

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

John Lawson Moss

*RE: In the Matter of John Lawson Moss
VSB Docket Nos. 07-102-071016, 07-102-071189, 08-102-071564, 08-102-072295,
08-102-072297, 08-102-072416, 08-102-073045, 08-102-073116, and 08-102-075544*

Attorney at Law

On January 30, 2009, came John Lawson Moss 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 Affidavit Declaring Consent to Revocation 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 John Lawson Moss be and the same hereby is revoked, and that the name of the said John Lawson Moss be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this 2nd day of February, 2009

For the Virginia State Bar Disciplinary Board

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

RECEIVED

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD JAN 30 2009

IN THE MATTER OF
JOHN LAWSON MOSS

VSB CLERK'S OFFICE

VSB DOCKET NOS.: 07-102-071016, 07-102-071189, 08-102-071564, 08-102-072295,
08-102-072297, 08-102-072416, 08-102-073045, 08-102-073116, and
08-102-075544

AFFIDAVIT DECLARING CONSENT TO REVOCATION

John Lawson Moss, after being duly sworn, states as follows:

1. That John Lawson Moss was licensed to practice law in the Commonwealth of Virginia on October 11, 2000;
2. That John Lawson Moss submits this Affidavit Declaring Consent to Revocation pursuant to Rule of Court, Part 6, Section IV, Paragraph 13.L.
3. That John Lawson Moss's consent to revocation is freely and voluntarily rendered, that John Lawson Moss is not being subjected to coercion or duress, and that John Lawson Moss is fully aware of the implications of consenting to the revocation of his license to practice law in the Commonwealth of Virginia;
4. John Lawson Moss is aware that there is currently pending several matters certified to the Disciplinary Board, and scheduled to be heard on February 3 and 4, 2009, each of which involves allegations of misconduct, the docket number(s) for which are set forth above, and the specific nature of which is here set forth:

A. The Hesson Case - VSB Docket No. 08-102-071564

FINDINGS OF FACT

1. On or about October 14, 2005, Ronnie Hesson, Sr., and Bonnie Hesson retained Respondent to defend Ronnie Hesson, Sr., in the matter of *John D. Muncy v. Janis L. Hodock, et. al*, Case No. 01000067-00, a timber dispute, pending in Tazewell County Circuit Court.
2. The Hessons paid Respondent \$3,500.00 for his legal representation of Mr. Hesson.
3. Respondent cashed the Hessons' check for \$3,500.00. Respondent did not deposit the \$3,500.00 paid by the Hessons into a client trust account. Respondent has no trust account records regarding the fee(s) paid by the Hessons.
4. Although Respondent purportedly maintains two client trust accounts with First Community Bank, he rarely uses either trust account to deposit unearned sums from clients.
5. After the Hessons paid Respondent the \$3,500.00 fee, Respondent did not communicate with the Hessons regarding their case. The Hessons repeatedly called Respondent and left him messages. They also visited his office to no avail.
6. On August 28, 2006, the Circuit Court of Tazewell County granted Plaintiff John D. Muncy's Motion for Summary Judgment for a portion of his claim against Mr. Hesson.
7. On November 13, 2006, the Circuit Court of Tazewell County entered judgment against Mr. Hesson in the amount of \$84,080.00, together with interest thereon at the judgment rate from August 28, 2006.
8. Respondent asked Mr. Hesson whether he wished to appeal the judgment, and Mr. Hesson stated that he did wish to appeal. Respondent, however, did not advise Mr. Hesson of the amount of the judgment, nor did he explain to Mr. Hesson that a judgment of \$84,080.00 was entered against him. Mr. Hesson remained unaware of the entry of judgment until September 2008.
9. Respondent had not previously filed a civil appeal, and did not research how and where to file a civil appeal before filing an appeal on behalf of Mr. Hesson.
10. On December 13, 2006, Respondent erroneously filed an appeal of the entry of judgment against Mr. Hesson with the Court of Appeals of Virginia, *Ronnie Hesson, Sr. v. John D. Muncy*, Record No. 2102-06-3.
11. On December 19, 2006, the Court of Appeals of Virginia advised Respondent of his failure to remit the filing fee and gave him until December 28, 2006 to resolve the

matter. The Court of Appeals of Virginia further recited Rule 5A:6(c) as follows: “if the fee is not received within such time, the appeal will be dismissed.”

