

Disciplinary Actions

The following is a list of attorneys who have been publicly disciplined. The orders have been edited. Administrative language has been removed to make the opinions more readable.

| Respondent's Name | Address of Record (City/County) | Action | Effective Date | Page |
|------------------------------|---------------------------------|--------------------------------------|------------------|------|
| Supreme Court | | | | |
| Victor Alan Motley | Richmond | Public Reprimand | | |
| Victor Alan Motley | Richmond | 18 Month Suspension | November 30,2000 | |
| Victor Alan Motley | Richmond | Public Reprimand | | |
| Lloyd Douglas Rials | Tampa, FL | Reinstatement Denied | October 19, 2000 | |
| Disciplinary Board | | | | |
| Lloyd Douglas Rials | Tampa, FL | Recommendation against Reinstatement | October 19, 2000 | |
| Bruce Wilson McLaughlin | Leesburg | Show Cause Suspension | November 22,2000 | |
| Andrew Robert Sebok | Virginia Beach | 9 Month Suspension w/Terms | October 13,2000 | |
| John Tyler Stant | Norfolk | Disability Suspension | October 30,2000 | |
| David Thomas Steckler | Fredericksburg | Revocations | November 17,2000 | |
| Drew Virgil Tidwell | Amherst,NY | Revocation | August 25,2000 | |
| George Alexander Weimer, Jr. | Richmond | 9 Month Suspension w/Terms | February 1,2001 | |
| District Committee | | | | |
| Gary Michael Bowman | Roanoke | Public Reprimand | October 13,2000 | |
| Roy David Bradley | Madison | Public Reprimand w/Terms | October 6,2000 | |
| Antonio Pierre Jackson | Farmville | Public Reprimand w/Terms | November 27,2000 | |
| Donald H.Spitzli,Jr. | Virginia Beach | Public Reprimand | October 31,2000 | |

Supreme Court

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 15th day of September, 2000.

Present: Carrico, C.J., Lacy, Keenan, Koontz, and Kinser, J.J., and Compton and Stephenson, Senior Justices

VICTOR ALAN MOTLEY

v.

VIRGINIA STATE BAR

Record No. 000392

VSJ Docket No. 96-032-2545

Opinion by

CHIEF JUSTICE HARRY L. CARRICO

September 15, 2000

FROM THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

This appeal presents for review an order of the Virginia State Bar Disciplinary Board (the Disciplinary Board) involving Victor Alan Motley (Motley), a Richmond attorney. Dated September 29, 1999, the order imposed upon Motley a public reprimand for failing to inform a client in a criminal case of the denial of his appeal by the Court of Appeals of Virginia in time for him to decide whether to seek an appeal to this Court. Motley is here on an appeal of right. Finding no error in the order of the Disciplinary Board, we will affirm.

Background

Motley's public reprimand resulted from his handling of a criminal case involving Brian Lee Rowe (Rowe) in the Circuit Court of the City of Richmond. Motley was retained by Rowe's parents and received from them a retainer fee of \$1,000. Orig-

nally, Rowe was charged with two counts of capital murder, one count of robbery, and three counts of use of a firearm. However, at the time Motley was retained, the capital murder charges had been reduced to first degree murder. Motley was retained for the purpose of arranging for Rowe to plead guilty to "the lowest possible charges."

Motley was successful in arranging with the prosecutor for Rowe to plead guilty to two counts of second degree murder, one count of robbery, and three counts of use of a firearm. Rowe and his parents expected that Rowe would receive a sentence of no more than thirteen years and two months, which, according to what Motley told them, was the maximum punishment under the sentencing guidelines. Motley argued for application of the guidelines, but the court sentenced Rowe to serve a total of ninety-three years.

Rowe's parents then asked Motley "what could be done," and Motley agreed to appeal the case for an additional fee of \$2,000. Motley filed a motion in circuit court to withdraw Rowe's guilty pleas or, in the alternative, for reconsideration of the sentence. The motion was denied, and Motley appealed the denial to the Court of Appeals. That court denied the petition for appeal by unpublished order. (No. 2718-95-2, April 15, 1996). The court noted, *inter alia*, that the circuit court had found the sentencing guidelines inapplicable to permit a sentence of thirteen years and two months because Rowe "faced a mandatory thirteen years on the firearms charges alone, without the additional charges of robbery and murder." *Id.*

Rowe had thirty days after entry of the order of April 15, 1996, within which to file a notice of appeal with the clerk of the Court of Appeals (Rule 5:14(a)) and a petition for appeal with the clerk of this Court (Rule 5:17(a)(2)). Neither document was filed within the prescribed time.¹

On June 24, 1996, Rowe's mother, Clareth A. Rowe, filed with the Virginia State Bar a complaint against Motley alleging

that he had failed to inform Rowe or his parents of the Court of Appeals' denial of Rowe's petition for appeal until it was too late to petition this Court for an appeal. The Third District Committee, Section Two (the Committee), determined that Motley had failed timely to inform Rowe or his parents of the Court of Appeals' action. The Committee decided it would offer Motley an opportunity to comply with certain terms and conditions as a predicate to the imposition of a private reprimand with terms but, failing such compliance, that it would impose a public reprimand. Motley appealed the Committee's determination to the Disciplinary Board.

After a hearing, the Disciplinary Board affirmed the District Committee's determination but imposed as a sanction an opportunity to comply with altered terms and conditions as part of a private reprimand, with the proviso that if Motley failed to comply with the terms and conditions, a public reprimand would be imposed. On September 29, 1999, the Disciplinary Board entered an order stating that Motley had "willingly failed and refused to comply with the terms of [the] Private Reprimand" and, therefore, a public reprimand was imposed.

Disciplinary Rule 6-101(C) of the Virginia Code of Professional Responsibility, which was in effect at all times pertinent to the present controversy, provided that "[a] lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered."² In imposing a public reprimand upon Motley, the Disciplinary Board found that he had "failed to timely inform either Rowe or his parents of the denial of the petition [for] appeal by the Court of Appeals in time to allow them to decide whether to appeal further to the Virginia Supreme Court" and, therefore, that Motley had "engaged in misconduct in violation of DR-6-101C of the Virginia Code of Professional Responsibility."

Issues on Appeal

1. Unconstitutional Vagueness

Motley argues that DR 6-101(C) is unconstitutionally vague. Citing Grayned v. City of Rockford, 408 U.S. 104, 108 (1972), Motley opines that the vagueness doctrine requires that a statute give a person of ordinary intelligence a reasonable opportunity to know what conduct is commanded or prohibited. He says the phrase "reasonably informed" in DR 6-101(C) is not defined and "gives no guidelines as to what is reasonable and leaves respondent at the [whim] of the personalities making up [the Disciplinary Board]."

We disagree with Motley. Disciplinary Rule 6-101(C) is presumed to be constitutional, and we will resolve any doubt regarding its constitutionality in favor of its validity. See Pulliam v. Coastal Emergency Servs., Inc., 257 Va. 1, 9, 509 S.E.2d 307, 311 (1999). Furthermore, "[v]agueness challenges to statutes not threatening First Amendment interests are examined in light of the facts of the case at hand; the statute is judged on an as-applied basis." Maynard v. Cartwright, 486 U.S. 356, 361 (1988).

We find nothing vague about the language of DR 6-101(C) with respect to the conduct commanded of Motley in light of the facts of this case. Beyond any question, the conduct commanded was for Motley to inform Rowe of the denial of his appeal by the Court of Appeals in time for him to decide whether to appeal the denial and, if his decision was affirmative, to file the notice of appeal and petition for appeal within the thirty-day period prescribed by Rules 5:14(a) and 5:17(a)(2).

2. Sufficiency of Evidence

Motley argues that the finding of the Disciplinary Board that he failed timely to inform Rowe of the denial of his appeal is not justified by a reasonable view of the evidence. On review of a disciplinary proceeding, "we will make an independent examination of the whole record, giving the factual findings of the Disciplinary Board substantial weight and viewing them as prima facie correct. While not given the weight of a jury verdict, those conclusions will be sustained unless it appears they are not justified by a reasonable view of the evidence or are contrary to law." Blue v. Seventh Dist. Comm., 220 Va. 1056, 1061-62, 265 S.E.2d 753, 757 (1980). And we view the evidence in the light most favorable to the side that prevailed below. Rutledge v. Virginia State Bar, 214 Va. 312, 313, 200 S.E.2d 573, 574 (1973).

Here, the evidence was in sharp conflict. Motley testified that he informed both Rowe and his mother of the Court of Appeals' denial of Rowe's petition for appeal within the thirty-day period following the denial. Both Rowe and his mother denied receiving knowledge of the Court of Appeals' action within the thirty-day period.

Motley introduced telephone bills which showed collect calls ostensibly placed by Rowe to Motley's office from Southampton Reception Center on April 22, 1996, and from Brunswick Correctional Center on April 30, 1996. Both these dates were within the thirty-day period after the Court of Appeals' denial of Rowe's petition for appeal, and Motley claimed that on both occasions he informed Rowe the appeal had been denied. Rowe testified, however, that he was not confined at Southampton Reception Center on April 22, 1996. He also said that on the one occasion he reached Motley by telephone from Brunswick Correctional Center within the thirty-day period following April 15, 1996, Motley told him he "hadn't heard anything" concerning the outcome of the appeal.

Rowe testified further that he received nothing from Motley in the mail within the thirty-day period following April 15, 1996, and that it was not until June that Motley told him in a telephone conversation that the appeal had been denied. A "couple of days later," on June 18, 1996, Rowe wrote Motley requesting a copy of the Court of Appeals' decision and received a copy in the mail.

Motley also claimed that, in the thirty-day period, he mailed Rowe's mother a copy of the Court of Appeals' order denying Rowe's appeal, but he could not document the mailing with a copy of a cover letter or otherwise. In addition, Motley introduced a memorandum prepared by his secretary stating that Ms. Rowe called the office on April 5, 1996, and left a message that she would make a payment on Motley's fee on April 15. Motley also introduced a copy of a receipt dated May 10, 1996, for a payment of \$100 purportedly made on that date by Ms. Rowe on a visit to Motley's office.

However, Ms. Rowe testified that she received nothing in the mail from Motley within the thirty-day period following April 15, 1996, and that she only learned of the denial of the appeal when Rowe informed her in late May or June that Motley had just told him the appeal had been denied. Ms. Rowe then contacted Motley, and he confirmed that the appeal had been denied and told her that it was "too late" to appeal further.

Ms. Rowe also denied that she "left a message" with Motley's office promising to make a payment on his fee on April 15, 1996, and she said that she did not recall visiting Motley's office on May 10, 1996, when Motley claimed she made a payment in the office. She insisted, instead, that March 6, 1996, was the last date upon which she made a payment.

Motley says Rowe and his mother were "not credible witnesses." We disagree. Their testimony was not inherently incredible, and it was for the Committee, as trier of fact, to determine the credibility of the witnesses and to resolve the conflicts between Motley's testimony and the testimony of Rowe and his mother.

The burden was on the Bar to establish Motley's violation by clear proof. See Blue, 220 Va. at 1062, 265 S.E.2d at 757. With the conflicts resolved against Motley, the evidence constituted clear proof to support the finding by the Disciplinary Board that Motley violated DR 6-101(C).

3. Prior Disciplinary Record

Motley argues that the Disciplinary Board erred in considering his prior disciplinary record in determining to impose a public reprimand upon him.³ While his argument is difficult to follow, he appears to seek a redetermination of the merits of the prior proceedings, an exercise in which we decline to indulge. He also appears to argue the relevancy of the evidence of his prior conduct.

However, "[b]ecause a primary purpose of the Disciplinary Rules is the protection of the public, it is clearly the Board's duty, in determining an appropriate penalty, to consider whether the attorney before it has demonstrated a history of professional conduct harmful to his clients or to the public generally." Tucker v. Virginia State Bar, 233 Va. 526, 533, 357 S.E.2d 525, 529 (1987). Hence, the evidence of Motley's disciplinary record was relevant and properly considered by the Disciplinary Board.

For all these reasons, we will affirm the Disciplinary Board's order of September 29, 1999.

Affirmed.
A Copy,
Teste:
David B. Beach, Clerk

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 15th day of September, 2000.

Upon an appeal of right from a judgment rendered by the Virginia State Bar Disciplinary Board on the 9th day of November, 1999.

VICTOR ALAN MOTLEY
v.
VIRGINIA STATE BAR
Record No. 000417
VSB Docket No. 96-032-2446

Opinion by
CHIEF JUSTICE HARRY L. CARRICO
September 15, 2000

FROM THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In this appeal of right, we review an order of the Virginia State Bar Disciplinary Board (the Disciplinary Board) involving Victor Alan Motley (Motley), a Richmond attorney. Dated November 5, 1999, the order imposed upon Motley an eighteen-month license suspension for mishandling a real estate transaction and mismanaging a trust account. Finding no error in the order, we will affirm.

