading in that they were calculated to induce Bar Counsel to conclude a) that Respondent had in fact furnished the Complainant with a copy of the Counterclaim on September 19, 2005, and b) that Respondent first learned from the Complainant on September 30, 2005, that Complainant did not have a copy of the Counterclaim.

12. At all times relevant hereto, Vincent Mark Amberly's address of record with the Virginia State Bar has been Vincent Mark Amberly, c/o Litman Law, 3717 Columbia Pike, Arlington, Virginia 22204. The respondent received proper notice of this proceeding as required by Part Six, Section IV, Paragraph 13 (E) and (I)(a) of the Rules of the Supreme Court of Virginia.

13. The Complainant, Martin B. Katz, hereinafter referred to as "complainant", was present at all times.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 3.3, Rule 4.1, Rule 8.1, and Rule 8.4.

III. DISPOSITION

Disposition was made after review of the foregoing findings of fact, and after review of exhibits 1 through 12 presented by Bar Counsel on behalf of the VSB and exhibits admitted as Respondent's 1 through 7. Disposition also was made after evidence adduced from witnesses presented on behalf of the Virginia State Bar and upon evidence presented by the Respondent in the form of his own testimony. At the conclusion of all of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its finding as follows:

1. The Board determined that the Bar proved by clear and convincing evidence a violation of Rule 3.3 of the Rules of Professional Conduct, Candor Toward The Tribunal

   (a) A lawyer shall not knowingly:

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

2. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of Rule 4.1 of the Rules of Professional Conduct, Truthfulness In Statements To Others

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

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

3. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of Rule 8.1 of the Rules of Professional Conduct, Bar Admission and Disciplinary Matters.

An Applicant for admission, 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:

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

4. The Board determined that the Bar proved by clear and convincing evidence that the Respondent was in violation of Rule 8.4 of the Rules of Professional Conduct, 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 [.]

Therefore, the Board received further evidence of aggravation and mitigation from the Bar and from Counsel for the Respondent, including the absence of a prior disciplinary record. Admitted was a certification from the State Bar and a proffer of Respondent's counsel that Respondent has not been the subject of any previous disciplinary action during the period of time that he has been licensed to practice law.

The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation, the Board reconvened to announce the sanctions that should be imposed, and the Chair announced the terms of the sanctions as follows:

Accordingly, it was ORDERED that the Respondent receive an Admonition with Terms.

The Respondent, Vincent Mark Amberly, is to complete three hours of Continuing Legal Education on the topic of Virginia procedure for which no continuing legal education credit is to be sought. The Respondent is to complete three hours of Continuing Legal Education on ethics for which no continuing legal education is to be sought. Both of these courses are to be completed within one year of the date of this Order, which is November 16, 2007. Failure to comply with the terms of this Order will result in a hearing to determine what sanctions are appropriate.

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent, Vincent Mark Amberly, c/o Litman Law, 3717 Columbia Pike, Arlington, Virginia 22204, by certified mail, return receipt requested, and by regular mail to Timothy J. Battle, Counsel for the Respondent, 524 King Street, P.O. Box 19631, Alexandria, Virginia 22314, and to Seth M. Guggenheim, Senior Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia 22314-3133.

ENTERED THIS ORDER THIS 3rd DAY OF JANUARY, 2008

VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks Jr., Chair

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
ANDREW IRA BECKER
VSB DOCKET NUMBER: 06-021-4018

MEMORANDUM ORDER

This matter came on to be heard on November 16, 2007, by a panel of the Disciplinary Board of the Virginia State Bar (the Board) consisting of Thaddeus T. Crump, Lay Member, Michael S. Mulkey, Glenn M. Hodge, John W. Richardson, and James L. Banks Jr., Chair, presiding (the Panel).

The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis. The Respondent, Andrew Ira Becker, appeared in person *pro se*.

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

Whereupon the Bar and the Respondent advised the Panel that they had entered into a written proposed Agreed Disposition pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.B.5.c., and presented the same to the Panel.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having considered all the evidence before it, the Panel accepted the Agreed Disposition by unanimous decision.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

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

2. In December 2005, Clifford McDole paid Mr. Becker $900 in cash to prepare and file a petition for the restoration of Mr. McDole's driving privileges.

3. On December 30, 2005, Mr. Becker deposited the $900 into one of his non-trust bank accounts. At the time, Mr. Becker had not prepared the petition or completed any work for his client.

4. In January 2006, at Mr. Becker's request, Mr. McDole delivered to Mr. Becker a Division of Motor Vehicles Compliance Summary. Purportedly, Mr. Becker gave this record to an administrative assistant to prepare Mr. McDole's petition for the restoration of his driving privileges.

5. No one, however, ever prepared Mr. McDole's petition.

6. Mr. McDole repeatedly contacted Mr. Becker about a court date, but none was ever scheduled.

7. According to Mr. McDole, Mr. Becker told him on more than one occasion to appear in court at a specific time for the petition to be heard.

8. Mr. McDole did as directed, but on each occasion there was nothing relating to him on the court's docket, and Mr. Becker never appeared.

9. On June 9, 2006, about six months after he hired Mr. Becker, and after repeated threats to do so, Mr. McDole complained to the Virginia State Bar.

10. On June 19, 2006, the bar sent the complaint to Mr. Becker, demanding a response in accordance with Rule 8.1 (c) of the Rules of Professional Conduct.

11. Mr. Becker, however, never responded to the bar complaint. Accordingly, on August 17, 2006, the bar referred the matter to the Second District Committee for a more detailed investigation.

12. On October 19, 2006, Mr. Becker explained to the bar's investigator that he meant to respond, but knew that he would see a bar investigator anyway. During a subsequent meeting on November 29 2006 he provided a written response.

13. Mr. Becker acknowledged that he did not pursue the matter diligently, and that it "dragged and dragged." He acknowledged further that there was a day when he told Mr. McDole that there was a hearing date and that he truly believed that there would be a hearing then.

14. Mr. Becker also acknowledged that he should have withdrawn from the matter and refunded Mr. McDole's money in February or March 2006 when he had not set a hearing.

15. On December 21, 2006, Mr. Becker notified Mr. McDole that his $900 was available for pickup, and Mr. McDole received his funds shortly thereafter.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Andrew Ira Becker constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

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

(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 1.15 Safekeeping Property

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

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

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

RULE 1.16 Declining Or Terminating Representation

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

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that the Respondent's license to practice law in the Commonwealth of Virginia is hereby SUSPENDED for a period of **TWO (2) YEARS,** effective September 17, 2009, the day immediately after the last day of the current suspension of his Virginia law license, September 16, 2009**.**

Further, in accordance with the terms of the Agreed Disposition, the Panel having accepted the same, it is now final, non-revocable and non-appealable.

The Board notes that with respect to the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia, the Respondent has complied the Notice provisions of the Rules of Court concerning the appropriate notification of the suspension of his law license to his clients, judges, and opposing counsel in pending litigation.

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this order to Andrew Ira Becker at his last address of record with the Virginia State Bar, Law Offices of Andrew Becker, P.L.C., Suite 200, 4164 Virginia Beach Boulevard, Virginia Beach, Virginia 23452 and by hand to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Donna T. Chandler, RPR, RMR, of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED THIS 28th DAY OF NOVEMBER, 2007

VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks Jr., Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JEFFREY FREDERICK BRADLEY
VSB DOCKET NUMBER: 06-070-3260

ORDER OF PUBLIC REPRIMAND WITH TERMS

This matter came on December 5, 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 Timothy A. Coyle, Dave R. Schultz, Paul M. Black, Werner H. Quasebarth, Lay member, and William E. Glover, Acting Chair presiding. Donna Chandler, Registered Professional Reporter, of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, having been duly sworn by the Chair, reported the hearing and transcribed the proceedings.

Alfred L. Carr, representing the Virginia State Bar, and the Respondent's legal counsel, Roland M.L. Santos, appeared on behalf and with the consent of Respondent Jeffery F. Bradley, presented an endorsed Agreed Disposition, dated December 5, 2007, reflecting the terms of the Agreed Disposition. Respondent did not appear due to his laborious physical and mental health issues.

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

VSB Docket No. 06-070-3260

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

2. The Rockingham County Circuit Court appointed Respondent to represent the Complainant, Claudio Monreal, at trial, as well as upon appeal.

3. The Complainant instructed Respondent to file a Notice of Appeal, but Respondent did not do so. The Complainant wrote a letter to the Rockingham County Circuit Court complaining that Respondent did not file a Notice of Appeal on his behalf. The court scheduled a hearing for April 17, 2006, in response to Complainant's letter. On April 17, 2006, in open court, Respondent Bradley represented to the presiding judge that he had indeed filed a Notice of Appeal on behalf of Mr. Monreal. The judge asked for a copy of this Notice and an explanation as to why a copy of it was not in the court file. Respondent did not have a copy of the Notice and could not offer the Court any reason why a copy was not in the court file. The Court ordered Respondent to re-file the notice, but Respondent did not re-file it, as ordered by the Court.

4. By letter dated April 17, 2006, the Bar's Intake Counsel requested that Respondent communicate with Mr. Monreal and inform him of the status of his appeal. Respondent did not contact Mr. Monreal. He also did not respond to Bar Counsel's letter dated May 9, 2006, informing Respondent of Mr. Monreal's complaint and providing twenty-one days for Respondent to answer the complaint. Respondent also did not respond to Bar Investigator A.E. Rhodenizer Jr.'s numerous attempts to contact him about this matter.

5. On June 6, 2006, the presiding judge, upon Mr. Monreal's request, appointed another attorney to replace Respondent as Mr. Monreal's attorney and to represent Mr. Monreal on his petition for a Writ of Habeas Corpus.

B. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent in VSB docket number 06-070-3260 constitutes clear and convincing evidence of 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 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

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

RULE 8.1 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;

C. MITIGATING FACTORS

The Board, in accepting the Agreed Disposition for a Public Reprimand with Terms, recognized mitigating factors that profoundly swayed the Board to accept this agreed disposition. In absence of such mitigating factors concerning Respondent's myriad of immense health issues, a suspension of Respondent's license to practice law would be justified.

The Board found that Respondent's current array of mental health and physical health issues did not justify or explain away the stipulated misconduct in this bar complaint. The Board, however, upon consideration of said mitigating factors understands and acknowledges that Respondent's numerous health issues may limit his ability to return to the active practice of law, if at all.

Therefore, the Board accepts the Agreed Disposition for a Public Reprimand with Terms as a resolution to VSB Docket No. 06-070-3260. VSB Docket Nos. 07-070-2299 and 07-070- 0021 now pending before the Board shall be dismissed without prejudice. UPON CONSIDERATION WHEREOF, the Virginia State Bar Disciplinary Board hereby ORDERS that the Respondent shall receive a **PUBLIC REPRIMAND WITH TERMS,** which is herby imposed.

D. TERMS

1. Within five days of the entry of an order by the Virginia State Bar Disciplinary Board (hereinafter the Board) adopting the agreed disposition, the Respondent shall file a letter with the Membership Department to change his class of membership in the Virginia State Bar to that of ASSOCIATE MEMBER pursuant to Part 6, § IV, ¶ 3(b) of the Rules of the Supreme Court of Virginia. An Associate class of membership ***prohibits*** the Respondent from practicing of law in the Commonwealth of Virginia.

2. Within five days of the entry of an order by the Board adopting the agreed disposition, the Respondent shall submit to the Executive Director of the Virginia State Bar a written request that he be transferred to the "Disabled and Retired Member" class of membership in the Virginia State Bar pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 3 (d). Contemporaneous with Respondent's submission to the Executive Director, Respondent shall furnish a true and correct copy of his submission to the Assistant Bar Counsel (hereafter Bar Counsel), assigned the Seventh District, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133. He shall promptly furnish to Bar Counsel a true copy of any correspondence received from the Virginia State Bar regarding his request for transfer to the "Disabled and Retired Member" class of membership.

   a. If the Respondent's class of membership in the Virginia State Bar is changed to that of a "Disabled and Retired Member" class of membership, he shall ***not*** seek to return to an ACTIVE MEMBER at any time before March 31, 2008.

   b. After March 31, 2008, Respondent may make written request of the Executive Director for reinstatement to the "Active Member" class of membership under the procedures applicable to a bar member's restoration to active status upon removal of a disability or impairment.