12. Respondent determined that an appeal would be frivolous because he lacked expert testimony to rebut the testimony of the underlying plaintiff. Respondent did not communicate his analysis or decision to the Hessons, nor did he seek their consent to abandon the appeal.
13. The Court of Appeals dismissed the appeal on June 15, 2007 due to the fact Respondent failed to file the filing fee. Additionally, the Court of Appeals lacked jurisdiction over the appeal. Va. Code Sections 17.1-405 and 17.1-406.
14. Respondent did not advise the Hessons of the dismissal of the appeal, nor did Respondent explain to the Hessons the basis of the dismissal of the appeal or any potential recourse available to them. Respondent did not communicate to the Hessons the errors Respondent made in filing the appeal.
15. The Hessons’ last communication with Respondent was in the spring of 2007 when they saw Respondent in Magic Mart in Tazewell, Virginia. Respondent stated he was still working on their case. The Hessons were not aware of the disposition of the appeal.
16. The Hessons did not learn of the dismissal of the appeal until July 2008, during the course of the investigation by the Virginia State Bar. Moreover, as stated, the Hessons did not understand that judgment had been entered against them until September 2008.
17. The Hessons have been unable to request a refund of their fee from Respondent, or the return of their file, because they cannot locate Respondent.
18. Respondent has not communicated with the Hessons regarding the status of their case; nor has he refunded their fee or returned their file to them.

NATURE OF MISCONDUCT

[Rules Applicable: 1.1; 1.3(a) (b) (c); 1.4 (a) (b); 1.15 (a)(1) (2) (c) (3) (d) (1) (i) (ii) (iii) (iv) (iv) (2) (i) (ii) (iii) (e) (1) (i) (ii) (iii) (iv) (v) (f) (2) (4) (i) (ii) (5) (i) (ii) (iii) (6); 1.16 (e); 8.4 (b) (c)].

B. The Baldwin Case - VSB Docket No. 07-102-071016

FINDINGS OF FACT

1. On January 9, 2007, Ruth A. Baldwin retained Respondent to represent her in a child custody case.
2. Ms. Baldwin paid Respondent the sum of \$400.00 for the representation.
3. Respondent cashed the \$400.00 check he received as his fee. Respondent did not deposit the \$400.00 fee into a client trust account.
4. Ms. Baldwin and her husband repeatedly requested that Respondent begin child custody litigation. Respondent failed to take any action for months.
5. Respondent did not return Ms. Baldwin's calls during this period.
6. Respondent eventually filed a child custody petition, and a hearing was scheduled for June 7, 2007. The hearing was then continued to June 11, 2007. Respondent failed to appear at the hearing. Respondent claims he suffered from a kidney stone attack en route to the hearing. Respondent never advised Ms. Baldwin that the reason he failed to appear at the hearing was a kidney stone attack.
7. The hearing was continued to June 18, 2007. Ms. Baldwin discharged Respondent before June 18, 2007.
8. Ms. Baldwin successfully resolved her case on her own at mediation.
9. Ms. Baldwin requested that Respondent refund her fee.
10. Respondent has not refunded any of the fee to Ms. Baldwin.

NATURE OF MISCONDUCT

[Rules Applicable: 1.3 (a) (b) (c); 1.4 (a); 1.15 (a) (1) (2) (c) (3) (4) (d) (1) (i) (ii) (iii) (iv) (2) (i) (ii) (iii) (e) (1) (i) (ii) (iii) (iv) (v) (f) (2) (4) (i) (ii) (5) (i) (ii) (iii) (6)].

C. The Goss Case - VSB Docket No. 07-102-071189

FINDINGS OF FACT

1. On July 27, 2006, Kenneth L. Goss paid Respondent \$750.00 for legal services. The scope of the services is disputed. Mr. Goss contends that he hired Respondent to file suit against the Southwest Virginia Regional Jail Authority for incarcerating Mr. Goss for ten days too long.
 2. Respondent concedes that he received \$750.00 from Mr. Goss, but he states it was for a probation review and to investigate a potential suit against the Southwest Virginia Regional Jail Authority.
 3. Mr. Goss complained to the Virginia State Bar in July 2007 regarding Respondent's failure to file suit as Respondent was retained to do in July 2006 and for failing to communicate with Respondent.
 4. In response, Respondent stated that Mr. Goss's probation review was scheduled for August 13, 2007, which review may have mooted or addressed the issue of the extra 10 days of incarceration and simplified any potential suit.
 5. On August 30, 2007, Respondent wrote to the Bar stating the probation review had been continued to September 13, 2007.
 6. On November 29, 2007, Respondent advised the Virginia State Bar that the probation review was held in October 2007 and that an order was entered November 19, 2007. Respondent asserted the transcript would assist in the suit, yet to be filed, regarding the excessive incarceration.
-
7. Mr. Goss paid Respondent an additional \$200.00 in February 2008 to file suit against the Southwest Virginia Regional Jail Authority
 8. Respondent did not deposit any sums received from Mr. Goss into his client trust account.
 9. Respondent cashed the checks received from Mr. Goss.
 10. Respondent did not file the suit he was retained to file.
 11. Respondent did not communicate with Mr. Goss regarding the status of the matter. Respondent asserts his secretary advised Mr. Goss that Respondent left the Fisher Firm and to provide Mr. Goss the number to Respondent's home office. Mr. Goss tried numerous times to contact Respondent, to no avail.
 12. Respondent did not refund the sums received from Mr. Goss to Mr. Goss.

