

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

Charles William Austin Jr.

*VSB Docket Nos. 06-031-0669, 07-031-2196
and 09-031-075999*

Attorney at Law

On January 12, 2009, came Charles William Austin, Jr., and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Affidavit Declaring Consent to Revocation and Certification document are true.

The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Charles William Austin, Jr. be and the same hereby is revoked, and that the name of the said Charles William Austin, Jr. be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 23 day of June, 20 09

For the Virginia State Bar Disciplinary Board

By

Barbara Sayers Lanier, Clerk of the Disciplinary System

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
CHARLES WILLIAM AUSTIN, JR.**

VSB Docket Nos. 06-031-0699; 07-031-2196; 09-031-075999

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Charles William Austin, Jr., after being duly sworn, states as follows:

1. That Charles William Austin, Jr. was licensed to practice law in the Commonwealth of Virginia on 10/14/1988;
2. That Charles William Austin, Jr. submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13.L.
3. That Charles William Austin, Jr.'s consent to revocation is freely and voluntarily rendered, that Charles William Austin, Jr. is not being subjected to coercion or duress, and that Charles William Austin, Jr. is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. Charles William Austin, Jr. is aware that there is currently pending a complaint, an investigation into, or a proceeding involving, allegations of misconduct, the docket number(s) for which is set forth above, and the specific nature of which is here set forth:

a. **VSB Docket No. 06-031-0699**

Mr. and Mrs. Ford retained Respondent to represent their interests in an action for securities fraud. Respondent represented on numerous occasions over that he had filed their complaint when in fact he did not. Respondent made several misrepresentations as to the status of the Ford's claim during the course of his representation of them.

b. **VS B Docket No. 07-031-2196**

Mr. and Mrs. Noble retained Respondent to represent their interests in an action for securities fraud. Respondent represented on numerous occasions that he had filed their complaint when in fact he did not. Respondent made several misrepresentations as to the status of the Nobles' claim during the course of his representation of them. The defendant in the action that was subsequently filed raised the defense of the statute of limitations.

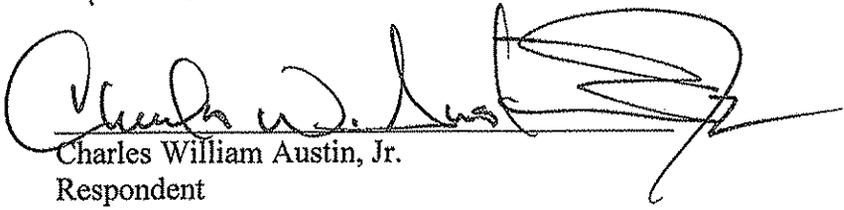
c. **VS B Docket No. 09-031-075999**

Unity Investments retained Respondent to represent their interests. He filed a complaint in the Newport News Circuit Court that resulted in a monetary settlement. Unity complains that while Respondent was holding onto funds due Unity he was taking funds as fees to which he was not entitled.

5. Charles William Austin, Jr. acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and

6. Charles William Austin, Jr. submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary proceedings based on the said alleged misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

Executed and dated on 1/12/09.


Charles William Austin, Jr.
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Richmond, to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to
before me by Charles William Austin, Jr. on January 12, 2009.


Notary Public # 330600

My Commission expires: 10-31-2011.

VIRGINIA:

BEFORE THE THIRD DISTRICT COMMITTEE SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
CHARLES WILLIAM AUSTIN, JR.

VS B Docket Nos. 06-031-0669 and 07-031-2196

SUBCOMMITTEE DETERMINATION
(CERTIFICATION)

On February 6, 2008, a meeting in these matters was held before a duly convened Third District Committee Section I Subcommittee consisting of Dianne Lena Reynolds Cane, M.D., lay person, Larry A. Pochucha, Esquire and Joseph P. Rapisarda, Jr., Esquire, Chair, presiding.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c. of the Rules of the Virginia Supreme Court, the Third District Committee Section I Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

VS B DOCKET NO. 06-031-0669

I. **FINDINGS OF FACT**

1. At all times relevant, Respondent has been a member in active and good standing with the Virginia State Bar.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on October 14, 1988.
3. Respondent's primary area of practice has been concentrated on securities litigation.
4. Respondent began working from his house in 1997. Since that time, he has not had any full time support staff.
5. Prior to February of 2002, Respondent engaged in conversations with Richard Ford ("Ford") and his personal attorney Susanna Hickman ("Hickman") concerning a potential claim against Merrill Lynch ("Merrill") and Ford's broker, Dee White ("White") for securities malpractice.