3. In the event that the Respondent's class of membership is ***not*** changed to the "Disabled and Retired Member" class of membership by the Executive Director of the Virginia State Bar, and irrespective of any contrary entitlement Respondent might have under the law, Respondent shall ***not*** request the Virginia State Bar for a return from an "Associate Member" to an "Active Member" class of membership prior to June 30, 2008.

   a. In the event the Respondent is deemed ineligible for the "Disabled and Retired Member" class of membership by the Executive Director and/or the Executive Committee of the Virginia State Bar, as the case may be, then, and in that event, the Respondent shall continuously maintain Associate Member status until June 30, 2008, after which date he shall be free to resume status as an Active Member, provided he is otherwise eligible for such status.

4. Respondent shall promptly furnish to Bar Counsel a true and correct copy of all correspondence generated by him to the Virginia State Bar and/or received by him from the Virginia State Bar regarding his request for ASSOCIATE MEMBER status. He shall not be obligated to furnish copies of any correspondence generated or received by him relative to a request for restoration to ACTIVE MEMBER status following June 30, 2008.

5. If the Respondent's class of membership in the Virginia State Bar is changed to that of a "Disabled and Retired Member," at no time between the entry of the Board's order adopting the agreed disposition and March 31, 2008, inclusive, shall Respondent engage in the practice of law in the Commonwealth of Virginia and/or any other state or federal jurisdiction. The Terms hereof are specifically intended to have the Respondent refrain fully and completely from the practice of law, thus enabling him to seek and receive any treatment that might be deemed medically necessary to alleviate the physical and mental health issues, which he has stated to the Virginia State Bar as having contributed to his inability to practice law as referred to herein.

6. In the event the Respondent is deemed ineligible for the "Disabled and Retired Member" class of membership by the Executive Director and/or the Executive Committee of the Virginia State Bar, as the case may be, then, and in that event, at no time between the entry of the Board's order adopting the agreed disposition and June 30, 2008, inclusive, shall Respondent engage in the practice of law in the Commonwealth of Virginia and/or any other state or federal jurisdiction. The Terms hereof are specifically intended to have the Respondent refrain fully and completely from the practice of law, thus enabling him to seek and receive any treatment that might be

deemed medically necessary to alleviate the physical and mental health issues, which he has stated to the Virginia State Bar as having contributed to his inability to practice law as referred to herein.

7. In any event, upon Respondent's attempt to return to the active practice of law after March 31, 2008, or after June 30, 2008, he shall:

   a. submit a letter from a member of the medical profession specifically licensed in Virginia to render a professional opinion whether Respondent's mental health presents any issues with his ability to return to the practice of law, and

   b. submit a letter from a member of the medical profession that is licensed in Virginia to render a professional opinion whether Respondent's physical health presents any issues with his return to the practice of law.

8. Respondent agrees to accept any terms and/or conditions the Executive Director of the Virginia State Bar deems appropriate to regulate Respondent's return to an Active class of membership in the Virginia State Bar.

E. ALTERNATIVE DISPOSITION

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

2. Upon a finding by the disciplinary tribunal that Respondent violated any of the Terms set forth herein, then, and in such event, the Board shall, as an alternative disposition to a Public Reprimand With Terms, impose a **TWO-YEAR SUSPENSION** of his license to practice law in the Commonwealth of Virginia. Upon the Board's entry of an order adopting the agreed disposition, the parties shall be deemed to have stipulated to the admissibility into evidence by the Board of the "Stipulation of Facts" appearing above, and the Respondent shall be deemed to have before the Board admitted to the violations of the Rules of Professional Conduct set forth above under the heading "Stipulations of Misconduct."

   The Respondent specifically acknowledges that in addition to the alternative disposition set forth herein for violation of the terms hereof, if Respondent practices law between entry of the Board's order adopting the agreed disposition and

   i) March 31, 2008, if the Respondent's class of membership in the Virginia State Bar is changed to that of a "Disabled and Retired Member" class of membership, or

   ii) June 30, 2008, in the event the Respondent is deemed ineligible for the "Disabled and Retired Member" class of membership by the Executive Director and/or the Executive Committee of the Virginia State Bar, or

   iii) at any time thereafter in violation of the terms of his Virginia State Bar membership classification,

   he shall be subject to prosecution for ethical misconduct under the applicable provisions of the Rules of Professional Conduct, including, but not limited to Rule 5.5.

F. COSTS

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 to the Respondent at his address of record with the Virginia State Bar, P.O. Box 1355, Harrisonburg, Virginia 22803, by certified mail, return receipt requested, and by regular mail to 64 B Court Square, Harrisonburg, Virginia 22801; and to Roland Michael Santos, Counsel for Respondent, 52 East Market Street, Harrisonburg, Virginia 22801; and to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.

ENTERED this 19th day of December, 2007

FOR THE VIRGINIA STATE BAR DISCIPLINARY BOARD:
William E. Glover, Acting Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MICHAEL JOHN DENNEY, ESQUIRE
VSB DOCKET NUMBER: 06-070-2853

ORDER OF SUSPENSION

THIS MATTER came on to be heard on Friday, December, 14, 2007, at 9:00 a.m., before a panel of the Disciplinary Board convening at the Virginia Worker's Compensation Commission, Courtroom A, 1000 DMV Drive, Richmond, Virginia 23220. The Board was comprised of James L. Banks, Jr., Chair, Timothy A. Coyle, Nancy C. Dickenson, David R. Schultz, and Stephen A. Wannall, lay member. The Respondent, Michael John Denney, was not present when the panel convened. The clerk called the name of the respondent in the hallway three times and he failed to appear, nor did any counsel appear on his behalf. The Virginia State Bar was represented by Alfred L. Carr, Assistant Bar Counsel.

The Chair polled the members of the Board as to whether any of them were conscious of any personal or financial interest of his that would preclude them from fairly hearing the matter and serving on the panel, to which inquiry each member responded in the negative.

The Court Reporter, Tracy J. Johnson of Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on a Subcommittee Determination of Certification from the Seventh District alleging misconduct in violation of the following provisions of the Rules of Professional Conduct: Rule 1.3(a) and (b) Diligence; Rule 1.4(a)(b) Communication; Rule 1.16 (a) and (e) Declining or Terminating Representation; Rule 8.1 Bar Admission and Disciplinary Matters; and Rule 8.4 Misconduct, arising from the representation of clients in a release estate matter involving an easement.

The Bar Counsel was given an opportunity to present evidence and relied upon exhibits numbered 1-24, previously filed. The Bar Counsel also presented evidence from one of the complainants, Michael A. Pearson, and from the Virginia State Bar investigator, Donald Lange. The respondent being absent, no evidence was presented on his behalf.

I. FINDINGS OF FACT

The Disciplinary Board Panel recessed to consider the evidence presented regarding the alleged misconduct and finds as follows on the basis of clear and convincing evidence:

1. At all times relevant hereto, Michael J. Denney, Esquire (hereinafter Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia. Respondent's Virginia State Bar license is currently suspended.[1]

2. On or about March 3, 2005, Complainants, Michael A. Pearson and Lori Udall, his spouse, retained Respondent to secure an easement over several neighboring parcels of land adjacent to their property in Fauquier County because the Complainants had made numerous unsuccessful attempts to negotiate an easement with the neighbors. Mr. Pearson and Ms. Udall had to secure an easement for a 50-foot road over the neighboring properties to meet the County requirements and regulations to further subdivide their property and develop it. On March 4, 2005, Respondent made a trip out to their property and visually inspected the neighboring properties and to deliver the retainer agreement. On March 6, 2005, Mr. Pearson and Ms. Udall executed a retainer agreement with Respondent to secure said easement.

3. On or about March 28, 2005, Ms. Udall telephoned Respondent's office to inquire about the status of the lawsuit and left a voice mail message when Respondent did not answer his office phone. Respondent did return that phone call and informed his clients that it was his legal opinion that a lawsuit needed to be filed in the Fauquier County Circuit Court to get the easement. Respondent also called and informed Mr. Pearson that he needed to file an Affidavit to establish that he was the sole heir of the family farm they now lived on, which they were seeking to subdivide and develop into homes. Respondent did draft an Affidavit and Mr. Pearson did go to his office to execute it; however, Respondent did not follow through and file it in the land records of Fauquier County as per his legal advice to Mr. Pearson.

4 During April of 2005 and early May of 2005, Mr. Pearson and his wife left numerous messages for Respondent requesting updates on the status of their lawsuit. Respondent did not return their phone calls to provide updates on the lawsuit he suggested they file to secure the easement during the same time period.

5. On or about May 15, 2005, Mr. Pearson stopped by Respondent's office. During their meeting, Respondent showed Mr. Pearson a draft Bill of Complaint and informed him that he intended to file the pleading in the Fauquier County Circuit Court within the week to initiate

FOOTNOTES

1 On March 29, 2006, the VSB Membership Department suspended Respondent's license for failure to comply with MCLE requirements. On October 11, 2006, the VSB Membership Department suspended Respondent's license for failure to pay bar dues.

the lawsuit. On or about June 10, 2005, Ms. Udall went to the Clerk's Office for the Circuit Court of Fauquier County to inquire about the lawsuit. The Clerk's Office informed her that Respondent had **not** filed a Bill of Complaint on her behalf. (Respondent's office was located across the street from the Fauquier County Circuit Court.)

6. On or about June 15, 2005, Mr. Pearson again went to Respondent's office and asked Respondent why he did not file the Bill of Complaint as he stated he would. Respondent claimed he had filed it and that there must have been some sort of mistake at the courthouse. He informed Mr. Pearson that he would re-file the Bill of Complaint the next day.

7. On or about June 20, 2005, Mr. Pearson went to the Clerk's Office of the Fauquier County Circuit Court. Again, the Clerk's Office informed him that Respondent had **not** filed a Bill of Complaint on his behalf.

8. During July and August of 2005, Mr. Pearson continued to check online and with the Fauquier County Circuit Court Clerk's Office to see if Respondent had filed a Bill of Complaint on his behalf. Respondent never filed the Bill of Complaint.

9. On or about September 8, 2005, six months later, Mr. Pearson sent a letter to Respondent expressing their dissatisfaction with how the Respondent had handled the case up to that point. Respondent did not respond to Mr. Pearson's letter requesting an update on the lawsuit.

10. On September 14, 2005, Mr. Pearson hired new counsel, and by letter dated September 15, 2005, fired Respondent and requested Respondent return all of his legal documents. Respondent did not respond to his clients' request to return their original documents supplied to Respondent.

11. On September 27, 2005, Mr. Pearson's new counsel, David Konick, Esquire, called Respondent and demanded that he turn over the Pearsons' documents to him. Respondent delivered the documents to Mr. Konick the next day, after a threat of legal action. Mr. Pearson estimates that he incurred additional fees and costs of $25,000.00 due to Respondent's lack of communication, lack of follow through and misrepresentations he made to them about the lawsuit.

12. During the course of the Bar's investigation into this complaint, Respondent did not cooperate with the Bar's investigator, Donald A. Lange. On June 26, 2006, the Fauquier County Sheriff's Office served Respondent with a subpoena *duces tecum*, directing Respondent to deliver to the Virginia State Bar, on or before July 12, 2006, a copy of Mr. Pearson's file and billing records. In the alternative, Respondent could have contacted Bar Investigator Donald Lange and made other arrangements to deliver the documents to comply with the subpoena. Respondent failed to respond to the subpoena.