1. The Real Estate Transaction Background

The real estate transaction in question involved an oral contract for the sale and purchase of a house and lot in the City of Richmond, entered into in February of 1996 between Evelyn J. Davis (Davis),¹ the seller, and Rebecca Gray (Gray), the purchaser. Motley's conduct with respect to the real estate transaction implicates DR 6-101 of the Virginia Code of Professional Responsibility, which was in effect at all times pertinent to this case.² DR 6-101 dealt with competence and promptness and a lawyer's duty to keep a client reasonably informed.³

Retained by a realtor to act as settlement attorney in the transaction, Motley concedes he represented "both the seller . . . and the buyer." Before consulting with Motley, Davis and Gray had agreed that Davis would sell the property to Gray for \$35,000. Gray agreed to pay \$4,000 in cash at closing and assume an existing deed of trust held by Suncoast Savings and Loan Association, FSA (Suncoast) for the balance.

Motley undertook the drafting of the necessary documents and the closing of the transaction. Closing was scheduled for February 15, 1996. Shortly before that date, Gray announced that she could pay only \$2,000 at closing. Davis agreed to accept the \$2,000, provided that Gray execute a deed of trust and note in favor of Davis to secure payment of the remaining \$2,000 by May 15, 1996.

On February 15, Motley, Davis, and Gray met to close the transaction. Gray had no funds with her but stated she would pay \$1,000 the next day and make another payment of \$1,000 in a few days. The parties signed the closing papers, but agreed that the deed would not be recorded until the first payment of \$1,000 was made. Davis gave Gray the keys to the house and agreed she could move in.

1 This Court awarded Rowe a delayed appeal on March 6, 1997, following a finding by the Circuit Court of the City of Richmond in a habeas corpus proceeding that Motley had been ineffective for "[f]ailing to perfect an appeal to [this Court] following the Virginia Court of Appeal's refusal to hear [Rowe's] appeal." The petition for appeal filed pursuant to the award of the delayed appeal was refused by this Court.
2 Effective January 1, 2000, the Virginia Code of Professional Responsibility was replaced by the Virginia Rules of Professional Conduct. The subject of reasonable communication between lawyer and client is now contained in Rule 1.4(a), (b), and (c) of the new Rules.
3 The record shows that Motley's disciplinary history consisted of two dismissals of complaints with terms (VSB Docket Nos. 86-146 and 91-031-0795) and a private reprimand with terms (VSB Docket No. 89-031-0495).

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On February 17, Gray gave Motley a non-certified check for \$1,000 drawn on the account of a third party in an out-of-state bank. Motley told Davis the check was not certified, but she agreed that the deed could be recorded.

Motley deposited the \$1,000 check in his personal account, and the bank returned the check for “[n]ot sufficient funds.” Motley deposited in his trust account the proceeds of a personal loan in the amount of \$3,026.27. He wrote trust account checks payable to his own order for a total of \$2,300, leaving a balance of \$726.27 of personal funds in the trust account. In addition, he wrote three trust account checks totaling \$550 relative to the Davis-Gray transaction, including a check to Davis for \$319.80, representing what Motley said was her part of the \$1,000 check that was returned for insufficient funds. These checks were not paid from funds provided by Gray but from Motley’s personal funds.

Gray took possession of the property in late February or early March of 1996. In May 1996, Motley informed Davis that he had received from Gray a certified check for \$1,500. Motley also told Davis that she owed him an additional \$200 because Gray had only made good to the extent of \$800 on the \$1,000 check that was returned for “[n]ot sufficient funds.” After consulting another attorney, Davis agreed to accept the check, but she refused Motley’s demand that she pay him the extra \$200. Although Davis should have received a total of \$3,373.23 in cash from the sale of her property, she received only \$1,819.80.

Two documents Motley prepared and had Davis sign at the closing formed part of the basis for the Disciplinary Board’s finding that Motley had violated DR 6-101. The two documents were a promissory note dated February 15, 1996, and made payable to Gray for \$3,366.78 and a deed of trust purportedly securing payment of the note. According to Motley, these documents were ostensibly designed to give Gray “security” for a debt in the sum of \$3,366.78 Davis owed to a finance company for windows she had installed in the house at some point in time prior to the closing.⁴

Also forming part of the basis for the Disciplinary Board’s finding of a violation of DR 6-101 was Motley’s alleged failure to comply promptly with instructions of Suncoast to forward documentation necessary to complete Gray’s assumption of the existing deed of trust on the property. As late as March 21, 1996, Motley had not sent Suncoast “Proof of Insurance coverage and paid receipt.” Apparently, Motley never did send the information, but Gray did.

2. Trust Account Problems Background

Motley’s questionable handling of his trust account in the Davis-Gray transaction led to a broader investigation into his management of the account. Motley’s conduct with respect to the trust account implicates former DR 9-102, which dealt with preserving the identity of funds and property of a client, and DR 9-103, which prescribed record-keeping requirements.⁵

Lacy O. Campbell, a State Bar investigator, made an analysis of Motley’s records for the period July 1, 1995, through June 30, 1996. The analysis revealed numerous deficiencies in Motley’s record-keeping and accounting practices. We will detail the results of the analysis *infra*.

On June 5, 1996, Davis filed with the Virginia State Bar a complaint against Motley for his handling of the real estate transaction. On June 25, 1999, the Third District Subcommittee, Section Two, certified to the Disciplinary Board charges of misconduct against Motley relating both to his handling of the Davis-Gray real estate transaction and the management of his trust account. On July 8, 1999, the State Bar served Motley with the Subcommittee’s certification. On September 24, 1999, the Disciplinary Board held a hearing in the matter, and by order dated November 5, 1999, suspended Motley’s license to practice law for eighteen months.

3. Issues on Appeal

A. Motions to Dismiss

1. Delayed Notice

Motley argues that the Disciplinary Board erred in denying his motion to dismiss the charges against him on the ground the charges were before the Disciplinary Board in violation of Part 6, Section IV, Paragraph 13 (B)(5)(c)(ii)(c) and Subsection (12) of the Rules of this Court. Subsection (12) contains the pertinent language:

If the Subcommittee has elected to certify the Complaint . . . to the Board, it will promptly mail to the Clerk of the Disciplinary System a statement of the certified charges which shall include sufficient facts to reasonably notify Bar Counsel and the Respondent of the basis for such certification and the Disciplinary Rules alleged to have been violated.

Motley points out that the Third District Subcommittee determined on July 17, 1998, to certify charges of misconduct against him but did not send the certification to the Clerk of the Disciplinary System until June 25, 1999, some eleven months later, and he was not served until July 8, 1999. This delay, Motley says, “violated procedural requirements under the [Rules] and prejudiced [his] right to a fair and prompt hearing.”

Motley does not explain, however, what prejudice he suffered as a result of the delay. In the absence of a showing of prejudice resulting to Motley from the failure to comply with the procedural requirement of prompt mailing contained in Subsection (12), dismissal of the charges against him would be inappropriate. See *Jamborsky v. Baskins*, 247 Va. 506, 511, 442 S.E.2d 636, 638-39 (1994) (delay of circuit court in complying with procedural requirement in juvenile transfer statute does not divest court of jurisdiction if no prejudice results); see also *Horne v. Commonwealth*, 230 Va. 512, 518-19, 339 S.E.2d 186, 191 (1986) (delay in taking accused before magistrate not ground for excluding evidence without resulting prejudice); *Potter v. Commonwealth*, 10 Va. App. 113, 116, 390 S.E.2d 196, 198 (1990) (delay in filing habitual offender information not ground for dismissal in absence of showing of prejudice resulting from the delay).

2. General Investigation of Trust Account

Motley also moved for dismissal of the charges against him on the ground the enlargement of the investigation of misconduct from the original scope of the Davis-Gray real estate closing to a general investigation of his trust account “without due cause” violated his rights to due process and equal protection of the law under the Fourteenth Amendment. He was denied due process and equal protection, Motley says, “in that Bar

Counsel exercised undue discretion by converting an investigation of a complaint relating to a single real estate closing into a general perusal of an attorney's trust account."

Part 6, Section IV, Paragraph 13(B)(3) of the Rules of this Court provides in pertinent part that the authority of Bar Counsel to investigate and prosecute complaints

includes the authority to examine the financial books and records maintained by an attorney . . . including, without limitation, any and all trust accounts . . . maintained by the attorney. . . . Bar Counsel may also examine an attorney's trust account whenever Bar Counsel reasonably believes that the trust account may not be in compliance with the . . . Code of Professional Responsibility.

Although Motley's argument is not clear, he does not appear to attack the facial validity of the Rule quoted above. In any event, the Rule is presumed to be valid, see Pulliam v. Coastal Emergency Servs., Inc., 257 Va. 1, 9, 509 S.E.2d 307, 311 (1999), and Motley has not demonstrated in what manner or to what extent it suffers from facial invalidity. Accordingly, we will consider only the as-applied aspect of Motley's attack upon the Rule, consisting of his argument that the investigation was transformed from its original limited scope into a general investigation of his trust account without due cause.

In Seventh Dist. Comm. v. Gunter, 212 Va. 278, 183 S.E.2d 713 (1971), we said:

A proceeding to discipline an attorney is not a criminal proceeding and the purpose is not to punish him but to protect the public. It is a special proceeding, civil and disciplinary in nature, and of a summary character. . . . Being an informal proceeding it is only necessary that the attorney be informed of the nature of the charge preferred against him and is given an opportunity to answer.

Id. at 284, 183 S.E.2d at 717.

We are of opinion that Motley has failed to demonstrate that he suffered a deprivation of due process or equal protection rights as a result of the broadened investigation itself or from the admission into evidence of certain exhibits obtained in the investigation.⁶ He was fully informed of the nature of the charges stemming from the broadened investigation, and he was given ample opportunity to answer. Furthermore, Bar Counsel had due cause from the investigation of Motley's trust account in connection with the Davis-Gray real estate transaction for a reasonable belief that the account may not have been in compliance with the Rules in other respects as well.

Bar Counsel would have learned from the investigation into the Davis-Gray real estate transaction that Motley deposited proceeds from a personal loan into his trust account and deposited a check from a client (Gray) into his personal account. Indeed, Motley conceded as much during the proceedings below.⁷

Former DR 9-102(A), styled "Preserving Identity of Funds and Property of a Client," provided that all funds received or held by a lawyer on behalf of a client residing in this state shall be deposited in a trust account and no funds belonging to

the lawyer shall be deposited therein except under circumstances not pertinent here.⁸ Given this Rule and the information disclosed by the investigation into the Davis-Gray real estate transaction, we find no abuse of discretion in Bar Counsel's broadening of the scope of the investigation into Motley's trust account.

B. Continuance

Motley obtained a summons and had it served on Gray to appear as a witness at the hearing before the Disciplinary Board. Gray failed to appear, and Motley moved for a continuance. The Board denied the motion, stating that "the panel does not believe that Ms. Gray's testimony would be material."

Motley argues that Gray's testimony was material and that it was reversible error for the Disciplinary Board to refuse to continue the case when she failed to appear. However, Motley's counsel conceded during argument on the motion for a continuance that he had "never spoken to Ms. Gray," and he even said "[s]he's adverse." Therefore, Motley was hardly in a position to assert the materiality of Gray's testimony or to claim prejudice from her failure to appear.

Even so, with the Disciplinary Board's permission, Motley's counsel made a proffer of what Gray would say "if [she] was here to testify." Counsel said that Gray would corroborate Davis that "both agreed . . . that [with respect to the indebtedness Davis owed for the windows] they were going to have this note and hold it in good faith [and] that when it was over and there was no more risk to [Gray] as being the new property owner, then it would be torn up."

However, assuming Gray would have testified in this manner, the testimony would have been completely beside the point. The crucial question is not whether Davis and Gray agreed to have a note. The question is whether Motley was incompetent in fashioning the arrangement between the parties in the manner that he did. We will deal with that question shortly, but it suffices to say at this point that, even had Gray testified as Motley says she would, the outcome of the inquiry into Motley's competence would be the same. Hence, Gray's testimony would not have been material.

Motley's counsel also proffered that Gray would corroborate Motley "about insurance being kept in place that [Davis] had on the property." This related to Motley's alleged failure, noted supra, promptly to furnish "Proof of Insurance coverage and paid receipt" to Suncoast in connection with Gray's assumption of the existing deed of trust on the property. Motley seeks to excuse his failure by saying that Gray and Davis "agreed that Davis' existing hazard insurance would remain in force and [.] therefore, it would not be necessary to send a new hazard insurance policy to the lender." But the fact that the parties agreed a new policy would not be obtained does not excuse Motley's failure to furnish proof to Suncoast that the existing policy would remain in force and that the premium was current. Hence, Gray's testimony would not have been material on this point either.