NATURE OF MISCONDUCT

[Rules Applicable: 1.3 (a) (b) (c) ; 1.4 (a) 1.15 (a) (1) (2) (c) (3) (d) (1) (i) (ii) (iii) (iv) (2) (i) (ii) (iii) (e) (1) (i) (ii) (iii) (iv) (v) (f) (2) (4) (i) (ii) (5) (i) (ii) (iii) (6)].

D. The Wardrop Case - VSB Docket No. 08-102-072416

FINDINGS OF FACT

1. On March 6, 2006, Respondent was appointed by the court to represent Gerald D. Wardrop in a child abuse and/or neglect matter brought by the Tazewell County Department of Social Services. The matter was pending in Tazewell County Juvenile and Domestic Relations District Court.
2. The Order of Appointment provided that Respondent was to represent Mr. Wardrop at hearings and all other stages or proceedings in the Tazewell County Juvenile and Domestic Relations District court and in any other court to which the case may be appealed until relieved or replaced by another lawyer.
3. While Respondent made initial appearances in Mr. Wardrop's case, Respondent eventually stopped communicating with Mr. Waldrop and failed to return his calls.
4. On July 25, 2007, Respondent failed to appear at a custody hearing in Mr. Wardrop's case.
5. The Court did not continue the hearing, and custody was ultimately awarded to Mr. Wardrop's ex-wife.
6. The Court subsequently appointed new counsel for Mr. Wardrop.
7. Respondent asserts he arrived late in Court at which time Judge Barringer advised Respondent he had appointed other counsel for Mr. Wardrop.

NATURE OF MISCONDUCT

[Rules Applicable: 1.3 (a) (b) (c); 1.4 (a) (b)].

E. The Everhart Case -VSB Docket No. 08-102-075544

FINDINGS OF FACT

1. On March 6, 2006, Arthur Dean Everhart received a speeding ticket in Virginia.
2. Alan R. Everhart, Arthur Dean Everhart's father, subsequently received a mailing from Respondent. Upon learning of Respondent through the mailing, Mr. Everhart contacted Respondent on February 22, 2008.
3. On February 22, 2008, Alan R. Everhart requested that Respondent represent his son, Arthur Dean Everhart, at his son's traffic court hearing scheduled for February 26, 2008.
4. Alan R. Everhart states that in the February 22, 2008, call between him and Respondent, Respondent advised Mr. Everhart that he would appear in court on February 26, 2008 to continue the trial. Respondent disputes this assertion.
5. On March 4, 2008, at Respondent's request, Alan R. Everhart paid the sum of \$215.00 to Respondent via credit card.
6. Respondent did not deposit any portion of the \$215.00 into his client trust account.
7. Respondent maintains he was not engaged to represent Arthur Dean Everhart until the date he received payment, March 4, 2008.
8. On March 19, 2008, Mr. Everhart received a letter from the Commonwealth of Virginia advising that Arthur Dean Everhart's license had been suspended.
9. Upon receipt of the letter, Mr. Everhart contacted Respondent to inquire as to the status of the matter and of his son's license.
10. Respondent returned Mr. Everhart's call and advised that Arthur Dean Everhart still had his license to drive in Virginia and that his case had been continued.
11. In actuality, Arthur Dean Everhart was found guilty in absentia on February 26, 2008.
12. On March 21, 2008, Mr. Everhart wrote Respondent a letter confirming the March 2008 call and Respondent's receipt of the \$215.00 payment. Mr. Everhart further stated that he had located and forwarded to Respondent a receipt to support the argument that Arthur Dean Everhart's speedometer was broken at the time he received the ticket. The letter also confirmed Respondent's statement to Mr. Everhart that Respondent would send Mr. Everhart documentation confirming that Arthur Dean Everhart still had his license in Virginia and that the case was postponed, as represented by Respondent.
13. Respondent did not respond to Mr. Everhart's letter.

