

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF BRIAN GAY

VSB Docket No. 08-022-073165

ORDER

THIS MATTER came to be heard on January 22, 2010, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of William E. Glover, First Vice Chair presiding, Sandra L. Havrilak, Randall G. Johnson, Jr., Richard J. Colten, and W. Ray Inscoe, Lay Member.

The Respondent was properly served with notice of these proceedings, in accordance with Part Six, §IV, ¶13-18C of the Rules of the Supreme Court of Virginia.

The Respondent, Brian Gay, appeared in person and was represented at all times by Allan D. Zaleski. Paul D. Georgiadis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The proceedings were recorded by Tracy J. Johnson, Chandler & Halasz, Inc., registered professional reporters, whose address is Post Office Box 9349, Richmond, Virginia 23227, and whose phone number is 804/730-1222.

The Chair inquired of the respective Panel members whether any member had any personal or financial interest or bias which would preclude any of them from fairly hearing the matter and serving on the Panel, to which inquiry each member, including the Chair, answered in the negative.

This matter came before the Board by Certification of a Subcommittee of the Second District Committee resulting from a hearing before the Subcommittee on the 13th day of May 2009 and resulting in an Order submitted and properly served upon the Respondent, Brian Gay, by certified mail, return receipt requested, on the 22nd of May 2009.

The Bar's Exhibits 1, 3 (with pages 20 and 24 removed), 4 and 6-56 were all offered and received into evidence without objection and collectively identified as VSB Exhibit 1. Bar Exhibit 2 was admitted over objection as VSB Exhibit 2. The Bar withdrew its Exhibit 5. Respondent's Exhibits A-L were all offered and received into evidence without objection and collectively identified as Respondent's Exhibit 1. The Respondent withdrew Exhibits M and N.

Bar Counsel called the following witnesses to testify: Teresa Doss, Janean Johnston and Virginia State Bar Investigator Oren Michael Powell. The Respondent's counsel called the following witnesses: Kathleen Cipriano, Renee Boone and the Respondent.

The factual basis of the Complaint considered by this Board is a result of a Complaint filed by Teresa Doss with the Virginia State Bar. In order to address the issues raised in the Second

District Subcommittee's Certification, each paragraph set out in the Findings of Fact and the Nature of Misconduct, as reported by the Subcommittee, will be set forth below in the same sequence, followed immediately thereby with this Board's findings and disposition.

The Certification to the Board is as follows:

### **I. FINDING OF FACT**

1. At all times relevant hereto, Brian Gay, hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.

The Panel finds that the Respondent, at all times relevant to this matter, has been an attorney licensed to practice within the Commonwealth of Virginia. Brian Gay has been a member of the Virginia Bar for in excess of seven years.

2. On the afternoon of May 1, 2007, the day prior to her contested divorce hearing on May 2, 2007, Teresa Doss retained Respondent. Ms. Doss had previously been represented by attorney Starr Yoder since April 17, 2006. Ms. Doss retained Respondent only after receiving a letter on April 30, 2007 from Yoder that advised that she was closing her law office and referring Doss's case to Respondent. Ms. Doss received a call from Respondent at work on May 1, 2007 and left work to meet with Respondent.

The Panel finds that this is an accurate representation, and the Respondent did not offer any evidence to suggest otherwise.

3. At the May 1, 2007 afternoon meeting at Respondent's office, Respondent presented Ms. Doss with a contract of representation, *Legal Representation Employment Contract*, hereinafter "Contract," attached hereto as **VSB Exhibit 1A**.

There was a variance in the testimony. Ms. Doss testified, under oath, that she was in a hurry in order to pick up one of her children from day care; essentially did not read the Contract, nor was it explained to her by the Respondent or any other person; that she initialed, where appropriate, with the exception of the so-called "bankruptcy provision," which was inadvertently left uninitialed. She acknowledged that she signed the Contract. The Respondent, on the other hand, testified, under oath, that he reviewed each and every paragraph of the Contract with Ms. Doss, observed that she understood the import of each provision, and that she voluntarily and intentionally chose not to initial the bankruptcy provision. The Respondent offered no evidence as to whether or not he requested her to initial the bankruptcy provision, nor did he give any reasonable explanation for the omission.

The Panel finds that this Finding of Fact is accurate.