6. On February 4, 2002, Respondent wrote a letter to Ford memorializing their conversations, indicating that it was his belief that Ford and his wife had a very good claim against Merrill and White for at least \$600,000.00.

7. As part of that letter, Respondent included a proposed retainer agreement setting forth the terms under which he was willing to enter into the representation.

8. One of those terms was that Ford retain his preferred expert, Craig McCann, Ph.D.

9. On February 5, 2002, Ford executed the retainer agreement that Respondent had previously forwarded to him, choosing as a fee arrangement a fixed fee of \$12,500.00 for Respondent to prepare and file a Statement of Claim and submit a Uniform Submission Agreement with either the National Association of Securities Dealers ("NASD") or the New York Stock Exchange ("NYSE") plus a contingency fee of 28% of all sums collected by way of settlement, award or judgment ("Retainer").

10. The Retainer also required that Ford pay McCann a retainer of \$10,000.00 in addition to paying an upfront filing fee of \$1,700.00.

11. On February 12, 2002, Ford paid Respondent the sum of \$24,200.00 pursuant to the terms of the Retainer.

12. On February 15, 2002, Respondent's trust account records indicated he paid McCann's firm \$10,000.00.

13. On April 2, 2002, Respondent disbursed \$2,000.00 of the initial retainer fee to himself as attorney's fees.

14. On August 26, 2002, Respondent forwarded a two page document purporting to be a Uniform Submission Agreement before the NASD that was necessary to begin the processing of Ford's claim against Merrill and White.

15. On November 30, 2002, Respondent disbursed \$1,000.00 of the initial retainer fee to himself as attorney's fees.

16. On December 16, 2002, Respondent wrote to Ford, advising him that his claim was proceeding forward, but that due to a backlog of cases in the NASD and NYSE that the case was proceeding slowly.

17. At the time that Respondent wrote that correspondence assuring Ford that his case was proceeding, Respondent had filed nothing with the NASD or NYSE in connection with Ford's case.

18. On January 7, 2003, in response to a request for an update, Respondent told Hickman that the Ford claim was filed. At the time Respondent made that statement, he knew it to be false because he had not in fact filed anything on Fords' behalf.

19. Despite having falsely stated that the claim was already filed on the Fords' behalf, Respondent disbursed \$3,000.00 of the initial retainer fee to himself as attorney's fees.

20. On June 24, 2003, Respondent emailed Hickman stating that the Fords' claim had been filed with the NASD and that it had been served on Merrill and White. Respondent also advised that he would provide Hickman with a copy of the Statement of Claim. Respondent apologized for not having done so earlier believing that he already had.

21. At the time that Respondent emailed Hickman on June 24, 2003, he knew the statements and representations he had made about the status of Fords' claim were false because he had not in fact filed anything.

22. On July 15, 2003, Respondent wrote to Hickman and blamed the delay in getting the Fords' claim to hearing on a backlog of cases that were filed with the NASD.

23. At the time that Respondent emailed Hickman on July 15, 2003, he knew the statements and representations he had made about the status of Fords' claim were false because in fact, he had not filed anything.

24. On October 14, 2003 and on November 12, 2003, Hickman made two telephone calls to Respondent to inquire about the status of the Fords' claim. Both of the calls went unreturned.

25. On November 22, 2003, Respondent disbursed \$4,000.00 of the initial retainer fee to himself as attorney's fees.

26. On January 19, 2004, Respondent wrote what purported to be a status report to Ford, and advised him that he had moved the claim from the NASD to the NYSE. At the time that Respondent prepared the report to Ford, he knew the statements and representations he had made about the status of the claim were false because in fact, he had not filed anything.

27. On October 19, 2004, Hickman emailed Respondent stating that she has heard nothing about the status of the case.

28. On November 5, 2004, Hickman again emailed Respondent stating she has heard nothing from him and that she is increasingly embarrassed to have recommended him to Ford. She asked for a status of the case by November 9, 2004.

