

VIRGINIA:

*Before the Virginia State Bar Disciplinary Board*

*In the Matter of*

*Brian Merrill Miller*

*VSB Docket Nos. 07-053-0803, 07-053-1613, 07-053-2491 and 07-053-2536*

*Attorney at Law*

*On November 20, 2008 came Brian Merrill Miller and presented to the Board an Affidavit Declaring Consent to Revocation of his license to practice law in the courts of this Commonwealth. By tendering his Consent to Revocation at a time when disciplinary charges are pending, he admits that the charges in the attached Certification document are true.*

*The Board having considered the said Affidavit Declaring Consent to Revocation, and Bar Counsel having no objection, the Board accepts his Consent to Revocation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said Brian Merrill Miller be and the same hereby is revoked, and that the name of the said Brian Merrill Miller be stricken from the Roll of Attorneys of this Commonwealth.*

*Enter this Order this 21<sup>st</sup> day of November, 2008*

*For the Virginia State Bar Disciplinary Board*

By *Barbara S. Lanier*  
*Barbara Sayers Lanier, Clerk of the Disciplinary System*

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF BRIAN MERRILL MILLER, ESQUIRE

VSB Docket Nos.: 07-053-0803  
07-053-1613  
07-053-2491  
07-053-2536

AFFIDAVIT DECLARING CONSENT TO REVOCATION

BRIAN MERRILL MILLER, after being duly sworn, states as follows:

1. That he was licensed to practice law in the Commonwealth of Virginia on April 19, 1989;
2. That, pursuant to Part 6, Section IV, Paragraph 13.L. of the *Rules of the Supreme Court of*

*Virginia:*

- a. his consent to revocation is freely and voluntarily rendered, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to a revocation of his license to practice law in the Commonwealth of Virginia;
- b. he is aware that there are proceedings against him involving allegations of misconduct, as referred to in the Subcommittee Determination (Certification) attached to this Affidavit, the contents of which are incorporated herein by reference;
- c. he acknowledges that the material facts upon which the allegations of misconduct, set forth in the Subcommittee Determination (Certification), are predicated are true; and
- d. he submits this Affidavit and consents to the revocation of his license to practice law in the Commonwealth of Virginia because he knows that if the disciplinary proceedings based on the said alleged misconduct were prosecuted to a conclusion, he could not successfully defend them.

Executed and dated this 20 day of November, 2008.

  
BRIAN MERRILL MILLER

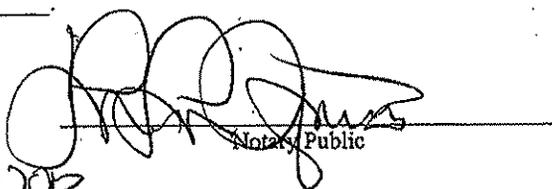
District of Columbia

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF Washington, DC, to wit:

The foregoing instrument was subscribed and sworn before me by Brian Merrill Miller on

November 20, 2008

  
Notary Public

My Commission expires November 14, 2013

LEONDA C. LONG III  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires November 14, 2013

SEEN, WITH NO OBJECTION TO ENTRY OF AN ORDER BY  
THE VIRGINIA STATE BAR DISCIPLINARY BOARD REVOKING  
RESPONDENT'S LICENSE TO PRACTICE LAW IN VIRGINIA:



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SETH M. GUGGENHEIM  
Senior Assistant Bar Counsel

**VIRGINIA:**

**BEFORE THE FIFTH DISTRICT—SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF BRIAN MERRILL MILLER, ESQUIRE**

**VSB Docket Nos.: 07-053-0803  
07-053-1613  
07-053-2491  
07-053-2536**

**SUBCOMMITTEE DETERMINATION  
(CERTIFICATION)**

On January 8, 2008, a meeting in these matters was held before a duly convened subcommittee of the Fifth District—Section III Committee of the Virginia State Bar, consisting of Michelle Renee Robl, Esquire, Mr. Berchard Lee Hatcher, lay member, and Kathleen Latham Farrell, Esquire, presiding. Seth Mark Guggenheim, Esquire, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c. of the Rules of the Virginia Supreme Court, the subcommittee of the Fifth District – Section III Committee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

**I. FINDINGS OF FACT**

1. At all times relevant hereto, Brian Merrill Miller, Esquire (hereafter “Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia, although he is not currently in good standing.