14. On April 11, 2008, Respondent filed a Motion to Rehear Arthur Dean Everhart's case. Respondent represented in writing to the Court that "Defendant has a clear driving record and forgot the correct court date. Defendant contacted counsel in order to take driver improvement to keep his record clean. Time to appeal had run before defendant contacted counsel."
15. On April 15, 2008, the Motion to Rehear was denied, and the Order stated "confusion as to the correct court date not sufficient reason to re-open a case."
16. Respondent did not notify Mr. Everhart or his son of the disposition of the Motion to Rehear or of the status of the case.
17. On June 2, 2008, Mr. Everhart again wrote to Respondent requesting that he resolve his son's case.
18. Respondent did not respond to Mr. Everhart's letter or communicate with him further.
19. Respondent has not refunded any of the \$215.00 to Mr. Everhart.

NATURE OF MISCONDUCT

[Rules Applicable: 1.1; 1.3 (a) (b) (c); 1.4 (a) (b); 1.15 (a) (1) (2) (c) (3) (d) (1) (i) (ii) (iii) (iv) (2) (i) (ii) (iii) (e) (1) (i) (ii) (iii) (iv) (f) (2) (4) (i) (ii) (5) (i) (ii) (iii) (6); 8.4 (b) (c)].

F. The Phipps Case - VSB Docket No. 08-102-073116

FINDINGS OF FACT

1. On September 19, 2005, Harry Dwight Phipps retained Respondent to represent him in a real estate dispute pending in Tazewell County Circuit Court.
2. Mr. Phipps paid Respondent \$2,000.00 for his representation.
3. Respondent did not deposit the \$2,000 into his client trust account.
4. Respondent learned the matter had been purged before he was retained, and he filed a Motion to Reinstate the case.
5. A hearing has never been held on the Motion to Reinstate the case.
6. In March and November 2006, Respondent cancelled two appointments with land surveyor(s) related to this case.

7. On November 1, 2006, Defendants moved to dismiss the case because counsel did not reinstate the case within one year of October 24, 2005, the date the Court discontinued the case from the docket due to inactivity.
8. Respondent did not communicate with Mr. Phipps regarding the status of the case.
9. In December 2006, Mr. Phipps subsequently retained Respondent to investigate another real property matter involving Dwight Dixon. Respondent charged Mr. Phipps an additional \$1,500.00 for the representation, which Mr. Phipps paid to Respondent.
10. Respondent did not deposit the \$1,500 into his client trust account.
11. Respondent did not resolve or investigate the real property matter involving Dwight Dixon.
12. Respondent does not have any client trust account records which pertain to the Phipps.
13. In January 2007, Mr. Phipps and his wife, Elizabeth Phipps, tried to contact Respondent. No one answered his phone. The Phipps tried repeatedly to contact Respondent. They called and wrote Respondent, who did not respond.
14. In May 2007, Mr. Phipps went to the Tazewell County Courthouse where he was informed that Respondent moved to Bland County. The Phipps sent Respondent a registered letter.
15. In June 2007, Respondent met once with the Phipps. After this meeting, he did not respond to their repeated attempts to communicate with him regarding the status of their case. The Phipps called and visited his offices, to no avail.
16. In August 2007, after repeated attempts at contact with Respondent, the Phipps met with Respondent, in his new law offices, and they understood that Respondent would set up a hearing in the Tazewell County Circuit Court matter by October 31, 2007. Respondent did not appear in Court on October 31, 2007, or otherwise set up a hearing or status conference at that date. Furthermore, Respondent did not contact the Phipps on or by that date.
17. On November 12, 2007, Mrs. Phipps wrote to Respondent regarding the August 2007 meeting and the fact that Respondent did not appear in court or set up a hearing in October 2007 as agreed. She further noted that she could not get in touch with Respondent, that he had not communicated with her or her husband, and that Respondent's secretary stated that Respondent left her with no instructions regarding the Phipps' cases. Respondent's secretary further stated that she had no way to contact Respondent, and that Respondent left the Fisher Firm, while she remained. Mrs. Phipps requested that Respondent "(p)lease call (her) ASAP" within the next fourteen days regarding the status of the Phipps' case. She also requested an update regarding

Respondent's plans to continue the case and the contract agreement. Mrs. Phipps stated: "John at this time I have no clue where you are and what your plans are to get this case into the Tazewell county court before the statute of limitation (sic) runs out like we all had agreed up on."

