VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE CITY OF NORFOLK

JUL 2 2012

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE

v. Case No. CL11-7521

JOHN WESLEY BONNEY

VSB Docket Nos. 10-021-084287
11-021-085707

MEMORANDUM ORDER

THIS MATTER came to be heard on March 21, 2012, before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of The Honorable Marjorie T. Arrington, Judge of the First Judicial Circuit, Chief Judge presiding ("Chief Judge"), The Honorable Paul F. Sheridan, Retired Judge of the Seventeenth Judicial Circuit, and The Honorable Ann Hunter Simpson, Retired Judge of the Fifteenth Judicial Circuit (collectively the "Panel"). The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders. Respondent appeared in person and through his counsel, Michael L. Rigsby, Esquire.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against Respondent, John Wesley Bonney, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a Subcommittee of the Second District Committee of the Virginia State Bar.

The Chief Judge 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 Chief Judge, verified they had no such interests.

The Panel accepted the parties' Stipulation of Fact and admitted the parties' pre-filed exhibits without objection.

Following opening statements on behalf of the parties, the Virginia State Bar then presented its evidence, at the conclusion of which Respondent moved to strike the evidence as to the following violations of the Virginia Rules of Professional Conduct charged in VSB Docket No. 10-021-084287: 1.5(a), (b) and (c); 1.6(a) and 3.4(j)[1]. Following the receipt of arguments from the parties and deliberation, the Panel overruled Respondent's motion to strike.

Respondent then presented his evidence, at the conclusion of which the Virginia State Bar presented its rebuttal evidence.

Following the receipt of arguments from the parties and deliberation, the Panel unanimously found by clear and convincing evidence the following material facts:

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

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2. In early 2008, Lisa Capehart ("Mrs. Capehart") and Phillip Capehart ("Mr. Capehart") (collectively the "Capeharts") consulted with Respondent regarding possible claims arising from the alleged faulty performance of renovations to their home. Respondent agreed to pursue claims for damages on behalf of the Capeharts against Big Red & Associates, Inc. ("Big Red") whom the Capeharts had hired to perform the renovations, "and parties related to the matter" for an advance fixed fee of $3,500.00 "to file suit" to be credited against

[1] Respondent withdrew his motion to strike as to Rule 1.5(b).

the 25% that Respondent would be entitled to receive from the proceeds of any judgment or settlement, all as set out in a written fee agreement prepared by Respondent dated February 28, 2008 that specifically limited the scope of the representation to only "the matter set out in this agreement." Mrs. Capehart signed the fee agreement on March 10, 2008. Mr. Capehart never signed the fee agreement.

3. Based on the Capeharts' contact with the Norfolk Redevelopment and Housing Authority in conjunction with the renovation process, Respondent also proposed representing the Capeharts against the NRHA on a contingency basis and prepared a separate written fee agreement dated February 28, 2008 for the Capeharts' consideration providing that Respondent would represent the Capeharts in "Dispute and possible suit or settlement with the NRHA, Norfolk Design Center; If a lawsuit is filed flat fee of $5000, then 33% of verdict, settlement." The fee agreement further provided that the Capeharts would pay Respondent a fixed fee of $5,000.00 "if a lawsuit is needed to be filed ONLY then 33% will be credit back $5000.00." Finally, it stated that Respondent would receive a contingent fee of 33% of any amounts recovered "include before suit is filed" and that Respondent would charge his hourly rates for "only for preparing package; and meeting w/personal representative from the NRHA; only fees for lawsuit actual court costs and expenses."

As the Capeharts were already in the process of attempting to obtain relief from the City of Norfolk, and were not interested in filing suit against the City of Norfolk or NRHA, they declined that representation and did not sign Respondent's proposed contingency fee agreement. Instead, they requested that Respondent only prepare and send a demand letter to the NRHA for which they would pay him his hourly rates. Respondent agreed to the hourly fee arrangement for preparing the demand letter to the NRHA, and informed the Capeharts that preparation of the

demand letter would require only a couple of hours of his time. Respondent also told the Capeharts that he would only bill them for preparing a demand package and meeting with representatives of the NRHA and would not bill them for any additional work.

The Capeharts at no time entered into a contingent fee agreement with Respondent relative to their claims against the City of Norfolk or NRHA.

4. On March 10, 2008, the Capeharts paid Respondent the $3,500.00 advance fee Respondent required "to file suit" against Big Red. Respondent deposited the $3,500.00 advance fee monies into his firm's trust account.

The Capeharts at no time paid Respondent any advance fee money for representation against NRHA.