Motley acknowledges that whether a continuance should have been granted was a matter for the exercise of discretion on the part of the Disciplinary Board. Under the circumstances, we find no abuse of discretion in the denial of Motley's motion for a continuance.

C. Recusal

Motley sought to have two members of the Disciplinary Board recuse themselves from hearing the present proceeding because they had participated in a previous disciplinary matter involving Motley that, at the time of the hearing, was before this Court on appeal. Motley argued that the two members became privy to information as a result of the prior proceeding that was inadmissible in the present case because the prior proceeding was on appeal and thus not final. The two members refused to step down, stating they felt "very strongly" that the "facts . . . raised" by Motley would not affect their impartiality and fairness in the present case.

Motley makes the same argument on appeal that he made before the Disciplinary Board. In addition, he says that "[i]t was highly prejudicial to have two panel members who had personal involvement with past disciplinary matters relating to [him]" and that "[i]t constituted error to deny [his] motion for [recusal]."

We disagree. In the first place, we think a member of the Disciplinary Board is subject to the same rules regarding recusal as are applicable to a trial judge, and Motley tacitly concedes this point. The fact that a trial judge is "familiar with a party and his legal difficulties through prior judicial hearings . . . does not automatically or inferentially raise the issue of bias." Deahl v. Winchester Dep't of Soc. Servs., 224 Va. 664, 672-73, 299 S.E.2d 863, 867 (1983) (quoting Barry v. Sigler, 373 F.2d 835, 836 (8th Cir. 1967)).

Whether a trial judge should recuse himself or herself involves the exercise of discretion. Deahl, 224 Va. at 672, 299 S.E.2d at 867. Nothing in this record indicates that the two members of the Disciplinary Board abused their discretion in refusing to recuse themselves. See Stockton v. Commonwealth, 227 Va. 124, 141, 314 S.E.2d 371, 382 (1984) (no abuse of discretion for trial judge to refuse to recuse himself because he had presided over previous trial in which defendant cursed him).

D. Sufficiency of Evidence
1. The Real Estate Transaction

Motley's conduct in the real estate transaction implicates former DR 6-101, which was styled "Competence and Promptness." DR 6-101(A) provided that a lawyer "shall undertake representation only in matters in which [he or she] can act with competence." DR 6-101(B) required that a lawyer "shall attend promptly to matters undertaken for a client," and DR 6-101(C) required a lawyer to "keep a client reasonably informed about matters in which the lawyer's services are being rendered."

In discussing the Disciplinary Board's finding that his conduct in handling the Davis-Gray real estate transaction constituted incompetence, Motley reminds us that a violation of disciplinary rules must be established by clear proof, Blue v. Seventh Dist. Comm., 220 Va. 1056, 1062, 265 S.E.2d 753, 757 (1980), and he maintains that the finding of incompetence against him is not supported by such proof. Motley says "[t]he evidence is that Davis and [Gray] agreed to the transaction and Motley was carrying out their requests."

If, as is apparent, Motley is content to rest his defense against the use of the disputed promissory note and deed of

trust upon the proposition that Davis and Gray agreed to the transaction and Motley was merely carrying out their requests, the defense simply will not suffice. What Motley permitted Davis to sign does not even conform to what he says the parties agreed to.

Motley says that "the parties agreed that Davis would execute a deed of trust note in the amount of \$3,366.78 to protect [Gray] in the event a lien was placed on the property due to Davis' default on the debt" and that Gray "would destroy the note when the debt for the windows was satisfied." But nothing in the note Davis signed makes its payment conditional upon the placing of a lien on the property nor does the note contain any provision requiring Gray to destroy it when the debt for the windows was satisfied.

Rather, the note Motley permitted Davis to sign is a fully negotiable instrument dated February 15, 1996, containing an unconditional promise to pay the fixed sum of \$3,366.78 in monthly installments of \$98 each beginning March 1, 1996, with payment in full due June 1, 1998. The note not only created an indebtedness requiring Davis to pay Gray \$3,366.78 when Davis owed Gray no money at all, but it also subjected Davis to the danger of double liability if the note found its way into the hands of a holder in due course.

Furthermore, it is obvious from a reading of Davis's testimony that she had no idea what she was getting herself into when she signed the note. She was asked by a member of the Disciplinary Board why she "signed a note promising to pay Ms. Gray money." She replied, "I wasn't paying Ms. Gray money. I was continuing to pay that bill [to the finance company]." Asked again why she signed the note, she said "[b]ecause that was my bill. It was a bill that I had created." Asked if she understood that the note "doesn't say" that she "really didn't have to pay Ms. Gray" but she "had to pay somebody else," she replied, "[n]o, I didn't."

It is also obvious that Motley himself neither understood the nature of the situation he created for Davis nor appreciated the potential harm she could have suffered. A member of the Disciplinary Board asked Motley whether he had any concerns "that the note might be negotiated with a holder in due course," and he replied, "I did, but you can question anything, but can you win on it?"

Motley concedes Davis was his client. As a result of that relationship, he owed her the duty to draft closing papers that accurately reflected the conditional nature of the liability she had agreed to undertake in favor of Gray. He also owed her the duty, in any event, to explain to her the true nature and potential consequences of what he actually prepared for her to sign and to advise her against signing anything to her prejudice. If this advice had created a conflict of interest because of his dual role in representing both Davis and Gray, then it would have been his duty to withdraw from representation of both.

Motley's failure to prepare papers conforming to the conditional nature of the liability Davis had agreed to undertake constituted a violation of his duty under DR 6-101(A)(1) to "act with competence," and his failure to advise her of the true nature and potential consequences of what he actually prepared is both incompetence under DR 6-101(A)(1) and a violation of his duty under DR 6-101(C) to "keep a client reasonably informed about matters in which the lawyer's services are

being rendered.” And we think all these violations have been established by clear proof.

We also think the evidence clearly and convincingly established that Motley violated DR 6-101(B) by failing to “attend promptly” to the matter of forwarding to Suncoast “Proof of Insurance coverage and paid receipt.” As noted previously, Motley attempts to excuse this failure by saying that, because Davis and Gray agreed to continue the existing policy, there was no need to send the trust holder a new policy. However, the trust holder did not require proof of a new policy but only proof that there was “Insurance coverage,” a requirement that could have been satisfied easily with proof that the existing policy remained in force. And Motley clearly did not furnish that proof.

2. Trust Account Problems

(a) DR 9-102(A) and (B)—Preserving Identity of Funds

Motley argues there is no clear and convincing evidence that he put client funds into his personal account. However, as noted previously, Motley conceded before the Disciplinary Board that he deposited the \$1,000 check he received from Gray into his personal account. He says now that he “inadvertently” made this deposit. Also, he argues that because the \$1,000 check was subsequently returned for insufficient funds and a check is not legal tender, no client funds were actually deposited into his personal account. This is an ingenious argument, but lacking in merit. Furthermore, the argument ignores the fact, also conceded by Motley, that he deposited \$3,026.27 of personal funds into his trust account, which is likewise prohibited by DR 9-102(A) except in circumstances not pertinent here.

Motley also argues there is no clear and convincing evidence that he failed to keep a record of client funds coming into his possession, as required by DR 9-102(B)(3). He says his records are incomplete but do indicate “whenever [he] deposited client funds into his account.” However, the record shows clearly that Motley failed to maintain a subsidiary ledger card or an equivalent for the Davis-Gray real estate transaction, as required by DR 9-103(A).

(b) DR 9-103—Record-Keeping Requirements

The Disciplinary Board found that Motley had violated DRs 9-102(A), -102(B)(3), -103(A)(1),(2), and (3), and 103(B)(2),(3),(4),(5), and (6), all relating to record-keeping and accounting procedures. Motley says that he had trust ledger cards, bank statements, and other records “that were used to account for client funds deposited in trust and disbursements” which, “[a]lthough . . . incomplete,” did provide “a good faith attempt to account for the deposit and disbursement of client funds held in trust.”

However, the analysis made of Motley’s records by Campbell, the State Bar investigator, for the period July 1, 1995, through June 30, 1996, disclosed numerous instances of incompleteness in subsidiary ledgers and cash disbursement journals. Similarly, cash receipts journals or equivalent records failed to provide identification of the sources of funds deposited. Also, Motley would deposit one amount but “[h]is ledger denote[d] another amount.”

Campbell found that “Motley was out of trust, on numerous occasions, on each of [numerous] clients.” A “look at . . . the checks that were pending, and . . . how much money was in the checking account [showed] there was not enough money to cover the checks.” For example, with respect to the handling of a settlement for one client, there were insufficient funds in the trust account to cover checks written on the settlement on thirty-two different occasions between August 15, 1995, and November 13, 1995, and, for another client, there were insufficient funds to cover checks written on the settlement on at least twenty-seven separate occasions between October 19, 1995, and March 25, 1996.

F. Mitigating Circumstances and Excessiveness of Sanction

Motley argues that the eighteen-month license suspension “imposed by the [Disciplinary] Board was excessive and contrary to law because the Board failed to consider mitigating evidence.” According to Motley, the Disciplinary Board failed to consider evidence that he engaged in no deliberate conduct; did not violate any court order; did not steal any client funds or cause harm to any client; no longer handles real estate matters; and acknowledged the need for improvement in the handling of his trust accounts, has instituted improved accounting procedures, and is willing to make other necessary improvements.

It is true, as Motley says, that neither in the Disciplinary Board’s oral decision nor in its written order is there any mention of mitigating evidence. However, we are aware of no requirement that the Board state that it considered mitigating evidence when announcing a decision or issuing an order that disciplines an attorney. And a failure to state that mitigating evidence was considered does not mean that it was not considered.

Furthermore, we are of opinion that the sanction imposed by the Disciplinary Board was not excessive even in light of the mitigating evidence. Motley’s mishandling of the Davis-Gray real estate transaction and his mismanagement of his trust account constitute serious violations of the disciplinary rules, justifying, when coupled with his disciplinary record,⁹ the imposition of serious disciplinary treatment.

For the foregoing reasons, we will affirm the order of the Disciplinary Board.

Affirmed.
A Copy,
Teste:
David B. Beach, Clerk

1 Evelyn Davis is also referred to in the record as Evelyn Meade and Evelyn Steele. Because the Disciplinary Board in its order referred to her as Davis, we will use the same name in this opinion.

2 Effective January 1, 2000, the Virginia Code of Professional Responsibility was replaced by the Virginia Rules of Professional Conduct.

3 The subjects of competence, promptness, and a duty to inform are now contained in Rules 1.1, 1.3(a), and 1.4(a),(b), and (c) of the new Rules of Professional Conduct, respectively.

- 4 The deed of trust that was to provide this "security" is not part of the record, but the evidence shows it did not describe any property that was to stand as security for payment of the promissory note Davis signed in favor of Gray. Apparently, it was Motley's intent that property Davis obtained at some time in the future would later on be included in the deed of trust.
- 5 The subjects of preserving identity and keeping records are now contained in Rule 1.15 of the new Rules of Professional Conduct.
- 6 Motley contends that the Disciplinary Board erred in admitting into evidence two exhibits over his objection that they were obtained in violation of his rights of due process and equal protection under the Fourteenth Amendment.
- 7 Motley's counsel conceded these facts in a letter dated December 9, 1996, to Campbell, the investigator for the State Bar.
- 8 The exceptions are that funds reasonably sufficient to pay service or other charges of the financial institution may be deposited in the trust account and that funds belonging in part to a client and part to the lawyer must be deposited in the account but the portion belonging to the lawyer must be withdrawn promptly after it is due.
- 9 In 1986, the Third District Committee dismissed a complaint against Motley with terms; in 1991, the Committee imposed a private reprimand upon Motley with terms; and in 1992, the Committee dismissed another complaint against Motley with terms.

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In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 22nd day of September, 2000.

VICTOR ALAN MOTLEY
v.
VIRGINIA STATE BAR
Record No. 001306
VSB Docket No. 98-032-1045

Upon an appeal of right from a judgment rendered by the Virginia State Bar Disciplinary Board on the 27th day of January, 2000.

Victor Alan Motley appeals from the order of the Virginia State Bar Disciplinary Board upholding the finding of the Third District Committee that Motley violated Disciplinary Rules 6-101(B) and 6-101(C) of former Code of Professional Responsibility, now Rules of Professional Conduct 1.3(a) and 1.4(a), and imposing a sanction of public reprimand.

Based on the pleadings, briefs, and argument of appellee's counsel,* the Court is of opinion that there is no error in the order of the Board. Motley was not deprived of due process when different members of the Board of Directors of the corporate complainant filed the complaint and testified at the hearing before the district committee. Motley owed a duty to keep his client informed of matters relevant to the representation regardless of any duty imposed on other persons involved in transactions relevant to the representation. Finally, prior violations of the Disciplinary Rules may be considered in determining appropriate sanctions for subsequent violations. Tucker v. Virginia State Bar, 233 Va. 526, 532-33, 357 S.E.2d 525, 529 (1987).

