

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
STACY F. GARRETT, III

VSB Docket Nos. 07-032-0022 [Pendleton]
 08-032-074858 [Delozier]
 08-032-075457 [McInnis]
 09-032-080055 [Canaday]

ORDER OF SUSPENSION

This matter came on to be heard on December 11, 2009, before a panel of the Virginia State Bar Disciplinary Board consisting of William Hanes Monroe, Jr., Chair; Paul M. Black; Pleasant S. Brodnax, III; Rev. W. Ray Iscoe, lay member; and Martha J.P. McQuade [the "Board"].

The Virginia State Bar [the "Bar"] was represented by Harry M. Hirsch, Deputy Bar Counsel. Stacey F. Garrett, III [the "Respondent"], appeared in person and represented himself. Valarie L. Schmit May, a registered professional reporter, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

The Chair opened the proceedings and polled the members of the Board as to whether any of them had any personal or financial interest which would impair, or reasonably could be perceived to impair his or her ability to be impartial. Each member of the Board responded in the negative.

The *Pendleton*, *Delozier* and *McInnis* disciplinary matters came before the Board on the District Committee Determination for Certification by the Third District Committee of the Bar. The

Certification was sent to Respondent on September 14, 2009. The *Canaday* disciplinary matter came before the Board on the Subcommittee Determination for Certification by the Third District Subcommittee of the Bar. The *Canaday* Certification was sent to Respondent on October 21, 2009.

At the commencement of the hearing, Bar Exhibits 1, 1A, 1B, 2 through 49, 55, 55A and 56 through 67 were admitted without objection. The Bar moved to admit additional Bar Exhibits 3A and 68, which were received without objection. The Respondent moved to admit Respondent Exhibits 1 through 5, which were received without objection. With the parties consent, the Board first conducted the evidentiary hearing with respect to the alleged misconduct in connection with each of the four disciplinary matters. Following the evidentiary hearing, the Board recessed to consider whether the Bar had presented evidence demonstrating that Respondent committed the charged ethical misconduct. The Board made the following findings of fact on the basis of clear and convincing evidence:

I. EVIDENTIARY HEARING

1. VSb DOCKET NO. 07-032-0022 [PENDLETON]

1A. Findings of Facts:

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 2551 Swanhurst Drive, Midlothian, Virginia 23113-9613. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(C) and 13(A) of the Rules of Virginia Supreme Court.

2. On or about July 1, 2006, Clara Pendleton [Pendleton] filed a complaint with the Bar pertaining to the representation of Joan Carter [Carter] by Respondent regarding the filing of a

clemency petition [representation]. Pendleton paid Respondent to represent Carter, yet no clemency petition was ever filed.

3. According to Carter, Respondent first visited her on February 10, 2005, at the Brunswick Correctional Center. Respondent agreed to represent her to file a clemency petition for a fee of \$3,500.00. There was no written fee agreement.

4. Pendleton paid Respondent the sum of \$2,000.00 by her check number 704, dated April 15, 2005. The check's memo line contained the words, "Joan E. Carter." Pendleton sent the check to Respondent with a letter dated April 14, 2005.

5. Pendleton understood that Respondent had agreed to file the clemency petition by October 2005, during the administration of Virginia Governor Warner.

6. Respondent disbursed from his trust account to his operating account check number 710, dated August 19, 2005, in the amount of \$500.00.

7. By letter dated August 24, 2005, to Respondent, Pendleton informed Respondent that a Jim Cho from Families Against Mandatory Minimums [FAMM] was willing to help with the clemency petition. In the letter, Pendleton also noted that October was "almost here."

8. On or about September 1, 2005, Carter met again with Respondent. Respondent indicated he needed the balance of \$1,500.00 to be paid. He also gave Carter a black binder of information and documentation, which had been prepared for her petition, including materials which Carter had previously provided to Respondent.

9. Respondent disbursed from his trust account to his operating account check number 711, dated September 2, 2005, in the amount of \$500.00.

10. On September 2, 2005, Respondent also disbursed to Laura Rinier a check from his trust account, number 712, in the amount of \$250.00. According to Respondent, Rinier was a paralegal that did some work on the clemency petition.