4. In the third paragraph of page 2 of the Contract, Respondent included a provision requiring Ms. Doss to pay for fees and costs incurred in the event Respondent is forced to defend the representation:

*"Should my attorney be called upon to collect said fees and expenses or defend his representation of me, including but not limited to any administrative actions, I will pay for the time, fees and expenses involved in such collection or defense."*

The Panel finds that this is an accurate representation. The Respondent acknowledged that VSB Exhibit 1A is, indeed, the Contract proffered to Ms. Doss and contains the cited language.

5. After Ms. Doss filed this instant bar complaint in December, 2007, Respondent charged and continues to bill the charge to Ms. Doss of \$225.00 for his time spent on December 21, 2007 answering the bar complaint, and charged and continues to bill the charge to Ms. Doss of an additional \$112.50 charged on February 6, 2008 for responding to the bar's subpoena *duces tecum* issued in the course of investigating this instant bar complaint.

This Panel finds that this is an accurate representation. The Respondent acknowledged the charges and billing but testified, under oath, in response to questioning by the Panel, regarding various theories for the charges and billing process. While the Respondent acknowledged that Ms. Doss got charged and billed, he suggested that perhaps it was by mistake in that he was not computer literate; and, although he reviewed the billings before they were printed and mailed to Ms. Doss, he was uncertain why the charges appeared. The Respondent also tried to explain that he continued the consistent charging and billing practice because he felt that if he corrected the process he might look responsible for some wrong-doing. The Panel finds that the Respondent intentionally billed and charged Ms. Doss for time spent answering the Bar Complaint, time involved with responding to the Bar's subpoena *duces tecum* in the course of the investigation, and time devoted to attempting to withdraw from the underlying domestic relations case.

6. In the second paragraph of page 3, Respondent included a pre-bankruptcy waiver of Ms. Doss's right to file for bankruptcy relief:

*"Client agrees, in consideration of the terms herein, not to discharge unpaid legal fees in any chapter under the bankruptcy code and acknowledges waiving that right."*

Again, there was no dispute that this language is contained in the Contract, and the Finding of Fact is accurate. Respondent testified, under oath, that the inclusion of a bankruptcy provision is both appropriate and had been approved by the Bar, or its agents, on two separate occasions. The Respondent claimed that a risk management contractor for the Virginia State Bar reviewed the same or similar bankruptcy language in 2005 and approved the provision. The risk management contractor, Ms. Johnston, testified, under oath, that she did not have any recollection of reviewing

and/or approving such language. The Respondent further testified that at an unrelated and earlier District Committee proceeding, relating to a prior charge of misconduct, the District Committee reviewed and approved of the same or substantially similar bankruptcy provision in an agreement. (VSB Docket No. 06-022-2717, date of hearing April 17, 2008). The Panel finds that this assertion by the Respondent was a material misrepresentation. In fact, the same or substantially the same language was contained in a note that the Respondent was attempting to get his then-client to sign and was not contained in a fee agreement. Additionally, the District Committee, in the prior proceeding, reviewed the language and specifically told the Respondent that such language is strongly discouraged; although, for other unrelated reasons, the District Committee was not in a position to find misconduct regarding use of the bankruptcy provision. The Panel concludes that the Respondent misrepresented the facts to mislead the Panel, thus reflecting negatively on his credibility.

7. Respondent failed to review or explain the foregoing clauses to Ms. Doss.

There was a significant variance in the testimony of Ms. Doss and the Respondent regarding this paragraph. Ms. Doss acknowledged being at the Respondent's office for several hours, filling out forms and being interviewed by the Respondent, but asserted that the Respondent never reviewed or explained the Contract or the bankruptcy provision contained therein. The Respondent disputed this and stated that he reviewed the Contract with Ms. Doss, paragraph by paragraph. The Panel finds that the testimony of Ms. Doss is credible, and Respondent did not adequately review or explain the content or import of the various clauses contained in the Contract. However, there was no evidence that Ms. Doss requested or needed a review or explanation, inasmuch as her testimony was that she was "in a rush" to pick up her child and did not attempt to read or understand the Contract until sometime after her office conference with the Respondent.

The Respondent further took the position that, since Ms. Doss intentionally did not initial the bankruptcy paragraph, which she claimed was inadvertent, inclusion of such a paragraph in the Contract is essentially moot. The Panel finds that the inclusion of the bankruptcy provision is not moot, is significant and contrary to public policy. It is noted that the provision may, possibly, be in contravention of Federal bankruptcy law. However, neither Bar Counsel nor the Respondent's counsel presented sufficient argument or citation to Federal bankruptcy law; thus, this Panel makes no finding regarding that issue. The Panel finds that, at the very least, such a provision is unwise, imprudent, misleading, and should be discouraged, in that it is contrary to public policy, which supports the proposition that debtors are entitled, under the law, to a "fresh start" when seeking the protection of bankruptcy.