Accordingly, the order of the Virginia State Bar Disciplinary Board is affirmed.

This order shall be certified to the Virginia State Bar Disciplinary Board.

A Copy,
Teste:
David B. Beach, Clerk

* Appellant waived oral argument.

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Disciplinary Board

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
LLOYD D. RIALS, Petitioner
VSB Docket No. 99-000-1972

ORDER OF RECOMMENDATION

On February 18, 2000, this matter came before the Disciplinary Board, consisting of Randy Ira Bellows, Bruce T. Clark, Donna A. DeCorleto, Karen A. Gould, and William M. Moffet, Second Vice Chair, on the Petition for Reinstatement by Lloyd D. Rials to reinstate his license to practice law in the Commonwealth of Virginia. Mr. Rials surrendered his license to practice law in 1980 after being charged with serious violations of the Code of Professional Responsibility.

The petitioner, Lloyd D. Rials, was represented by Murray J. Janus and Deanna D. Cook of the law firm of Bremner, Janus & Cook. Dorothy M. Pater, Assistant Bar Counsel, appeared for the Virginia State Bar. The hearing was transcribed by Catharina M.K. Blalock, Court Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone (804)730-1222.

This matter is governed by Rule 13(J) of the Rules of Court, Part Six, Section IV. Pursuant to that provision, it is the petitioner's burden to show by clear and convincing evidence that he is a person of honest demeanor and good moral character and that he possesses the requisite fitness to practice law.

In addition to the testimony of the petitioner, the Board heard and considered the testimony of four witnesses who appeared on the petitioner's behalf: John T. DeBevoise, pastor of Mr. Rials' church in Tampa, Florida; Jeffrey Kramer, an attorney who worked with Mr. Rials on oil and gas claims; Palmer B. Dent, a Hartford employee from Georgia who had worked on insurance matters with Mr. Rials; and Paul A. Reneau, from the Institute of Gas Technology, a former employer of Mr. Rials in Wisconsin. The Bar opposed the Petition for Reinstatement and presented testimony from seven witnesses: Cam Moffatt, VSB investigator; Edwin R. Ward, IRS agent; Joseph Abdelnour, attorney; John C. Stephens, Jr., attorney; Alvin P. Anderson, attorney; and Joseph U. Brimmer and Linda Tiexeira, who had been involved in two of the divorce actions in which forgery occurred that gave rise to the disciplinary actions pending against Mr. Rials at the time he surrendered his license.

The Board also reviewed the petition filed by the Petitioner, the testimony and documentary exhibits presented, petitioner's Answers to Request for Bill of Particulars, and letters from the community in response to the Bar's publication of the public hearing on Mr. Rials' Petition for Reinstatement. The Board considered the following factors in reaching its conclusion and recommendation to the Supreme Court as outlined by this Board *In the Matter of Alfred L. Hiss*, Docket No. 83-26, opinion dated May 24, 1984:

1. The severity of the petitioner's misconduct including but not limited to the nature and circumstances of the misconduct.
2. The petitioner's character, maturity and experience at the time of his disbarment.
3. The time elapsed since the petitioner's disbarment.
4. Restitution to clients and/or the Bar.
5. The petitioner's activities since disbarment including but not limited to his conduct and attitude during that period of time.
6. The petitioner's present reputation and standing in the community.
7. The petitioner's familiarity with the Virginia Code of Professional Responsibility (as of 1/1/2000, the Rules of Professional Conduct) and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the petitioner.
9. The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.
10. The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.

In order to assess factors 1 through 10 above, it is necessary to review the circumstances that gave rise to Mr. Rials surrendering his license while disciplinary charges were pending against him in 1980. Prior to the series of events giving rise to Mr. Rials' disbarment, Mr. Rials' license to practice law was suspended for eight months in 1996 as a result of the defalcation of \$8,000 in fees from his law partnership, Stephens, Abdelnour, Rideout & Rials. Mr. Rials repaid the firm in full the amount he had retained in settlement of the claims the firm had against him. There was no criminal conviction associated with the defalcation.

Shortly after this, in 1978 and 1979, Mr. Rials forged a notary public's signature to at least five divorce depositions in three different divorces. Mr. Rials also fabricated a witness and his testimony for one of the divorces. Continuing this pattern of forgery, Mr. Rials forged a notary public's signature to a deed. No restitution or payment from the Client Protection Fund was paid to any clients in these matters because there was no financial loss to any clients in connection with these forgeries. He had his attorney resolve the divorce matters at his expense. After surrendering his license, Mr. Rials was convicted of two

felony convictions after having plead guilty in connection with the forgeries. Mr. Rials was sentenced to three years in the Penitentiary on each felony conviction, which was suspended pending the completion of ten years of unsupervised probation.

The Board makes the following findings with respect to the *Hiss* factors enumerated as 1 through 10 above:

1. **The severity of the petitioner's misconduct including but not limited to the nature and circumstances of the misconduct.** The Board finds that the misconduct that gave rise to Mr. Rials surrendering his license to be severe. Mr. Rials made multiple serious errors in judgment that resulted in his license being surrendered in 1980. His actions in fabricating a witness and repeatedly forging a notary public's signature over several years constituted egregious fraud upon various courts. Two of the clients whose divorces had to be redone because of Mr. Rials' forgeries, Mr. Brimmer and Mrs. Tiexeira, testified that they were opposed to Mr. Rials' license being reinstated. They also testified to the inconvenience and uncertainty to which Mr. Rials' actions subjected them. The defalcation by Mr. Rials constituted a breach of fiduciary responsibility. Mr. Abdelnour, one of the lawyers in the firm affected by the defalcation, believes that Mr. Rials was dealt with lightly given his misdeeds in the defalcation situation and the forgeries. Mr. Abdelnour opposes Mr. Rials' Petition for Reinstatement. Mr. Stephens, another one of the partners in the firm affected by the defalcation, also opposes the reinstatement petition, as does Alvin Anderson, who served on the First District Disciplinary Committee and investigated the forgeries in 1980. Messrs. Abdelnour and Stephens also testified to the shock and disbelief they had felt when they discovered Mr. Rials' defalcation.
2. **The petitioner's character, maturity and experience at the time of his disbarment.** At the time he surrendered his license, Mr. Rials had been practicing law for approximately 10 years and was 36 years old. Mr. Rials could not offer any excuse or justification for the actions that lead to his disbarment. Mr. Rials admitted to poor judgment at the time and that he should have known better. He understood that his actions were wrong at the time. The actions were taken as a matter of expediency in uncontested cases, according to Mr. Rials.
3. **The time elapsed since the petitioner's disbarment.** The date of the Order disbaring Mr. Rials is May 2, 1980. Therefore, almost 20 years has elapsed since Mr. Rials' disbarment.
4. **Restitution to clients and/or the Bar.** This factor is not applicable to Mr. Rials' Petition since there was no claim by any client of a financial loss related to Mr. Rials' actions. Mr. Rials testified that he paid to have the divorce depositions redone that were effected by his forgery of the notary public acknowledgements and new final decrees issued.
5. **The petitioner's activities since disbarment including but not limited to his conduct and attitude during that period of time.** According to the testimony presented by the petitioner, Mr. Rials has been a responsible member of society since being disbarred, by supporting his family, by

being a good parent, and by participating actively in his church. Since Mr. Rials' disbarment, he has accumulated approximately twelve-years experience in risk management in the oil and gas industry.

6. **The petitioner's present reputation and standing in the community.** Mr. Rials is active in his church, the Fourth Presbyterian Church in Chicago, Illinois. He has lived in his current home in Cary, Illinois, since 1996. Mr. Rials is married to his second wife, and his children are now adults. Mr. Rials volunteers with the Home Depot Kids Workshop at monthly Saturday workshops. From 1998 to 1999 he served on the Board of Directors for the Barrington Chapter of the Lyric Opera of Chicago. He has also served as a lecturer for the Lyric Opera of Chicago. Mr. Rials' civil rights were restored by the Governor of Virginia on February 18, 2000, in response to Mr. Rials' petition regarding same. (Petitioner's Exhibit 8.)
7. **The petitioner's familiarity with the Virginia Code of Professional Responsibility (as of 1/1/2000, the Rules of Professional Conduct) and his current proficiency in the law.** The length of time that Mr. Rials has not practiced law in Virginia is of concern to the Board. The Board is not satisfied that the petitioner established by clear and convincing evidence familiarity with the current Virginia Rules of Professional Conduct, or that he has maintained his knowledge of Virginia law. He did not take any continuing legal education courses on Virginia law between 1980 and 1998.
8. **The sufficiency of the punishment undergone by the petitioner.** The Board considers Mr. Rials' felony convictions with the concomitant loss of his civil rights together with the loss of his law license to be sufficient punishment for his misconduct.
9. **The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.** The Board found Mr. Rials to be sincere, frank and truthful in his testimony to the Board in discussing the factors relating to his disbarment and reinstatement. He did not excuse his conduct and was remorseful about what he had done. Mr. Rials explained that he wanted his license reinstated so that he could return to the practice of law, albeit not as a solo practitioner.
10. **The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.** Letters received from citizens in the Williamsburg area in response to the Bar's notification of the public hearing asked that Mr. Rials' law license be restored to him. Despite this, however, the Board is concerned that restoring a license to a lawyer who has committed egregious fraud upon several circuit courts in Virginia and who has breached fiduciary responsibilities would adversely affect public confidence in the administration of justice.

The Board recommends that Mr. Rials' license not be reinstated. The Board's opinion is that Mr. Rials' misconduct was of an egregious nature arising out of several separate incidents which occurred over a several-year period. The Board also

finds that Mr. Rials has not proven by clear and convincing evidence that he possesses the requisite fitness to practice law.

The Petitioner posted a bond of a \$1,000.00 for payment of costs with his Petition for Reinstatement. As required by Paragraph 13(K)(10)(e) of the Rules of Court, Part Six, Section IV, the Board finds the cost of this proceeding to be as follows:

ENTERED this 26th day of July, 2000
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 William M. Moffet, First Vice Chair

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BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

In the Matter of
ANDREW ROBERT SEBOK
 VSB Docket Nos.. 98-022-2586
 99-022-0170
 98-021-2742
 98-021-2743
 99-021-1231
 99-021-0506

ORDER

THIS MATTER came to be heard on September 21 and 22, 2000, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of William M. Moffet, Chair presiding, Richard J. Colten, Janipher W. Robinson, Werner H. Quasebarth, Lay Member, and Bruce T. Clark. The Respondent, Andrew Robert Sebok, was present and was represented by James C. Roberts. Charlotte P. Hodges, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

All matters heard came before the Board on certifications of the Second District Subcommittee.

Following a two-day hearing and findings of misconduct as set out below, an Agreed Disposition as to the sanctions to be imposed was entered into between the parties. Having considered the cases before it, the Virginia State Bar Disciplinary Board makes the following findings by clear and convincing evidence.

At all relevant times hereto, the Respondent, Andrew Robert Sebok, has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket #98-022-2586 (Audrey E. Noble)

1. In November of 1993, Audrey E. Noble retained the Respondent to represent her in a contested divorce. According to her testimony, he is still representing her.
2. On August 29, 1997, a Final Decree of Divorce ("the Decree") was entered by the Circuit Court of the City of Norfolk. Among other things, the Decree called for the division of Mr. Noble's military retirement, an annuity held by Mr. Noble and Mr. Noble's retirement pension with the City of Norfolk. These divisions were to be accomplished

by the filing of appropriate “qualified domestic relations orders” (hereinafter QDRO) with each entity. The Decree directed that QDRO’s were to be in place no later than October 1, 1997.

3. Thereafter, the Respondent failed to pursue completion of QDRO’s as ordered in the Decree. As a result of such failure, Mrs. Noble has not received the support payments due her. As of the time of the hearing before the Board, over three years following entry of the Decree, two of the QDRO’s were still not entered, the third having been entered a year following the original Decree.

Based upon the evidence presented, and the Respondent’s own admissions, the Board finds violations of the following Disciplinary Rules of the Code of Professional Responsibility:

DR 6-101 (B) * * *

DR 7-101 (A)(1) * * *

Based upon the testimony and exhibits presented, the Board finds that allegations that Respondent violated DR 6-101(C), 6-101(D), DR 7-101A(2) and A(3) were not proven by clear and convincing evidence.

VSJ Docket #99-022-0170 (Ronald J. Brown)

On January 21, 1998, Respondent was appointed by the Circuit Court of the City of Norfolk to file an appeal for Ronald J. Brown, he having gained the right to do so after a *habeus corpus*. At the time, Mr. Brown was serving a twenty five year sentence.

2. The Respondent met with Mr. Brown’s brother and the attorney who successfully filed the *habeus corpus* and assured them the appeal would be filed in a timely fashion.

3. The Respondent failed to file the Notice of Appeal with the trial court in a timely fashion and as a result the appeal was dismissed on May 8, 1998.