29. Without replying to Hickman's request for a status report, Respondent disbursed \$2,500.00 of the initial retainer fee to himself as attorney's fees.

30. On December 6, 2004, Hickman wrote a letter to Respondent demanding, among other things, a status report that includes a statement of how the retainer has been applied.

31. On February 11, 2005, Respondent sent Hickman an email stating he will be sending a package of materials.

32. On June 30, 2005, Hickman sent respondent a letter by certified mail advising him that neither she nor Ford has received any package of materials.

33. On August 24, 2005, Ford filed a complaint against Respondent with the Virginia State Bar alleging misconduct in the handling of Ford's case.

34. On September 30, 2005, Andrew Biondi ("Biondi") of the law firm of Sands Anderson Marks & Miller wrote to Respondent advising that Biondi had been retained to represent Ford to determine the status of the complaint and statement of claim that Respondent represented he had filed on the Fords' behalf.

35. On October 7, 2005, Biondi wrote to Respondent indicating that it was his fourth attempt to contact Respondent concerning the status of the claim he purportedly filed on the Fords' behalf.

36. On October 13, 2005, Respondent wrote to Ford enclosing a copy of the Statement of Claim he had allegedly filed with the NYSE.

37. On October 13, 2005, Respondent also wrote to the Virginia State Bar with his response to the Fords' complaint.

38. In his response to the bar complaint, Respondent stated that Ford's frustration is borne in large part to the "glacial pace at which [the] claim has proceeded thus far."

39. Respondent further stated in his response to the Bar that the reasons for the delay are contained in the correspondence he attached.

40. Respondent failed to disclose that he had lied to the Fords for over three years that he had filed their claim when in fact it took a bar complaint for him to file the claim.

41. Respondent never provided the Fords with a statement of his services or any other documentation that would justify his having earned the fees he billed despite a demand for a return of the retainer and an accounting of the fees Respondent paid himself.

II. NATURE OF MISCONDUCT

Such conduct by Charles William Austin, Jr. constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

* * * *

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

* * * *

RULE 1.5 Fees

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

* * * *

RULE 1.16 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 8.4 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.
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law.

* * * *

VSB DOCKET NO. 07-031-2196

I. **FINDINGS OF FACT**

1. At all times relevant, Respondent has been a member in active and good standing with the Virginia State Bar.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on October 14, 1988.
3. Respondent's primary area of practice has been concentrated on securities litigation.
4. Respondent began working from his house in 1997. Since that time, he has not had any full time support staff.
5. Sometime in the summer of 2002, Ricki and Wade Noble ("Nobles") spoke with Respondent about a claim they had against Investors Security Company ("Investors") and their broker Bruce Jackson ("Jackson") for mismanaging their retirement accounts.
6. On August 15, 2002, the Nobles paid Respondent \$2,500.00 to hire Jeff Terrell, a chartered financial consultant, to review their case. Terrell spoke with the Nobles and advised them that he believed they had a case.
7. Respondent agreed to represent the Nobles for a contingency fee of 34% of monies recovered plus costs.
8. The Nobles paid Respondent \$1,425.00 for the filing fee necessary to initiate their claim against Investors and Jackson.
9. The Nobles do not recall signing a retainer agreement, and Respondent has never produced one despite being served by the Bar with a subpoena duces tecum for his client file relating to the Nobles.
10. From the time they engaged Respondent until July of 2004, the Nobles allege that they were never able to reach Respondent directly.
11. On July 5, 2004, Respondent wrote to the Nobles apologizing for his inability to get back to them. He further wrote that the Nobles "claim against [Investors] and Jackson appears to finally be breaking free of the administrative and bureaucratic morass and moving forward in earnest." He further stated that a hearing date would be set shortly.
12. Based on Respondent's representation in his July 5, 2004 correspondence, the Nobles believed that Respondent had filed their claim.

13. At the time that Respondent wrote his July 5, 2004 correspondence, he had not filed anything on the Nobles' behalf.

14. On February 17, 2005 Mr. Noble wrote to Respondent stating he had tried to reach him several times by phone but that no one answered and no calls were being returned.

