

VIRGINIA:

Before the Virginia State Bar Disciplinary Board

In the Matter of

John Joseph Vavala

Attorney at Law

On December 15, 2006, came John Joseph Vavala 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 resignation at a time when disciplinary charges are pending, he admits that the charges in the attached Certification and Affidavit Declaring Consent to Revocation are true.

The Board having considered the said Affidavit Declaring Consent to Revocation accepts his resignation. Accordingly, it is ordered that the license to practice law in the courts of this Commonwealth heretofore issued to the said John Joseph Vavala be and the same hereby is revoked, and that the name of the said John Joseph Vavala be stricken from the Roll of Attorneys of this Commonwealth.

Enter this Order this fifteenth day of December, 2006

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 **received**

IN THE MATTER OF JOHN JOSPH VAVALA
VSB DOCKET NO. 07-000-0981

DEC 5 1986

VSB CLERK'S OFFICE

CONSENT TO REVOCATION

TO THE HONORABLE MEMBERS OF THE VIRGINIA STATE BAR DISCIPLINARY BOARD:

Your Affiant, JOHN JOSEPH VAVALA, after being duly sworn, states as follows:

1. That he was licensed by the Board of Law Examiners on May 25, 1982, to practice law in the courts of the Commonwealth, and that on June 2, 1982 he qualified before the Supreme Court of Virginia.
2. That this consent is freely and voluntarily tendered by him pursuant to Part 6, Section IV, Paragraph 13(L) of the Rules of the Supreme Court of Virginia, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to Revocation.
3. That he is aware that there are proceedings currently pending involving allegations of Misconduct (VSB Docket Numbers 06-021-1184, 06-021-1894, 06-021-2260 and 07-021-1263), involving his failure to: a) notify clients of the suspension of his license to practice law; b) communicate effectively with clients; c) pursue client matters as agreed; d) deposit monies in his trust account as appropriate; and e) respond to complaints made to the Virginia State Bar.
4. That the material facts upon which the allegations of Misconduct are predicated are true; and,
5. That he submits this consent to Revocation because he knows that if disciplinary

Proceedings based on the alleged Misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

In accordance with Paragraph 13(L)(2), the admissions offered in this affidavit consenting to Revocation shall not be deemed an admission in any proceeding except one relating to the status of this attorney as a member of a bar.

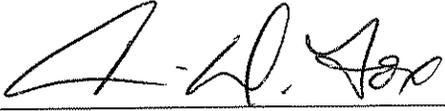
WHEREFORE, your Affiant respectfully requests that he be allowed to consent to the Revocation of his license to practice law before this Honorable Board and before all other courts of the Commonwealth of Virginia, that his name be stricken from the roles of attorneys qualified to practice law in the Commonwealth of Virginia, and that such orders and decrees as may be necessary or required in this regard may be entered.

GIVEN under my hand on December 14, 2006.


JOHN JOSEPH VAVALA
Affiant

STATE OF VIRGINIA
CITY/COUNTY OF VIRGINIA BEACH, to-wit:

The foregoing instrument was subscribed and sworn before me by John Joseph Vavala on December 14, 2006.


Notary Public

My commission expires: 3, 31, 09

VIRGINIA:

**BEFORE THE SECOND DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF JOHN JOSEPH VAVALA

VS. B DOCKET NO. 06-021-1884

Complainant: Penney V. Van Haren

VS. B DOCKET NO. 06-021-1894

Complainant: Billey E. Brooks

VS. B DOCKET NO. 06-021-2260

Complainant: Leland M. Poole

**SUBCOMMITTEE DETERMINATION
(CERTIFICATION)**

On October 25, 2006, a meeting in these matters was held before a duly convened subcommittee of the Second District Committee consisting of Michael C. Moore, Esquire, Member, David J. McDonald (Lay Member), and Donald C. Schultz, Esquire, Chair, presiding.

Pursuant to Part Six, Section IV, Paragraph 13.G.1 (b) of the Rules of the Supreme Court, the Second District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

I. ALLEGATIONS OF FACT

1. During all times relevant hereto, the Respondent, John Joseph Vavala, was an attorney licensed to practice law in the Commonwealth of Virginia, except for those times when his license was not in good standing, as indicated herein.

06-021-1884

Complainant: Penny V. Van Haren

2. In November 2005 Penny V. Van Haren paid Mr. Vavala \$480 to represent her in her divorce.
3. Mr. Vavala took no further action in the matter, and failed to respond to Mrs. Van Haren's numerous attempts to contact him subsequently.

4. On November 18, 2005, the Virginia State Bar Disciplinary Board suspended Mr. Vavala's license to practice law for a period of five years, effective immediately. The Order required Mr. Vavala to notify all clients about the suspension of his license forthwith by certified mail, return receipt requested.
5. Mr. Vavala did not notify his client about the suspension of his law license.
6. During a chance meeting with his client on December 31, 2005, Mr. Vavala apologized for failing to return her telephone calls, but still did not mention that his license to practice law had been suspended.
7. On December 13, 2005, the Virginia State Bar sent to Mr. Vavala at his address of record a copy of Ms. Van Haren's complaint to the bar, demanding that he submit a response in accordance with Rule 8.1 (c) of the Rules of Professional Conduct. Mr. Vavala failed to respond to the bar complaint.
8. Despite repeated attempts by the Virginia State Bar Investigator to meet with Mr. Vavala and discuss the case, by telephone, in person, and by letter, dated May 24, 2006, Mr. Vavala failed to respond to the bar investigator's requests for information.