4. The Respondent admitted to the Virginia State Bar investigator that he had missed the filing date in the Brown matter and he took responsibility for such actions.

Based upon the evidence presented and the Respondent’s own admission made to the Bar investigator, the Board finds violation of the following Disciplinary Rule of the Code of Professional Responsibility:

DR 6-101 (B) * * *

Based upon the testimony and exhibits presented, the Board finds that allegations that the Respondent violated DR 6-101(C) and (D) were not proven by clear and convincing evidence.

VSJ Docket #98-021-2742 and #98-021-2743 (Annie Fletcher & Reginald Fletcher, Sr.)

1. The Respondent was retained in mid September of 1997 by Annie Fletcher to represent her son, Reginald Fletcher, Jr., on appeal of a criminal conviction. Reginald Fletcher, Jr. had previously had a *habeus corpus* which he filed *pro*

se denied by the Court of Appeals of Virginia and the Virginia Supreme Court.

2. The Respondent agreed to take the case upon payment of a \$2,000.00 retainer. Mrs. Fletcher paid \$1,000.00 towards the retainer in September of 1997. Mr. Reginald Fletcher, Sr., father of the defendant and former husband of Annie Fletcher, paid the remaining \$1,000.00 in two equal installments in October and December of 1997. Both parents thereafter filed complaints leading to the assignment of the two VSJ numbers listed above.
3. The Respondent met with Reginald Fletcher, Jr. in prison and reviewed extensive transcripts of the trial of Reginald Fletcher, Jr. and the trials of two of his co-defendants. However, the transcript of the retrial of one of the co-defendants was not available to him. Based upon this investigation, the Respondent developed a theory for appeal which hinged upon proving that inconsistent testimony concerning the events for which Mr. Fletcher was convicted, was given at the retrial of a co-defendant. The Respondent asserts that he attempted to explain this to Mr. and Mrs. Fletcher and attempted to make them understand that in order to pursue this matter further, a transcript of the co-defendant’s trial needed to be obtained.
4. The Fletchers were unhappy with the advice given and the progress made on their son’s case and, therefore, they requested that the Respondent refund the fee paid. This request was made on several occasions. Respondent refused to refund the fee.

While the Board finds that the Respondent’s actions in reference to moving this matter forward were arguably appropriate and that the delay encountered arose from the Respondent’s inability to secure the transcript of the co-defendant’s trial, the Board does find violation of DR 6- 101(C), which states “a lawyer shall keep a client reasonably informed about matters in which the lawyer’s services are being rendered.”

In reaching its decision, the Board recognizes that, although the Respondent was paid by Mr. and Mrs. Fletcher to assist their son, the Respondent’s client was, at all times, Reginald Fletcher, Jr. As such, the Respondent had an affirmative duty to keep him fully apprised of the efforts being undertaken on his behalf and he had a right to know of the importance of the trial transcript in his case. The Respondent did not comply with this duty.

From the evidence presented, the Board finds violation of the following Disciplinary Rule:

DR 6-101 (C) * * *

Based upon the testimony and exhibits presented, the Board finds that allegations that the Respondent violated DR 2-105(A), DR 2-108(D), DR 6-101(B) and DR 9-102(A) and (B) were not proven by clear and convincing evidence.

VSJ Docket #99-021-1231 (Camille Ford)

1. In the first week of July, 1998, Pearline Ford met with the Respondent to seek his assistance in filing a motion on behalf of her daughter, Camille Ford, under 28 U.S.C. 2255 (2255 Motion). The Respondent agreed to undertake the

work for a fee of \$10,000.00. On July 10, 1998, Pearline Ford paid the Respondent \$5,000.00 towards the fee. Thereafter, the parties agreed the balance of the fee could be paid at the rate of Five Hundred Dollars per month until paid in full. No written retainer agreement or engagement letter was prepared.

2. The Respondent stipulated at the hearing before the Board that the funds paid him by Ms. Ford were not placed in a client trust account until earned, but were immediately placed in Respondent's operating fund and used. In October of 1998, Respondent received an additional \$1,000.00 from Ms. Ford. Respondent stipulated that these funds were handled in the same manner as the first payment.
3. Ms. Camille Ford's Petition for a Writ of *Certiorari* was denied by the Supreme Court of the United States on October 6, 1997. Based upon this date of denial, her 2255 Motion had to be filed no later than October 6, 1998. Respondent failed to file the Motion prior to said deadline.
4. The Respondent admitted to the Board that he did, in fact, file the 2255 Motion late, relying upon what his client and her mother had told him the due date for the filing of the 2255 Motion was, rather than independently confirming the deadline.
5. Due to Respondent's failure to file the 2255 Motion until October 22, 1998, it was dismissed by the United States District Court for the Eastern District of Virginia, Norfolk Division.
6. Following the denial of the Motion, Pearline Ford repeatedly attempted, without success, to obtain repayment from the Respondent. Ultimately, she sued him in General District Court seeking reimbursement. Just prior to the trial, Respondent offered Ms. Ford \$4,000.00 to settle her claim. These funds were paid her in installments between May and July of 2000. Ms. Ford was never refunded the balance of the funds she had given the Respondent.

Based, in part, upon the evidence presented, and in part upon Respondent's own admissions and stipulations, the Board finds violation of the following Disciplinary Rules of the Code of Professional Responsibility:

- DR 2-108 (D) * * *
- DR 6-101 (B) * * *
- DR 9-102 (A) (1) AND (2) * * *
- DR 9-102 (B) (4) * * *

Based upon the exhibits and testimony presented, the Board finds the allegations that the Respondent violated DR 2-105(A), DR 6-101(A), (C) and (D), and DR 7-101(A) were not proven by clear and convincing evidence.

VSB Docket #99-021-0506 (Sonya N. Flores-Gonzalez)

1. The Respondent was retained on January 14, 1998, by Sonya N. Flores-Gonzalez to prepare and file an I-130

application (immigration petition) with the Department of Immigration and Naturalization Service (INS) on behalf of her husband, a foreign national then illegally in this country.

2. The Respondent was given a retainer fee of \$1,000.00 for services to be performed. These funds were deposited in his personal account and, at such time, they were at least partly unearned.
3. The I-130 application was completed on January 14, 1998 and, by 8:30 p.m. of that day, the Respondent was instructed to file the same. Under the program then in existence, the deadline for the filing of the application was midnight of that day. To allow such filings, the INS office in Norfolk, Virginia remained open that day until midnight.
4. The application was not filed prior to the midnight deadline. Instead, Respondent mailed the application to the INS office in St. Albans, Vermont. The application was filed and stamped "received" by the INS office in St. Albans, Vermont on January 17, 1998, three days after the deadline.
5. Had the filing been made in a timely fashion and were it in proper form, the complainant's husband would have been eligible for a green card and could have remained in the United States. As the application was rejected for untimely filing, in order to refile the application, Ms. Flores-Gonzalez' husband ultimately was required to return to his native land for a period of approximately four months.
6. That despite repeated requests from the client for a refund of the monies paid him, the Respondent failed to make such refund.

Based, in part, upon the evidence presented, and in part upon Respondent's own admissions and stipulations, the Board finds violation of the following Disciplinary Rules of the Code of Professional Responsibility:

- DR 2-108 (D) * * *
- DR 6-101 (B) * * *
- DR 9-102 (A) (1) and (2) * * *
- DR 9-102 (B)(4) * * *

Based upon the testimony and exhibits presented, the Board finds that allegations that the Respondent violated DR 2-105, DR 6-101(C) and (D), and DR 7-101 (A) were not proven by clear and convincing evidence.

Sanctions

Thereupon, the Board heard evidence as to what sanctions should be imposed. Respondent presented evidence from several fact witnesses and two psychologists. In brief, the evidence presented was that Respondent was a respected and talented lawyer in the areas of criminal appellate work and immigration law for many years prior to 1996. The evidence was that he was extremely dedicated to pursuing his clients' interests prior to that date. Beginning in 1996, Respondent experienced sev-

eral emotional traumas which sent him into a state of severe depression. These events included a divorce, financial reverses, loss of his office space and witnessing the execution of one of his clients with whom he had developed a personal relationship. When these events occurred, Respondent became depressed and despondent. His personality, as described by several witnesses, changed during this period. He became disorganized and incapable of keeping up with deadlines. He was in solo practice. Several of the complainants testified that they held no animus towards Respondent, as evidenced by the fact that complainant Noble had not terminated her employment of him as of the date of the hearing. Moreover, the evidence presented established that once Respondent got into treatment, started taking appropriate medication, took employment with another attorney who dealt with the fees received and employed a paralegal to assist him in keeping up with deadlines, the problems evidenced by his unacceptable conduct between 1996 and 1999 ceased to exist.

In hearing the above evidence, the Board was mindful of Part Six; Section IV, Paragraph 13.C(6)(e) of the Rules of Court which states:

If the Board finds that the misconduct was the result of a Disability, it may consider the Disability in mitigation of any discipline imposed.

With the above evidence and guiding rule in mind, the Board heard and accepted an agreed disposition as to sanctions which was presented to the Board by Respondent and the Virginia State Bar. In doing so, the Board found by clear and convincing evidence that Respondent's misconduct was due to a disability and it exercised its discretion to consider that disability in mitigation of the discipline imposed.

WHEREFORE, the Board hereby ORDERS as follows:

1. The Respondent's license to practice law in the Commonwealth of Virginia is suspended for a period of nine (9) months, effective October 13, 2000.
2. That for a period of three (3) years, commencing on September 21, 2000, the Respondent will attend counseling sessions at least four times a month with his clinical psychologist unless otherwise directed by his psychiatrist. In addition, the Respondent shall see his psychiatrist at least twice each year during the same period.
3. That for a period of three (3) years from September 21, 2000, the Respondent shall take all medications prescribed for him by his psychiatrist in strict accordance with the instructions given him in reference to such medications.
4. That during the said three year period, the Respondent shall provide the Virginia State Bar with a comprehensive medical release and will direct his treating psychiatrist and clinical psychologist to provide quarterly written reports to the Virginia State Bar on the progress of his therapy.
5. That for a period of three (3) years following the reinstatement of Respondent's license to practice law within the Commonwealth, he shall not practice as a

sole practitioner, but shall instead practice in the employ of another attorney or attorneys licensed to practice within the Commonwealth of Virginia. During such time, he shall take no fees from clients directly, but shall instead allow his employer to manage such funds.

6. That for a period of three (3) years following the reinstatement of the Respondent's license to practice law within the Commonwealth of Virginia, the Respondent shall not allow his name to be placed on any lists of court appointed attorneys in any state or federal court.
7. That the Respondent shall make the following restitutions within the times indicated:
 - A. The Sum of Two Thousand Dollars (\$2,000.00) to Pearlne Ford within eighteen months of September 21, 2000.
 - B. The Sum of One Thousand Dollars (\$1,000.00) to Sonya N. Flores-Gonzalez within eighteen months of September 21, 2000.
 - C. The Sum of One Thousand Dollars (\$1,000.00) each to Annie Fletcher and Reginald Fletcher, Sr. within twenty four months of September 21, 2000.

The Respondent shall provide written proof to the Virginia State Bar of compliance with this portion of the Order, such proof to be provided no later than thirty days following the final date upon which each of such payments are to have been made.

8. If at any time it is determined by the Board that the Respondent has failed to comply with any of the terms placed upon him herein, there shall be imposed an additional five year suspension of his license to practice law within the Commonwealth of Virginia.

ENTERED this Order this 14th day of November, 2000.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By William M. Moffet, First Vice Chair

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BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

In the Matter of
DAVID THOMAS STECKLER
 VSB Docket No. 00-000-1274

ORDER

THIS MATTER came on to be heard on November 17, 2000, before a panel of the Disciplinary Board consisting of William M. Moffet, First Vice-chair, Randy I. Bellows, Chester J. Cahoon, Jr., Robert E. Eicher, and D. Stan Barnhill. The State Bar was represented by Barbara Ann Williams, Esq. The respondent, David Thomas Steckler ("Steckler"), after receiving

due notice by certified mailing to the last address provided to the State Bar, failed to appear either in person or by counsel.

This matter came before the Board on a Motion and Notice of Show Cause Proceeding To Further Suspend or Revoke License to Practice Law for Failure to Comply with Rules of Court, Part Six, Section IV, Paragraph 13.

I. Findings of Fact

The Board makes the following findings of fact on the basis of clear and convincing evidence.