13. On July 12, 2006, Investigator Lange, as part of his investigation of the matter, mailed, by first class mail, a letter to Respondent at P.O. Box 718, Warrenton, VA 20188, Respondent's address of record with the Virginia State Bar, asking Respondent to contact him to discuss Mr. Pearson's Bar complaint. The U.S. Postal Service returned the letter to the Bar because it had closed Respondent's post office box, his official address of record, on May 31, 2006. Respondent did not promptly notify the Virginia State Bar Membership Department in writing of the change in his address of record, as required by Part 6, § IV, ¶ 3.

14. Investigator Lange learned that Respondent had relocated his law office to 8393 West Main Street, Suite 14, Marshall, VA 20115. On July 25, 2006, upon arriving at this new address, Investigator Lange noted that Respondent had a sign posted at curbside advertising his law practice and photographed the sign as part of the investigation. (The VSB suspended Respondent's license to practice law on March 29, 2006.) Investigator Lange inquired of the landlord whether Respondent had a law office in the building. The landlord said he did and gave Investigator Lange a description of Respondent's vehicle, which was parked in the parking lot adjacent to the building.

15. Investigator Lange knocked on the office door but no one answered so he waited in the parking lot. Investigator Lange noticed a male walking toward Respondent's vehicle, approached him and identified himself as a VSB Investigator. Respondent identified himself as Michael Denney. Investigator Lange asked Respondent if he had been performing any legal work after March 29, 2006. Respondent informed Investigator Lange that he had prepared a few wills for clients. Investigator Lange asked for a copy of Respondent's appointment calendar. Respondent did not comply with Investigator Lange's request to review his appointment calendar.

16. On July 21, 2006, without success, Investigator Lange attempted to contact Respondent by certified mail at his new law office address. However, on July 27, 2006, Respondent signed for the certified letter delivered to his home address in Markham, Virginia.

17. On July 27, 2006, Investigator Lange asked Respondent if he intended to respond to the subpoena. Respondent replied that he had mailed the documents one week before the deadline, but did not state to what address he had mailed the documents. Investigator Lange asked for proof of the mailing, but Respondent stated that he did not have proof that he mailed the documents. Investigator Lange extended the subpoena's July 12, 2006, deadline and asked Respondent to deliver the documents to him by August 21, 2006. As of January 9, 2007, Respondent had not delivered the requested documents to the Virginia State Bar or to Investigator Lange.

18. On August 10, 2006, the Bar notified Respondent by certified mail that he was not in compliance with the subpoena *duces tecum* issued on June 26, 2006. On August 15, 2006, Respondent signed for the August 10, 2006, certified letter delivered to his home address in Markham, Virginia. Respondent did not and has not responded to the letter directing him to comply with the subpoena.

II. MISCONDUCT

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

RULE 1.3 Diligence

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

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

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 1.16 Declining Or Terminating Representation

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

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

(3) the lawyer is discharged.

(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 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

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

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;

III. DISPOSITION

Upon reviewing of the forgoing findings of facts, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1-24, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After deliberation, the Board reconvened and determined that the respondent was then present in the courtroom. The Chair announced the finding of the Board that such conduct as set out in the Finding of Facts on the part of Michael John Denney constitutes a violation, by clear and convincing evidence of:

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 1.16 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 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

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

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.

IV. VIOLATIONS NOT FOUND

RULE 1.16 Declining Or Terminating Representation

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

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

(3) the lawyer is discharged.

The Board then heard evidence regarding the appropriate sanction that should be imposed. The Virginia State Bar Counsel offered evidence from the Complainant, Pearson. The Virginia State Bar Counsel produced Respondent's disciplinary record, showing no prior disciplinary sanctions of any kind. The Respondent, Michael John Denney, pro se, presented argument on his behalf.

The Board recessed to consider the evidence presented and arguments by counsel. After deliberation, the Board finds that a three-year suspension of Respondent's license to practice law is appropriate given the facts and circumstances of the misconduct.

Therefore it is ORDERED that the license of the Respondent, Michael John Denney, to practice law in the Commonwealth of Virginia be, and the same is hereby, suspended for a period of three years, effective December 14, 2007.

It is further ORDERED, pursuant to the provisions of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent 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 14 days of the effective date of the order, and make such arrangements as are required herein within 45 days of the effective date of this order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the order of suspension that such notices have been timely given and such arrangements for disposition of matters made.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of this order, 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 the arrangement required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

It is further ORDERED that a certified copy of this order shall be served by the Clerk of the Disciplinary System upon the Respondent, Michael John Denney, at his address of record with the Virginia State Bar, by certified mail, return receipt requested, P.O. Box 322, Marshall, VA 20116, and a copy to Alfred L. Carr, Assistant Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, VA 22314.

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

ENTERED THIS THE 23rd DAY OF JANUARY, 2008
VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks, Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT JOSEPH HILL, ESQUIRE
VSB DOCKET NUMBER: 08-000-073114

ORDER OF INDEFINITE SUSPENSION BY REASON OF IMPAIRMENT

THIS DAY CAME the Virginia State Bar, by Senior Assistant Bar Counsel Seth M. Guggenheim, and Robert Joseph Hill, Respondent, and his counsel, Charles S. Cox Jr., Esquire; and

IT APPEARING to the Board by virtue of the endorsement of Bar Counsel appearing below that the Virginia State Bar is satisfied that the written evaluations furnished to the Bar on behalf of the Respondent support the Respondent's claim that he suffers from an impairment, as defined in Part Six, Section IV, Paragraph 13.A. of the Rules of the Supreme Court of Virginia; and

IT FURTHER APPEARING to the Board, acting through its undersigned member, following an independent review of the said written evaluations, that the Respondent currently suffers from an impairment; and

IT FURTHER APPEARING to the Board that the parties agree that the Respondent, Robert Joseph Hill, must be suspended, indefinitely, from the practice of law in the Commonwealth of Virginia by reason of his impairment, and that the Respondent shall have the burden of proving that such impairment has terminated, should he so contend hereafter; it is, therefore

ORDERED that Respondent Robert Joseph Hill's license to practice law in the Commonwealth of Virginia be, and it hereby is, SUSPENDED, indefinitely, effective upon entry of this Order, pending further order of this Board, pursuant to Part Six, Section IV, Paragraph 13.I.6.; and it is further

ORDERED that the written evaluations filed in this matter and maintained by the Clerk of the Disciplinary System remain confidential in accordance with the Rules of the Supreme Court of Virginia applicable to impairment proceedings; and it is further

ORDERED that the Clerk of the Virginia State Bar Disciplinary System mail a certified copy of this Order to the Respondent, Robert Joseph Hill, by certified mail, return receipt requested, to his address of record with the Virginia State Bar as of the date of mailing, and that she mail a certified copy of this Order, by regular mail, to Respondent's counsel and Bar Counsel at their respective addresses appearing below.

AND THIS ORDER IS FINAL.

ENTERED THIS 13th DAY OF DECEMBER, 2007

WILLIAM H. MONROE JR.
Second Vice Chair
Virginia State Bar Disciplinary Board

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT LORENZO KLINE III
VSB DOCKET NUMBER: 08-000-072725

ORDER OF REVOCATION

This matter came on to be heard on December 14, 2007, before a panel of the Virginia State Bar Disciplinary Board ("Board") consisting of Robert E. Eicher, First Vice Chair, Glenn M. Hodge, Michael S. Mulkey, Rhysa Griffith South, and W. Jefferson O'Flaherty, lay member. The Virginia State Bar ("VSB") was represented by Marian L. Beckett, Assistant Bar Counsel. The Respondent, Robert Lorenzo Kline III, after being called by the clerk, did not appear. Donna T. Chandler, RPR, RMR, CCR, court reporter, P.O. Box 9349, Richmond, VA 23227, telephone number (804) 730-1222 after being duly sworn, reported the hearing and transcribed the proceedings. The Chair polled the members of the Board Panel as to whether any of them had any personal or financial interest or bias that would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

The matter came before the Board on a Rule to Show Cause and Order of Suspension and Hearing entered November 16, 2007, as a result of Respondent being disbarred by the State of Maryland pursuant to an order of the Court of Appeals of Maryland, effective September 25, 2007. The Respondent received proper notice of this proceeding as required by Part Six, Section IV, Paragraph 13 (E) and (I)(a) of the Rules of the Supreme Court Virginia. Part Six, Section IV, Paragraph 13.I.7 of the Rules of the Supreme Court states how the Board is to proceed upon receiving notice of disbarment of a Virginia attorney in another jurisdiction. The rule states that the Board shall impose the same discipline as was imposed in the other jurisdiction unless the Respondent proves by clear and convincing evidence one or more of the following three grounds for an alternative, or no sanction, being imposed:

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

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

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

The Respondent filed no response to the Rule to Show Cause and Order of Suspension and Hearing.

The following was received into evidence: the notice, dated November 16, 2007, from Barbara S. Lanier, Clerk of the Disciplinary System, sent by certified mail, return receipt requested, to the Respondent with its enclosures, the Rule to Show Cause and Order of Suspension and Hearing entered November 16, 2007, the Order of the Court of Appeals of Maryland entered on September 25, 2007, disbarring the Respondent, and the Joint Petition for Disbarment by Consent by the Attorney Grievance Commission of Maryland and the Respondent.

After receiving the evidence and hearing argument of Assistant Bar Counsel, the Board recessed to deliberate. After due deliberation, the Board reconvened and the Chair announced the Board's decision that the Respondent had failed to show cause why the same discipline imposed by the State of Maryland should not be imposed by the Board.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective December 14, 2007.

It is further ORDERED that the Respondent comply with the requirements of Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of Respondent's license to practice law in the Commonwealth of Virginia to all clients for whom Respondent 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 client. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation, and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. The Respondent also shall furnish proof to the Bar within sixty (60) days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

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

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

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent, Robert Lorenzo Kline III, at his address of record with the Virginia State Bar, being 35 Franklin Boulevard, Reisterstown, MD 21136, by certified mail, return receipt requested, and by hand delivery to Marian L. Beckett, Assistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED THIS 22nd DAY OF JANUARY, 2007
VIRGINIA STATE BAR DISCIPLINARY BOARD

Robert E. Eicher, First Vice Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JOHN JAMES McNALLY, ESQUIRE
VSB DOCKET NUMBER: 06-021-2517

ORDER OF SUSPENSION

THIS MATTER came before the Virginia State Bar Disciplinary Board ("Board") for hearing on October 26, 2007, upon the Second District Committee's Certification of a Subcommittee Determination for Certification to the Board, which was mailed to the Respondent on May 24, 2007, and upon a Certified Notice of Hearing issued to the Respondent on June 27, 2007, by the Clerk of the Disciplinary System pursuant to Part 6, Section IV, Paragraph 13.I.1.3 of the Rules of the Supreme Court of Virginia.

A hearing was held before the duly convened panel of the Board consisting of Acting Chair William E. Glover, Lay Member V. Max Beard, and lawyer members Robert E. Eicher, Martha JP McQuade and Russell W. Updike. The Virginia State Bar ("VSB") was represented by Assistant Bar Counsel Edward L. Davis ("Mr. Davis"). Respondent John James McNally ("Mr. McNally") represented himself. The hearing was recorded and reported by Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, telephone number (804) 730-1222, after she was duly sworn by the Chair.

The Chair opened the hearing by polling the Board members to ascertain whether any of them had any personal or financial interest or bias that would interfere with or influence his or her determination, and each member responded that there were no such conflicts.

Mr. Davis and Mr. McNally informed the Board that, prior to the hearing, they had reached the following:

STIPULATED FACTS

1. During all times relevant to the disciplinary charges, Mr. McNally had been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On May 27, 2003, Complainant Leslie C. Ballance ("Mr. Balance") had hired Mr. McNally to pursue a medical malpractice claim relating to the death of Mr. Balance's mother in a nursing home. Mr. McNally filed suit, and litigation took place over the following three years.

3. In late 2006, Mr. Ballance approached Rebecca Correa, L.P.N. ("Ms. Correa") as a potential expert witness.

4. At Mr. Balance's request, Ms. Correa spoke with Mr. McNally about reviewing the relevant medical records, preparing a report, and testifying as an expert.