II. RULE VIOLATIONS

In case Number 06-021-1884 (Complainant: Penney V. Van Haren,) the conduct alleged gives rise to violations of the following Rules of Professional Conduct:

In failing to take any action on behalf of his client after having been paid to do so, and failing to carry out his contract of employment, the respondent was in violation of the following 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.

In failing to respond to his client's numerous inquiries, the Respondent was in violation of the following Rule 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.

In failing to obey the Order of the Virginia State Bar Disciplinary Board to notify his clients about the suspension of his law license by certified mail, or by any means, the Respondent was in violation of the following Rule of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

In failing to respond to the bar's letter of complaint that demanded a response, and/or in failing to respond to the investigator's numerous attempts to contact him, the Respondent was in violation of the following Rule of Professional Conduct:

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

In failing to obey the Order of the Virginia State Bar Disciplinary Board to notify his clients about the suspension of his law license by certified mail, or by any means, and/or in receiving funds from his client but failing to do the work he was paid to do, the Respondent was in violation of the following Rule of Professional Conduct:

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;

I. ALLEGATIONS OF FACT (Continued)

06-021-1894

Complainant: Billey E. Brooks

9. Mr. Vavala served as corporate attorney and registered agent for the complainant, Billey E. Brooks, who owned a heating and air conditioning service.

10. In June 2003, Mr. Brooks paid Mr. Vavala \$175 to incorporate Mr. Brooks' business. Mr. Vavala did so on June 27, 2003.

11. On March 1, 2004, in response to a billing statement from Mr. Vavala, Mr. Brooks paid Mr. Vavala another \$175 to file the annual report with the State Corporation Commission, and to pay the costs of \$100.

12. Mr. Vavala did not place the check into an attorney trust account, but cashed it the following day, March 2, 2004, although he had not taken any action in the matter.

13. Mr. Vavala never filed the annual report, and never paid the costs to the SCC in accordance with his statement.

14. Accordingly, on November 1, 2004, the State Corporation Commission (SCC) terminated the corporation for failing to file the annual report or pay the assessment.

15. Mr. Brooks did not know that an assessment was due, having assumed that Mr. Vavala filed the report and paid the costs as indicated on his statement.

16. On June 7, 2005, in response to another statement from Mr. Vavala, Mr. Brooks paid him another \$175 to attend to his company's annual SCC requirements.

17. As before, Mr. Vavala did not deposit the check into an attorney trust account, but cashed it the following day, June 8, 2005.

18. Although Mr. Brooks paid the \$175 as asked, Mr. Vavala did not file an annual report or pay the annual SCC assessment, and the corporation remained terminated.

19. On November 18, 2005, the Virginia State Bar Disciplinary Board suspended Mr. Vavala's license to practice law for a period of five years effective immediately. The Order required Mr. Vavala to notify all clients about the suspension of his license forthwith by certified mail, return receipt requested.

20. Mr. Vavala did not inform his client about the suspension of his law license, and Mr. Brooks did not learn about it until he read an article about it in the *Virginian Pilot* newspaper.

21. Mr. Brooks then made several attempts to contact Mr. Vavala, who never returned his telephone calls.

22. Therefore, Mr. Brooks contacted the SCC on his own and learned for the first time that his corporation had been terminated since 2004.

23. Mr. Brooks took the necessary action to reinstate his company's corporate status, and himself substituted for Mr. Vavala as registered agent.

24. On May 24, 2006, the Virginia State Bar sent to Mr. Vavala at his address of record a copy of Mr. Brooks' complaint to the bar, demanding that he submit a response, in accordance with Rule 8.1 (c) of the Rules of Professional Conduct. Mr. Vavala, however, failed to respond to the bar complaint.

25. Despite repeated attempts by the Virginia State Bar Investigator to meet with Mr. Vavala and discuss the case, by telephone, in person, and by letter, dated May 24, 2006, Mr. Vavala failed to respond to the bar investigator's requests for information.

II. RULE VIOLATIONS

In case Number 06-021-1894 (*Complainant: Billey E. Brooks*) the conduct alleged gives rise to violations of the following Rules of Professional Conduct:

In failing to attend to his client's filing requirements with the SCC, and failing to carry out his contract of employment to do so, resulting in the termination of his client's corporate status, thereby damaging his client, the Respondent was in violation of the following 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.

In failing to respond to his client's numerous inquiries, the Respondent was in violation of the following Rule 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.

In failing to deposit his client's funds into an attorney trust account, including those funds earmarked for payment to the State Corporation Commission, the Respondent was in violation of the following Rule of Professional Conduct:

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.

