

**VIRGINIA:**

**BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD**

**IN THE MATTER OF JAMES ANDREW CARTER, II**

**VSb DOCKET NOS. 06-060-2563,  
06-060-3160,  
06-060-3942,  
06-060-4118,  
07-060-1738,  
07-060-064820 and  
08-060-072335.**

**ORDER OF SUSPENSION**

**THIS MATTER** came before the Virginia State Bar Disciplinary Board (“Board”) for hearing on March 26, 2009; upon the Sixth District Committee’s Certifications of Subcommittee Determinations for Certification to the Board which were mailed to the Respondent Andrew James Carter, II (hereinafter “Mr. Carter”) on October 6, 2008 (with respect to VSB Docket Nos. 07-060-1738, 06-060-2563, 06-060-3160, 07-060-064820 and 08-060-072335), November 10, 2008 (with respect to VSB Docket No. 06-060-4118) and December 30, 2008 (with respect to VSB Docket No. 06-060-3942); upon Certified Notices of Hearing issued to Mr. Carter on November 3, 2008 (with respect to VSB Docket Nos. 060-060-2563, 06-060-3160, 06-060-1738, 07-060-064820 and 08-060-072335), December 3, 2008 (with respect to VSB Docket No. 06-060-4118) and January 12, 2009 (with respect to VSB Docket No. 06-060-3942) 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; and Pre-Trial Orders having been issued on November 3, 2008 (with respect to VSB Docket Nos. 06-060-2563, 06-060-3160, 07-060-1738,

07-060-064820 and 08-060-072335), on December 15, 2008 (with respect to VSB Docket No. 06-060-4118) and January 12, 2009 (with respect to VSB Docket No. 06-060-3942).

A hearing was held before the duly convened panel of the Board consisting of Acting Chair William E. Glover, Lay Member Jody D. Katz and lawyer members Carl A. Eason, Sandra L. Havrilak and Martha JP McQuade. The Virginia State Bar ("VSB") was represented at the hearing by Assistant Bar Counsel Marian L. Beckett (hereinafter "Ms. Beckett") and Mr. Carter represented himself. The hearing was recorded and reported by Tracy J. Johnson, 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 which would interfere with or influence his or her determination, and each member responded that there were no such conflicts.

Without objection, Ms. Beckett introduced into evidence the Bar's Exhibits 1 (an Affidavit of Mr. Carter's membership in the Virginia State Bar) and 2 (Stipulations of Facts and Misconduct endorsed by Ms. Beckett and Mr. Carter on February 9, 2009). Mr. Carter joined Ms. Beckett in requesting that the following be accepted by the Board:

**STIPULATIONS OF FACT AND MISCONDUCT:**

1. At all times relevant hereto, the Respondent, James Andrew Carter, II, Esquire, (hereinafter "the Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The representation in all of these matters occurred between February 2005 and the end of October of 2007. During those two (2) years and ten (10) months, the Respondent was addicted to alcohol, developed a daily habit of marijuana use and used cocaine. The Respondent was aware that the possession of marijuana and cocaine were unlawful pursuant to the Code of Virginia, 1950,

as amended. The Respondent also suffered from depression during that time requiring treatment by medication.

**As to VSB Docket Nos. 06-060-2563, 06-060-3160, 06-060-3942, 06-060-4118, 07-060-1738, 07-060-064820 and 08-060-072335:**

3. The Respondent stipulates that his alcohol addiction, substance abuse and depression detrimentally influenced his practice of law during the period of time in the events in question. The Respondent further stipulates that as to all seven (7) Complaints indicated by the docket numbers set forth above, his alcohol addiction, substance abuse and depression led to action and/or inactions which constituted misconduct in violation of the following provisions of the Rules of Professional Conduct:

**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:

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; [or]

**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;

**As to VSB Docket Number 06-060-2563:**

4. The Complainant, Gail Eklind, (hereinafter "the Complainant"), owned a bed and breakfast that was managed by her son and daughter-in-law. At the time that the Complainant hired the Respondent, the Complainant's son and his wife were engaged in divorce proceedings. The Complainant's daughter-in-law had retained furniture from the bed and breakfast after the sale of the business, claiming it was marital property.