8. On May 2, 2007, Respondent appeared in Virginia Beach Circuit Court and negotiated the terms of the final decree with the *pro se* spouse for a divorce based upon living separate and apart since April 1, 2005. Under the resulting sketch decree, Ms. Doss was entitled to 43% of her ex-spouse's military pension with an arrearage dating back to July, 1998. The decree reflects that Ms. Doss's spouse had been receiving his pension since July, 1998.

The Panel finds that this is an accurate representation. Neither Ms. Doss nor the Respondent presented any evidence contrary to this assertion.

9. On the same day, May 2, 2007, Respondent submitted a sketch final decree to the court. On May 3, 2007, the court rejected the decree for failure to comply with its procedures. Thereafter, Respondent reviewed the rejection notice, drafted a reply, reviewed the transcript, and drafted corrections through May 29, 2007.

The Panel finds that this Finding of Fact is accurate, and no evidence was presented to the contrary. The Respondent, however, testified that the Clerk's Office in the Virginia Beach Circuit Court would, from time to time, intercept mail directed to the Court or to the law clerks and would additionally misinterpret the proper procedure.

10. As of May 29, 2007, the divorce case would have been completed upon the resubmission of the final decree to the court for entry. From May 30, 2007 until the day of his withdrawal on July 22, 2008, Respondent failed to perform any further work to finalize the decree and complete the divorce and, alternatively, failed to withdraw from the case. Respondent has admitted that he could have completed the remaining work to finalize the decree and complete the divorce in "one billable hour."

The Panel finds that this is an accurate representation of the facts and process. The Respondent, showing no remorse or contrition, took the position that he was not going to complete the process of obtaining a divorce on behalf of Ms. Doss unless and until he was paid in full for his professional services. On May 25, 2007, the Respondent wrote a letter to his client stating, *inter alia*, that

"I anticipate that your final order will be entered shortly. As is often the case in Virginia Beach, what the attorneys and judges want to do does not align with what the law clerks want us to do. I will advise you as soon as possible on entry of an order." (VSB Exh. 21)

A phone report with the date of June 18, 2007, from the Respondent's office reflects

"BG spoke with client re payment and need to make arrangements to pay something each month or I would do nothing on file, advised that payment would be forthcoming; she to contact to make \$ arrangement." (VSB Exh. 23)

The Respondent, on two separate occasions, communicated with his client that he would withdraw from her representation should she not make arrangements for payment of his invoices. On December 21, 2007, the Respondent wrote to Ms. Doss stating,

"Your conduct in failing to abide by the terms of your contract, if you do nothing to correct the matter, may result in financial hardship to you if you sit on your rights regarding your divorce settlement and will delay the entry of a divorce. I suggest that

you consult with an attorney regarding this matter if you fail to become current with this firm.” (VSB Exh. 30)

The testimony revealed that frequent phone conversations took place between Ms. Doss and the Respondent’s secretary throughout the representation regarding the unpaid balance and potential arrangements to satisfy the bill and the client’s desire to get the final decree entered. Ms. Doss testified that she did not have available funds and proposed to pay her obligation from the proceeds she anticipated receiving from her ex-spouse’s military retired pay as a result of the final decree distribution.

This Panel concludes that the Respondent placed his self-interest above and paramount to the interest of Ms. Doss, in that the Respondent was concerned about being paid and, thus, thwarted his client’s getting a divorce until fee payment was made.

11. As of May 31, 2007, Ms. Doss owed Respondent \$1,475.00 after having paid Respondent \$325.00.

The Panel confirms the accuracy of this finding, and it is not contested by either the Respondent or Ms. Doss. Ms. Doss testified that she did not contest the bill but simply didn’t have the funds to pay it at the time, nor would she until awarded her share of the military retired pay. Ms. Doss testified that she intended to pay the amount after receiving the military retirement and, further, that she informed the Respondent’s office of this fact throughout the more than one-year delay.

12. Because Ms. Doss failed to pay Respondent, Respondent refused to finalize the divorce.

The Panel finds that this allegation has been established. The Respondent offered no excuse for the delay or his inaction other than the fact that he had not been paid in full by his client.