In failing to pay \$100 of his client's funds to the SCC after having received funds from his client for that purpose, the Respondent was in violation of the following Rule of Professional Conduct:

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:

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

In failing to obey the Order of the Virginia State Bar Disciplinary Board to notify his clients about the suspension of his law license by certified mail, or by any means, the Respondent was in violation of the following Rule of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

In failing to respond to the bar's letter of complaint that demanded a response, and/or in failing to respond to the investigator's numerous attempts to contact him, the Respondent was in violation of the following Rule of Professional Conduct:

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

In failing to obey the Order of the Virginia State Bar Disciplinary Board to notify his clients about the suspension of his law license by certified mail, or by any means, (subparagraph 8.4 b. only), and/or in receiving funds from his client but failing to do the work he was paid to do, and failing to pay \$100 of those funds to the SCC, although his statement indicated that to be the purpose of the funds, but cashing the check instead and thereby taking personal possession of the funds and/or converting them to his own use, the Respondent was in violation of the following Rules of Professional Conduct:

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;

I. ALLEGATIONS OF FACT (Continued)

VSB DOCKET NO. 06-021-2260

Complainant: Leland M. Poole

26. On September 19, 2005, Leland M. Poole paid Mr. Vavala \$150 to prepare Articles of Organization and related documents for Mr. Poole to form a limited liability company, an entity that Mr. Vavala recommended for Mr. Poole and his business.

27. In addition to preparing the corporate documents, Mr. Vavala was to provide Mr. Poole with ongoing advice to assist him in starting up and running his company.

28. Mr. Vavala prepared some of the documents, but never completed the process, and did not keep his client informed about what he had done. As a result, Mr. Poole's corporate entity never stood up.

29. In mid-October, 2005, Mr. Vavala stopped responding to Mr. Poole's attempts to contact him.

30. On November 18, 2005, the Virginia State Bar Disciplinary Board suspended Mr. Vavala's license to practice law for a period of five years effective immediately. The Order required Mr. Vavala to notify all clients about the suspension of his license forthwith by certified mail, return receipt requested.

20. Mr. Vavala did not inform his client about the suspension of his law license, and Mr. Poole did not learn about it until he heard about it at a local bar.

21. On February 22, 2006, Mr. Vavala met with the Virginia State Bar's investigator at his office in Virginia Beach, Virginia. Mr. Vavala explained that as registered agent, all he would have to do was contact his client's verbally about the suspension of his license, but he could not say whether he had advised Mr. Poole about the suspension.

22. Nonetheless, Mr. Vavala never completed the formation of Mr. Poole's company so as to become its registered agent. Further, his billing statement to Mr. Poole indicated that it was for, *inter alia*, "Meetings with clients."

23. His lawyer having lost his license without providing the agreed-upon services, Mr. Poole demanded a refund which the bar's investigator communicated to Mr. Vavala. Mr. Vavala said that he would issue the refund the following week, but never did so at any time.

II. RULE VIOLATIONS

In case Number 06-021-2260 (Complainant: Leland M. Poole) the conduct alleged gives rise to violations of the following Rules of Professional Conduct:

In failing to complete the formation of his client's LLC as agreed, and failing to carry out his contract of employment to do so, the Respondent was in violation of the following 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.

In failing to respond to his client's numerous inquiries or inform him about what work he had done, the Respondent was in violation of the following Rule 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.

In failing to refund unearned fees upon demand and as promised, the Respondent was in violation of the following Rule of Professional Conduct:

RULE 1.15 Safekeeping Property

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

In failing to obey the Order of the Virginia State Bar Disciplinary Board to notify his clients about the suspension of his law license by certified mail, return receipt requested, or by any means, the Respondent was in violation of the following Rule of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

In failing to obey the Order of the Virginia State Bar Disciplinary Board to notify his clients about the suspension of his law license by certified mail, return receipt requested, or by any means, the Respondent was in violation of the following Rule of Professional Conduct:

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;

III. CERTIFICATION

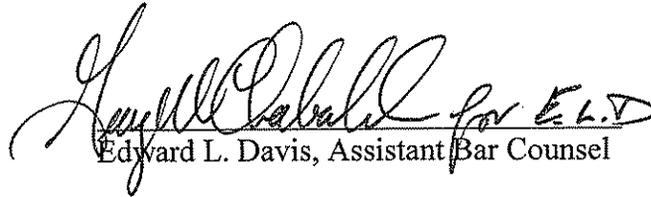
Accordingly, it is the decision of the Subcommittee to certify the charges of misconduct to the Virginia State Bar Disciplinary Board.

SECOND DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 
Donald C. Schultz, Esquire
Subcommittee Chair

CERTIFICATE OF SERVICE

I certify that I have this 21st day of November, 2006 caused to be mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the foregoing Subcommittee Determination (Certification) to John Joseph Vavala, the Respondent, at Suite 103, 124 South Lynnhaven Road, Virginia Beach, Virginia 23452, his address of record with the Virginia State Bar.


Edward L. Davis, Assistant Bar Counsel