5. On February 14, 2005, the Complainant paid the Respondent a flat fee of \$655 for representation in recovering the furniture. Following his receipt of the payment, the Respondent failed to deposit the check in a trust account, even though the fee had not yet been earned.

6. It was the Respondent's intent to file a warrant-in-detinue action on behalf of the Complainant. To that end, he requested a description of the furniture from the Complainant but did not seek information regarding the value of the furniture. The General District Court for the County of York would not accept the filing because it did not declare the property's value and was therefore deficient.

7. At the Respondent's request, the Complainant provided information regarding the value of the items claimed, thus allowing the

Respondent to determine which court would have jurisdiction over the matter, namely the General District Court, Circuit Court or both. Despite the fact that the value claimed was in excess of \$15,000 rendering jurisdiction solely in the Circuit Court, the Respondent filed the case in the General District Court. The Respondent informed the Complainant that she could either leave the case in General District Court by omitting certain of the items claimed thereby reducing the value or, if she wished, he would re-file the warrant in the Circuit Court. The Complainant requested that the matter be filed in the Circuit Court.

8. The Respondent subsequently informed the Complainant that he had filed the warrant in the Circuit Court for York County, and that a court date had been set. The Respondent's representation that he had filed the action in the Circuit Court for York County was false. No warrant-in-detinue was filed by the Respondent in any court on behalf of the Complainant.

9. Following his announcement to the Complainant that he had filed the matter, the Respondent failed to respond to the Complainant's inquiries regarding the hearing date, and failed to provide copies of any pleadings filed on her behalf, despite the Complainant's requests for such information.

10. The Complainant terminated representation by the Respondent and hired new counsel in October of 2005, for which representation the Complainant incurred additional expenses.

11. The Respondent failed to return to the Complainant any portion of the advanced fees paid. The Respondent would testify that he returned the entire flat fee to the Complainant's son. The Complainant's son would testify that the Respondent did not return the funds to him.

12. The bar complaint in this matter was forwarded to the Respondent on February 23, 2006. The cover letter which accompanied the complaint included the following language in bold type as set forth here:

**As part of the 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.**

The language referenced constituted a lawful demand for information from a disciplinary authority requiring a response within the twenty-one (21) day period specified.

13. In addition to the Respondent's stipulation of violations of Rules 1.16(a)(2) and 8.4(b) referenced on page 2 *supra*, the Respondent further stipulates that his actions related to the representation of Gail Eklind and his failure to respond timely to the bar complaint constitute misconduct in violation of the following provisions of the 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.

**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 follow[s:]

(c) A lawyer shall:

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

**RULE 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]

**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[;]

**As to VSB Docket No. 06-060-3160:**

14. The Complainant, Scott Eklind (hereinafter "the Complainant"), and the Respondent were personal friends of long standing. In December of 2004, the Complainant made a personal loan of \$9,400 to the Respondent. Pursuant to a written agreement executed by both parties, the Respondent was to repay the loan in the amount of \$181.73 per month over a period of four years. The Respondent made three payments, the last one occurring in February of 2004, and then defaulted on the loan.

15. Prior to the onset of formal representation, the Respondent wrote a letter to the school attended by the Complainant's daughter in an attempt to resolve certain issues between the school and the Complainant. Despite the Respondent's attempt at resolution, the school charged the Complainant with embezzlement and petit larceny. On February 8, 2005, the Complainant was arrested and released on his own recognizance.

16. On February 12, 2005, the Complainant paid \$10,000 in advanced legal fees for representation against the criminal charges, and for representation in certain civil matters the Complainant contemplated pursuing. The attorney/client relationship was concurrent with the period of the personal loan made by the Complainant to the Respondent in December of 2004, as described above. The Respondent defaulted on his loan payments the month after the representation began.

17. The criminal charges against the Complainant were *nolle prosequied* through the efforts of the Respondent. After the dismissal, the Respondent agreed to represent the Complainant in two additional actions: a suit against the school for malicious prosecution and breach of contract, and a breach of contract action against a cellular telephone corporation. Approximately four weeks later, on April 21, 2005, the Respondent informed the Complainant that he would not continue the representation.

18. Between May of 2005 and December of 2005, the Complainant made several oral requests for the return of his file. He then made written requests via correspondence dated November 21, 2005 and December 27, 2005. When the Complainant received his file on January 6, 2006, the file contained documents and information, including credit card information, relative to four clients other than the Complainant, and unrelated to the Complainant's cases.