1. From April 26, 1983, until July 16, 1999, Steckler was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.
2. On August 13, 1999, a three-judge circuit court panel entered an order suspending Steckler's license to practice law in the Commonwealth of Virginia for a period of one year, effective July 16, 1999.
3. The order required, *inter alia*, that, pursuant to Paragraph 13(K)(1), Steckler 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 was then handling matters; to all opposing counsel; and to all presiding judges in pending litigation.
4. The order also required Steckler to furnish true copies of all the noticeletters sent to the above listed persons, with all of the original certified mail return receipts for the notice letters, to the Clerk of the Disciplinary System, within forty-five days of the effective date of the order.
5. On September 1, 1999, the Clerk of the Disciplinary System sent a letter to Steckler, by certified mail, return receipt requested, enclosing a copy of the court's order of August 18, 1999, reminding him of his duties as a suspended attorney under Paragraph 13(K)(1) and providing forms acceptable to the Disciplinary Board for complying with his duties.
6. On October 20, 1999, the Clerk of the Disciplinary System sent a letter to Steckler, by certified mail, return receipt requested, enclosing a copy of her letter to him dated September 1, 1999; setting forth again his duties under Paragraph 13(K)(1) as a suspended attorney; and urging him to fulfill his duties under the rule as soon as possible.
7. On December 9, 1999, a bar complaint alleging that Steckler had failed to comply with the requirements of Paragraph 13(K)(1) was mailed to Steckler's last address of record with the Virginia State Bar and to his counsel before the three-judge panel, Michael L. Rigsby.
8. Steckler did not respond to the bar complaint. Michael L. Rigsby informed the Clerk of the Disciplinary Board and the First Vice Chair of the Disciplinary Board by letters dated October 27, 2000, and November 15, 2000, that he no longer represented Steckler.
9. By letter dated January 5, 2000, the Clerk of the Disciplinary Board advised Steckler that the matter was pending

before the Disciplinary Board and had been referred for additional investigation.

10. Steckler failed to furnish proof to the Virginia State Bar on or before October 2, 1999—forty-five days after the entry of the suspension order—that he gave the notice required under Paragraph 13(K)(1).

II. Nature of Misconduct

The Board finds by clear and convincing evidence that Steckler has failed to comply with Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia.

III. Disposition

After review of the foregoing findings of misconduct, it is ORDERED that the license to practice law in the Courts of this Commonwealth heretofore issued to Respondent David Thomas Steckler be, and the same hereby is, revoked effective November 17, 2000, and that the name of David Thomas Steckler stricken from the roll of attorneys of this Commonwealth.

Pursuant to Part Six, § IV, ¶13(K)(10) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

ENTERED this 12th day of December, 2000.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By William M. Moffet, First Vice Chair

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
DAVID THOMAS STECKLER
VSB Docket No. 00-060-1972

ORDER

THIS MATTER came on to be heard on November 17, 2000, before a panel of the Disciplinary Board consisting of William M. Moffet, First Vice-chair, Randy I. Bellows, Chester J. Cahoon, Jr., Robert E. Eicher, and D. Stan Barnhill. The State Bar was represented by Barbara Ann Williams, Esq. The respondent, David Thomas Steckler ("Steckler"), after receiving due notice by certified mailing to the last address provided to the State Bar, failed to appear either in person or by counsel.

This matter came before the Board by direct certification from a subcommittee of the Sixth District Committee, pursuant to Part Six, Section IV, ¶ 13(B)(5)(c)(ii)(c) of the Rules of the Supreme Court of Virginia.

I. Findings of Fact

The Board makes the following findings of fact on the basis of clear and convincing evidence.

1. From April 26, 1983, until July 16, 1999, Steckler was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.

2. Before July 8, 1999, Michael E. McShane ("McShane") hired Steckler to serve as settlement agent for McShane's home mortgage refinancing.
3. McShane picked up the closing papers (including a HUD settlement statement that Steckler had already signed) at Steckler's office, took the papers home and signed them, then mailed the papers back to Steckler's office; McShane never met Steckler.
4. The HUD Settlement Statement dated July 8, 1999, directed Steckler as settlement agent to make mortgage payoffs in the amount of \$9,929.93 and \$96,830.41, and to pay the borrower, McShane, \$15,808.66.
5. On July 8, 1999, Steckler, or his employees, closed the refinancing and deposited a loan disbursement check in the amount of \$125,000.00, drawn on a NationsBank account and made payable to David T. Steckler & Michael McShane, in account number 7911345360, titled DAVID T. STECKLER ATTORNEY AT LAW TRUST ACCOUNT, at Wachovia Bank, formerly known as Central Fidelity Bank.
6. Check #8080 in the amount of \$15,808.66, drawn on Steckler's trust account, and made payable to McShane as payment for loan proceeds due to him as borrower, was issued on July 8, 1999, and deposited by McShane on July 20, 1999.
7. Check #8085 in the amount of \$9,929.93, drawn on Steckler's trust account and made payable to First Virginia Bank as payment in full of a mortgage loan to McShane, was issued on July 8, 1999, and deposited on July 19, 1999.
8. Check #8086 in the amount of \$96,830.41, drawn on Steckler's trust account and made payable to NationsBank as payment in full of a mortgage loan to McShane, was issued on July 8, 1999.
9. Bank of America, which merged with NationsBank and accepts, processes and endorses checks payable to NationsBank, received Check #8086 on July 15, 1999, and unsuccessfully attempted to deposit it on July 19, and again on July 23, 1999.
10. On or about July 27, 1999, Wachovia Bank returned Check #8086 to Bank of America for non-sufficient funds.
11. After Bank of America made numerous unsuccessful attempts to contact Steckler about the returned check, on September 6, 1999, Steckler contacted Bank of America and indicated that he had been out of town and his trust account was "out of whack" due to the overpayment of a large amount of bank fees.
12. After Steckler failed to make Check #8086 good, by letter dated October 5, 1999, Bank of America made a claim in the amount of \$96,830.41 against Bond #60936704 that CNA-Western Surety issued to Steckler as an attorney settlement agent.
13. On November 4, 1999, Western Surety Company issued a check for \$96,830.41 to Bank of America, and as consideration for the payment, Bank of America assigned its claims against Steckler to Western Surety Company.
14. Western Surety Company hired Bonded Collections of Tucson, Inc., to collect the missing funds from Steckler.
15. After numerous unsuccessful attempts to contact Steckler, Jamie G. Lynch, Collection Manager for Bonded Collections of Tucson, filed a bar complaint against Steckler with the State Bar on or about February 4, 2000.
16. The State Bar's efforts to locate Steckler have been unsuccessful. He no longer is conducting business at the last known address he provided the State Bar, he has failed to respond to certified mail sent to that address, and his current or former spouse, a professor at Mary Washington College, has failed to respond to all inquires as to his whereabouts.
17. Pursuant to Part 6, Section IV, ¶13(C)(5) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary Board gave Steckler written notice of the hearing before the Disciplinary Board scheduled for November 17, 2000, by letter dated August 21, 2000, sent to Steckler's last known address, 1301 Princess Anne Street, Fredericksburg, VA 22401, by certified mail return receipt requested.

II. Nature of Misconduct

The Board finds by clear and convincing evidence that the following Disciplinary Rules have been violated:

DR 1-102. (A)(1), (3) and (4) * * *

DR 9-102. (B)(4) * * *

III. Disposition

After review of the foregoing findings of misconduct, it is ORDERED that the license to practice law in the Courts of this Commonwealth heretofore issued to Respondent David Thomas Steckler be, and the same hereby is, revoked effective November 17, 2000, and that the name of David Thomas Steckler stricken from the roll of attorneys of this Commonwealth.

* * *

ENTERED this 12th day of December, 2000.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: William M. Moffet, First Vice Chair

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
DREW VIRGIL TIDWELL
VSB Docket: 00-000-1453

ORDER OF REVOCATION

This cause came to be heard the 25th day of August 2000, on a Rule to Show Cause and Order of Suspension entered by the Virginia State Bar Disciplinary Board on December 29, 1999. The December 29, 1999 Order required the Respondent to appear before the Board on January 28, 2000, "to show

cause why his license to practice law in the Commonwealth should not be suspended or revoked.”

By letter dated January 6, 2000, the Respondent informed Dorothy Pater, Assistant Bar Counsel, that he would not execute a Petition to Surrender his License and requested a continuance of the proceeding scheduled for January 28, 2000. The Board convened by telephone conference on January 7, 2000 and granted Respondent’s oral motion continuing the matter until August 25, 2000. All legal notices of the new date and place were timely sent by the Clerk of the Disciplinary System, in the manner prescribed by law.

On August 21, 2000, the Respondent filed a written response with the Virginia State Bar challenging the legal sufficiency of due process in the earlier State of New York disbarment proceeding.

On August 25, 2000, this cause was heard by a duly convened panel of the Virginia State Bar Disciplinary Board composed of Henry P. Custis, Jr., Chair presiding, Robert Eicher, Dennis P. Gallagher, Karen A. Gould and Deborah A. Wilson. Charlotte P. Hodges appeared as Counsel to the Virginia State Bar (“VSB”). Drew Virgil Tidwell, (“Respondent”) appeared *pro se*.

The Chair opened the hearing by polling the Board members to ascertain whether any member had a conflict of interest that would preclude him or her from serving. There were no conflicts and the hearing proceeded as scheduled.

The Virginia State Bar Exhibit Nos.1-10d were admitted into evidence, with the Respondent objecting to VSB Exhibits 10 A. Respondent’s Exhibits were admitted into evidence with Bar Counsel objecting to the admission of Respondent’s character letters, which were previously submitted to the New York Bar State Bar.

Respondent argued that the sole issue to be decided is whether the Board will grant reciprocal recognition to the Disbarment Order entered on September 17, 1999, by the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department.

The evidence established that the Respondent was convicted in the Supreme Court of Erie County, New York, on September 3, 1999, pursuant to a plea agreement of leaving the scene of an accident without making a report in violation of the New York Vehicle and Traffic Law Section 600(2)(a).

Respondent argued that by applying New York’s automatic disbarment of any attorney convicted of any state felony he was denied due process of law, having neither received notice nor being given an opportunity to be heard. Respondent cited cases he felt supported his position, although none were presented to the Board, and urged this body to impose a disposition short of disbarment.

Bar argued that Respondent had ample notice of his impending disbarment in the New York disciplinary process but failed to take affirmative steps to protect his interest. Respondent’s acquiescence and failure to timely challenge the actions of the New York disciplinary authorities or to timely note his exception before this Board is tantamount to a waiver of any alleged due process violations. The burden of proof was on Respondent in this show cause proceeding and he failed to

prove that he was denied due process in the New York disciplinary proceeding.

The Board considered the issue to be of utmost importance because of the underlying constitutional implications raised by Respondent’s claim. However, before addressing the merits of Respondent’s constitutional argument, the Board must first consider the procedural posture of the issue in light of Part 6, Section IV, ¶ 13 (G) of the Rules of the Supreme Court of Virginia.

Subsection (G), governing Disbarment or Suspension in Another Jurisdiction, provides in relevant part that: “[T]he Board shall forthwith serve upon the Respondent by certified mail (a) a copy of such certificate, (b) a copy of such order, and (c) a notice fixing the time and place of a hearing to determine what action should be taken by the Board.”

Respondent received a certified letter dated January 4, 2000 together with attachments from the Clerk of the Disciplinary System, which satisfied the requirements of subsection (G). See VSB Exhibit No.1.

Subsection (G) further provides that, within fourteen days of the date of mailing, Respondent shall file a written response, which shall be confined to allegations that:

- (1) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking notice or opportunity to be heard as to constitute a denial of due process; or
- (2) the imposition by the Board of the same discipline upon the same proof would result in a grave injustice; or
- (3) the same conduct would not be grounds for disciplinary action or for the same discipline in this state.

Respondent did not file any response as required by subsection (G) within the fourteen-day period challenging the New York disciplinary proceeding. Even assuming arguendo that Respondent’s January 6, 2000 letter to Bar Counsel was a timely response, it fails to state any notice to this Board that Respondent was challenging certain due process irregularities resulting from the New York disciplinary process. Further, Respondent did not raise a due process claim during his January 7, 2000 telephone conference with the Board when he requested a continuance of the January 28, 2000 hearing. See VSB Exhibit No. 3. (Transcript of January 7, 2000 proceeding).

The Respondent first raised a due process challenge to the New York disciplinary action in a letter to Bar Counsel dated August 1, 2000-more than seven months after the Rule to Show Cause and Order of Suspension was entered on December 29, 1999.

By Order entered on October 16,2000, duly served on the Respondent as provided by law, the Board granted the Respondent leave to file responsive pleadings not later than October 13, 2000. On November 2, 2000, Bar Counsel received the Respondent’s letter to the Chairman of the Disciplinary Board, dated October 27, 2000, enclosing an affidavit from Leonard E. Krawczyk, former District Attorney for Erie County, New York. The Board convened by telephone conference on November 20, 2000, and after deliberation agreed (i) to accept the

Respondent's letter of October 27, 2000, and the affidavit therewith for its consideration in the proceeding, and (ii) to deem such letter to be a request for the Board's reconsideration of its order entered on August 25, 2000.