5. Mr. Ballance advanced $1,000 to Mr. McNally for costs.

6. On December 12, 2005, Mr. McNally delivered to Mr. Ballance the medical records and a $500 trust account check for Ms. Correa, annotated "Expert Ballance Ret." Mr. Ballance delivered the check and medical records to Ms. Correa, who then commenced her review of the records and preparation of a narrative report.

7. Upon completion of her report, Ms. Correa telephoned Mr. McNally to inform him. Mr. McNally asked her to send her resume, which she did by letter, dated December 18, 2005.

8. In her letter of December 18, 2005, Ms. Correa specifically stated that she required an additional $500 for her report.

9. On or about December 21, 2005, Ms. Correa met with Mr. McNally at his home office and delivered the report.

10. In return for the report, Mr. McNally gave her a check in the amount of $500, this time with the annotation: "Expert Fee Ballance."

11. Unbeknownst to Ms. Correa, Mr. McNally post-dated the check to January 2, 2006.

12. When Ms. Correa attempted to negotiate the check, her bank would not accept the check because it was post-dated.

13. Ms. Correa contacted Mr. McNally about this, who said that he had decided not to use her services, and asked her to return his check.

14. Having felt that she had earned the check in return for her report, Ms. Correa deposited the check again, but this time it was returned because Mr. McNally ordered a stop-payment.

15. Mr. McNally explained to the Bar that the fee for reviewing the records and preparing the report was $500, and that the second $500 check was only to retain Ms. Correa's future services as an expert. He told the Bar's investigator that he post-dated the check based on his "belief that we would not be using her services again."

16. Mr. McNally also said, however, that he gave Ms. Correa the check in order to get the report, that Ms. Correa asked for a $500 "retainer" in return for the report.

17. The check in question, however, is annotated "Expert Fee Balance," unlike the first check (the one that Ms. Correa was able to deposit) which is annotated "Expert Ballance Ret."

18. In his letter to the bar dated March 8, 2006, Mr. McNally acknowledged that on December 18, 2006, when Ms. Correa informed him that the report was ready, she said that she needed to be paid up front for the report, and that Mr. McNally would have to provide her another $500 check to get the report. He acknowledged further that he told her to bring the report and that he would give her a check.

19. Ms. Correa has never been paid the $500 for her report in accordance with the terms of her letter to Mr. McNally, dated December 18, 2005, and their subsequent discussions.

The VSB's Exhibits and Mr. McNally's Exhibits were admitted, without objection, and Mr. Davis and Mr. McNally informed the Board that, prior to the hearing, they had reached the following:

STIPULATED RULE VIOLATION

By his actions as set forth in the Stipulated Facts, Mr. McNally engaged in misrepresentation and thereby violated the Rules of Professional Conduct, specifically Rule 8.4(c), which states that it is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

The VSB withdrew its charge that Mr. McNally had violated Rule 8.4(b) by engaging in larceny.

AGREED PROPOSED DISCIPLINE

Mr. Davis and Mr. McNally informed the Board that they jointly proposed Mr. McNally receive a 14-day suspension of his Bar license, such suspension to begin December 15, 2007. Argument was presented as to why the VSB considered this a reasonable proposed discipline. In addition, Mr. McNally's disciplinary record, which had been certified, was admitted.

The Chair of the Board informed Mr. Davis and Mr. McNally that the Board was not bound by the proposed discipline and could impose a different sanction. Mr. McNally reiterated his presentation of and agreement to the Stipulated Facts and Stipulated Rules Violation. The Board then retired to deliberate.

DISPOSITION

After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced the sanction that Mr. McNally's Virginia license to practice law be suspended for 14 days, beginning December 15, 2007. Accordingly, and in conformance with the Board's October 26, 2007, Summary Order in this matter, it is ORDERED that:

Mr. McNally's Virginia license to practice law be, and hereby is, suspended for 14 days, beginning December 15, 2007;

Mr. McNally comply with the requirements of Part 6, Section IV, Paragraph 13.(M) of the Rules of the Supreme Court of Virginia. He shall forthwith give notice of the suspension of his license to practice law in the Commonwealth of Virginia, by certified mail**,** return receipt requested**,** to all clients for whom he is handling matters and to all opposing attorneys and presiding judges in pending litigation. He also shall make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of each client. The Respondent also shall forthwith furnish proof to the Bar that such notices have been timely given and such arrangements made for the disposition of matters;

Further, if Mr. McNally is not handling any client matters on the effective date of his suspension, he must submit an affidavit to that effect to the Clerk of the Disciplinary System. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.(M) shall be determined by the Board, unless Mr. McNally makes a timely request for hearing before a three-judge court;

Pursuant to Part 6, Section IV, Paragraph 13.B.8(c) of the Rules, the Clerk of the Disciplinary System shall assess costs in this matter against Mr. McNally; and

The Clerk of the Disciplinary System shall mail an attested copy of this Order to Mr. McNally, by certified mail, at his address of record with the Virginia State Bar, that being John James McNally, 1057 Manchester Avenue, Norfolk, Virginia 23508 and also shall hand deliver a copy to Mr. Davis at the following address: Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

ENTERED THIS 19th DAY OF DECEMBER, 2007
VIRGINIA STATE BAR DISCIPLINARY BOARD

William E. Glover, Acting Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JEROLD KAY NUSSBAUM, ESQUIRE
VSB DOCKET NUMBER: 08-000-072701

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on December 14, 2007, before a duly convened panel of the Board consisting of Robert E. Eicher, First Vice Chair, presiding, Glenn M. Hodge, Michael S. Mulkey, Rhysa Griffith South and W. Jefferson O'Flaherty, lay member. Richard E. Slaney, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("Bar"). Jerold Kay Nussbaum ("Respondent") did not appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The court reporter for the proceeding, Donna T. Chandler, 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 disbarred from the practice of law in the State of Maryland, effective October 15, 2007, by order entered by the Court of Appeals of Maryland of the same date. Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.I.7, a Rule to Show Cause and Order of Suspension and Hearing was entered by the Board on November 16, 2007, and properly served on the Respondent.

All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. Part Six, Section IV, Paragraph 13.I.7 of the Rules of the Supreme Court of Virginia, specifies how the Board is to proceed upon receiving notice of disbarment of a Virginia attorney in another jurisdiction. The rule states that the Board shall impose the same discipline as was imposed in the other jurisdiction unless the Respondent proves by clear and convincing evidence one or more of the following three grounds for an alternative, or no sanction, being imposed:

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

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

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

The following items were admitted into evidence as Board Exhibit A without objection: the notice from Barbara Sayers Lanier, the Clerk of the Disciplinary System, sent by certified mai,l return receipt requested, to the Respondent, dated November 16, 2007 with its enclosures including the Rule to Show Cause and Order of Suspension and Hearing of the Board entered November 16, 2007, and the order of the Court of Appeals of Maryland entered October 15, 2007.

The Respondent filed no response to the Rule to Show Cause and Order of Suspension and Hearing and had advised the Assistant Bar Counsel that he did not intend to appear at these proceedings.

After receiving the evidence and hearing the argument of Assistant Bar 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 Respondent has failed to show cause why the same discipline imposed in Maryland should not be imposed by the Board.

Accordingly, it is hereby ORDERED that Jerold Kay Nussbaum's license to practice law in the Commonwealth of Virginia be, and hereby is, revoked effective December 14, 2007.

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

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.(M) shall be determined by the 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, Jerold Kay Nussbaum, at his address of record with the Virginia State Bar, 60 West Street, Suite 220, Annapolis, MD 21401-2434, by certified mail, return receipt requested, and by hand delivery to Richard E. Slaney, Assistant Bar Counsel, Suite 1500, 707 East Main Street, Richmond, VA 23219. Pursuant to Part Six, Section IV, Paragraph 13.B.8.c of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

ENTERED THIS 17th DAY OF DECEMBER, 2007
Virginia State Bar Disciplinary Board

Robert E. Eicher, First Vice Chair

VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
STANLEY DAVID SCHWARTZ, ESQUIRE
VSB DOCKET NUMBERS: 08-000-072731
08-000-072985

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board ("Board") for hearing on Friday, December 14, 2007, before a duly convened panel of the Board consisting of Robert E. Eicher, First Vice Chair, presiding, Glenn M. Hodge, Michael S. Mulkey, Rhysa Griffith South, and W. Jefferson O'Flaherty, lay member. Kathryn R. Montgomery, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar ("Bar"). Stanley David Schwartz ("Respondent") did not appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The court reporter for the proceeding, Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23277, 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 (1) of the Respondent being excluded from the practice of patent, trademark and other non-patent law before the Untied States Patent and Trademark Office, effective September 27, 2007, pursuant to a Final Order of the United States Patent and Trademark Office, dated September 29, 2007, and (2) the Respondent's conviction of a crime, as defined in Rules of Court, Part 6, Section IV, Paragraph 13.I.5, on September 27, 2007, in the Circuit Court for Montgomery County, Maryland.

Pursuant to Rules of Court, Part Six, Section IV, Paragraph 13.I.7.b. and f., a Rule to Show Cause and Order of Suspension and Hearing was entered by the Board on November 16, 2007, and properly served on the Respondent in VSB Docket No. 08-000-072731, and on November 27, 2007, in VSB Docket No. 08-000-072985. The Respondent did not file an answer or other response in the matters.

All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

VSB Docket No. 08-000-072731

The following items were admitted in evidence without objection: the notice from Barbara Sayers Lanier, the Clerk of the Disciplinary System, sent by certified mail, return receipt requested, to the Respondent, dated November 16, 2007, with its enclosures including the Rule to Show Cause and Order of Suspension and Hearing of the Board entered November 16, 2007, and attachments therewith.

Also received into evidence were the duly authenticated official records of the Circuit Court for Montgomery County, Maryland, reflecting that the Respondent plead guilty to and was convicted of multiple felonies and was sentenced to incarceration in the Division of Corrections. The Board took judicial notice of the Maryland records. Further received and admitted from the Virginia State Bar was a certification that the Respondent had no disciplinary record.

After receiving the evidence and hearing the argument of Assistant Bar 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 Respondent had been

convicted of a crime, and that Stanley David Schwartz's license to practice law in the Commonwealth of Virginia should be revoked. Accordingly, it is hereby ORDERED that such license be, and hereby is, revoked effective December 14, 2007.

VSB Docket No. 08-000-072985

On motion of Assistant Bar Counsel, it is ORDERED that this matter be and hereby is dismissed without prejudice.

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

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of the revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.(M) shall be determined by the 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, Stanley David Schwartz, at his address of record with the Virginia State Bar, Suite 1109, 2001 Jefferson Davis Highway, Arlington, Virginia 22202-3603, by certified mail, return receipt requested, and by hand delivery to Kathryn R. Montgomery, Assistant Bar Counsel, Suite 1500, 707 East Main Street, Richmond, VA 23219.

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

ENTER THIS ORDER THIS 11th DAY OF JANUARY, 2008
VIRGINIA STATE BAR DISCIPLINARY BOARD

Robert E. Eicher., First Vice Chair

DISTRICT COMMITTEES

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

IN THE MATTER OF
KENNETH PAUL MERGENTHAL, ESQUIRE
VSB DOCKET NUMBER: 06-060-0300

AGREED DISPOSITION
(PUBLIC REPRIMAND WITH TERMS)

Pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13 (G)(1)(d), the Virginia State Bar, by Marian L. Beckett, Assistant Bar Counsel, and Kenneth Paul Mergenthal, Esquire, Respondent, *pro se*, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

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

2. The Respondent had not been the trial counsel for the Complainant, Marcellus Berryman. Following completion of the trial, the trial counsel filed a Notice of Appeal and withdrew from representation of the Complainant.

3. In April of 2003, the Respondent was appointed by the Circuit Court of the City of Fredericksburg to represent Mr. Berryman, (hereinafter the Complainant), on appeal of his criminal convictions of multiple crimes. The Respondent timely filed a Petition for Appeal.