15. The Nobles did not hear from Respondent until May 2, 2005. Based on that correspondence, the Nobles believed that their claim had been filed and they were simply waiting to obtain a hearing date.

16. At the time that Respondent wrote his May 2, 2005 correspondence, he had not filed anything on the Nobles' behalf.

17. On December 20, 2005, Respondent interviewed the Nobles by phone. The Nobles wanted an in person meeting, but Respondent refused.

18. During that telephonic meeting, Respondent agreed to refund the Nobles \$2,500.00 and lower his contingency fee to 25% because of the length of time it was taking to complete the case. He also told the Nobles that Mr. Noble would make a good witness.

19. At no time during the meeting on December 20, 2006 did Respondent disclose to the Nobles that he had filed nothing on their behalf.

20. At no time during this meeting did Respondent ever state to the Respondents that he felt they only had a 50-50% chance of prevailing in the case.

21. On May 2, 2006, the Nobles received a letter from Investors thanking them for choosing Investors and Jackson as their financial consultants.

22. Shortly thereafter, Wade Noble called Respondent to ask why Investors would send such a letter if the Nobles were suing them.

23. Respondent told the Nobles he would contact the Virginia State Corporation Commission and file a complaint and would call Investors. Respondent characterized the situation to Mr. Noble as a case of the right hand not knowing what the left was doing. He further stated that the delays in their case were attributable to family illness, his own illness, and the illness of support staff.

24. During this communication, Respondent failed to disclose that he had, in fact, filed nothing on the Nobles' behalf.

25. On August 10, 2006, the Nobles sent Respondent an email asking for an update.

26. On August 13, 2006, the Nobles sent another email asking that their correspondence be acknowledged.

27. On August 21, 2006, Respondent stated he had been out of the office and would put some information together for the Nobles and contact them later.

28. At no time during these communications did Respondent disclose that he had, in fact, filed nothing on the Nobles' behalf.

29. On January 5, 2007, the Nobles wrote to Respondent complaining about the complete lack of update.

30. On January 22, 2007, the Nobles filed a complaint with the Virginia State Bar.

30. On February 14, 2007, Respondent provided the Nobles an acknowledgment of their Bar complaint plus a copy of the claim he filed on their behalf.

31. On February 15, 2007, Respondent provided the Bar his response to the Nobles' complaint. In that response, Respondent made no mention that he has not filed anything on their behalf.

32. Even though Respondent led the Nobles to believe that he had previously filed their claim, Respondent did not file anything until February of 2007.

33. For the first time in almost five years, in February of 2007 Respondent told the Nobles that their case was not that strong and that it would cost them additional funds to move forward.

34. In May of 2007, Respondent sought to modify the terms under which he would continue to represent the Nobles.

35. The Nobles sought to meet in person, but Respondent refused.

36. The Nobles sent Respondent an email on June 7, 2007 with additional questions about how to proceed and asked that he answer them so they could make a fully informed decision as to what steps they should take next.

37. Respondent did not respond to that email.

38. Unbeknownst to the Nobles, and despite statements and representations that he was taking action on their case, Respondent did not file the Nobles State of Claim until November 7, 2007.

38. On or around January 3, 2008, the Nobles fired Respondent.

39. The claim that Respondent filed on the Nobles' behalf is still pending.

40. However, the Nobles have consulted with other attorneys and have been advised that their claim is barred by applicable statutes of limitation.

41. Investors have answered the Statement of Claim that Respondent filed on the Nobles' behalf and has averred that the claim is barred by the statute of limitations.

II. NATURE OF MISCONDUCT

Such conduct by Charles William Austin, Jr. constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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

* * * *

RULE 1.5 Fees

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

* * * *

RULE 1.16 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).

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

* * * *

III. CERTIFICATION

Accordingly, it is the decision of the subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

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

By Joseph P. Rapisarda, Jr.
Joseph P. Rapisarda, Jr.
Chair

CERTIFICATE OF SERVICE

I certify that on this 3rd day of April, 2008, I mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee Determination (Certification) to Charles William Austin, Jr., Esquire, Respondent, [*pro se*,] at 119 Huddersfield Drive, Richmond, VA 23236, the Respondent's last address of record with the Virginia State Bar.

Paul E. Franco, Jr.
Paul E. Franco, Jr.
Assistant Bar Counsel