**As to VSB Docket No. 07-053-0803:**

2. On or about September 4, 2003, Ricardo R. Scott and Beryl D. Scott (hereafter “Complainants”) retained the Respondent to enforce a judgment which had been entered in favor

of Mr. Scott by the Fairfax County, Virginia, Circuit Court on the 31<sup>st</sup> day of July, 2003. The Respondent accepted an advanced legal fee of \$500.00 for such purpose.

3. Although the Respondent sent an invoice dated November 30, 2003, to the Complainants for work allegedly performed on their behalf, the Complainants were not furnished with any evidence that such work had been performed. The invoice disclosed that the Complainants had a "New Trust Account Balance" of \$65.00.

4. On or about September 19, 2005, the Complainants wrote to the Respondent, inquiring as to the status of their legal matter, and further indicating that "If we do not hear from you by October 21, 2005, we will assume you are no longer representing us and that you will refund the \$500.00 you determined would be the cost of recovering our judgment." The Complainants' letter was sent via certified mail to the Respondent, and was signed for on September 21, 2005, by an agent of the Respondent.

5. The Complainants received neither a response to their letter nor a refund, in whole or in part, of the sum paid to the Respondent.

6. The Complainants filed a Bar Complaint. On September 27, 2006, Bar Counsel mailed a copy of the Bar Complaint in this matter to the Respondent, with a letter containing the following text:

**This letter constitutes a demand that you submit a written answer to the complaint within twenty-one (21) days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits. [Emphasis in original.]**

The Respondent failed to submit a written answer to the Bar Complaint within the twenty-one (21) day period referred to in the letter, or at any time thereafter.

7. In his report filed with Bar Counsel on December 18, 2007, a Virginia State Bar investigator reported that staff at the Respondent's office advised that the Respondent came in one day, packed up his belongings, left, and had not had any contact with his office since that time.

**As to VSB Docket No. 07-053-1613:**

8. On or about January 18, 2006, Megan Klisiewicz (hereafter Complainant), then known as Megan Kennedy, retained the Respondent to satisfy an indebtedness owed to her by her former husband. The Complainant tendered an advanced legal fee to the Respondent in the sum of \$500.00.

9. The Respondent performed the initial steps required by the representation, but beginning in at least April of 2006 the Respondent ceased responding to the Complainant's inquiries in a timely fashion.

10. In an e-mail sent to the Respondent on September 6, 2006, the Complainant asserted that it had been over six weeks since she and the Respondent had spoken, and that he had yet to provide her with material which she had requested from him related to the legal matter. The Complainant terminated the Respondent's representation in that e-mail, and requested the return to her of "all my paperwork" which included the copy of her divorce decree.

11. The Complainant never heard from the Respondent again, and never received her file materials concerning the legal matter she had entrusted to him. The Complainant learned in early November of 2006 from the staff at the office where the Respondent had been renting space that the Respondent had come to his office one weekend when no one else was present, and had cleared out his office, which presumably included the Complainant's file materials.

12. The Complainant filed a Bar Complaint. On December 6, 2006, Bar Counsel mailed a copy of the Bar Complaint in this matter to the Respondent, with a letter containing the following text:

**This letter constitutes a demand that you submit a written answer to the complaint within twenty-one (21) days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits. [Emphasis in original.]**

The Respondent failed to submit a written answer to the Bar Complaint within the twenty-one (21) day period referred to in the letter, or at any time thereafter.