18. On October 31, 2007, Respondent left his law firm, the Fisher Law Firm.
19. Respondent did not advise the Phipps that he left the Fisher Law Firm.
20. After failed attempts to communicate with Respondent, the Phipps filed their Complaint with the Virginia State Bar.
21. Respondent contacted the Phipps on December 27, 2007.
22. In his January 14, 2008 Response to the Complaint, Respondent advised that he stood ready to assist the Phipps with their case.
23. The Phipps then tried to contact Respondent for further assistance with the case. Respondent did not return their calls.
24. Respondent did nothing further to advance either case for which he was retained and paid.

NATURE OF MISCONDUCT

[Rules Applicable: 1.3 (a) (b) (c); 1.4 (a) (b); 1.15 (a) (1) (2) (c) (3) (d) (1) (i) (ii) (iii) (2) (i) (ii) (iii) (e) (1) (i) (ii) (iii) (iv) (v) (f) (2) (4) (i) (ii) (5) (i) (ii) (iii) (6)].

G. The Mitchell Case - VSB Docket No. 08-102-073045

FINDINGS OF FACT

1. In July 2007, Mr. Britt Mitchell retained Respondent to represent Mr. Mitchell's friend, Ms. Linda Elizabeth Robbins aka Linda Robbins Hayes ("Ms. Hayes") in her divorce. Specifically, Respondent agreed to assist Ms. Hayes in obtaining a divorce from her husband. Accordingly, she withdrew her case from Southwest Legal Aid Society, Inc., and retained Respondent.
2. Mr. Mitchell paid Respondent \$300 for his representation of Ms. Hayes.
3. Respondent did not deposit the \$300 into his client trust account.
4. Respondent requested and received an additional \$75.00 in October 2007 for his representation of Ms. Hayes.

5. Respondent did not deposit the \$75.00 in his client trust account.
6. Respondent did not file a divorce complaint on behalf of Ms. Hayes.
7. Respondent initially communicated with Mr. Mitchell and Ms. Hayes regarding the divorce case, but after a short time Respondent moved and did not communicate with either Mr. Mitchell or Ms. Hayes regarding the case status.
8. Mr. Mitchell called Respondent between 40 and 50 times regarding the case status, without response.
9. Mr. Mitchell retained Ann Margaret Brammer to file Ms. Hayes' divorce. Ms. Brammer filed Ms. Hayes' divorce on April 30, 2008, and a final order was entered in July 2008.
10. Mr. Mitchell also retained Respondent to represent him in the repossession of his vehicle in Tazewell County General District Court.
11. Mr. Mitchell paid Respondent \$175.00 for this matter, as Mr. Mitchell paid Respondent a total of \$550.00.
12. Respondent appeared in court once regarding the case, in December 2007.
13. Respondent did not communicate with Mr. Mitchell regarding the repossession case, and Mr. Mitchell is still unaware of the status. Mr. Mitchell does not know whether the matter has been prejudiced by Respondent's failure to Mr. Mitchell. Mr. Mitchell would like a refund from Respondent, but he cannot communicate with Respondent to request a refund.

NATURE OF MISCONDUCT

[Rules Applicable: 1.3 (a) (b) (c); 1.4 (a) (b); 1.15 (a) (1) (2) (c) (3) (d) (1) (i) (ii) (iii) (iv) (2) (i) (ii) (iii) (e) (1) (i) (ii) (iii) (iv) (v) (f) (2) (4) (i) (ii) (5) (i) (ii) (iii) (6)].

H. The Street Case -VSB Docket No. 08-102-072297

FINDINGS OF FACT

1. Respondent was court appointed to represent Mr. Street on a rape charge in Tazewell Circuit Court.
2. On October 18, 2006, Mr. Street pled no contest to the rape charge, and on January 29, 2007, a sentencing hearing was held.