11. On or about October 14, 2005, Margaret Coakley [Coakley] wrote a check, number 1234, payable to Respondent, in the amount of \$1,500.00 for the remaining attorney's fees due for the representation. This payment was reflected in

Respondent's Carter subsidiary ledger as having been received on October 17, 2005.

12. During the Bar investigation, Respondent told Investigator Cam Moffatt [Moffatt] that at some point in the representation, Respondent advised Carter that because of her history of four counts of cocaine distribution, it would be best to file the petition during the Warner administration since Mr. Kilgore was running against Mr. Kaine. However, when Mr. Kaine won the election, Respondent advised Carter to wait until Mr. Kaine was in office in order to file the petition.

13. According to Carter, she met again with Respondent on or about October 25, 2005. About this point in time, publicity had come out that Carter had filed a sexual harassment complaint involving an employee at the Pocahontas Correctional Center. Respondent advised Carter to wait until the defendant in the case had been tried before filing her petition for clemency. According to Carter, she agreed to do so by relying on Respondent's judgment because he was an attorney.

14. On November 4, 2005, Respondent disbursed to his operating account check number 722, in the amount of \$2,300.00, which according to Respondent's subsidiary ledger includes the amount of \$250.00 for Carter's representation.

15. Respondent's subsidiary ledger for the representation indicates a final balance of \$2,000.00.

16. Pendleton wrote a letter to Respondent dated January 9, 2006, in which she stated, *inter alia*, that Respondent had decided not to file the clemency petition with Governor Warner without the permission of Carter (or herself).

17. Respondent wrote a letter to Coakley dated February 16, 2006, explaining, *inter alia*, why the petition had not yet been filed. The letter shows a copy going to Carter.

18. According to Carter, she last met with Respondent on or about March 1, 2006. At that meeting, Respondent apologized for not having filed the clemency petition, related that his wife was ill and told Carter he would file the clemency petition. Respondent's memo to file of the visit indicates, *inter alia*, that Respondent told Carter he would send her a copy of the petition when it was filed.

19. On or about July 1, 2006, Carter wrote a letter to "BBCL", which is the law firm of Boone, Beale, Cosby & Long where Respondent was an attorney at a point in time. In the letter, Carter asked that Pendleton and Coakley be refunded the monies they had paid for her representation since the clemency petition had not been filed.

20. Upon receipt of the Bar complaint filed by Pendleton, the Bar sent Respondent a letter dated July 12, 2006, demanding a response to the complaint within 21 days. The letter stated, *inter alia*, that pursuant to Rule 8.1(c), Respondent had a duty to comply with the Bar's lawful demands for information not protected from disclosure by Rule 1.6. Respondent did not respond to the letter.¹

21. By letter dated August 15, 2006, the Bar informed Respondent that Pendleton's complaint was being referred to the Third District Committee for investigation. The letter stated, *inter alia*, that pursuant to Rule 8.1(c), Respondent had a duty to comply with the lawful demands of the Bar for information not protected by Rule 1.6; and an investigator's demands for information constituted lawful demands under Rule 8.1(c).

22. During the Bar investigation, a subpoena *duces tecum* was issued and served on Respondent on September 13, 2006. The subpoena *duces tecum* required the production of Respondent's files and trust account records pertaining to his representation of Carter regarding the clemency petition. Production was required on or before October 6, 2006. Attached to the subpoena *duces tecum* was an August 28, 2006 letter addressed to Investigator Moffatt from Carter authorizing Respondent to surrender Carter's file and trust account records to the Bar.

23. Due to Respondent's failure to honor the subpoena *duces tecum*, on January 5, 2007, the Bar served upon Respondent and filed with the Clerk of the Disciplinary System, a Notice of Noncompliance and Request for Interim Suspension. An interim suspension of Respondent's license to practice law in the Commonwealth of Virginia was imposed by the Bar's Disciplinary Board effective January 22, 2007, until full compliance was made.