4. On October 30, 2003, the Court of Appeals denied the appeal on the grounds that the issue on which the appeal turned had not been properly preserved for reconsideration.

5. The Respondent states that he sent a letter to the Complainant at that time informing him of the denial of the appeal. The Complainant alleges he never received such a letter, and the Respondent was unable to produce a copy of the referenced correspondence.

6. In June of 2005, the Complainant wrote the Respondent, threatening to file a bar complaint unless the Respondent provided information about the outcome of the appeal. After receipt of that correspondence from the Complainant, the Respondent wrote to the Complainant informing him of the denial of the appeal sixteen (16) months prior.

7. The Complainant filed a bar complaint alleging failure to communicate, failing to provide a copy of the Complainant's file and other documents, and failure to further appeal to the Supreme Court of Virginia. The complaint was received by the Virginia State Bar on August 1, 2005.

8. On August 10, 2005, bar counsel sent a copy of the complaint to the Respondent accompanied by a letter stating in pertinent part,

> Pursuant to Rule of Professional Conduct 8.1(c), you have a duty to comply with the bar's lawful demands for information not protected from disclosure by Rule 1.6. **As part of my preliminary investigation of the complaint, I demand that you submit a written answer to the complaint within 21 days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits.** [Bold typeface in original document].

9. The Respondent failed to respond to the August 10, 2005, correspondence from the bar.

10. On September 7, 2005, the matter was referred for formal investigation, and was assigned to a bar investigator. The investigator left a message on the Respondent's office telephone answering machine on November 28, 2005, to which the Respondent did not respond. The investigator then sent a letter to the Respondent via facsimile and first class mail dated December 2, 2005, requesting that the Respondent call the investigator to set up a meeting for an interview about the matter. The Respondent failed to respond to the investigator's December 2nd correspondence.

11. Also on September 7, 2005, the bar issued a subpoena *duces tecum* to the Respondent, requesting a copy of the entire client file, with a return date of September 30th. The subpoena was served on the Respondent by the Sheriff's Office on September 12, 2005. The Respondent failed to respond to the subpoena.

12. On December 13, 2005, bar counsel issued a Notice of Noncompliance and a Request for Interim Suspension to the Respondent based on his failure to respond to the subpoena *duces tecum* issued on September 7th. On December 28, 2005, the Virginia State Bar Disciplinary Board entered an order suspending the Respondent's license to practice law in the Commonwealth of Virginia.

13. Bar counsel received correspondence from the Respondent on January 3, 2006, stating that he had not been able to deliver the client file in accordance with the subpoena request as he had not been able to locate the file.

II. NATURE OF MISCONDUCT

The subcommittee finds that such conduct by Kenneth Paul Mergenthal 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.

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand With Terms on the Respondent, Kenneth Paul Mergenthal, and he is hereby so reprimanded. The terms and conditions that shall be imposed are:

1. The Respondent shall forthwith withdraw as counsel from all criminal matters in which he serves as court appointed counsel.

2. The Respondent shall certify in writing to bar counsel on or before February 1, 2008, that he has withdrawn from all current representation as court appointed counsel in pending criminal matters.

3. In addition to the certification referenced in paragraph 2, *supra*, the Respondent shall present to bar counsel on or before February 1, 2008, copies of orders of withdrawal and/or motions for withdrawal for all criminal matters in which he serves as court appointed counsel.

4. In addition to the certification referenced in paragraph 2, *supra*, the Respondent shall confirm on or before February 1, 2008, that he has removed his name from the list of attorneys available for appointment for representation of criminal defendants in all of the courts in which he accepts such court appointments by presenting to bar counsel letters of notification to those courts.

5. The Respondent shall not accept any new court appointments to serve as counsel in criminal matters until January 1, 2011.

Upon satisfactory proof that the above noted terms and conditions have been complied with, in full, this matter shall be closed.

If, however, the Respondent fails to comply with any of the terms set forth herein, as and when his obligation with respect to any such Term has accrued, bar counsel shall serve notice requiring the Respondent to show cause why the alternative disposition set forth below should not be imposed. Such show cause proceeding shall be set for hearing before the Sixth District Committee, and the burden of proof shall be on the Respondent to show by clear and convincing evidence timely compliance and timely certification.

By entering into this Agreed Disposition, the Respondent agrees that should the Respondent fail to comply with any of the terms set forth herein when his obligation with respect to any such Term has accrued and fail to carry burden of proof at a show cause hearing, pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(G)(5)(b), the case shall be certified to the Disciplinary Board for imposition of the alternative disposition of the SUSPENSION of the Respondent's license to practice law in the Commonwealth of Virginia for a period of six (6) months, to commence on a date determined by the Board.

The Respondent further agrees that in the event that this matter is certified to the Disciplinary Board for imposition of the alternative disposition, the Respondent shall be deemed to have stipulated to the Statement of Facts and the Violations of the Rules of Professional Conduct as set forth above in sections I and II of this Agreed Disposition.

IV. COSTS

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

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Jean Patricia Dahnk, Esq., Chair Designate

VIRGINIA:
BEFORE THE TENTH DISTRICT, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
STEPHANIE ALLETTE PEASE, ESQUIRE
VSB DOCKET NUMBERS: 07-102-0608
07-102-064917
07-102-070676

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

On November 6, 2007, a duly convened Tenth District, Section II, Subcommittee consisting of Donald M. Williams Jr., Esquire (Chair presiding), Joseph W. Rasnic, Esquire, and Patricia P. Robbins, 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 Tenth District, Section II, Subcommittee of the Virginia State Bar hereby approves the Agreed Disposition entered into between Respondent Stephanie Allette Pease ("Respondent") and Assistant Bar Counsel Scott Kulp, and hereby serves upon Respondent the following Public Reprimand with Terms:

VSB Docket No. 07-102-0608

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. Respondent served as court-appointed counsel for Martha Ann Scales, who was found guilty of distributing crack cocaine and sentenced to a term of imprisonment and payment of a fine.

3. Respondent noted an appeal to the Court of Appeals.

4. The bar received information that the Court of Appeals dismissed the appeal on August 3, 2006, because there had been no response to a show cause regarding failure to timely file a transcript or statement of facts.

5. Respondent was advised of the bar's Inquiry into this matter by December 6, 2006, correspondence.

6. Respondent acknowledged she did not respond to the show cause because the response "fell through the cracks." Respondent further acknowledged many of her filings were haphazardly prepared and insufficiently reviewed.

7. Respondent acknowledged she had little to no communication with Ms. Scales after the trial.

8. While Respondent contends she sent an August 11, 2006, letter to Ms. Scales at the regional jail in Duffield, Virginia, enclosing the dismissal letter and advising she would gladly discuss the matter and review potential remedies, Ms. Scales denies receiving the letter.

9. Respondent made no other attempts to communicate with Ms. Scales or to ascertain whether Ms. Scales had received the August 11, 2006 letter or whether she already had been transferred to the Department of Corrections.

10. Ms. Scales contends she learned of the dismissal for the first time during her September 26, 2007, interview with the bar's Investigator.

11. Respondent contends she has implemented new procedures to ensure that nothing is filed until it has been fully reviewed by her and placed on her calendar.

[Rules 1.3a, 1.4a, 1.4b]

VSB Docket No. 07-102-064917

STIPULATION OF FACTS

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

2. Respondent served as court-appointed counsel for Kimberly Pennington, who was charged with distribution of methamphetamine. In addition, Respondent received $1,000 from Ms. Pennington to handle the civil forfeiture of Ms. Pennington's vehicle.

3. Ms. Pennington was convicted on the criminal charge, but since it was her first offense, the penalty was held in abeyance if she incurred no additional violations in the ensuing year.

4. Ms. Pennington's vehicle was condemned and forfeited to the Commonwealth by November 9, 2006, Order.

5. Respondent noted an appeal of the civil forfeiture to the Court of Appeals.

6. The bar received information that the Court of Appeals dismissed the appeal on March 1, 2007, because the Court did not have jurisdiction to hear the case pursuant to Va. Code §§ 17.1-405 and 17.1-406; moreover, since the Notice of Appeal was not timely filed in the trial court, the Court could not transfer the case to the Supreme Court of Virginia.

7. Respondent acknowledged little familiarity with Va. Code §§ 17.1-405 and 17.1-406 dealing with the Court of Appeals' jurisdiction.

8. Respondent acknowledged she had little to no communication with Ms. Pennington after the trial, and she opined that this appeal simply "fell through the cracks."

9. Respondent failed to inform Ms. Pennington (a) that her appeal had been dismissed, (b) of the reasons for the dismissal, and (c) of any recourse she might have to revive the appeal.

[Rule 1.3a, 1.4a, 1.4b]

VSB Docket No. 07-102-070676

STIPULATION OF FACTS

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

2. Respondent served as court-appointed counsel for Glen Trent.

3. Mr. Trent pled guilty to possession of a firearm while in the possession of drugs and was sentenced to a term of imprisonment, all of which was suspended. Mr. Trent was placed on first offender status for felony possession of drugs and misdemeanor possession of marijuana.

4. After Mr. Trent's first offender status was later revoked, Respondent moved for reconsideration, resulting in the trial court's reinstatement of the first offender status for the felony drug charge; however, the court denied first offender status for the misdemeanor charge and sentenced Mr. Trent to time served.

5. Respondent noted an appeal to the Court of Appeals to challenge the trial court's revocation of first offender status after Mr. Trent's positive drug screen on the day he was placed on first offender status.

6. The bar received information that the Court of Appeals dismissed the appeal on March 1, 2007, because two hearing transcripts deemed indispensable to the appeal were not timely filed.

7. Respondent acknowledged she had little to no communication with Mr. Trent, and she opined that this appeal simply "fell through the cracks."

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

[Rule 1.3a, 1.4a, 1.4b]

NATURE OF MISCONDUCT

The foregoing Findings of Fact for VSB Docket Nos. 07-102-0608, 07-102-064917, and 07-102-070676 give rise to the following violations of the Rule of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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

SUBCOMMITTEE DETERMINATION

It is the decision of the Tenth District, Section II, 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 Nos. 07-102-0608, 07-102-064917, and 07-102-070676) with the following Terms:

> Attend six (6) hours of MCLE-approved Continuing Legal Education in the area of Virginia appellate practice and certify completion by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form(s) to Assistant Bar Counsel Scott Kulp by **June 18, 2008**. These six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization.

If, however, the foregoing Terms are not met by the date 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 Tenth District, Section II, 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.

TENTH DISTRICT, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Donald M. Williams Jr., Esquire
Subcommittee Chair Presiding

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

IN THE MATTERS OF
ANGELA DAWN WHITLEY, ESQUIRE
VSB DOCKET NUMBER: 05-032-4582

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITHOUT TERMS

On October 11, 2007, a hearing in this matter was held before a duly convened Third District Committee Subcommittee consisting of Randall G. Johnson Jr., Chair Designee, Cliona Robb and Coral Gills.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Supreme Court of Virginia, the Third District Committee Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand without Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Angela Dawn Whitley, hereafter "Whitley" or the "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia, and her official address of record with the Virginia State Bar has been 320 West Broad Street, Richmond, Virginia 23220.

2. On or about May 11, 2005, Whitley was hired by Complainant Rasheik Battle, hereafter "Battle", to represent him in the City of Richmond traffic court regarding a summons he had received for a violation of Va. Code Section 46.2-301 for allegedly driving while his operator's license was suspended or revoked. The case was scheduled to be heard on May 12, 2005.

3. Battle paid Whitley $400.00 in cash on May 11, 2005, for the representation.

4. At a later date, Whitley learned that Battle had hired another attorney and that Whitley and Battle agreed that Whitley would refund the $400.00 to Battle. Whitley prepared a receipt dated May 18, 2005, for the "full return of the $400.00 fee paid by [Battle] to [Whitley] on May 11, 2005, for representation [sic] the matter scheduled for May 12, 2005."