The Board is very sensitive to Respondent's claim that he was denied due process in the New York disciplinary proceeding and made every attempt to allow him the opportunity to present supporting evidence. However, neither the facts before us nor the Rules governing the Board when making a final determination can be ignored.

The burden was on Respondent to persuade this Board that reciprocal recognition of the September 17, 1999 Disbarment Order entered by the New York Supreme Court should not be granted.

To the contrary, the evidence established that Respondent had represented to the Supreme Court of Erie County New York during his criminal proceeding that he intended to surrender his license to practice law in New York. See VSB Exhibit No.8 (September 3, 1999, Transcript p. 2).

When questioned as to why his actions in New York should not be viewed as a waiver of his due process claim, he stated that his representation was made for publicity reasons.

MR. TIDWELL: First off, you can't—well, I'll be blunt with you. Done for PR purposes at the time. The law in New York is clear you can't surrender your license. . .

MS. WILSON: Am I not mistaken in understanding—I understand what you're saying, that this was part of PR, but, I mean, I have a record here that's part of a judicial proceeding in which that is specifically stated. . .

MR. TIDWELL: I mean, it was a, it was good PR/bad law.

MS. WILSON: Well, is there any reason why you should not be held accountable today for the decision that you made at that juncture?

MR. TIDWELL: I would say this much: If I knew—and at that time I knew that—if I knew in New York that I would be able to have a due process hearing, I would go forward and do so. . . (Transcript p. 27).

Respondent was questioned further by Board Member Robert E. Eicher.

MR. EICHER: Well, are you telling me in connection with the proceeding for which we have the transcript, that you knew at the time you were not permitted to surrender your license upon conviction, but the representation was made to the court nonetheless?

MR. TIDWELL: I knew that, but the representation was made. I remember saying to my attorney, I said, You know, this doesn't mean a thing. He said, The DA wants it. I said, Well,

if the DA wants it, give it to the DA. (Transcript p. 30).

The Board is not persuaded by the Krawczyk affidavit with respect to the Respondent's waiver of a due process claim. The Respondent stood silent when Mr. Krawczyk represented to the court that the Respondent "will be surrendering his license to practice law immediately-immediately upon his entering this plea." Mr. Krawczyk added "and those [inclusive of the surrender of license] are the only conditions of this plea, Your Honor." The Respondent's counsel, Mr. Taheri, followed with "That is correct, Your Honor." The Court then inquired of the Respondent, "And do you wish to proceed as the attorneys have indicated?" The Respondent answered "yes, Your Honor."

Under these circumstances, the Board rejects the Respondent's suggestion that the representation of his immediate surrender of his law license upon entering his plea was but a public relations ploy that permits him to disavow the representation in this proceeding. Doing so would betray the solemnity of the occasion of his plea in open court and essentially would reward a disingenuous presentation to the Court. See Rule 3.3(a)(a) and comment [3] of the Virginia Rules of Professional Conduct.

At bottom, whether characterized as a waiver or estoppel, the Board is not disposed to entertain the Respondent's due process challenge in face of the explicit representation of his surrendering his law license as one of the terms of his plea agreement. The Respondent will not be permitted to impeach himself as a predicate for challenging New York due process in this proceeding.

Respondent conceded that he took no actions to assert a due process challenge to the New York disciplinary proceeding, as he felt such an effort would be a waste of time:

MR. GALLAGHER: Mr. Tidwell, is it—am I to understand that you did not request a hearing because you felt that would be a waste of time largely because of your understanding of New York law?

MR. TIDWELL: Yes. Under my understanding and my review of the cases... (Transcript pp 23-26).

MS. WILSON: So let me make sure that I fully understand this. It is your position that you felt no obligation on your part to exhaust all further remedies for purposes of reserving or preserving the arguments that you're raising here today; is that your position?

MR. TIDWELL: That is correct. I did not see any need to do it. I think it would be a waste of time, effort and money. (Transcript p. 28).

MS. GOULD: Has anyone ever challenged the New York statute on the ground of that it does not afford you due process?

MR. TIDWELL: "The statute was challenged in the Mitchell case. It went up to the Court of Appeals, and basically the Court of Appeals took the position in Mitchell that the state

legislature had spoken when it enacted Section 94(A) and (3), and because it was legislative action, that was it. They, they did not have to afford due process. It was same as setting the standards for a professions.” (Transcript p. 35).

Respondent’s statement acknowledges an informed decision on his part not to assert a due process challenge to the constitutionality of the New York statute. Yet, he is now asking this Board to ignore the final order entered by the New York Supreme Court. Finding no compelling justification, this Board is obliged to give conclusive effect to September 17, 1999 order of the New York Supreme Court.

Respondent argued that Virginia has adopted the rule of law in the case of *Selling v Radford*, 243 U.S. 46 (1917) by codifying Part 6, Section IV, ¶ 13 (G) of the Rules of the Supreme Court of Virginia. Respondent, however, ignores the Rule’s affirmative obligation imposed upon an attorney to file a timely challenge to any alleged due process violation. Having failed to comply with this requirement, Respondent is without a legal basis to challenge the sufficiency of the New York Order.

Having considered the evidence presented and argument of Counsel, the Board finds that Respondent has failed to timely raise his due process claim or to present any evidence warranting a different result other than revocation of Respondent’s license to practice law in this jurisdiction. The evidence before the Board supports a finding that the New York proceeding was not flawed in notice or an opportunity for Respondent to protect his interest and does not constitute a denial of due process. Upon consideration whereof, it is

ORDERED that pursuant to Part 6, § IV, ¶ 13c. (3) of the Rules of the Virginia Supreme Court that the license of Respondent, Drew Virgil Tidwell, to practice law in the Commonwealth of Virginia be, and the same hereby is, revoked, as set forth in the Board’s Order dated and entered August 25, 2000.

Enter this Order this 8th day of December, 2000
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By Henry P. Custis, Jr., Chair

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BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

In the Matter of
GEORGE ALEXANDER WEIMER, JR.
 VSB Docket Nos. 99-031-1009
 00-031-0999

ORDER

This matter came on November 16, 2000 to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Third District, Section One Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of David S. Barnhill, Richard J.

Colten, Robert I. Freed, Chester J. Cahoon, Jr., and William M. Moffet, presiding.

Charlotte P. Hodges, Esquire, representing the bar and the pro se Respondent, presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition.

Having considered the Agreed Disposition, it is the decision of the board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

VSB DOCKET NO. 99-031-1009

1. At all times relevant hereto, the Respondent, George Alexander Weimer, Jr., (hereinafter “Mr. Weimer”), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. During approximately November, 1997, Mr. Weimer was hired by the Complainant, Mark F. Presley (hereinafter “Mr. Presley”), to represent him in a criminal matter. After Mr. Weimer concluded his representation of Mr. Presley, Mr. Presley’s wife, Kimberly Presley (hereinafter “Mrs. Presley”), began working for Mr. Weimer as a paralegal during approximately May, 1998.
3. On or about May 19, 1998, Mr. Weimer assisted Mr. Presley in a workers’ compensation matter. In addition, Mr. Weimer assisted Mr. Presley in obtaining insurance coverage for a medical condition that Mr. Presley had.
4. Mr. Weimer also represented Mr. and Mrs. Presley with regard to the sale of their house and the real estate closing during approximately July, 1998.
5. From approximately June, 1998 until on or about September 7, 1998, Mr. Weimer had a sexual affair with Mrs. Presley, without Mr. Presley’s knowledge or consent.

VSB DOCKET NO. 00-031-0999

6. During approximately March, 1999, one B.S. Underwood (hereinafter “Mrs. Underwood”) hired Mr. Weimer to represent her in obtaining a separation agreement and divorce from her husband, Marty J. Underwood (hereinafter “Mr. Underwood”). There were issues of child custody and division of marital assets involved.
7. While Mr. Weimer represented Mrs. Underwood, he became involved in a sexual relationship with her. On or about September 27, 1999, Mrs. Underwood moved into Mr. Weimer’s residence and lived with him (along with the Underwoods’ minor son) until approximately January, 2000. She returned to the home she shared with her husband for a short period, and then returned to Mr. Weimer’s home where she now still resides.

The Board finds by clear and convincing evidence that such conduct on the part of George Alexander Weimer constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

DR 1-102.(a)(3) ***

DR 5-101.(A) ***

DR 7-101.(A)(3) ***

Upon consideration hereof, it is ORDERED that the Respondent shall be suspended from the practice of law for a period of nine (9) months beginning February 1, 2001, and shall not take on any new clients as of November 16, 2000 who have not already retained Respondent *and* paid him a fee for his services. Respondent shall also forward a letter immediately to the Clerks of the Courts in which he practices, requesting that he be removed from their appointment lists.

ENTER this Order this 17th day of November, 2000
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By William M. Moffet, First Vice Chair

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District Committee

BEFORE THE NINTH DISTRICT COMMITTEE
 OF THE VIRGINIA STATE BAR

In the Matter of
GARY MICHAEL BOWMAN
 VSB Docket No. 99-00-0243

DISTRICT COMMITTEE DETERMINATION
 (PUBLIC REPRIMAND)

On September 15, 2000, a hearing in this matter was held before a duly convened Ninth District Committee panel consisting of Kimberley S. White, Esquire, Paul J. Feinman, Esquire, Joy Lee Price, Esquire, David P. Joyce, Esquire and G. Carter Greer, Chair, presiding.

The Respondent appeared in person *pro se* and Edward L. Davis, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶13(B)(7) of the Rules of the Supreme Court, the Ninth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

1. FINDINGS OF FACT

1. During all times relevant hereto, the respondent, Gary Michael Bowman (hereinafter Respondent or Mr. Bowman), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Mr. Bowman is a sole practitioner in Roanoke, Virginia. The primary focus of his practice is the representation of debtors in bankruptcy matters.

*In the Matters of William Jeffrey Jarvis
 and Lori A. Jarvis, Debtors*

3. During 1998, Mr. Bowman undertook to represent one William Jeffrey Jarvis and Lori A. Jarvis in their respective

bankruptcy cases in the Roanoke Division of the United States Bankruptcy Court for the Western District of Virginia. One of the Jarvises' creditors was Wachovia Bank, formerly known as Central Fidelity Bank. The collateral for Wachovia's loan was a restaurant owned by the Jarvises, the Allegheny Café, in Radford, Virginia.

4. On May 29, 1998, Mr. Bowman filed in the bankruptcy court a "Designation of Record and Statement of Issues" in Mr. Jarvis' case. Mr. Bowman endorsed the certificate of service indicating that he mailed a true and correct copy of the pleading to Wachovia's counsel on May 29, 1998. Wachovia's counsel did not see the document until June 3, 1998 when, knowing that the deadline for filing it was approaching, he reviewed the court's file and saw it for the first time. He then asked Mr. Bowman about it, and Mr. Bowman provided a copy. Wachovia's counsel never received a copy in the mail.
5. On July 21, 1998, Mr. Bowman filed in the bankruptcy court a motion to convert a Chapter 7 bankruptcy to a Chapter 13 bankruptcy in Mr. Jarvis' case. He endorsed a certificate of service indicating that a true and correct copy of the motion to convert was mailed to all parties on the mailing matrix of the case on July 20, 1998. Mr. Bowman, however, did not mail a copy to Wachovia's counsel, although Wachovia's counsel was named on the bankruptcy court's supplemental mailing matrix at the time.
6. On July 21, 1998, Mr. Bowman filed a Second Amended Chapter 13 Bankruptcy Plan on behalf of Lori Jarvis. He endorsed the certificate of service indicating that he mailed a copy to all parties on the mailing matrix on July 21, 1998. Mr. Bowman, however, did not mail a copy to Wachovia's counsel until July 31, 1998. Wachovia's counsel did not receive his copy until August 3, 1998, as did counsel for another creditor, Crestar Bank, exactly two days before the deadline for filing objections to modified plans under local bankruptcy rules. Crestar's counsel needed to file an objection, and managed to do so the day of the deadline.

In the Matter of Roy A. Bane, Debtor

7. Mr. Bowman also undertook to represent one Roy Andrew Bane in a bankruptcy matter pending in the Western District of Virginia. Another attorney represented two of the creditors, Affordable Efficiencies, Inc. and Lance A. Coperman.
8. On March 27, 1998, Mr. Bowman filed a Debtor's Response to Motion for Relief from Stay on behalf of Mr. Bane in the Roanoke Division of the United States Bankruptcy Court. The Certificate of Service stated that he mailed a true and correct copy of the pleading to all the parties on the mailing matrix of this case and the creditor's counsel at his address of record. The certificate did not specify a date, and neither the creditor's counsel nor his office ever received a copy in the mail. The creditor's counsel did not discover that the pleading had been filed until after he filed a Motion for Default Judgment in the bankruptcy court. At that time, the judge's secretary informed him that the debtor's response to the relief from stay had already been filed.