24. On January 25, 2007, Respondent brought to the Bar a package which was represented to be everything in response to

¹ Rule 8.1(c) and Rule 1.6 stated throughout the Findings of Facts in each of the cases refer to the Virginia Rules of Professional Conduct.

the subpoena *duces tecum* including his file and financial records except for one cancelled check which he would forward when he found it. Based upon that representation, counsel for the Bar informed the Clerk of the Disciplinary System that it appeared Respondent had fully complied and the interim suspension was lifted effective January 25, 2007.

25. By letter dated February 5, 2007, to Craig Cooley, Esq., Investigator Moffatt stated that Respondent had not provided trust account information pertaining to the representation. She asked that Respondent bring to a scheduled February 13, 2007, meeting a copy of his bank records showing the deposit and disbursement of funds related to the representation. The meeting was rescheduled at Respondent's request to February 19, 2007. Respondent did not bring bank statements to the meeting. Ms. Moffatt asked Respondent to provide them, and he agreed to do so in a week. Respondent never provided the requested bank statements.

26. During the Bar investigation, Investigator Moffatt attempted to reach Respondent on several occasions. From November 29, 2006, until December 18, 2006, Investigator Moffatt called Respondent by leaving him two messages on his voicemail and two messages with a receptionist. None of these calls were returned by Respondent.

27. During her interview of Respondent on February 19, 2007, Investigator Moffatt asked Respondent why he had not refunded any of the attorney's fees paid to him for the representation. Respondent told her that he not seen Carter's letter addressed to "BBCL". Respondent stated that some refund was probably due, but he had since completed the petition and it was ready to be filed.

28. Respondent never filed the clemency petition and failed to respond to reasonable attempts to communicate with him by both Pendleton and Coakley on behalf of Carter. Despite Carter's requests for a return of the fee after she discharged him, Respondent disregarded Carter's request to refund the fee, or to return any remaining unearned portion of the fee.

29. Respondent failed to respond to the Bar's preliminary investigation initial letter, failed to timely respond to the subpoena for records, failed to respond to the Bar's request for additional records, and failed to respond to the Bar's attempts to communicate with him.

1B. Nature of Misconduct:

The Certification asserts such conduct by Respondent constitutes violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

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.

(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; and
- (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

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

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

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

1C. Disposition:

Upon review of the foregoing findings of fact, the testimony and exhibits presented by the Bar, the testimony of and exhibits presented by the Respondent, argument of counsel for the Bar and argument by Respondent, the Bar withdrew the allegations of

misconduct brought under Rules 1.15(a)(1) and 1.15(a)(2) of the Rules of Professional Conduct as charged in the Certification. The Board then recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence any violation of Rules 1.3(b), 1.15(c)(3) and 1.16(a)(1) of the Rules of Professional Conduct as charged in the Certification.

2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.3(a), 1.4(a), 1.15(c)(4) and 8.1(c) of the Rules of Professional Conduct as charged in the Certification.

2. VSb DOCKET NO. 08-032-074858 [DELOZIER]

2A. Findings of Facts:

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 2551 Swanhurst Drive, Midlothian, Virginia 23113-9613. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and 13(A) of the Rules of Virginia Supreme Court.

2. Complainant William Delozier [Delozier] was referred to Respondent by a Northern Virginia attorney, Joseph Smith [Smith], regarding representation to restore Delozier's driver's license. Delozier initially retained Smith and paid him \$1,500.00. Smith quickly determined that the case needed to be filed in the Circuit Court of the City of Richmond since Delozier no longer resided in Virginia.

3. After getting Delozier's agreement to do so, Smith contacted Respondent, who agreed to the representation for the same fee. By letter to Delozier, copied to Respondent, dated November 30, 2007, Smith confirmed that Respondent agreed to

undertake the representation for the same fee and Delozier agreed to the referral. By copy of the letter, Smith forwarded to Respondent what he had in his file as well as a check for \$1,500.00.

4. After Delozier attempted to call Respondent and left messages in early December, Delozier was finally able to speak with Respondent in or about the middle of December 2007. Respondent told Delozier he had filed a petition with the Capital Area Alcohol Safety Program [Capital ASAP] and asked Delozier to contact him when he received information from Capital ASAP.

