

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF  
ANDREW IRA BECKER**

**VS B Docket Number 04-021-2662  
04-021-3554  
06-021-1176**

**ORDER  
*AMENDED***

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

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

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

## **I. STIPULATIONS OF FACTS**

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

***VSB DOCKET NO. 04-021-2662***  
***Complainant: Michael L. Metzner, Esquire***

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

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

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

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

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

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

8. In the Night Moves case, Mr. Becker and opposing counsel endorsed a Stipulation of Dismissal of the case which was filed in the U. S. District Court, Norfolk, on April 3, 2003, and subsequently entered by the court. Mr. Becker sought neither Mr.

Metzner's nor the client's consent to dismiss the matter, and did not inform either of them about this action.

9. By facsimile dated October 9, 2003, Mr. Becker apologized to Mr. Metzner for the way that he handled the cases, saying that he had his "head in the sand," that he should have withdrawn from the Coco's case because of the distance involved and that he should have sought more help in the Night Moves case. He closed by saying that: *Fortunately, as I am sure you know by now through your own efforts, no case was dismissed with prejudice and liability was actually established in the Coco's file.*

and

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

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

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

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

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

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

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

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

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

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

## **II. STIPULATIONS AS TO RULE VIOLATIONS**

### ***(Metzner Complaint)***

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

#### **RULE 1.1 Competence**

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

#### **RULE 1.3 Diligence**

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

#### **RULE 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

#### **RULE 3.4 Fairness to Opposing Party And Counsel**

A lawyer shall not:

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

**I. STIPULATIONS OF FACT (Continued)**

***VSB DOCKET NO. 04-021-3554***

***Complainant: VSB/Anonymous***

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

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

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

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

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

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

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

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

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

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

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

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

31. On May 28, 2004, having found that the Becker firm violated each order entered by the Court with respect to employment, compensation, accounting and reporting by the Becker firm, and having found further that the inability of the Becker firm to account for funds and collection matters turned over to it reduced the benefit to the estate, the United States Bankruptcy Court for the Eastern District of Virginia, Norfolk Division, entered an order permanently barring Mr. Becker from service as counsel before that court in any capacity, including the filing of proofs of claim, with leave to seek reinstatement after April 8, 2005.

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

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

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

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

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

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

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

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

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

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

## **II. STIPULATIONS AS TO RULE VIOLATIONS**

### ***(VSB/Anonymous Complaint)***

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

#### **RULE 1.1 Competence**

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#### **RULE 1.3 Diligence**

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

#### **RULE 1.4 Communication**

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

#### **RULE 3.4 Fairness to Opposing Party And Counsel**

A lawyer shall not:

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

#### **RULE 8.1 Bar Admission and Disciplinary Matters**

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

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

**I. STIPULATIONS OF FACT (Continued)**

***VSB DOCKET NO. 06-021-1176***  
***Complainant: Gerald A. Hainsworth***

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

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

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

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

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

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

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

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

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

*This is my fourth e-mail with no reply. I have left a message on your voicemail, which has also been ignored. If this e-mail goes without response I will be taking the issue to your governing body. Deplorable behavior from a supposed professional.*

*Please advise . . . the check I sent you has been cashed but no word of progress from your office.*

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

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

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

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

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

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

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

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

## **II. STIPULATIONS AS TO RULE VIOLATIONS**

### ***(Hainsworth Complaint)***

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

#### **RULE 1.4 Communication**

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

#### **RULE 8.1 Bar Admission and Disciplinary Matters**

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

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

### **SANCTION**

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

The Bar offered one Exhibit in aggravation, consisting of Mr. Becker's disciplinary record. Mr. Becker received a Dismissal *de minimus* on October 19, 1991, a 120-day Suspension with Terms effective December 1, 2003, and a Dismissal for Exceptional Circumstances effective April 26, 2007. The circumstances of the 1991 Dismissal *de minimus* were not apparent, however a letter included in the Bar's Exhibit to the complainant in the matter indicates that the alleged misconduct was clearly not of sufficient magnitude to warrant disciplinary action and that the respondent had taken reasonable precautions against a recurrence of the same. The 2007 dismissal for exceptional circumstances involved Mr. Becker's failure to cooperate in responding to

the Bar's subpoena duces tecum. Mr. Becker eventually responded although late. For this reason the matter was dismissed for exceptional circumstances. The 2003 120-day suspension with terms, however, involved circumstances similar to those in this case. In summary, the case involved neglect relating to five separate complainants.

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

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

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

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

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

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

The next witness was Sidney Becker, the respondent's older brother. Sidney Becker testified that he has always been close to his brother, Andrew. When asked if he

could provide any insight as to Andrew's apparently inexplicable behavior, Mr. Sidney Becker testified that he thought his brother developed a pattern of denial owing to their father's early death. He considers his brother a very likable and honest person.

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

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

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

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

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

#### **DUTIES OF THE RESPONDENT**

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

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

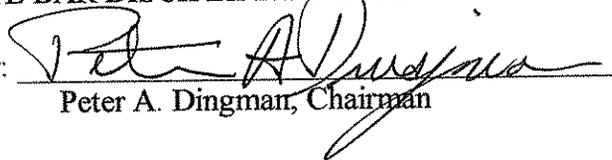
It is finally ordered that the Clerk of the Disciplinary System shall forward a copy of this order, by certified mail, return receipt requested, to the Respondent, Andrew Ira

Becker, at his address of record with the Virginia State Bar, 4164 Virginia Beach Boulevard, Suite 200, Virginia Beach, Virginia 23452, by regular mail to Michael L. Rigsby, Respondent's Counsel, at Carrell, Rice & Rigsby, Forest Plaza II, Suite 309, 7275 Glen Forest Drive, Richmond, Virginia 23226, and hand delivered to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

AMENDED and ENTERED this 18<sup>th</sup> day of JUNE, 2007.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:

  
Peter A. Dingman, Chairman