19. The bar complaint in this matter was forwarded to the Respondent on April 7, 2006. The cover letter which accompanied the complaint included the following language in bold face type as set forth here:

**As part of the 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.**

The language referenced constitutes a lawful demand for information from a disciplinary authority requiring a response within the twenty-one (21) day period specified.

20. In addition to the Respondent's stipulation of violations of Rules 1.16(a)(2) and 8.4(b) referenced on page 2 *supra*, the Respondent further stipulates that his actions related to the representation of Scott Eklind and his failure to respond timely to the bar complaint constitute misconduct in violation of the following provisions of the Rules of Professional Conduct:

**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).

**RULE 1.7 Conflict of Interest: General Rule.**

- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests.

**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; [or]

**As to VSB Docket No. 06-060-3942:**

21. The Complainant in this matter, Dominik P. Reinmund (hereinafter "the Complainant"), paid an advance fee of \$2,500 on April 22, 2005, for representation in real estate litigation.

22. The Complainant had purchased property intending to tear down the house then existing on the property and build a new one. Prior to the purchase, the Complainant was assured by the real estate agent and a sewage system inspector that the septic system on the property was in working order. Following the sale, the Complainant learned that the septic system did not function, and no permit to repair the system would be issued as the soil on the property was not suitable for a septic system.

23. At the outset of representation, the Respondent informed the Complainant that there were three potential parties against whom suit could be brought: the realtor, the septic inspector and the seller of the property. The Respondent recommended that the suit be brought against the seller only, as suing the real estate agent, the real estate firm or the septic system inspector would extend the time of litigation.

24. The Respondent filed a Complaint against the seller in the Circuit Court for Gloucester County on or about June 28, 2005. Following the lawsuit, however, the Respondent took no further steps to substantially move the case forward.

25. Based on the information included in the Client ledger for this matter, less than nine (9) hours of work were performed during the twelve (12) month period between the onset of the representation on April 22, 2005, and termination of the representation on April 20, 2006. The monthly time allotment for legal activity on the case was as follows:

May 2005	24 minutes
June 2005	4 hours and 57 minutes
July 2005	12 minutes
August 2005	0 time
September 2005	0 time
October 2005	0 time
November 2005	1 hour
December 2005	1 hour and 57 minutes
January 2006	0 time
February 2006	0 time
March 2006	0 time
April 2006	0 time

The Client Ledger indicates that the services performed in June of 2005 primarily related to preparation of the Complaint, the same month the Complaint was filed.

26. Prior to or during December of 2005, the Complainant informed the Respondent that he would be relocating to the Midwest during the spring or summer of 2006, necessitating the prosecution of the case in a timely fashion. Despite the Respondent's knowledge of the

Complainant's plans for relocation, no legal services were performed between January and the end of April of 2006.

27. Prior to January of 2006, the Respondent returned telephone calls and responded to requests for information within three (3) days of contact by the Complainant. Beginning in January of 2006, the Respondent failed to respond to the Complainant's communications. Despite repeated efforts, the Complainant was not able to speak to the Respondent from January of 2006 until the end of April of 2006. Based on the information included in the Client Ledger for this matter, no telephone communication was conducted between the Complainant and Respondent after December 19, 2005.

28. By letter dated April 20, 2006, the Complainant terminated the representation, and subsequently hired successor counsel and incurred additional legal fees. The Complainant moved to Indiana in August of 2006, requiring continuation of the litigation from a location hundreds of miles distant.

29. In addition to the Respondent's stipulation of violations of Rules 1.16(a)(2) and 8.4(b) referenced on page 2 *supra*, the Respondent further stipulates that his actions related to the representation of Dominik Reinmund constitute 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.

**As to VSB Docket No. 06-060-4118:**

30. The Complainant, Holly L. Zeese (hereinafter "the Complainant"), sustained considerable damage to her home as a result of Hurricane Isabel. She was of the opinion that the contractor had performed substandard work and hired an attorney to file suit against the contractor. After six months of inactivity on her case, the Complainant discharged the initial attorney.