5. On December 21, 2007, Respondent filed a cover letter and petition for restoration of driving privileges on behalf of Delozier with the Clerk of the Circuit Court of the City of Richmond, Virginia, and paid filing fees by trust account check in the amount of \$103.00. The cover letter indicated it was copied to Delozier.

6. After receiving information from Capital ASAP, Delozier and his wife tried calling Respondent about eight times from January 4, 2008 to January 30, 2008, leaving cell phone voice mail messages. Respondent did not return the calls.

7. On January 29, 2008, Delozier called Smith and asked him if he knew of any alternate contact information for Respondent. Smith indicated he would try to reach Respondent.

8. By letter dated January 30, 2008 to Respondent, Delozier, *inter alia*, enclosed materials he had previously obtained from Fairfax ASAP and asked Respondent to contact him as soon as possible so "we can proceed with the next step." Respondent did not respond to the letter.

9. On or about March 5, 2008, Delozier did an internet search for contact information regarding Respondent, including the Bar's website.

10. By letter to Respondent dated March 12, 2008, Delozier fired Respondent and asked for a refund of the \$1,500.00 since Respondent had "completed no services on [Delozier's] behalf." Respondent did not respond to the letter.

11. On April 24, 2008, Delozier filed a Bar complaint.

12. Upon receipt of the Bar complaint filed by Delozier, the Bar sent Respondent a letter dated May 7, 2008, demanding a response to the complaint within 21 days. The letter stated, *inter alia*, that pursuant to Rule 8.1(c), Respondent had a duty to comply with the Bar's lawful demands for information not protected from disclosure by Rule 1.6. Respondent did not respond to the letter.

13. By letter dated June 5, 2008, the Bar informed Respondent that Delozier's complaint was being referred to the Third District Committee for investigation. The letter stated, *inter alia*, that pursuant to Rule 8.1(c) Respondent had a duty to comply with the lawful demands of the Bar for information not protected by Rule 1.6; and an investigator's demands for information constituted lawful demands under Rule 8.1(c).

14. On June 5, 2008, the Bar served Respondent with a subpoena *duces tecum* seeking Respondent's file and trust account records pertaining to his representation of Delozier. The production was due on or before June 26, 2008, a Thursday. Respondent filed a response to the subpoena *duces tecum* by cover letter dated July 5, 2008, a Saturday. The Bar received the response on July 9, 2008, a Wednesday, thirteen days late.

15. The materials submitted in response to the subpoena *duces tecum* by Respondent included, *inter alia*, a subsidiary ledger, Smith's November 30, 2007 letter and Delozier's January 30, 2008 letter.

16. On August 6, 2008, the City of Richmond Circuit Court sent a notice of a September 11, 2008, hearing to Delozier, Respondent and the Commonwealth's Attorney.

17. On September 10, 2008, Respondent wrote to Judge Cavedo stating he had a conflict with the hearing date, providing available dates, indicating the Commonwealth had no objection to the restoration of license and had endorsed an attached order.

18. On September 11, 2008, the petition was heard. Neither Respondent nor Delozier appeared.

19. Sometime prior to the hearing date, Delozier had retained Todd Stone, Esq. as new counsel in the matter. Stone did appear at the hearing on September 11, 2008. At that time, he first learned that Respondent was still in the case, that Respondent and the Commonwealth had worked out the case, and the order prepared by Respondent was entered by the court.

20. After the hearing, Stone called Delozier about the outcome of the case. Respondent left Delozier a voice mail message the day after the hearing stating he could go to the Virginia Department of Motor Vehicles and obtain a driver's license.