5. Respondent prepared a demand package, i.e., a draft Complaint against NRHA and Big Red. He engaged in communication with counsel for NRHA and presented a settlement demand on behalf of the Capeharts for $100,000 by letter dated April 14, 2008.

In late April 2008, Respondent sent an invoice to the Capeharts memorializing Respondent's billing the Capeharts over 30 hours over an approximately six-week period and included billings for conducting research, reviewing documents, and participating in telephone conferences with the Capeharts. The total amount billed was $6,082.50. The billing statement further indicated a balance due of over $2,582.50 after Respondent's application of the $3,500.00 advance fee monies the Capeharts had paid for litigation against Big Red. Respondent also prepared a "Corrected Invoice" for the Capehart account reflecting total Fees & Disbursements of $5,510.00 and a Balance Now Due of $2,010.00.

6. Respondent, without the authorization of the Capeharts, disbursed from trust the $3,500.00 advance fee monies the Capeharts had paid as and for the litigation against Big Red,

and applied those monies to the amounts Respondent billed hourly for preparing the demand package to NRHA.

7. Following Respondent's issuance of the invoice in April 2008, Respondent and the Capeharts engaged in additional discussions regarding the scope and terms of the representation. Those discussions culminated in Respondent's preparation of a new fee agreement on July 9, 2008, which provided Respondent would represent the Capeharts in a lawsuit against "only" Big Red and an individual named David Firnstahl ("Firnstahl"), who had allegedly designed the renovations and facilitated the hiring of Big Red. The fee agreement provided for a contingent fee of 33% of any judgment or settlement without any credit for monies the Capeharts had already paid for the representation. Respondent required the Capeharts to execute the new fee agreement and pay him an additional $1,500.00 as a pre-condition to his filing suit against Big Red and Firnstahl. The Capeharts signed the fee agreement on July 23, 2008 and paid Respondent the $1,500.00.

8. In August 2008, Respondent filed suit on behalf of the Capeharts in the Norfolk Circuit Court naming only Big Red and Firnstahl as defendants and requesting judgment in excess of $250,000 (Case No. CL08-5080)("Suit"). In October 2008, a default judgment was entered against Big Red for $46,250.00[2]. The case remained pending against Firnstahl, on whose behalf timely responsive pleadings had been filed.

9. After hiring Respondent, the Capeharts had continued their efforts to obtain relief from the City of Norfolk regarding the problems they had encountered with the renovations to their home. During the summer of 2008, the Capeharts, without the assistance or knowledge of Respondent, negotiated a payment from the City of Norfolk in the amount of $45,000.00, as memorialized in a written release signed by Mrs. Capehart on July 16, 2008 in which the City of

[2] No monies were ever collected from Big Red.

Norfolk, NRHA and its employees, agents, *et al.*, were released from any further liability arising from the matter. The Capeharts did not advise Respondent of their receipt of the $45,000.00.

10. In February 2009, Respondent discovered the Capeharts had received the $45,000.00. Respondent asserted a claim for fees against the $45,000.00, and in an email to the Capeharts dated March 2, 2009, made an "offer in compromise" by demanding the Capeharts pay him $10,000.00 "[i]n order to avoid lengthy litigation." When the Capeharts refused, Respondent filed a motion to withdraw as their counsel in the Suit in which he revealed that the Capeharts had received settlement monies and opined his belief that it "negates the action of the lawsuit." By order entered March 6, 2009, Respondent was allowed to withdraw.

By letter dated June 2, 2009, Respondent filed a motion to dismiss the Suit as to Firnstahl on the asserted basis that the Capeharts had committed a fraud on the court by failing to disclose their receipt of the $45,000.00 from the City of Norfolk. Respondent also requested that "appropriate action be taken against Plaintiffs, including attorney's fees." The case against Firnstahl was nonsuited in February 2010 on the motion of the Capeharts' successor counsel without any ruling on Respondent's motion to dismiss.

11. In April 2009, Respondent filed suit on behalf of his firm in the Norfolk Circuit Court against the Capeharts claiming breach of contract, unjust enrichment and fraud and requesting $50,000.00 in compensatory damages, as well as $150,000.00 in punitive damages. In support of those requests, Respondent alleged, *inter* alia, that: i) the initial representation agreement dated February 28, 2008 was entered into by both of the Capeharts and included claims against NRHA and entitled him to 25% of the $45,000.00 the Capeharts had recovered from the City of Norfolk/NRHA; and ii) the Capeharts had settled their claims against NRHA "behind the back of [Respondent]" and "fraudulently concealed" the settlement from him in

order to avoid paying him his 25% share.