5. Since Battle refused to accept a refund of the $400.00 in the form of a check or money order, Whitley had the receipt and cash in the amount of $400.00 placed in an envelope in the desk of her secretary to be held there until Battle picked up the funds.

6. Whitley withdrew from the representation by court order entered on June 14, 2005.

7. After approximately two weeks, Whitley's secretary informed Whitley that she was uncomfortable holding the $400.00 in cash in her desk. At that point Whitley had the $400.00 in cash placed in her file for Battle where it remained until Battle picked up the funds on or about March 17, 2006.

8. Whitley held the $400.00 in cash either in her secretary's desk or in her own file for Battle for approximately nine months. Whitley never deposited the $400.00 into a trust account.

9. The $400.00 paid to Whitley by Battle constituted an advanced legal fee.

II. NATURE OF MISCONDUCT

Such conduct by Angela Dawn Whitley constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

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

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

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

RULE 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).

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a Public Reprimand Without Terms 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 SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

Randy Johnson, Chair, Designee

REINSTATEMENT PETITION

Pursuant to Part 6, Section IV, Paragraph 13I(9)(e) of the Rules of the Supreme Court of Virginia, ***Bruce Charles Britton*** *petitioned the Court on May 9, 2007, for reinstatement of his license to practice law. The Virginia State Bar Disciplinary Board will hear the petition on June 27, 2008, at 9 a.m. in the General Assembly Building, 910 Capitol Street, House Room D, Richmond. After hearing evidence and oral argument, the Disciplinary Board will make factual findings and recommend to the Supreme Court whether the petition should be granted or denied.*

The Disciplinary Board seeks information about Mr. Britton's fitness to practice law. Written comments or requests to testify at the hearing should be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, or by e-mail to clerk@vsb.org, no later than June 10, 2008. Comments will become a matter of public record.

Bruce Charles Britton

On April 21, 1989, the Virginia State Bar Disciplinary Board suspended Mr. Britton's license to practice law for five years, effective May 21, 1989, for misconduct in three matters that involved representation of personal injury plaintiffs. The board found Mr. Britton communicated with, and later sued, his client's daughter, when he knew the daughter was represented by another lawyer; he instructed another client to deceive two treating physicians in connection with two matters for the client; and he was untruthful on two occasions when communicating settlement offers to a third client. Mr. Britton appealed, and the Supreme Court dismissed the appeal. On April 6, 1990, Mr. Britton was convicted in the General District Court of Fairfax County of practicing law after his license had been suspended. He appealed to the Circuit Court of Fairfax County where he was found guilty and fined $1,000.

On December 13, 1991, a three-judge court in the Fairfax Circuit revoked Mr. Britton's license for the unauthorized practice of law and for trust account violations in his representation of a personal injury client. The court found he had failed to properly account for the settlement funds; he failed to maintain proper trust account records; and he gave the client inadequate and misleading accountings.

Mr. Britton filed his first petition for reinstatement on April 25, 1997. The Disciplinary Board recommended that Mr. Britton's license not be reinstated and the Supreme Court denied the petition. In its recommendation, the board noted that, during the reinstatement hearing, Mr. Britton conceded that he had handled more than one legal matter after his license was suspended. The Disciplinary Board further noted Mr. Britton was not forthright with a character witness in explaining the circumstances of his petition.

In his current reinstatement petition, Mr. Britton states he wants to return to practice as a solo practitioner to help clients who would otherwise lack the aid of an attorney. He states that since August 1, 1988, he has been employed at the Department of Veterans Affairs in Washington, D.C., first in the Regional Office and then, since 2005, in the Appeals Management Center. He further states he has been active in his church and community, has kept current with the law, and has otherwise satisfied all conditions required for reinstatement and is fit to practice law.

Copies of the board and Supreme Court orders regarding Mr. Britton's suspension and revocation are available from the clerk at clerk@vsb.org or (804) 775-0539.

PROPOSED SUPREME COURT RULE

VIRGINIA STATE BAR COUNCIL TO REVIEW PROPOSED SUPREME COURT RULE REGARDING THE PROVISION OF LEGAL SERVICES FOLLOWING DETERMINATION OF MAJOR DISASTER

On June 19, 2008, the Virginia State Bar Council ("Bar Council") will meet in Virginia Beach to consider a proposed Supreme Court Rule regarding the *Provision of Legal Services Following Determination of Major Disaster.*

This proposed rule was developed as a result of the ABA's actions to help address the problem of the provision of legal services following a disaster or emergency, such as existed following Katrina and Rita. Beyond the physical damage and devastation caused by those hurricanes, there was also a crippling effect on the legal systems in the affected states. In response, the ABA formed a task force that advocated for the suspension of unauthorized practice of law rules in the various states impacted by these hurricanes because, while lawyers from other jurisdictions would have liked to help staff disaster assistance centers or otherwise advise hurricane victims, they were deterred from doing so because of a lack of clarity about whether they would be violating any unauthorized practice of law rules.

The task force recognized the need for a model rule that would allow out-of-state lawyers to provide pro bono legal services in an affected jurisdiction and that would allow lawyers in the affected jurisdiction whose legal practices had been disrupted by a major disaster to practice law on a temporary basis in an unaffected jurisdiction. Since both the highest court of a jurisdiction affected by the major disaster and the highest courts of jurisdictions not affected by the disaster could

REINSTATEMENT PETITION

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The Disciplinary Board seeks information about Mr. Britton's fitness to practice law. Written comments or requests to testify at the hearing should be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, or by e-mail to clerk@vsb.org, no later than June 10, 2008. Comments will become a matter of public record.

Bruce Charles Britton

On April 21, 1989, the Virginia State Bar Disciplinary Board suspended Mr. Britton's license to practice law for five years, effective May 21, 1989, for misconduct in three matters that involved representation of personal injury plaintiffs. The board found Mr. Britton communicated with, and later sued, his client's daughter, when he knew the daughter was represented by another lawyer; he instructed another client to deceive two treating physicians in connection with two matters for the client; and he was untruthful on two occasions when communicating settlement offers to a third client. Mr. Britton appealed, and the Supreme Court dismissed the appeal. On April 6, 1990, Mr. Britton was convicted in the General District Court of Fairfax County of practicing law after his license had been suspended. He appealed to the Circuit Court of Fairfax County where he was found guilty and fined $1,000.

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In his current reinstatement petition, Mr. Britton states he wants to return to practice as a solo practitioner to help clients who would otherwise lack the aid of an attorney. He states that since August 1, 1988, he has been employed at the Department of Veterans Affairs in Washington, D.C., first in the Regional Office and then, since 2005, in the Appeals Management Center. He further states he has been active in his church and community, has kept current with the law, and has otherwise satisfied all conditions required for reinstatement and is fit to practice law.

Copies of the board and Supreme Court orders regarding Mr. Britton's suspension and revocation are available from the clerk at clerk@vsb.org or (804) 775-0539.

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The task force recognized the need for a model rule that would allow out-of-state lawyers to provide pro bono legal services in an affected jurisdiction and that would allow lawyers in the affected jurisdiction whose legal practices had been disrupted by a major disaster to practice law on a temporary basis in an unaffected jurisdiction. Since both the highest court of a jurisdiction affected by the major disaster and the highest courts of jurisdictions not affected by the disaster could

implement the rule on an emergency basis, the ABA determined that this rule should be a Model Court Rule.

The ABA then asked that each state consider the adoption of this or an equivalent rule. In response, the Virginia State Bar formed an Emergency Legal Services Task Force ("ELS Task Force") to study this model court rule. After deliberations the ELS Task Force agreed that a similar court rule should be adopted in Virginia with minor amendments.

The rule provides that the Virginia Supreme Court shall determine when, as a result of a disaster, an emergency affecting the justice system has occurred in Virginia that would trigger the provisions of this rule. Additionally, if that emergency extends to another jurisdiction the determination of the existence of a major disaster will be made in conjunction with the highest court of that jurisdiction. Under this rule, the Court may allow:

1. Out-of-state lawyers to provide pro bono legal services to the citizens of Virginia within certain constraints described in the model rule, and;

2. Displaced lawyers from an affected state can provide legal services in Virginia on a temporary basis if these services are reasonably related to the lawyer's practice in the affected jurisdiction.

Specifically, the ELS Task Force reviewed the ABA rule and agreed to the following revisions. The last sentence in paragraph (b), *Temporary practice in this jurisdiction following a major disaster*, should read as follows:

> Such legal services shall be assigned and supervised through an established bar association *pro bono* program, not-for-profit bar association, ~~or~~ an approved legal ~~services program~~ assistance organization, a public defender's office, or through such organization(s) specifically designated by this Court.

In paragraph (d), regarding the duration of authority for temporary practice, the ELS Task Force agreed the model rule language needed to be revised to clarify that a lawyer shall not accept new unrelated matters for an existing client when practicing under the authority granted in this rule. This revision is reflected in the second to last sentence of paragraph (d).

In Comment [1], second to last sentence, the ELS Task Force clarified that lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a *pro bono* basis through "entities authorized by this Rule."

In Comment [3], the ELS Task Force verified that the reference to the emeritus rule complies with Virginia's definition of an emeritus lawyer.

In Comment [4], the reference to Rule 5.5 Comment [14] was deleted because the ABA's Rule 5.5 Comment [14] has not been adopted in Virginia.

In Comment [5], the ELS Task Force agreed to delete the last sentence regarding the time period limitation on the authority created in paragraph (c), as it is addressed in paragraph (d) of the rule.

Inspection and Comment

The proposed rule may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed rule can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web 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 rule by filing ten copies with Karen A. Gould, the Executive Director of the Virginia State Bar, not later than **April 14, 2008**.

# # #

Virginia State Bar - Emergency Legal Services Task Force
Proposed SC Rule on Provision of Legal Services Following Determination of Major Disaster

(DRAFT – February 28, 2008)

Rule ___. Provision of Legal Services Following Determination of Major Disaster

(a) *Determination of existence of major disaster.* Solely for purposes of this Rule, this Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(1) this jurisdiction and whether the emergency caused by the major disaster affects the entirety or only a part of this jurisdiction, or

(2) another jurisdiction but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction. The authority to engage in the temporary practice of law in this jurisdiction pursuant to paragraph (c) shall extend only to lawyers who principally practice in the area of such other jurisdiction determined to have suffered a major disaster causing an emergency affecting the justice system and the provision of legal services.

(b) *Temporary practice in this jurisdiction following major disaster.* Following the determination of an emergency affecting the justice system in this jurisdiction pursuant to paragraph (a) of this Rule, or a determination that persons displaced by a major disaster in another jurisdiction and residing in this jurisdiction are in need of pro bono services and the assistance of lawyers from outside of this jurisdiction is required to help provide such assistance, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Such legal services must be provided on a *pro bono* basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer. Such legal services shall be assigned and supervised through an established bar association *pro bono* program, not-for-profit bar

association, ~~or~~ an approved legal ~~services program~~ assistance organization, a public defender's office, or through such organization(s) specifically designated by this Court.

(c) *Temporary practice in this jurisdiction following major disaster in another jurisdiction.* Following the determination of a major disaster in another United States jurisdiction, a lawyer who is authorized to practice law and who principally practices in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in this jurisdiction on a temporary basis. Those legal services must arise out of and be reasonably related to that lawyer's practice of law in the jurisdiction, or area of such other jurisdiction, where the major disaster occurred.

(d) *Duration of authority for temporary practice*. The authority to practice law in this jurisdiction granted by paragraph (b) of this Rule shall end when this Court determines that the conditions caused by the major disaster in this jurisdiction have ended except that a lawyer then representing clients in this jurisdiction pursuant to paragraph (b) is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation, but the lawyer shall not thereafter accept new clients or new unrelated matters for an existing client. The authority to practice law in this jurisdiction granted by paragraph (c) of this Rule shall end [60] days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) *Court appearances*. The authority granted by this Rule does not include appearances in court except:

(1) pursuant to that court's *pro hac vice* admission rule and, if such authority is granted, any fees for such admission shall be waived; or

(2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of this jurisdiction to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, any *pro hac vice* admission fees shall be waived.