**As to VSB Docket No. 07-053-2491:**

13. In 2002, Don C. Costello (hereafter "Complainant") retained the Respondent to represent him in domestic relations matters.

14. As an outgrowth of the representation, the Complainant and his wife, through counsel, agreed to a division of the net proceeds of sale of a jointly-owned residence, which proceeds were on deposit with the Clerk of the Fairfax County, Virginia, Circuit Court.

15. Consistent with the agreement regarding the division of proceeds, and by Order of the said Court, the Clerk of Court issued check number 11788, dated March 23, 2005, to the Respondent, in the sum of \$35,797.66. On April 1, 2005, the Respondent negotiated the said check, depositing it to an account at BB&T Bank denominated "Brian Miller & Associates Client Trust Account."

16. At the time he deposited the said check to the "client trust account," the balance therein was \$144.09. Following his deposit, made as aforesaid, the Respondent drew checks against the said account which include the following:

Check Number	Check Date	Payee	Amount of Check
1429	4/1/05	Brian M. Miller	\$ 500.00
1430	4/8/05	Brian M. Miller	500.00
1431	4/12/05	Brian M. Miller	1,500.00
1432	4/15/05	David Ginsberg, Esq.	7,295.00
1433	5/5/05	Brian M. Miller	2,000.00
1434	5/12/05	CDI	48.00
1435	5/13/05	Brian M. Miller	2,000.00
1436	6/15/04 [sic]	Brian M. Miller	1,000.00
1437	7/6/05	Brian M. Miller	1,500.00
1438	7/15/05	Brian M. Miller	1,000.00
1439	8/8/05	Robert Stewart	1,000.00
1440	8/8/05	Brian M. Miller	1,000.00
1441	8/8/05	Sevila, Saunders <i>et al.</i>	175.00
1442	8/15/05	Brian M. Miller	1,000.00
1443	8/17/05	Brian M. Miller	1,000.00
1444	8/22/05	Brian M. Miller	500.00
1445	8/25/05	Clerk	189.00
1446	9/2/05	Brian M. Miller	1,200.00
1447	9/12/05	Brian M. Miller	1,000.00
1448	9/20/05	Brian M. Miller	1,000.00
1449	9/23/05	Clerk of Court	23.00
1450	9/28/05	Sherman & Fromme, PC	750.00
1451	10/10/05	Jerome Hammond	500.00
1452	10/26/05	Clerk	69.00
1453	11/4/05	Clerk	25.00
1454	11/18/05	Clerk of the Court	23.00
1455	12/7/05	Brian M. Miller	2,000.00
1456	12/21/05	Brian M. Miller	2,000.00
1457	12/26/05	Clerk of the Court	23.00

All checks identified above were negotiated by or on behalf of their respective payees. Copies of the Respondent's monthly bank statements for the aforesaid account through the period ending December 30, 2005, confirm that no deposits were made to the account following the deposit of \$35,797.66, referred to above.

17. With the exception of check numbered 1432, dated April 15, 2005, payable to the order of David Ginsberg, Esq., in the sum of \$7,295.00, no other checks drawn by the Respondent and made payable to third parties were for the benefit of the Complainant. In

particular, checks numbered 1428 and 1434 were drawn on behalf of a client with the surname "McGriff," and checks numbered 1439 and 1451 were refunds of legal fees to Respondent's clients other than the Complainant.

18. With the sum of only \$144.09 in the said account at the time the Complainant's share of the real estate sales proceeds were deposited therein on April 1, 2005, and with no other deposits having been made thereafter through at least December 30, 2005, the Respondent thus misappropriated the Complainant's funds by drawing checks in excess of \$144.09 to the order of parties unrelated to the Complainant's legal matter as client refunds and for other purposes. The Respondent also misappropriated the Complainant's funds by drawing a stream of 17 checks made payable to the Respondent's order, as set forth above, in amounts aggregating the sum of \$20,700.00.