13. After the bar forwarded a copy of Ms. Doss’s bar complaint to Respondent on December 19, 2007, Respondent filed a motion to withdraw on December 21, 2007. Respondent also wrote to Ms. Doss on December 21, 2007 to demand that she pay him “in full” or he would withdraw from the case. Therein, Respondent concluded:

*“Your conduct in failing to abide by the terms of your contract, if you do nothing to correct the matter, may result in financial hardship to you if you sit on your rights regarding your divorce settlement and will delay the entry of a divorce ...”* December 21, 2007 letter to Doss attached hereto as **VSB Exhibit 1B**.

The Panel finds that this allegation has been established and was not in controversy. The Respondent did not testify that it may have been imprudent to address his client in such a manner.

14. On December 21, 2007, Respondent charged Ms. Doss \$112.50 and continues to bill Ms. Doss this charge for drafting and filing his motion to withdraw.

The Panel confirms the accuracy of this finding. The Respondent testified, on several occasions, that he was not particularly facile with his office's billing software, but, nevertheless, reviewed all billings prior to their being printed. The Respondent did not testify or acknowledge that billing for withdrawing from representation as a result of not being paid a fee was, in fact, billing for time unrelated to pursuing the interest of the client rather than the attorney's own financial interest.

15. Based upon discussions with Ms. Doss, Respondent withdrew the motion to withdraw on January 23, 2008, but thereafter failed to complete the divorce.

The Panel, again, finds this allegation to be accurate and undisputed by the Respondent.

16. On May 12, 2008, Respondent filed a notice and motion to withdraw from the case, setting the matter for hearing on May 16, 2008. On May 15, 2008, Ms. Doss wrote the court moving to continue the May 16 hearing as the short notice precluded her from being able to take off from work to attend the hearing.

The Panel finds that this is an accurate representation. It should be noted that this is the second motion to withdraw filed by the Respondent.

17. On May 16, 2008, the court granted Ms. Doss's continuance motion. Respondent charged Ms. Doss one hour, \$250.00, for his appearance at Virginia Beach Circuit Court on his own motion to withdraw. Respondent billed Ms. Doss for said amount and continues to bill Ms. Doss for such charge.

The Panel confirms the accuracy of this finding. The Respondent, once again, claimed that he had difficulty with his office's time and billing software, but acknowledged that he reviewed all billings prior to their being printed. His intent is confirmed by his actions and the written Contract, page 2 of 6, third full paragraph, which states

"... should my attorney be called upon to collect said fees and expenses *or defend his representation of me, including but not limited to any administrative actions* (italics added), I will pay for the time, fees and expenses involved in such collection or defense." (VSB Exh. 13)

Consequently, the Panel finds that the Respondent willfully and intentionally charged and pursued billing the client for both his two attempts to withdraw and for his defense in responding to a subpoena *duces tecum* relative to the Bar Complaint filed by Ms. Doss.

18. On June 24, 2008, Respondent wrote to Ms. Doss:

*"You have three choices here: 1) you may pay me and I complete your divorce; 2) you pay me for past services rendered and I withdraw with or without your consent; 3) I withdraw without your consent and send your file to collections. If anyone is telling you that I cannot withdraw without your consent then they are sadly mistaken."*

The Panel finds the allegation to be accurate. (VSB Exh. 50) The Respondent did not dispute that he authored and sent the June 24, 2008, correspondence to Ms. Doss, nor did he offer any testimony as to the intent of his language being other than as stated in the letter. The Respondent took the position that he was not going to complete his representation without being paid; or, in the alternative, he would withdraw with or without the consent of Ms. Doss, after she paid him; or, in the further alternative, that he would withdraw without consent and send the unpaid balance to collection. The Respondent further informed his client that he could withdraw without her consent, but neglected to inform her that he would need leave of court before doing so and there would necessarily have to be a judicial determination that his withdrawal would not prejudice her matter.

19. On or about July 3, 2008, Ms. Doss endorsed the order to withdraw.

20. By letter dated July 18, 2008, Respondent filed the enclosed order of withdrawal with the court. The court entered the order on July 22, 2008.

There is no dispute regarding these findings. The Panel, consequently, finds that from May 2, 2007, until July 22, 2008, a period in excess of 14-1/2 months, the Respondent was counsel of record for Ms. Doss and willfully and intentionally neglected to adequately and properly represent his client's interests. As a result of the Respondent's failure to act on his client's behalf, Ms. Doss was substantially harmed, in that, in order, ultimately, to get her divorce decree entered, she was compelled to further negotiate with her husband and give up the share of her husband's military retirement benefit previously agreed upon between them and that she would have received had the Respondent followed through and secured, on behalf of Ms. Doss, the entry of the divorce decree on the terms theretofore agreed upon between Ms. Doss and her husband.