21. During the Bar investigation, Investigator Moffatt attempted to reach Respondent on several occasions. Investigator Moffatt called Respondent on his cell number and left messages on July 21, 2008, July 23, 2008, and July 28, 2008. On July 29, 2008, Respondent left a message for Investigator Moffatt providing dates and times of his availability for a meeting. On July 30, 2008, Investigator Moffatt left a message for Respondent setting a meeting at the Bar offices on August 5, 2008, at 11:30 a.m. On August 5, 2008, Respondent did not appear for the meeting, and Moffatt called Respondent from the Bar offices at approximately 11:50 a.m. and left a message. When Moffatt returned to her home office, she found a caller ID indication that Respondent had called at 10:50 a.m. without leaving a message. Respondent did not return Moffatt's call made from the Bar offices.

22. On August 6, 2008, Investigator Moffatt called Respondent and left a message asking that he contact her. Respondent did not return the call.

23. On August 8, 2008, Investigator Moffatt wrote a letter to Respondent relating what had occurred on August 5 and 6, and indicating that if she did not hear from him by August 13, 2008, Moffatt would state in her report that Respondent had refused to cooperate with the investigation. Respondent did not respond to the letter.

24. Respondent never did make himself available to Investigator Moffatt for an interview.

2B. Nature of Misconduct:

The Certification asserts that such conduct by Respondent, constitutes violations of the following provisions of the Virginia 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 1.16 Declining Or Terminating Representation

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

- (1) the representation will result in violation of the Rules of Professional Conduct or other law;
- (3) the lawyer is discharged.

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:

- (d) 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

2C. Disposition:

Upon review of the foregoing findings of fact, the testimony and exhibits presented by the Bar, the testimony of and exhibits presented by the Respondent, argument of counsel for the Bar and

argument by Respondent, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence any violation of Rule 1.16(a)(1) of the Rules of Professional Conduct as charged in the Certification.

2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.4(a), 1.16(a)(3), 1.16(d) and 8.1(c) of the Rules of Professional Conduct as charged in the Certification.

3. VSB DOCKET NO. 08-032-075457 [McINNIS]:

3A. Findings of Facts:

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 2551 Swanhurst Drive, Midlothian, Virginia 23113-9613. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and 13(A) of the Rules of Virginia Supreme Court.

2. On or about September 2005, Complainant Lavalley McInnis [McInnis], met Respondent at the firm of Boone, Beale, Cosby & Long [BBCL]. Respondent agreed to represent McInnis in seeking a pardon of a 1995 domestic violence conviction as well as the expungement of a 2005 domestic violence charge in Chesterfield County which was nolle prossed. The agreed total fee was \$5,000.00.

3. On or about September 2, 2005, Respondent was paid \$1,500.00 toward the representation. Respondent's subsidiary ledger for this representation shows the payment was made in cash.

4. A handwritten note in Respondent's file, which appears to have been initialed by Respondent on September 2, 2005, also appears to have been signed by McInnis. The note indicates that \$1,500.00 was a retainer fee and \$350.00 was to be paid every other Friday until paid in full.

5. According to Respondent's subsidiary ledger, a cash payment of \$350.00 was received on September 30, 2005. The ledger also shows that on the same day trust account check number 717 in the amount of \$500.00 was disbursed as a "check to open account"; and on February 21, 2006, a cash payment of \$700.00 was received, bringing the balance of the subsidiary ledger to \$2,050.00.

6. In the Fall of 2006, McInnis visited BBCL to speak to Respondent. McInnis was informed that Respondent no longer worked at the firm, and he was given a cell phone number to reach Respondent.

7. In 2007, McInnis made about 13 calls to Respondent, leaving messages which were not returned.

8. By letter to Respondent dated May 28, 2008, McInnis terminated Respondent's services and asked for a refund of fees paid. In the letter, McInnis stated that he received no communication from Respondent about the matter, and Respondent failed to return McInnis's telephone calls. Respondent did not respond to this letter although it was in his file.

9. On June 12, 2008, the Bar received the complaint filed by McInnis.

10. Upon receipt of the Bar complaint filed by McInnis, the Bar sent Respondent a letter dated June 18, 2008, demanding a response to the complaint within 21 days. The letter stated, *inter alia*, that pursuant to Rule 8.1(c), Respondent had a duty to comply with the Bar's lawful demands for information not protected from disclosure by Rule 1.6. Respondent did not respond to the letter.