19. The Complainant first learned that sums had been disbursed by the Court to the Respondent during the course of the representation following the time he discharged the Respondent and secured his file from the Respondent's office. As of the time that the Complainant filed a complaint with the Virginia State Bar in February of 2007, he had received neither any portion of the real estate sales proceeds nor an accounting as to their disposition from the Respondent, and he had been unable to reach the Respondent by phone and e-mail.

20. The Complainant filed a Bar Complaint. On February 26, 2007, Bar Counsel mailed a copy of the Bar Complaint in this matter to the Respondent, with a letter containing the following text:

**This letter constitutes a demand that you submit a written answer to the complaint within twenty-one (21) days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits. [Emphasis in original.]**

The Respondent failed to submit a written answer to the Bar Complaint within the twenty-one (21) day period referred to in the letter, or at any time thereafter.

21. As of the time that the Complainant filed a complaint with the Virginia State Bar in February of 2007, the Complainant had been informed by the staff of the law firm from which the Respondent was renting space that the Respondent had come in one day, packed up his belongings, and left.

22. In consequence of a report made to a law enforcement agency regarding Respondent's handling of the \$35,797.66 check referred to above, he was located on or about November 25, 2007, in Miami, Florida, by the Transportation Security Administration, and thereafter transported to Fairfax County, Virginia, to answer a criminal charge placed against him.

**As to VSB Docket No. 07-053-2536:**

23. On or about August 24, 2006, Kevin M. Bennecoff (hereafter "Complainant") hired the Respondent to represent him in a Virginia circuit court landlord-tenant matter, wherein the opposing party, as defendant, had appealed a judgment in the Complainant's favor rendered by a general district court. The Complainant paid the Respondent, by credit card, the sum of \$1,000.00 as an advanced fee for the representation, which was to be performed at the hourly rate of \$200.00.

24. The Respondent appeared in the circuit court on or about August 25, 2006, and the matter was continued at both parties' request to a date in February of 2007. Following the initial court appearance, the Respondent failed to return any calls or respond to any e-mails made to him on the Complainant's behalf regarding the return of the Complainant's documents.

25. The Respondent abandoned the Complainant's legal matter, failed to return the Complainant's documents to him, failed to account to the Complainant regarding the disposition of the \$1,000.00 advanced fee, and failed to return any portion of the advanced fee to the Complainant.

26. The Complainant had to hire another attorney to conclude the representation commenced by the Respondent, but he did so without the benefit of the documents previously given to the Respondent, of which the Complainant did not have copies.

27. The Complainant filed a Bar Complaint. On February 28, 2007, Bar Counsel mailed a copy of the Bar Complaint in this matter to the Respondent, with a letter containing the following text:

**This letter constitutes a demand that you submit a written answer to the complaint within twenty-one (21) days of the date of this letter. Send me the original and one copy of your signed answer and any attached exhibits. [Emphasis in original.]**

The Respondent failed to submit a written answer to the Bar Complaint within the twenty-one (21) day period referred to in the letter, or at any time thereafter.

## **II. NATURE OF MISCONDUCT**

Such conduct by Brian Merrill Miller 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.
- (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.

**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**

- (c) A lawyer shall:
- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
  - (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**

- (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).
- (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[.]

#### **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; [and/or]
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyers fitness to practice law[.]

### **III. CERTIFICATION**

Accordingly, it is the decision of the subcommittee to certify the above matters to the Virginia State Bar Disciplinary Board.

FIFTH DISTRICT—SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By



Kathleen Latham Farrell, Esquire,  
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that on this 29<sup>th</sup> day of August, 2008, I mailed by

Certified Mail, Return Receipt Requested, a true and correct copy of the foregoing Subcommittee  
Determination (Certification) to Brian Merrill Miller, Esquire, Respondent, at 10482 Armstrong  
Street, Fairfax, VA 22030, the Respondent's last address of record with the Virginia State Bar.



Seth Mark Guggenheim  
Senior Assistant Bar Counsel