On June 19, 2009, the unjust enrichment and fraud claims were dismissed with prejudice on demurrer.

By letter dated September 16, 2009, the Court sustained the Capeharts' demurrer as to the breach of contract claim upon concluding that: i) the written fee agreements dated February 28, 2008 and July 9, 2008 did not entitle Respondent to a contingent fee against any amounts recovered from the City of Norfolk or NRHA; and ii) the suit therefore did not state a cause of action upon which a legal remedy may be provided.

The suit was dismissed with prejudice. By order dated July 19, 2010, Respondent was sanctioned $2,450.00 based on the court's finding that the suit was filed without a good faith basis in law or fact in violation of the requirements of §8.01-271.1 of the Code of Virginia, 1950, as amended.

12. Respondent did not maintain a subsidiary ledger for the Capeharts.

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13. Oran J. Vertrees ("Vertrees") hired Respondent in January 2010 to represent him in his contested divorce case pending in the Norfolk Circuit Court (*Jodi Luce Vertrees v. Oran J. Vertrees*, Case No. CL10-60). Vertrees signed a Representation Agreement on January 22, 2010, in which he agreed to pay Respondent for the representation at the rate of $250.00 per hour. Although the Representation Agreement called for an advance fee of $1,700.00, Vertrees actually paid Respondent a total advance fee of $5,021.00 as follows: $1,691.00 on January 26, 2010 and $3,330.00 on February 19, 2010. Respondent deposited Vertrees' $5,021.00 advance fee monies into Respondent's trust account.

14. At the commencement of the representation, Respondent told Vertrees that his advance fee of $5,021.00 should be adequate to take the case through trial, and Vertrees asked Respondent to advise him if Respondent's billings were approaching the amount of the

$5,021.00 advance fee.

15. By letter dated September 24, 2010, Respondent provided Vertrees with a billing statement indicating that Respondent had: i) billed Vertrees $7,425.00 for time spent on the representation between January 24, 2010 and September 15, 2010; and ii) applied the entire $5,021.00 advance fee monies toward Vertrees' bill leaving a balance owed of $2,404.00. At the time of the issuance of the billing, the divorce case was in the discovery stage.

16. Respondent disbursed Vertrees' $5,021.00 advance fee monies from trust as follows: $2,691.00 on or about February 24, 2010 and $2,330.00 on or about June 28, 2010.

17. Prior to the billing statement he sent to Vertrees by letter dated September 24, 2010, Respondent did not provide Vertrees with: a) any notice that Respondent's billings had approached or exceeded the amount of the $5,021.00 advance fee; or b) a billing statement or any accounting of the handling of Vertrees' $5,021.00 advance fee monies.

18. Respondent did not maintain a subsidiary ledger for Vertrees.

The Panel unanimously found that the evidence established under the clear and convincing evidentiary standard violations of the following provisions of the Virginia Rules of Professional Conduct on the part of Respondent:

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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.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a

contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

RULE 1.9 Conflict of Interest: Former Client
(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
(1) use information relating to or gained in the course of the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client, or when the information has become generally known; or
(2) reveal information relating to the representation except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client.

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.

(b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c).
Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust

accounts;

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 3.1 Meritorious Claims And Contentions
A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.4 Fairness To Opposing Party And Counsel
A lawyer shall not:
(j) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 8.4 Misconduct
It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another

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RULE 1.15 Safekeeping Property
(c) A lawyer shall:
(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them;

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c).
Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust

accounts;

A majority of the Panel found that the evidence established under the clear and convincing evidentiary standard violations of the following provision of the Virginia Rules of Professional Conduct on the part of Respondent:

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RULE 1.6 Confidentiality of Information
(a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

The Panel unanimously found that the evidence failed to show under the clear and convincing evidentiary standard that Respondent violated the following provisions of the Virginia Rules of Professional Conduct charged in VSB Docket No. 10-021-084287: 1.3(c), 1.5(a) and 3.3(a)(1), and dismissed those charges.

A majority of the Panel found that the evidence failed to show under the clear and convincing evidentiary standard that Respondent violated Rule 8.4(b) of the Virginia Rules of Professional Conduct as charged in VSB Docket No. 10-021-084287 and dismissed that charge.