11. By letter dated July 16, 2008, the Bar informed Respondent that McInnis's complaint was being referred to the Third District Committee for investigation. The letter stated, *inter alia*, that pursuant to Rule 8.1(c) Respondent had a duty to comply with the lawful demands of the Bar for information not protected by Rule 1.6; and an investigator's demands for information constituted lawful demands under Rule 8.1(c).

12. On July 22, 2008, the Bar served Respondent with a subpoena *duces tecum* seeking Respondent's file and trust account records pertaining to his representation of McInnis. The production was due on or before August 12, 2008.

13. During the Bar investigation, Investigator Moffatt attempted to reach Respondent on several occasions. Investigator Moffatt called Respondent on his cell number and left messages on July 21, 2008, July 23, 2008, and July 28, 2008. On July 29, 2008, Respondent left a message for Investigator Moffatt providing dates and times of his availability for a meeting. On July 30, 2008, Investigator Moffatt left a message for Respondent setting a meeting at the Bar offices on August 5, 2008, at 11:30 a.m.

14. On August 5, 2008, Respondent did not appear for the meeting, and Moffatt called Respondent from the Bar offices at approximately 11:50 a.m. and left a message. When Moffatt returned to her home office, she found that Respondent had called at 10:50 a.m. without leaving a message. Respondent did not return Moffatt's call made from the Bar offices.

15. On August 6, 2008, Investigator Moffatt called Respondent and left a message asking that he contact her. Respondent did not return the call.

16. On August 8, 2008, Investigator Moffatt wrote a letter to Respondent relating what had occurred on August 5 and 6, and indicating that if she did not hear from him by August 13, 2008, Moffatt would state in her report that Respondent had refused to cooperate with the investigation. Respondent did not respond to the letter.

17. Respondent did not respond to the subpoena *duces tecum* on or before August 12, 2008.

18. On September 4, 2008, the Bar sent Respondent a letter noting his failure to respond to the subpoena *duces tecum* and pointing out such a failure could result in an interim suspension and disciplinary sanction under Rule 8.1(c). In the letter, Respondent was given until September 15, 2008, to comply or a notice of noncompliance would be filed with the Disciplinary Board requesting an interim suspension of Respondent's license to practice law in Virginia.

19. On September 10, 2008, Respondent wrote a letter to McInnis stating, *inter alia*, they had agreed that nothing would be filed in the case until McInnis had paid \$3,500.00 toward the attorney's fees. Respondent enclosed with the letter a trust account check, number 835, in the amount of \$2,050.00 as a refund. According to Respondent, this amount was \$500.00 less

than the full amount paid by McInnis, which sum was for the efforts Respondent expended on behalf of McInnis.

20. Respondent filed a response to the subpoena *duces tecum* by cover letter dated September 12, 2008. The Bar received the response on September 15, 2008, thirty-four days after the original return date.

21. Upon reviewing the documents produced by Respondent in answer to the subpoena *duces tecum*, Investigator Moffatt again attempted to set up a meeting with Respondent to discuss the Bar complaint. Moffatt called Respondent on September 15, 2008, but was unable to leave a message in Respondent's voice mail because it was full. Moffatt called on September 17, 2008, and September 22, 2008, leaving in each call a message in which she asked Respondent to contact her. Respondent did not respond to the calls.

22. Respondent never did make himself available to Investigator Moffatt for an interview.

3B. Nature of Misconduct:

The Certification asserts that such conduct by Respondent, constitutes violations of the following provisions of the Virginia 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 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:

- (3) the lawyer is discharged.

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

3C. Disposition:

Upon review of the foregoing findings of fact, the testimony and exhibits presented by the Bar, the testimony of and exhibits presented by the Respondent, argument of counsel for the Bar and argument by Respondent, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.4(a), 1.16(a)(3) and 8.1(c) of the Rules of Professional Conduct as charged in the Certification.

4. VSB DOCKET NO. 09-032-080055 [CANADAY]

4A. Findings of Facts:

1. At all times relevant hereto, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 2551 Swanhurst Drive, Midlothian, Virginia 23113-9613. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and 13(A) of the Rules of Virginia Supreme Court.