(f) *Disciplinary authority and registration requirement*. Lawyers providing legal services in this jurisdiction pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the *Rules of Professional Conduct* of this jurisdiction as provided in Rule 8.5 of the *Rules of Professional Conduct*. Lawyers providing legal services in this jurisdiction under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court. The registration statement shall be in a form prescribed by this Court. Any lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in this jurisdiction.

(g) *Notification to clients*. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in this jurisdiction of the jurisdiction in which they are authorized to practice law, any limits of that authorization, and that they are not authorized to practice law in this jurisdiction except as permitted by this Rule. They shall not state or imply to any person that they are otherwise authorized to practice law in this jurisdiction.

Comment

[1] A major disaster in this or another jurisdiction may cause an emergency affecting the justice system with respect to the provision of legal services for a sustained period of time interfering with the ability of lawyers admitted and practicing in the affected jurisdiction to continue to represent clients until the disaster has ended. When this happens, lawyers from the affected jurisdiction may need to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction. In addition, lawyers in an unaffected jurisdiction may be willing to serve residents of the affected jurisdiction who have unmet legal needs as a result of the disaster or, though independent of the disaster, whose legal needs temporarily are unmet because of disruption to the practices of local lawyers. Lawyers from unaffected jurisdictions may offer to provide these legal services either by traveling to the affected jurisdiction or from their own offices or both, provided the legal services are provided on a *pro bono* basis through entities authorized by this Rule. ~~an authorized not-for-profit entity or such other organization(s) specifically designated by this Court~~. A major disaster includes, for example, a hurricane, earthquake, flood, wildfire, tornado, public health emergency or an event caused by terrorists or acts of war.

[2] Under paragraph (a)(1), this Court shall determine whether a major disaster causing an emergency affecting the justice system has occurred in this jurisdiction, or in a part of this jurisdiction, for purposes of triggering paragraph (b) of this Rule. This Court may, for example, determine that the entirety of this jurisdiction has suffered a disruption in the provision of legal services or that only certain areas have suffered such an event. The authority granted by paragraph (b) shall extend only to lawyers authorized to practice law and not disbarred, suspended from practice or otherwise restricted from practice in any other manner in any other jurisdiction.

[3] Paragraph (b) permits lawyers authorized to practice law in an unaffected jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, to provide pro bono legal services to residents of the affected jurisdiction following determination of an emergency caused by a major disaster; notwithstanding that they are not otherwise authorized to practice law in the affected jurisdiction. Other restrictions on a lawyer's license to practice law that would prohibit that lawyer from providing legal services pursuant to this Rule include, but are not limited to, probation, inactive status, disability inactive status or a non-disciplinary administrative suspension for failure to complete continuing legal education or other requirements. Lawyers on probation may be subject to monitoring and specific limitations on their practices. Lawyers on inactive status, despite being characterized in many jurisdictions as being "in good standing," and lawyers on disability inactive status are not permitted to practice law. Public protection warrants exclusion of these lawyers from the authority to provide legal services as defined in this Rule. Lawyers permitted to provide legal services pursuant to this Rule must do so without fee or other

compensation, or expectation thereof. Their service must be provided through an established not-for-profit organization that is authorized to provide legal services either in its own name or that provides representation of clients through employed or cooperating lawyers. Alternatively or in addition, this court may ~~instead~~ designate other specific organization(s) through which these legal services may be rendered. Under paragraph (b), an *emeritus* lawyer from another United States jurisdiction may provide *pro bono* legal services on a temporary basis in this jurisdiction provided that the *emeritus* lawyer is authorized to provide pro bono legal services in that jurisdiction pursuant to that jurisdiction's *emeritus* or pro bono practice rule. Lawyers may also be authorized to provide legal services in this jurisdiction on a temporary basis pursuant to Part 6 § I (C) of the Rules of Virginia Supreme Court. ~~under Rule 5.5(c) of the *Rules of Professional Conduct.*~~

[4] Lawyers authorized to practice law in another jurisdiction, who principally practice in the area of such other jurisdiction determined by this Court to have suffered a major disaster, and whose practices are disrupted by a major disaster there, and who are not disbarred, suspended from practice or otherwise restricted from practicing law in any other manner in any other jurisdiction, are authorized under paragraph (c) to provide legal services on a temporary basis in this jurisdiction. Those legal services must arise out of and be reasonably related to the lawyer's practice of law in the affected jurisdiction. For purposes of this Rule, the determination of a major disaster in another jurisdiction should first be made by the highest court of appellate jurisdiction in that jurisdiction~~. For the meaning of "arise out of and reasonably related to," see Rule 5.5 Comment [14] Rules of Professional Conduct.~~

[5] Emergency conditions created by major disasters end, and when they do, the authority created by paragraphs (b) and (c) also ends with appropriate notice to enable lawyers to plan and to complete pending legal matters. Under paragraph (d), this Court determines when those conditions end only for purposes of this Rule. The authority granted under paragraph (b) shall end upon such determination except that lawyers assisting residents of this jurisdiction under paragraph (b) may continue to do so for such longer period as is reasonably necessary to complete the representation~~. The authority created by paragraph (c) will end [60] days after this Court makes such a determination with regard to an affected jurisdiction.~~

[6] Paragraphs (b) and (c) do not authorize lawyers to appear in the courts of this jurisdiction. Court appearances are subject to the *pro hac vice* admission rules of the particular court. This Court may, in a determination made under paragraph (e)(2), include authorization for lawyers who provide legal services in this jurisdiction under paragraph (b) to appear in all or designated courts of this jurisdiction without need for such *pro hac vice* admission. If such an authorization is included, any *pro hac vice* admission fees shall be waived. A lawyer who has appeared in the courts of this jurisdiction pursuant to paragraph (e) may continue to appear in any such matter notwithstanding a declaration under paragraph (d) that the conditions created by major disaster have ended. Furthermore, withdrawal from a court appearance is subject to Rule 1.16 of the *Rules of Professional Conduct.*

[7] Authorization to practice law as a foreign legal consultant or in-house counsel in a United States jurisdiction offers lawyers a limited scope of permitted practice and may therefore restrict that person's ability to provide legal services under this Rule.

~~[8] The ABA National Lawyer Regulatory Data Bank is available to help determine whether any lawyer seeking to practice in this jurisdiction pursuant to paragraphs (b) or (c) of this Rule is disbarred, suspended from practice or otherwise subject to a public disciplinary sanction that would restrict the lawyer's ability to practice law in any other jurisdiction.~~

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS IS SEEKING PUBLIC COMMENT A PROPOSED AMENDMENT TO RULE 2.11 OF THE RULES OF PROFESSIONAL CONDUCT

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 a proposed amendment to Rule 2.11 of the Rules of Professional Conduct.

RULE 2.11

It came to the attention of the Committee that Rule 2.11 Comment [9] includes a reference to Rule 2.2 which no longer exists. Rule 2.2 was deleted by Supreme Court Order, September 24, 2003; the purpose of the deletion was to remove ambiguity, as first developed in the Ethics 2000 initiative, of coverage and the resulting confusion between Rule 1.7's application to joint representations and Rule 2.2's application to the lawyer's role as intermediary. As the two contexts are indistinguishable, all such situations are now being handled in one rule, i.e., Rule 1.7. Further, the terms "Intermediary" and Intermediation" no longer exist. Therefore, the Committee is proposing an amendment to Rule 2.11 Comment [9], which deletes reference to Rule 2.2 and clarifies the reference to Rule 1.7 and "common representation." The amendment also removes all references to the lawyer's role as intermediary.

Inspection and Comment

The proposed amendment may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed amendment 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 amendment by filing ten copies with Karen A. Gould, the Executive Director of the Virginia State Bar, not later than **April 14, 2008.**

# # #

RULE 2.11 Mediator

(a) A lawyer-mediator is a third party neutral (*See* Rule 2.10) who facilitates communication between the parties and, without deciding the issues or imposing a solution on the parties, enables them to understand and resolve their dispute.

(b) Prior to agreeing to mediate and throughout the mediation process a lawyer-mediator should reasonably determine that:

(1) mediation is an appropriate process for the parties;

(2) each party is able to participate effectively within the context of the mediation process; and

(3) each party is willing to enter and participate in the process in good faith.

(c) A lawyer-mediator may offer legal information if all parties are present or separately to the parties if they consent. The lawyer-mediator shall inform unrepresented parties or those parties who are not accompanied by legal counsel about the importance of reviewing the lawyer-mediator's legal information with legal counsel.

(d) A lawyer-mediator may offer evaluation of, for example, strengths and weaknesses of positions, assess the value and cost of alternatives to settlement or assess the barriers to settlement (collectively referred to as evaluation) only if such evaluation is incidental to the facilitative role and does not interfere with the lawyer-mediator's impartiality or the self-determination of the parties.

(e) Prior to the mediation session a lawyer-mediator shall:

(1) consult with prospective parties about

(i) the nature of the mediation process;

(ii) the limitations on the use of evaluation, as set forth in paragraph (d) above;

(iii) the lawyer-mediator's approach, style and subject matter expertise; and

(iv) the parties' expectations regarding the mediation process; and

(2) enter into a written agreement to mediate which references the choice and expectations of the parties, including whether the parties have chosen, permit or expect the use of neutral evaluation or evaluative techniques during the course of the mediation.

(f) A lawyer-mediator shall conduct the mediation in a manner that is consistent with the parties' choice and expectations.

COMMENT

[1] Offering assessments, evaluations, and advice are traditional lawyering functions for the lawyer who represents a client. A lawyer-mediator, who does not represent any of the parties to the mediation, should not assume that these functions are appropriate. Although these functions are not specifically prohibited in the statutory definition of mediation, which is set forth as paragraph (a) of this Rule, an evaluative approach which interferes with the parties' self-determination and the mediator's impartiality would be inconsistent with this definition of mediation.

[2] Defining mediation to exclude an evaluative approach is difficult not only because practice varies widely but because no consensus exists as to what constitutes an evaluation. Also, the effects of an evaluation on the mediation process depend upon the attitude and style of the mediator and the context in which it is offered. Thus, a question by a lawyer-mediator to a party that might be considered by some as "reality testing" and facilitative, might be

viewed by others as evaluative. On the other hand, an evaluation by a facilitative mediator could help free the parties from the narrowing effects of the law and help empower them to resolve their dispute.

Informed Consent to Mediator's Approach

[3] The Rule focuses on the informed consent of the prospective mediation clients to the particular approach, style and subject matter expertise of the lawyer-mediator. This begins with consultation about the nature of the mediation process, the limitations on evaluation, the lawyer-mediator's approach, style and subject matter expertise and the parties' expectations regarding the mediation process. If the parties request an evaluative approach, the lawyer-mediator shall explain the risk that evaluation might interfere with mediator impartiality and party self-determination. Following this consultation the lawyer-mediator and the parties shall sign a written agreement to mediate which reflects the choice and expectation of the parties. The lawyer-mediator shall then conduct the mediation in a manner that is consistent with the parties' choice and expectations. This is similar to the lawyer-client consultation about the means to be used in pursuing a client's objectives in Rule 1.2.

Continuing Responsibility to Examine Potential Impact of Evaluation

[4] If the parties choose a lawyer-mediator who is willing and able to offer evaluation during the mediation process and has met the requirements of paragraph (e), a lawyer-mediator has a continuing responsibility under paragraphs (b) and (d) to assess the situation and consult with the parties before offering or responding to a request for an evaluation. Consideration shall be given again as to whether mediator impartiality and party self-determination are at risk. Consideration should also be given as to whether an evaluation could detract from the willingness of the parties to work at understanding their own and each other's situation and at considering a broader range of interests, issues and options. Also, with an evaluation the parties may miss out on opportunities to maintain or improve relationships or to create a higher quality and more satisfying result.