31. On April 25, 2005, the Complainant hired the law firm of Thomas Hunter and Associates as successor counsel and paid an advanced fee of \$2,500. The Complainant provided information and photographs regarding the damage to her home, as well as information regarding the status of the repairs that had previously been performed, were continuing to be performed, and still needed to be performed.

32. The Respondent timely filed suit against the initial contractor on or before July 1, 2005. The Complainant was charged for 4.2 hours of work through the filing of the law action, but following the filing of the Complaint, little action was taken on the case.

33. Based on the information included in the Client Ledger for this matter, less than six and a half (6 ½) hours of legal services were provided during the two and a half year period of representation. Of the 6 ½ hours of total work performed on the case, 4.2 hours of work were performed during the first five (5) weeks of representation, in preparation for filing and the filing of the Complaint. The remaining two (2) hours of legal service were provided over the next 28 months, between June 30, 2005 and October 27, 2007.

34. In correspondence to the bar, the Complainant alleged lack of communication on the part of the Respondent, particularly a failure to return telephone calls. Communications with the Complainant, which were included in the 6 ½ total hours of work performed, included an “impromptu meeting” between the Complainant and the Respondent on July 11, 2005, a meeting on February 23, 2006 at which the Complainant provided additional information regarding her case and telephone contacts with the Complainant on June 15, 2006 by the Respondent and on October 2<sup>nd</sup> and 3<sup>rd</sup> by a staff member on behalf of the Respondent.

35. The Client Ledger indicates that no substantive work was performed on the case and no communication with the Complainant occurred for the seven month period between July 11, 2005 and February 23, 2006. No work was performed and no communication with the Complainant took place in the twelve months between October 2006 and October of 2007.

36. The Complainant filed her bar complaint on June 16, 2006, at which time the Respondent was still counsel of record. Despite the receipt of the bar complaint, the Respondent failed to prosecute the case during the ensuing sixteen (16) months, at which time the representation ended. The Respondent admits that he neither moved forward nor withdrew from the case between June of 2006 and October of 2007.

37. By letter dated October 30, 2007, the Respondent sent the Complainant a Motion to Withdraw as Counsel and an Order Granting Leave to Withdraw as Counsel. The responsibility for the entry of the Order was placed squarely on the shoulders of the Complainant, as indicated by the following language:

Please find enclosed a Motion to Withdraw as Counsel and an Order to Withdraw in reference to the above-captioned matter. Please endorse the Order and forward it

to the Court for entry in the enclosed self-addressed stamped envelope. Please request the clerk to provide certified copies of the Order upon entry to all counsel.

38. Prior to the formal opening of this case, the Virginia State Bar intake department provided the Respondent with the opportunity to resolve the matter. On June 20, 2006, Deputy Intake Counsel Jane Fletcher sent a letter to the Respondent enclosing the bar complaint and containing the following language:

... In an effort to resolve the situation that led to this inquiry and thereby try to avoid our office initiating a preliminary investigation into this matter, **you must communicate with Ms. Zeese as to the status of her case.** Please send this office a copy of any written communication you send to the complainant. If you communicate orally with the complainant, please send us a written summary of your conversation. ... 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 RPC 1.6. Failure to respond in a timely manner to this and other lawful demands for information about the inquiry may result in the imposition of disciplinary sanctions. ... **Your response must be received in this office by June 30, 2006.** ... [Boldface type included in the original document.]

39. The Respondent failed to respond to Intake Counsel Jane Fletcher's letter by the deadline specified, resulting in a follow-up letter being sent on June 30, 2006 giving the Respondent an additional five (5) days to inform the Intake Department of any action he had taken.

40. The Respondent again failed to communicate with the Intake Department within the five (5) days required, and a third letter was forwarded to the Respondent on July 10, 2006, informing the Respondent that due to his lack of response the case was being formally opened.

41. In addition to the Respondent's stipulation of violations of Rules 1.16(a)(2) and 8.4(b) referenced on page 2 *supra*, the Respondent further stipulates that his actions related to the representation of Holly Zeese and his failure to respond timely to VSB Intake Counsel constitute 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 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 admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; [or]

**As to VSB Docket Nos. 07-060-1738 and 07-060-064820:**

42. As the two instant matters are intertwined, the cases are presented together.

43. Complainant W. Mike Robinson (hereinafter "Robinson") had been a personal friend of the Respondent for some time prior to the onset of the attorney/client relationship. Complainant Kevin A. Coleman (hereinafter "Coleman") had not had any interaction with the Respondent until the transaction which led to the complaint. Robinson and Coleman had a business relationship.