- 9. On April 6, 1998, the day before the hearing on the creditor's motion, the creditor's counsel went to the bankruptcy court clerk's office to obtain a copy of the above-referenced Response. There, he had a chance meeting with Mr. Bowman, who delivered him a copy of the Response as well as a Motion to Assume the Lease that he was filing with the court that day. To counsel's surprise, the Motion to Assume the Lease contained a certificate of service endorsed by Mr. Bowman stating that he had mailed it to him on April 4, 1998. The creditor's counsel, however, never received the documents which Mr. Bowman certified that he had mailed to him. Mr. Bowman acknowledged that he did not mail the documents as certified.
- 10. On June 4, 1998, Mr. Bowman filed a Motion for Stay Pending Appeal in the Roy Bane bankruptcy matter. The same day he filed a Notice of Hearing for June 9, 1998. He endorsed a certificate of service indicating that he had mailed a true and correct copy of the documents to the creditor's counsel on June 3, 1998. The creditor's counsel never received the documents. Mr. Bowman testified that he decided not to pursue the Motion shortly after filing it and that, for this reason, he did not mail the documents. At the time that he filed the documents, however, he had already certified that he mailed them the day before, when he had not.
- 11. During this same time frame, Mr. Bowman filed a Bill of Complaint in the Roanoke City Circuit Court seeking a temporary restraining order. A hearing on the temporary restraining order was held on June 5, 1998. Subsequently, on June 9, 1998, Mr. Bowman hand-delivered a memorandum with legal authorities to the court. He endorsed a certificate of service indicating that he had mailed a true and correct copy of the memorandum to the creditor's counsel two days before on June 7, 1998. The creditor's counsel, however, never received a copy in the mail and did not learn about it until the judge's office contacted him on June 9, 1998 to ask if he planned to file a response. Mr. Bowman testified that he did not mail the document but that he hand-delivered a copy to counsel's office the same day that he filed it with the court, two days after the certificate of mailing.

II. NATURE OF MISCONDUCT

The Committee finds by a majority decision that the Respondent violated the following Disciplinary Rule:

DR 1-102.(A)(4) * * *

DR 7-102 (A)(5) * * *

III. PUBLIC REPRIMAND

Accordingly, upon consideration of the misconduct proven and the Respondent's prior Disciplinary Record, it is the decision of the Committee to impose a Public Reprimand, and the Respondent is hereby so reprimanded.

NINTH DISTRICT COMMITTEE
By G. Carter Greer, Esq., Chair
Certified October 13, 2000

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BEFORE THE SEVENTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
ROY DAVID BRADLEY, ESQ.
VSB Docket No. 98-070-0964

COMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On September 26, 2000, a hearing in this matter was held before the duly convened Seventh District Committee, consisting of Peter Chapin Burnett, Esq., Ann K. Crenshaw, Esq., John G. Berry, Esq., Frederick Warren Payne, Esq., James W. Fletcher, III, Esq., Glenn M. Hodge, Esq., Larry Lambert, and Julia S. Savage, Esq., presiding.

Pursuant to Part 6, §IV, ¶13(B)(6) *et seq.* of the Rules of the Supreme Court of Virginia, the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, with terms, as follows:

I. FINDINGS OF FACT

- 1. At all times relevant hereto, the Respondent, Roy David Bradley, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
- 2. At times pertinent to the findings set forth herein, Respondent represented an individual named Thomas Jackson Smith, Sr.
- 3. On or about the 14th day of February, 1995, Respondent presented to one Kellie J. Marr a "deed of conveyance" which Respondent had prepared for Ms. Marr's execution. The document purported to convey from Kellie J. Marr to Thomas Jackson Smith, Sr., certain real estate located in Madison County, Virginia, referred to in the deed by a metes and bounds description.
- 4. At the time he prepared and presented the deed of conveyance to Ms. Marr for her execution, the Respondent had actual knowledge that Ms. Marr had no legal, equitable, or other interest of any kind in the property described in the deed of conveyance.
- 5. At Respondent's instance, Ms. Marr executed the deed of conveyance on the 14th day of February, 1995. The deed was shortly thereafter presented by Respondent to the clerk of the Madison County Circuit Court for recordation, and was recorded among the land records maintained by said Clerk in Deed Book 235 at Page 671, *et seq.*
- 6. During the investigation of this matter conducted by the Virginia State Bar, Respondent admitted his knowledge that Ms. Marr had no interest in the property referred to in the deed of conveyance, but claimed that his actions in preparing the deed, presenting it for execution, and causing it to be recorded were justified because his client, Thomas Jackson Smith, Sr., had an interest in the property by reason of "adverse possession."

7. At the time Respondent prepared the deed of conveyance, presented it for execution to Ms. Marr, and caused it to be recorded, Respondent either knew, or upon the conduct of a reasonable inquiry should have known, that Thomas Jackson Smith, Sr.'s, use and possession of the property was with the consent of its lawful owner and that no evidence whatever existed upon which there could be a colorable claim of adverse possession in favor of Respondent's client.

II NATURE OF MISCONDUCT

The Committee finds that the following Disciplinary Rules have been violated:

DR 1-102.(A)(3) and (4) ***

DR 7-102.(A)(1), (2), (3), (4), (5), (6), (7) and (8) ***

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Committee to offer the Respondent an opportunity to comply with certain terms, compliance with which shall be a predicate for the disposition of this matter by imposition of a PUBLIC REPRIMAND WITH TERMS. Following are the Terms with which Respondent must comply:

By September 26, 2001, Respondent shall enroll in and attend six (6) credit hours of Virginia State Bar approved Continuing Legal Education in real estate transactions and six (6) credit hours of Virginia State Bar approved Continuing Legal Education in legal ethics. Respondent's Continuing Legal Education attendance obligations set forth in this paragraph, aggregating twelve (12) credit hours, shall not be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdictions in which he may be licensed to practice law. Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Seth M. Guggenheim, Assistant Bar Counsel, promptly following his attendance of such CLE courses.

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a PUBLIC REPRIMAND, WITH TERMS shall then be imposed, and this matter shall be closed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the Committee shall, as an alternative disposition to a Public Reprimand with terms, certify to the Virginia State Bar Disciplinary Board the foregoing Findings of Fact as Charges of Misconduct against the Respondent.

SEVENTH DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR By Julia S. Savage, Esq., Chair Certified October 6, 2000

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BEFORE THE NINTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

In the Matter of ANTONIO PIERRE JACKSON VSB Docket No. 99-090-3213

SUBCOMMITTEE DETERMINATION (Public Reprimand with Terms)

On October 10, 2000, a meeting in this matter was held before a duly convened Subcommittee of the Ninth District Committee, consisting of Joy Lee Price, Esquire, Langhorne S. Mauck, (Lay Member), and G. Carter Greet, Esquire, Chair presiding.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B), the Ninth Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Antonio Pierre Jackson, the following Public Reprimand with Terms.

I. FINDINGS OF FACT

- 1. During all times relevant hereto, the Respondent Antonio Pierre Jackson, (hereinafter Respondent), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about January 14, 1999, the Supreme Court of Virginia granted the Habeas Corpus Petition of William M. Thompson allowing him to appeal from the ruling of the Virginia Court of Appeals dated June 30, 1998 which affirmed Thompson's conviction as a habitual offender, second offense. The Virginia Supreme Court further ordered that if Thompson were entitled to appointed counsel, time computations would commence to run from the date of the entry of the order appointing counsel.
3. On or about February 18, 1999, Amelia Circuit Court Clerk Wilson wrote Respondent advising him of his appointment to perfect Thompson's appeal.
4. On or about February 20, 1999, Respondent filed a Notice of Appeal in the Virginia Supreme Court in William Matthew Thompson v. Commonwealth of Virginia.
5. On or about March 23, 1999, the Amelia Circuit Court entered an order appointing Respondent as counsel to perfect the appeal pursuant to the Virginia Supreme Court Order dated January 14, 1999.
6. On April 22, 1999 Respondent filed a Motion for Extension of Time with the Virginia Supreme Court requesting "an additional week" in which to prepare and file the required Petition for Appeal. Respondent transmitted said Motion to the Court and by copy to his client with a cover letter dated April 22, 1999 indicating the filing of a "Petition for Appeal and three copies..."
7. On or about April 23, 1999, Respondent was advised by David B. Beach, Clerk of the Virginia Supreme Court, that the Motion for Extension of Time would be denied.

8. On or about April 27, 1999, the Supreme Court of Virginia entered an order denying the Motion for Extension.
9. On or about May 4, 1999, Thompson wrote the Supreme Court of Virginia to inquire about the status of his appeal.
10. On or about May 7, 1999, Thompson learned from the Clerk's office of the Supreme Court of Virginia that the Motion for Extension of Time had been denied and that no petition for appeal had been filed in his case.
11. On or about July 9, 1999, after Thompson filed the instant complaint with the bar, Respondent first advised Thompson that "the Supreme Court of Virginia dismissed the Petition for Appeal filed on your behalf because it was not timely filed."
12. On or about July 29, 1999, the Supreme Court of Virginia granted Thompson's *Habeas Corpus* petition and thereby allowed his appeal to be fully considered. The appeal was ultimately denied with the Court affirming the trial court's conviction of Thompson as a habitual offender, second offense.

II NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility.

DR 6-101.(A), (B) and (C) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of this complaint by a Public Reprimand with terms.

1. On or before July 31, 2001, Respondent shall certify in writing to Bar Counsel Respondent's attendance at an approved continuing legal education course or viewing of a videotape of an approved continuing legal education course, offering two or more hours of continuing legal education credits, that deals with appellate practice or legal ethics. The first two hours of the course shall not count toward either the mandatory continuing legal education requirement in ethics or overall continuing legal education requirements.
2. Upon written proof that this term has been satisfied, the Respondent shall be given a Public Reprimand and this matter shall be closed. If, however, Respondent fails to meet this term within the time specified, Respondent agrees to the stipulation of Part I, Findings of Fact, and Part II, Disciplinary Rules, and that this matter shall be certified by the Subcommittee of the 9th District Committee to the 9th District Committee for a hearing on the

imposition of a sanction appropriate for the aforementioned stipulated facts and Disciplinary Rule violations.

NINTH DISTRICT SUBCOMMITTEE
By G. Carter Greer
Subcommittee Chair
Certified November 27, 2000

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BEFORE THE SECOND DISTRICT COMMITTEE, SECTION ONE
OF THE VIRGINIA STATE BAR

In the Matter of
DONALD H. SPITZLI, JR.
VSB Docket No. 97-021-2888

DISTRICT COMMITTEE DETERMINATION
(Public Reprimand)

On September 14, 2000, a hearing in this matter was held before a duly convened panel of the Second District Committee, Section One, consisting of Charles E. Malone, Esquire, Afshin Farashahi, Esquire, Ray W. King, Esquire, Robert W. Carter, Laymember, Kurt M. Rosenbach, Laymember, and William H. Monroe, Esquire, presiding.

Richard Brydges appeared on behalf of Respondent Donald H. Spitzli. Assistant Bar Counsel Charlotte P. Hodges appeared on behalf of the Virginia State Bar.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(7)(c), the Second District, Section One Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, the Respondent, Donald H. Spitzli, Jr. (hereinafter Spitzli) has been an attorney licensed to practice law in the Commonwealth of Virginia. The Complainant, Michael J. Milner (hereinafter Milner) is an attorney in the Office of General Counsel of the United States Department of Housing and Urban Development.
2. On December 13, 1991, Spitzli was the seller of a condominium in a residential real estate matter. Suellen Anne Keever, Esquire (hereinafter Keever) was the buyer in this transaction, and Doyle Ray Weaver, Esquire, was the closing attorney.
3. Spitzli certified that he had no knowledge of loans that were made or would be made to the borrower (Keever), or loans that had been or would be assumed by the borrower, for purposes of financing, other than those described in the sales contract.
4. However, Spitzli had knowledge of a promissory note in the amount of \$6,785.08 (the amount of the purchaser's down payment).

5. Spitzli provided Keever, the purchaser, with a loan for this down payment.
6. Under HUD regulations, the above mentioned loan should have been considered in performing the underwriting of the loan.
7. Spitzli falsely certified to not having knowledge of the additional loan.
8. There were two additional promissory notes in the amount of \$25,000 and \$32,779 which were part of the purchase price not shown on the HUD-1 statement.
9. The settlement statement, which Spitzli certified was correct and accurate, did not disclose the existence of any of the promissory notes.

II. NATURE OF THE MISCONDUCT

The Committee finds that the bar has proven by clear and convincing evidence that such conduct by Donald H. Spitzli constitutes misconduct in violation of the following provision of the Virginia Code of Professional Responsibility:

DR 1-102. (A)(1) and (3) * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Second District, Section One Committee to issue a Public Reprimand.

* * *

ENTER this Order this 31st day of October, 2000.
VIRGINIA STATE BAR
SECOND DISTRICT COMMITTEE, SECTION I
By William H. Monroe, Jr., Chair

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