[5] On the other hand, the parties may expect the lawyer-mediator to offer an evaluation in helping the parties reach agreement, especially when the most important issues are the strengths or weaknesses of legal positions, or the significance of commercial or financial risks. This is particularly useful after parties have worked at possible solutions and have built up confidence in the mediator's impartiality or where widely divergent party evaluations are major barriers to settlement.

[6] The presence of attorneys for the parties offers additional protection in minimizing the risk of a poor quality evaluation and of too strong an influence on the parties' self-determination. An evaluation, coupled with a reminder to the parties that the evaluation is but one of the factors to be considered as they deliberate on the outcome, may in certain cases be the most appropriate way to assure that the parties are making fully informed decisions.

Legal Advice, Legal Information and Neutral Evaluation

[7] A lawyer-mediator shall not offer any of the parties legal advice which is a function of the lawyer who is representing a client. However, a lawyer-mediator may offer legal information under the conditions outlined in paragraph (c). Offering legal information is an educational function which aids the parties in making informed decisions. Neutral evaluations in the mediation process consist of, for example, opining as to the strengths and weaknesses of positions, assessing the value and costs of alternatives to settlement or assessing the barriers to settlement.

[8] The lawyer-mediator shall not, however, make decisions for any party to the mediation process nor shall the lawyer-mediator use a neutral evaluation to coerce or influence the parties to settle their dispute or to accept a particular solution to their dispute. Paragraphs (d), (e), and (f) restrict the use of evaluative techniques by the lawyer-mediator to situations where the parties have given their informed consent to the use of such techniques and where a neutral evaluation will assist, rather than interfere with the ability of the parties to reach a mutually agreeable solution to their dispute.

Mediation ~~and Intermediation~~

[9] While a lawyer is cautioned in ~~the Comment to Rule 2.2 not to act as intermediary between clients where contentious litigation or negotiation is expected~~ Rule 1.7 regarding the special considerations in common representation, ~~this~~ these should not deter a lawyer-mediator from accepting clients for mediation. ~~Unlike intermediation, where the lawyer represents all parties~~ In mediation, a lawyer-mediator represents none of the parties and should be trained to deal with strong emotions. In fact mediation can be especially useful in a case where communication and relational breakdown have made negotiation or litigation of legal issues more difficult.

Confidentiality and Professional Responsibility Standards

[10] Confidentiality of information revealed in the mediation process is governed by *Code of Virginia* Sections 8.01-576.9 and 8.01-576.10 and Section 8.01-581.22.

VIRGINIA CODE COMPARISON

There was no counterpart to this Rule in the *Virginia Code*.

COMMITTEE COMMENTARY

The Committee adopted this Rule, not part of the *ABA Model Rules*, to give further guidance to lawyers who serve as mediators. Although Legal Ethics Opinions [e.g., LEO 590 (May 17, 1985)] have approved of lawyers serving as mediators, different approaches to and styles of mediation ranging from pure facilitation to evaluation of positions are being offered. This Rule requires lawyer-mediators to consult with prospective parties about the lawyer-mediators' approach, style and subject matter expertise and to honor the parties' choice and expectations.

SANCTION BY DISCIPLINARY BOARD SUSPENSION OF ONE YEAR OR LESS WITH OR WITHOUT TERMS

On November 7, 2007, the Standing Committee on Lawyer Discipline approved a proposed amendment which would provide a Suspension of one year or less, with or without terms, as an available sanction by the Virginia State Bar Disciplinary Board.

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

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

* * *

I. Board Proceedings

* * *

2. Hearing Procedures

* * *

f. Disposition

(1) If the Board concludes that the evidence fails to show under a clear and convincing evidentiary standard that the Respondent engaged in the Misconduct, the Board shall dismiss any Charge of Misconduct not so proven.

(2) If the Board concludes that there has been presented clear and convincing evidence that the Respondent has engaged in Misconduct, after considering evidence and arguments in aggravation and mitigation, the Board shall impose one of the following sanctions and state the effective date of the sanction imposed:

(a) Admonition, with or without Terms;

(b) Public Reprimand, with or without Terms;

(c) Suspension of the License of the Respondent;

(i) For a stated period not exceeding five years; provided, however, if the Suspension is for more than one year, the Respondent must apply for Reinstatement as provided in this Paragraph; or

(ii) For a stated period of one year or less, with or without Terms; or

(d) Revocation of the Respondent's License.

* * *

Comments or questions should be submitted in writing to the Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, no later than May 15, 2008. The Virginia State Bar Council will consider the proposed amendments when it meets on June 19, 2008.

LEGAL ETHICS OPINION

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON LEGAL ETHICS OPINION 1843

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 1843, *Whether a Member of the Virginia State Bar Who Practices Patent Law Can be a Partner with a Non-lawyer Patent Agent?*

This hypothetical involves the question of whether a member of the Virginia State Bar who practices patent law can be employed by a firm owned by a non-lawyer patent agent and share legal fees with the non-lawyer patent agent. Traditionally, a lawyer cannot form a partnership with a non-lawyer as per Rule 5.4(b); however, in the specific case of a patent lawyer, that rule is pre-empted by the Supremacy Clause and 37 C.F.R. § 10, which deal with representation of others before the U.S. Patent and Trade Office ("USPTO").

The opinion cites to specific Code of Federal Regulations that regulate the practice of practitioners before the USPTO and that regulate the formation of partnerships and the sharing of fees between practitioners. These regulations permit the formation of partnerships and the sharing of fees between attorneys and patent agents to the extent the shared fees arise from the practice of patent, trademark, and other law before the USPTO. As a result, the opinion finds that the requestor can join the practice of a non-lawyer patent agent either as a registered active Virginia lawyer or an associate member of the Virginia State Bar, as long as that practice is devoted solely to patent and trademark law before the UPSPTO.

Inspection and Comment

The proposed advisory opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed advisory opinion can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at 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 **April 14, 2008**.

SANCTION BY DISCIPLINARY BOARD SUSPENSION OF ONE YEAR OR LESS WITH OR WITHOUT TERMS

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

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I. Board Proceedings

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f. Disposition

(1) If the Board concludes that the evidence fails to show under a clear and convincing evidentiary standard that the Respondent engaged in the Misconduct, the Board shall dismiss any Charge of Misconduct not so proven.

(2) If the Board concludes that there has been presented clear and convincing evidence that the Respondent has engaged in Misconduct, after considering evidence and arguments in aggravation and mitigation, the Board shall impose one of the following sanctions and state the effective date of the sanction imposed:

(a) Admonition, with or without Terms;

(b) Public Reprimand, with or without Terms;

(c) Suspension of the License of the Respondent;

(i) For a stated period not exceeding five years; provided, however, if the Suspension is for more than one year, the Respondent must apply for Reinstatement as provided in this Paragraph; or

(ii) For a stated period of one year or less, with or without Terms; or

(d) Revocation of the Respondent's License.

* * *

Comments or questions should be submitted in writing to the Executive Director, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219, no later than May 15, 2008. The Virginia State Bar Council will consider the proposed amendments when it meets on June 19, 2008.

LEGAL ETHICS OPINION

VIRGINIA STATE BAR'S STANDING COMMITTEE ON LEGAL ETHICS SEEKING PUBLIC COMMENT ON LEGAL ETHICS OPINION 1843

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This hypothetical involves the question of whether a member of the Virginia State Bar who practices patent law can be employed by a firm owned by a non-lawyer patent agent and share legal fees with the non-lawyer patent agent. Traditionally, a lawyer cannot form a partnership with a non-lawyer as per Rule 5.4(b); however, in the specific case of a patent lawyer, that rule is pre-empted by the Supremacy Clause and 37 C.F.R. § 10, which deal with representation of others before the U.S. Patent and Trade Office ("USPTO").

The opinion cites to specific Code of Federal Regulations that regulate the practice of practitioners before the USPTO and that regulate the formation of partnerships and the sharing of fees between practitioners. These regulations permit the formation of partnerships and the sharing of fees between attorneys and patent agents to the extent the shared fees arise from the practice of patent, trademark, and other law before the USPTO. As a result, the opinion finds that the requestor can join the practice of a non-lawyer patent agent either as a registered active Virginia lawyer or an associate member of the Virginia State Bar, as long as that practice is devoted solely to patent and trademark law before the UPSPTO.

Inspection and Comment

The proposed advisory opinion may be inspected at the office of the Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Copies of the proposed advisory opinion can be obtained from the offices of the Virginia State Bar by contacting the Office of Ethics Counsel at (804) 775-0557, or can be found at the Virginia State Bar's Web site at 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 **April 14, 2008**.

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(DRAFT – February 1, 2008)

LEGAL ETHICS OPINION 1843
WHETHER A MEMBER OF THE VIRGINIA STATE BAR WHO PRACTICES PATENT LAW CAN BE A PARTNER WITH A NON-LAWYER PATENT AGENT?

This hypothetical involves a Virginia licensed lawyer who has maintained associate status during the course of his employment with the United States Patent and Trademark Office ("USPTO"). He has now retired and is considering two different options as he contemplates the practice of patent law with a firm owned by a non-lawyer patent agent. The questions presented involve whether or not he can be employed by the firm as a patent attorney and would, therefore, be sharing legal fees with a non-lawyer patent agent. In the alternative, could he maintain associate status and be employed as a registered patent agent? Under either scenario, the firm would be solely engaged in the practice of patent law before the USPTO.

Traditionally, a lawyer cannot form a partnership with a non-lawyer as per Rule 5.4(b)[1]; however, in the specific case of a patent lawyer, that rule is pre-empted by the Supremacy Clause[2] and 37 C.F.R. § 10, which deal with representation of others before the USPTO[3].

The U.S. Supreme Court has held that "[a] State may not enforce licensing requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress." Sperry v. Florida *ex rel.* Florida Bar, 373 U.S. 379, 385 (1963). Therefore, this legal authority leads to the conclusion that the Virginia Rules of Professional Conduct are preempted by the federal regulations as they pertain to the specific practice of patent law before the USPTO.

FOOTNOTES

1. Rule 5.4 Professional Independence Of A Lawyer

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

2. Article Six of the Constitution of the United States in pertinent part: "[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding."

3. As part of the definitions under 37 C.F.R. § 10.1, the code states:

> This part governs solely the practice of patent, trademark and other law before the Patent and Trademark office. Nothing in this part shall be construed to preempt the authority of each State to regulate the practice of law, except to the extent necessary for the Patent and Trademark Office to accomplish its Federal Objectives.

The C.F.R. that regulates practice before the USPTO does not refer specifically to lawyers but to "practitioners" and regulates forming a partnership or sharing fees between practitioners.

A practitioner is defined in 37 C.F.R. § 10.1 (r):

Practitioner means (1) an attorney or agent registered to practice before the Office in patent cases or (2) an individual authorized under 5 U.S.C. 500(b) or otherwise as provided by this subchapter, to practice before the Office in trademark cases or other non-patent cases.

Thus, while Rule 5.4(a) and (b)[4] prohibit a lawyer from forming a partnership or sharing legal fees with a non-lawyer, 37 CFR §10.49 allows the formation of a partnership among lawyer and non-lawyer "practitioners" as long as the activities of that partnership consist solely of the practice of patent, trademark, or other law before the USPTO.

And finally, in dealing with the sharing of legal fees in a practice, 37 C.F.R. § 10.48 permits a lawyer/practitioner to share legal fees with a non-practitioner.

Thus, the federal regulations permit forming partnerships and sharing fees between attorneys and patent agents to the extent the shared fees arise from the practice of patent, trademark, and other law before the USPTO. As a result, the requestor can join the practice of a non-lawyer patent agent either as a registered active Virginia lawyer or an associate member of the Virginia State Bar, as long as that practice is devoted solely to patent and trademark law before the UPSPTO.

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

FOOTNOTES

4. RULE 5.4 Professional Independence Of A Lawyer

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

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