2. In 2007, Respondent met Kevin W. Canaday, Sr. [Canaday] at Dillwyn Correctional Center. They agreed that Respondent would prepare and file a petition for executive clemency with the Governor of Virginia for which Respondent would receive an attorney's fee of \$5,000.00.

3. On or about February 14, 2008, Respondent met Canaday and gave him a draft petition for executive clemency.

4. Towana McKinney [McKinney], Canaday's sister, sent Respondent a cashier's check dated March 3, 2008, in the amount of \$5,000.00, payable to Respondent for his representation of Canaday regarding the petition for executive clemency.

5. On information and belief, Respondent deposited the \$5,000.00 check.

6. Sometime after Respondent was paid, Canaday asked McKinney to contact Respondent to determine the status of the petition because Canaday had not heard from Respondent.

7. McKinney left many telephone messages for Respondent to call her about the status of the petition for executive clemency for Canaday. Respondent returned three of those messages.

8. Several months after Respondent had been paid and after McKinney had left many telephone messages for Respondent, he returned her call [Call #1] saying he was getting everything together and Canaday should hold on.

9. Several months after Call #1 and after McKinney had left many more telephone messages for Respondent, he returned her call [Call #2]. McKinney told Respondent Canaday was upset that Respondent had not communicated and wanted to know what was going on. Respondent told McKinney he would visit Canaday. He also said his wife had cancer.

10. Just before Christmas of 2008 and after McKinney had left many additional telephone messages for Respondent, he returned her call [Call #3]. Respondent told McKinney he had sent the petition to the Governor. When asked by McKinney, Respondent told her he could not give her a copy because he had not made a copy of the petition, he had not sent the petition by certified mail and he could not recall the date he had sent it. McKinney never heard from Respondent again.

11. Canaday wrote the Governor asking whether a petition had been filed on his behalf. In response he received a letter dated April 15, 2009, from the office of the Secretary of the Commonwealth stating the procedure for filing a petition for conditional pardon.

12. On or about May 22, 2009, McKinney wrote to the Governor including documentation she received from Canaday, seeking executive clemency for Canaday. On June 5, 2009, in a

letter to Canaday, copied to McKinney, the office of the Secretary of the Commonwealth acknowledged receipt of Canaday's petition for executive clemency.

13. During the investigation of this matter, VSB Investigator Cam Moffatt [Moffatt] contacted the office of the Secretary of the Commonwealth in order to determine whether Respondent had contacted that office on behalf of Canaday regarding a petition for executive clemency. Moffatt learned that there was nothing on file and nothing in the computer system of that office indicating Respondent had contacted the office of the Secretary of the Commonwealth on behalf of Canaday.

14. Canaday filed a Bar complaint against Respondent which was received by the Bar on June 24, 2009. Upon receipt of the Bar complaint, the Bar sent Respondent a letter dated June 29, 2009, demanding a response to the complaint within 21 days. The letter stated, *inter alia*, that pursuant to Rule 8.1(c), Respondent had a duty to comply with the Bar's lawful demands for information not protected from disclosure by Rule 1.6. Respondent did not respond to the letter.

15. By letter dated July 24, 2009, the Bar informed Respondent that Canaday's complaint was being referred to the Third District Committee for investigation. The letter stated, *inter alia*, that pursuant to Rule 8.1(c) Respondent had a duty to comply with the lawful demands of the Bar for information not protected by Rule 1.6; and an investigator's demands for information constituted lawful demands under Rule 8.1(c).

16. On August 3, 2009, the Bar served Respondent with a subpoena *duces tecum* seeking Respondent's file and trust account records pertaining to his representation of Canaday. The production was due on or before August 14, 2009, a Friday.