With regard to all twenty Findings of Fact, the Panel notes, generally, that Ms. Doss presented herself as a credible witness, and, throughout his testimony, the Respondent did not.

## **II. NATURE OF MISCONDUCT**

The Certification alleged that Respondent engaged in the following acts of misconduct, and the Board finds that Bar Counsel proved, by clear and convincing evidence, that the Respondent violated the Virginia Rules of Professional Conduct, as charged and as more specifically set forth below:

**As to withholding services for failure of the client to pay and failing to withdraw:**

**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;

The Panel, by a vote of 4 to 1, finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.16(a)(1).

**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.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

The Panel unanimously finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.3(a), (b), and (c).

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

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

The Panel, by unanimous vote, finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.7(a)(2).

#### **RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

The Panel unanimously finds that the Virginia State Bar did prove, by clear and convincing evidence, that there was a violation of Rule 8.4(a) and (b).

**As to the Contract provision requiring Ms. Doss to pay for charges defending the representation and charging her for answering and handling the Bar Complaint, and for the Contract provision of the pre-bankruptcy waiver of the right to discharge Respondent's charges in bankruptcy:**

#### **RULE 1.5 Fees**

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
  - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
  - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
  - (3) the fee customarily charged in the locality for similar legal services;
  - (4) the amount involved and the results obtained;
  - (5) the time limitations imposed by the client or by the circumstances;
  - (6) the nature and length of the professional relationship with the client;
  - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
  - (8) whether the fee is fixed or contingent.

By unanimous vote, the Panel finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.5.

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

The Panel unanimously finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 8.4.

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

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

The Panel finds, unanimously, that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.7(a)(2).

**As to charging Ms. Doss for filing the motion to withdraw and for the time spent in court on the motion to withdraw:**

**RULE 1.5 Fees**

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
  - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

By unanimous vote, the Panel finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.5.

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

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

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- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

The Panel unanimously finds that the Virginia State Bar did prove, by clear and convincing evidence, a violation of Rule 1.7(a)(2).

After considering the testimony of all witnesses, including the Respondent, and after reviewing all exhibits introduced by the Virginia State Bar and the Respondent, and having considered briefs and pleadings submitted by the Virginia State Bar and the Respondent, and having heard argument, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its findings as set forth above.

The Board then received evidence regarding mitigation and/or aggravation, reviewed the two prior findings of misconduct and heard testimony from Respondent.

The Board again recessed to deliberate what sanction to impose upon its findings of misconduct. Following an equally aggressive prosecution and defense, the Board took into account, incident to its deliberations, the Respondent's lack of credibility, lack of contrition or apology and the fact that the Respondent did not appear to adequately or accurately comprehend the seriousness or gravamen of his behavior and misrepresentation of his client. After due deliberation, the Board reconvened, and the Chair announced the Board's unanimous determination that the license of Brian Gay to practice law in the Commonwealth of Virginia be **SUSPENDED FOR A PERIOD OF 60 DAYS** commencing on January 22, 2010. And, it is hereby

**FURTHER ORDERED** that, as directed in the Board's January 22, 2010, Summary Order in this matter, Respondent must comply with the requirements of Part Six, §IV, ¶13-29 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 his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. Respondent shall give such notice within 14 days of the effective date of the suspension, 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 Virginia State Bar within 60 days of the effective date of the suspension that such notices have been timely given and such arrangements made for the disposition of matters.

**FURTHER ORDERED** that, if the Respondent is not handling any client matters on the effective date of the suspension, he 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 ¶13-29 shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

**FURTHER ORDERED** that, pursuant to Part Six, §IV, ¶13-9E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

**FURTHER ORDERED** that the Clerk of the Disciplinary System shall send an attested copy of this Order by certified mail to the Respondent, Brian Gay, at Gay & Cipriano, P.C., Suite 308, 3500 Virginia Beach Boulevard, Virginia Beach, VA 23452, and by regular mail to Allan D. Zaleski, attorney for Respondent, 112 College Place, P.O. Box 3428, Norfolk, VA 23514, and to Paul D. Georgiadas, Assistant Bar Counsel, Virginia State Bar.

ENTERED this 17<sup>th</sup> day of February, 2010.

VIRGINIA STATE DISCIPLINARY BOARD

By:   
William E. Glover, First Vice Chair