44. Robinson owned and operated a business called D and D Home Loans, which was a sub-prime lender for homeowners in default on mortgage payments or facing foreclosure. Robinson would bring together a lender and a borrow in transactions to advance funds to cure mortgage payment arrearages and/or forestall foreclosure.

45. Robinson created the transactions between the borrowers and the lenders such that in return for receiving financing from the lender, the borrow executed a Deed of Gift, forfeiting the property as a gift to the lender if the loan was not repaid according to the terms agreed upon.

46. In the loan agreement at issue, Robinson arranged for Coleman to be the lender for Matthew and Christine Perry, a husband and wife who were \$46,000 in arrears on mortgage payments. They had not made their October of 2004 mortgage payment, but agreed to pay the

mortgage company \$16,000 on or before October 16, 2004, in order to prevent acceleration of their loan. Coleman loaned the Perrys the \$16,000 with a Deed of Gift as collateral for the loan.

47. In violation of their agreement, the Perrys failed to make any payments to Coleman for a period of approximately ten (10) months, so Coleman sought to have the Deed of Gift recorded in order to take possession of the Perry's home. The Clerk of the Court would not accept the Deed of Gift for recordation because the Deed was executed in blue rather than black ink. Since the Deed could not be recorded, Coleman wished to auction the home to recoup the \$16,000 lent to the Perrys, plus additional fees owed pursuant to their agreement.

48. The Perrys hired attorney Taylor Williams to file an action against Robinson and Coleman to prevent the home from going to auction. The Respondent was hired by Robinson and Coleman to defend them against the Perry's suit.

49. At some point during the representation of Robinson and Coleman, the Respondent prepared a Deed of Trust for the Perrys' property. A notation at the top of the Deed of Trust read "Prepared by/Return to: James A. Carter, II." The Deed was forwarded to Mr. Williams for execution by the Perrys, which was accomplished. On July 13, 2006, Mr. Williams returned the original Deed of Trust to the Respondent per the notation on the Deed. Both Mr. Williams and Coleman understood that the Respondent would have the Deed of Trust recorded. The Respondent failed to do so, however.

50. The Respondent initially told Coleman that the Deed of Trust had been filed. He then informed Coleman that the deed needed to be and had been re-filed. The Respondent later recanted, stating that he had not filed the deed, but rather that he had given "the paperwork" to Mr. Williams, and that recordation had been Mr. Williams' responsibility. The Respondent further changed his recollection of the events during an interview with a Virginia State Bar investigator. At that time, the Respondent denied ever receiving Mr. Williams' July 13, 2006 letter with the Deed of Trust enclosed.

51. Robinson's bar complaint alleges that the Respondent failed to return client telephone calls for the sixty (60) day period prior to the filing of the complaint. The last telephone call listed on the Respondent's invoice for representation of Robinson regarding the Perry case occurred on or about October 13, 2005, approximately fourteen (14) months prior to the filing of the Bar complaint.

52. The litigation against the Perrys was settled on or about August 10, 2006. The Respondent would testify that he notified Coleman of the settlement on October 30, 2006, via email to the address

troy@drfg.com. Coleman would testify that he was not notified of the settlement, and that troy@drfg.com was neither his email address nor an email address with which he was familiar.

53. The Robinson bar complaint was forwarded to the Respondent on December 13, 2006, with the response due on or before January 4, 2007. The cover letter which accompanied the Complaint included the following language in bold face type as set forth here:

here: **As part of the 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.**

The language referenced constitutes a lawful demand for information from a disciplinary authority requiring a response within the twenty-one (21) day period specified.

54. The Respondent failed to submit a response with the twenty-one (21) day period specified, requiring the matter to be sent to investigation. Only after the Respondent received the letter informing him that the case was being sent for further investigation did he respond to the complaint.

55. Relative to the Coleman complaint, a subpoena *duces tecum* was issued by the bar to the Respondent on August 3, 2007, and was accepted at the Respondent's address of record on August 6, 2007. The return date for the response to the subpoena was August 24, 2007. The Respondent failed to comply by the return date and did not present any response until after the bar filed a Notice of Noncompliance and Motion for Interim Suspension. The response to the subpoena *duces tecum* was received by the bar on September 18, 2007.