3. On March 27, 2007, the Court entered the Sentencing Order, pursuant to which Mr. Street was sentenced to 50 years on the rape charge, 2 years and 8 months of which was suspended.
4. Mr. Street advised Respondent in the courtroom at the sentencing hearing that he wanted to appeal his sentence.
5. On April 11, 2007, Respondent wrote to Mr. Street and advised him of the status of the appeal. He stated that a Notice of Appeal was required to be filed by April 27, 2007.
6. On April 30, 2007, Respondent sent Mr. Street a copy of the Notice of Appeal he had sent to the Virginia Court of Appeals. Respondent stated the Notice of Appeal was based upon Mr. Street's sentence and the difference in the sentence recommended by the guidelines and the sentence imposed on Mr. Street.
7. Mr. Street tried repeatedly to communicate with Respondent regarding the appeal; however Respondent did not return Mr. Street's calls.
8. Mr. Street's mother, Bonnie Street, spoke with Respondent once after Mr. Street's conviction. She inquired as to the status of the appeal, and Respondent advised Ms. Street that the appeal was proceeding as planned.
9. Subsequently, both Ms. Street and her daughter, Mr. Street's sister, each tried numerous times to contact Respondent regarding Mr. Street's appeal. Respondent did not return their calls.
10. Respondent failed to timely file Mr. Street's appeal.
11. Respondent stated the appeal "fell through the cracks."
12. Respondent requested and obtained an extension of time to August 18, 2007, in which to file a petition for appeal.
13. Respondent failed to file the Petition for Appeal by August 18, 2007.
14. On August 31, 2007, the case was dismissed because Respondent failed to file a Petition for Appeal.
15. Respondent never notified Mr. Street that he failed to file the appeal and that Mr. Street's appeal was dismissed.
16. Respondent never notified Mr. Street of the reason his appeal was dismissed.
17. Respondent never advised Mr. Street of his options upon dismissal of his appeal.

18. On November 29, 2007, Respondent advised the Virginia State Bar that he was working on a Writ of Habeas Corpus on Mr. Street's behalf.
19. Respondent did not assist Mr. Street with the filing of the Writ of Habeas Corpus on Mr. Street's behalf.

NATURE OF MISCONDUCT

[Rules Applicable: 1.1; 1.3 (a) (b) (c); 1.4 (a) (b)].

I. The Keen Case - VSB Docket No. 08-102-072295

FINDINGS OF FACT

1. Respondent was court appointed to represent Mr. Jerry Lee Keen in Tazewell Circuit Court.
2. At the sentencing hearing, Respondent agreed to file an appeal on behalf of Mr. Keen.
3. Respondent did not communicate with Mr. Keen after the sentencing hearing.
4. Respondent noted an appeal on behalf of Mr. Keen.
5. Respondent failed to timely file Mr. Keen's Petition for Appeal.
6. Respondent requested and obtained an extension of time to August 18, 2007, in which file a Petition for Appeal.
7. Respondent failed to file the appeal by August 18, 2007.
8. On August 31, 2007, the case was dismissed because Respondent failed to file a Petition for Appeal.
9. Respondent never notified Mr. Keen that he failed to file the appeal and that Mr. Keen's appeal was dismissed.
10. Respondent never notified Mr. Keen of the reason his appeal was dismissed.
11. Respondent never advised Mr. Keen of his options upon dismissal of his appeal.
12. It appears that Mr. Keen did not know that his appeal was dismissed until July 2008 when he learned of the status during the investigation by the Virginia State Bar.

13. Respondent stated to the investigator that the appeal “fell through the cracks”. Respondent offered no explanation as to why he failed to communicate with Mr. Keen, or why he failed to advise Mr. Keen of any recourse he might have. Respondent stated that other than filing for the extension of time, he did very little in furtherance of the appeal. Respondent did not file a response to the Complaint.

NATURE OF MISCONDUCT

[Rules Applicable: 1.1; 1.3 (a) (b) (c); 1.4 (a) (b)].

Such conduct by John Lawson Moss constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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.
- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:
- (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
 - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
 - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
 - (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or
 - (iv) trusts established pursuant to deeds of trust to which the provisions of *Code of Virginia* Section 55-58 through 55-67 are applicable;
 - (2) funds, securities, or other properties may be maintained in a common account:
 - (i) where a common account is authorized by a will or trust instrument;

(ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or

(iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
 - (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
 - (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (5) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash

- balances to the subsidiary ledger trial balance;
- (iii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 1.16 Declining or Terminating Representation

- (c) 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.

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 as a lawyer; and
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the fitness to practice law.

5. John Lawson Moss acknowledges that the material facts upon which the allegations of misconduct are predicated are true; and

6. John Lawson Moss 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 brought or prosecuted to a conclusion, he could not successfully defend them.

Executed and dated on 1/30/09



John Lawson Moss
Respondent

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF SMYTH to wit:

The foregoing Affidavit Declaring Consent to Revocation was subscribed and sworn to before
me by John Lawson Moss on 1/30/09

Ruth M. Rentz
Notary Public

My Commission expires: 05-31-2012