THEREAFTER, the Virginia State Bar and Respondent presented evidence and argument regarding the sanction to be imposed upon Respondent, and the Panel then retired to deliberate. **AFTER DUE CONSIDERATION** of the evidence, including Respondent's disciplinary record consisting of a Private Reprimand With Terms and a Public Reprimand With Terms, the nature of the ethical misconduct committed by Respondent, and arguments of counsel, the Panel reached the unanimous decision that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of forty-five (45) days with

terms. Therefore, it is hereby **ORDERED** that the license of Respondent, John Wesley Bonney, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of forty-five (45) days, effective March 22, 2012, with terms. The terms with which Respondent must comply are as follows:

1. Respondent is placed on probation for a period of 18 months effective upon the termination of the forty-five (45) day suspension of Respondent's license to practice law in the Commonwealth of Virginia ordered herein. During such probationary period, Respondent will not engage in any professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia that Respondent engaged in professional misconduct during such probationary period shall conclusively be deemed to be a violation of this Term.

2. On or before May 1, 2012, Respondent shall, at his sole cost and expense, retain the services of a law office management consultant ("Consultant") approved by the Office of Bar Counsel to review and make written recommendations concerning the Respondent's law practice policies, methods, systems, procedures and escrow account maintenance and record-keeping to ensure compliance with all provisions of the Virginia Rules of Professional Conduct. The Respondent shall grant the Consultant full access to his law practice office, books, records, and files for the purposes of conducting the review and monitoring of Respondent's compliance with the Consultant's recommendations.

The Office of Bar Counsel shall have full access, through telephone and in-person communication and/or written reports and correspondence, to the Consultant's findings and recommendations and assessment of the Respondent's compliance with said recommendations.

On or before July 1, 2012, Respondent shall ensure the Office of Bar Counsel receives a copy of the written report of the Consultant's findings and recommendations. Respondent shall institute and follow any and all recommendations made to him by the Consultant as soon as reasonably practicable following which the Consultant shall again review Respondent's law practice office, books, records, and files. On or before October 1, 2012, Respondent shall ensure the Office of Bar Counsel receives a copy of the Consultant's written report of Respondent's compliance with each of the Consultant's recommendations.

3. On or before July 1, 2012, Respondent shall issue a refund to Lisa and Phillip Capehart in the amount of $1,500.00.

4. On or before July 1, 2012, Respondent shall issue a refund to Oran James Vertrees in the amount of $3,000.00.

If Respondent fails to comply with any of the terms within the time periods prescribed,

the alternative disposition shall be the suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a period of one (1) year.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the license suspension, and make such arrangements as are required herein within 45 days of this effective date of the license suspension. The Respondent shall furnish proof to the Virginia State Bar within 60 days of the effective date of the license suspension that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Virginia State Bar Disciplinary Board.

Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

It is further **ORDERED** that the Clerk of this Court shall send a copy *teste* of this order to Respondent by regular mail at The Law Office of John W. Bonney, 5416 Tidewater Drive, Norfolk, VA 23509, his address of record with the Virginia State Bar; and send copies *teste* by regular mail to counsel of record and to Barbara Sayers Lanier, Clerk of the Disciplinary System, Virginia State Bar, Eighth and Main Building, Suite 1500, 707 East Main Street, Richmond, Virginia 23219.

These proceedings were recorded by Biggs & Fleet Court Reporters, 125 St. Paul's Blvd., Ste. 309, Norfolk, VA 23510, telephone number (757) 622-2049.

ENTERED this 26th day of June, 2012.

Marjorie T. Arrington
Chief Judge

SEEN:

VIRGINIA STATE BAR

By: _____
M. Brent Saunders, Esquire
Assistant Bar Counsel

see attached page
Michael L. Rigsby, Esquire
Counsel for Respondent

COPY TESTE:
GEORGE E. SCHAEFER, CLERK
NORFOLK CIRCUIT COURT
BY: _____
Janice O'Hern, Deputy Clerk
Authorized to sign on behalf
of George E. Schaefer
Date: 6/28/12

These proceedings were recorded by Biggs & Fleet Court Reporters, 125 St. Paul's Blvd., Ste. 309, Norfolk, VA 23510, telephone number (757) 622-2049.

ENTERED this _____ day of _____, 2012.

_____
Marjorie T. Arrington
Chief Judge

SEEN:

VIRGINIA STATE BAR

By:_____
M. Brent Saunders, Esquire
Assistant Bar Counsel

SEEN and Objected to as to ¶ 3 finding of fact that "The Copeharts at no time entered into a contingent fee agreement with Respondent relative to their claims against the City of Norfolk or NRHA." The finding is not established by clear & convincing evidence and fails to weigh clear evidence of the Copehart's employment of Mr. Barney.

Michael L. Rigsby
_____
Michael L. Rigsby, Esquire
Counsel for Respondent