56. Pursuant to the investigation of these matters, it came to the bar's attention that during the Respondent's representation of Complainant Robinson in unrelated litigation, a reporter from Ronald Graham and Associates court reporting agency provided services for a deposition taken by the Respondent. The reporting services resulted in a bill in the amount of approximately \$1,600 charged to the Respondent. Although the court reporting service sent numerous invoices to the Respondent, no payment was made. Eventually Mr. Graham filed a warrant in debt in the Virginia Beach General District Court against the Respondent, Robinson's company D and D Loans, and another lender procured by Robinson for a transaction similar to the Perry transaction. The Respondent was personally served with the warrant in debt in January 5, 2007. Complainant Robinson would testify that the Respondent informed him that he need not attend the hearing, as the Respondent would appear and resolve the matter. On the return date, February 23, 2007, the Respondent

failed to appear. However, Robinson did appear and paid Mr. Graham the outstanding balance due, resulting in dismissal of the case.

57. In addition to the Respondent's stipulation of violations of Rules 1.16(a)(2) and 8.4(b) referenced on page 2 *supra*, the Respondent further stipulates that his actions related to the representation of Kevin Coleman and W. Mike Robinson and his failure to respond timely to the bar complaint and the subpoena *duces tecum* constitute 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.
- (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 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]

**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[;]

**As to Ronald Graham of Ronald Graham and Associates court reporting service:**

**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 4.4 Respect For Rights Of Third Persons**

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

**As to VSB Docket No. 08-060-072335:**

58. The Complainant, William Victor Maloy (hereinafter “the Complainant”), was the President of Colonial Greyhound Adoption of Williamsburg, Virginia. The Respondent served as the Registered Agent for the corporation. One of the Respondent’s duties as Registered Agent was to provide all required information on a yearly basis to the Virginia State Corporation Commission and to ensure that Colonial Greyhound Adoption’s active corporate status was maintained.

59. The State Corporation Commission forwarded its annual request for information regarding Colonial Greyhound Adoption the Respondent, along with the documents to be completed and returned to the Commission. The Respondent provided only a portion of the information requested.

60. In October of 2006, the State Corporation Commission advised the Respondent that the corporation’s annual report had been rejected due to the lack of complete information. The Respondent failed thereafter to file a complete report in response to the notification by the Commission that additional information was required.

61. Six months later, with the Respondent still having failed to correct Colonial Greyhound Adoption’s annual report, the State Corporation Commission sent the Respondent a letter dated April 9, 2007, which stated in part as follows:

According to the Commission’s records, the above-named corporation failed to file its annual report before April 2, 2007, and, consequently, the corporation’s existence was automatically terminated as of that date. ...Among other things, this termination means that the corporation can no longer lawfully conduct business and its directors are required to liquidate its business and affairs. As there may be other consequences resulting from the termination, it is suggested that the corporation, its officers and directors seek the advice of counsel.

62. The State Corporation Commission did not send a copy of the referenced April 9<sup>th</sup> letter to the Complainant, nor did the Respondent forward a copy to the Complainant or otherwise inform him of the termination of the business. The Complainant was completely unaware that his corporation had ceased to exist. The Respondent failed to inform

the Complainant of the corporate status of Colonial Greyhound Adoption until June 26, 2007, some eight (8) weeks after the Respondent learned of the termination.

63. The Complainant immediately terminated the Respondent as Registered Agent, took steps to determine the actions necessary to cure the defects in the annual report, provided the requested information to the State Corporation Commission, and reinstated Colonial Greyhound Adoption solely through his own efforts.

64. In addition to the Respondent's stipulation of violations of Rules 1.16(a)(2) and 8.4(b) referenced on page 2 *supra*, the Respondent further stipulates that his actions related to the representation of William Maloy constitute misconduct in violation of the following provisions of the 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.
- (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.

The Board then adjourned to deliberate as to whether such Stipulations of Fact and Misconduct should be accepted. When the Board reconvened, the Chair inquired of Mr. Carter whether he challenged that, as drafted, the Stipulations of Fact were sufficient to establish each alleged act of misconduct. Mr. Carter confirmed that he did not so

challenge but accepted that all elements of each alleged act of misconduct were established by the agreed upon facts. The Chair then announced the Board's decision to accept the Stipulations in total.