17. By letter to Respondent dated August 12, 2009, Moffatt asked him to contact her to schedule a meeting.

18. August 14, 2009 was the date of a district committee hearing at the Bar offices involving Respondent in which Moffatt was a witness. At a point during the day, Moffatt asked Respondent whether he had brought a copy of his Canaday file pursuant to the subpoena *duces tecum*. Respondent responded that he had not because his copier was broken. Respondent said he would make a copy of his file and drop it off at the Bar offices on Monday, August 17, 2009. Moffatt asked Respondent whether

they could also schedule a time to meet. Respondent said he would contact Moffatt with dates. Respondent never did so.

19. Respondent never made himself available for an interview with Moffatt in this matter.

4B. Nature Of Misconduct

The Certification asserts that such conduct by Respondent, constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (1) the representation will result in violation of the Rules of Professional Conduct or other law;

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:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law;

4C. Disposition:

Upon review of the foregoing findings of fact, the testimony and exhibits presented by the Bar, the testimony of and exhibits presented by the Respondent, argument of counsel for the Bar and argument by Respondent, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence any violation of Rules 1.16(a)(1) and 8.4(b) of the Rules of Professional Conduct as charged in the Certification.
2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rules 1.3(a), 1.4(a), 8.1(c) and 8.4(c) of the Rules of Professional Conduct as charged in the Certification.

II. SANCTIONS HEARING

Following the hearing on each of the four disciplinary matters, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record. Without limitation, the evidence included substantial testimony offered by the Respondent regarding the diagnosis of Respondent's wife with a terminal illness, necessitating

Respondent's role as her primary caregiver and ending in her subsequent death. All of these matters took place at various times during which the Complainant's allegations of misconduct appeared to have occurred. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as a one-year suspension of Respondent's license to practice law, effective December 11, 2009, with a term requiring Respondent to contact Lawyers Helping Lawyers before December 18, 2009. The Respondent was ordered to initiate a one-year treatment program concurrent with the one-year suspension by entering into a written contract with Lawyers Helping Lawyers, affirming that Respondent will comply with all terms therein. Further, the Respondent was ordered to authorize Lawyers Helping Lawyers to provide the Bar with copies of all reports and progress assessments, including that Respondent is in full compliance with the terms of the contract.

Should the Respondent fail to comply with any term of this order, counsel for the Bar shall issue a rule to show cause requiring Respondent to show cause, if any, why the Board should not impose an alternative sanction of a suspension of five years.

Accordingly, it is ORDERED that the Respondent, Stacey F. Garrett, III, be suspended from the practice of law for a period of one year, with terms, effective December 11, 2009.

It is further ORDERED that, as directed in the Board's December 11, 2009, Summary Order in this matter, Respondent must comply with the requirements of Part Six, § IV, ¶ 13 of the Rules of the Supreme

Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the suspension of Respondent's license to practice law in the Commonwealth of Virginia, to all clients for whom Respondent is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in Respondent's care in conformity with the wishes of Respondent's client. Respondent shall give such notice within 14 days of the effective date of this order, and make such arrangements as are required herein within 45 days of the effective date of the suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of this order that such notices have been timely given and such arrangements made for the disposition of matters.

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

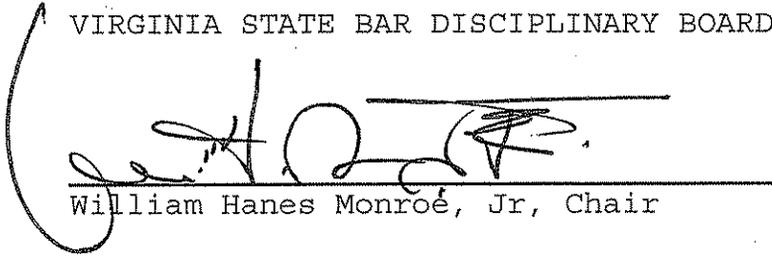
It is further ORDERED that pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System

shall mail an attested copy of this order to Respondent Stacey F. Garrett, III at his address of record with the Virginia State Bar, being 2551 Swanhurst Drive, Midlothian, Virginia 23113-9613, by certified mail, return receipt requested, and by regular mail to Harry M. Hirsch, Deputy Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 11th day of January, 2010.

VIRGINIA STATE BAR DISCIPLINARY BOARD



William Hanes Monroe, Jr, Chair