Ms. Beckett then presented an opening and also introduced into evidence, without objection, the Bar's Exhibit 4, Mr. Carter's prior record, which consisted of a 2004 Admonition Without Terms. The Bar did not present any witnesses or further evidence.

Mr. Carter called the following witnesses: Michael Powell, whose first contact with Mr. Carter was in April 2007; Scott Eklind, one of the Complainants who has known Mr. Carter since high school; Irving ("Chip") Goldstein, who has known Mr. Carter for approximately two years; and Thomas Hunter, Mr. Carter's employer, both currently and during the time period of the stipulated violations of the Rules of Professional Conduct. Mr. Carter also testified, describing his "life long struggle" with addiction issues and his attempts to control same.

Mr. Carter is thirty-eight (38) years old and admitted that, at all times which are the subject of the **Stipulations of Fact and Misconduct** set forth above, he knew right from wrong. His addiction issues came to light when he was arrested in 2004 for, and subsequently convicted of, driving while under the influence. Mr. Hunter represented him in that charge. As a result of that conviction, Mr. Carter was ordered to attend the Alcohol Safety Action Program and Alcoholics Anonymous meetings. Mr. Carter testified that he has not had a drink since April 3, 2005, after the disposition of the DUI charge. He admitted, however, that he has used both marijuana and cocaine since.

After Mr. Hunter discovered the cocaine use in 2006, Mr. Carter participated in the Lawyers Helping Lawyers program. He stopped after Mr. Hunter moved him from the Williamsburg office to the Hampton Roads office to allow more direct supervision, because it was difficult to get to meetings with his mentor. He never requested a mentor at his new location. He had also been seeing a counselor but stopped going to appointments because of the cost involved. His medications for depression are currently being prescribed and monitored by his family physician. He had been attending Alcoholics Anonymous meetings but no longer does so. He testified that he still has an AA mentor but has not seen that person since prior to the fall of 2004.

Mr. Carter compared controlling his addiction problems to tuning a piano; he only has to seek treatment when he needs it. He also testified that he is staying sober “on my own.” He credited his many friends and supporters and Mr. Hunter, who has worked extensively with him on his organizational skills as well as his addiction problems and with whom he has a contract which requires him to report any use of alcohol or drugs on his part. When asked directly, however, Mr. Carter admitted that he had used marijuana as recently as in the fall of 2008 and that he did not report that use to any physician, counselor, mentor or Mr. Hunter. He also testified that he has no specific plan for addressing his addiction problems.

While recognizing that “this is not just about me - it’s about the public’s faith in the system,” Mr. Carter said he had done “a lot of good” in his years as an attorney that

the Board had not heard about and would “cherish” the ability to continue practicing law. He asked for leniency from the Board.

In closing, Ms. Beckett asked the Board to impose either a five year suspension or revocation of Mr. Carter’s license to practice law. Mr. Carter asked for a suspension of less than one year with terms and indicated that he was willing to comply with periodic testing, counseling or whatever else the Board might require. 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. Carter’s Virginia license to practice law be suspended for a period of five years, effective March 26, 2009. Accordingly, and in conformance with the Board’s Summary Order in this matter, it is ORDERED that:

Mr. Carter’s Virginia license to practice law be, and hereby is, suspended for five (5) years, effective March 26, 2009.

Mr. Carter must 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 shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of each client. The Respondent shall also 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. Carter 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. Carter 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. Carter; and

The Clerk of the Disciplinary System shall mail an attested copy of this Order to Mr. Carter, by certified mail, at his address of record with the Virginia State Bar, that being: Andrew James Carter, II, The Law Firm of Thomas Hunter & Associates, 910 West Mercury Blvd., Suite 2A, Hampton, VA 23666 and shall also mail a copy to Ms. Beckett at the following address: Marian L. Beckett, Assistant Bar Counsel, Virginia State Bar, 100 N. Pitt St., Suite 310, Alexandria, VA 22314.

ENTERED THIS 28<sup>th</sup> DAY OF April, 2009.

VIRGINIA STATE BAR DISCIPLINARY BOARD



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William E. Glover, Acting Chair