

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
Sherman William Everlof, Jr.	Warrenton	Revocation	December 17, 1999	25
Charles Daugherty Fugate, II	Jonesville	Interim Suspension	January 7, 2000	27
Robert Brown Patterson	Middleburg	90 day suspension	January 1, 2000	27
Drew Virgil Tidwell	Amherst, NY	Interim Suspension	December 29, 1999	28

Surrenders with Disciplinary Charges Pending

The following is a list of attorneys who have surrendered their licenses with disciplinary charges pending.

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date
William Thomas Stone	Williamsburg	Disciplinary Board	December 28, 1999
Kenneth Xavier Warren	Baltimore, MD	Disciplinary Board	January 20, 2000

Disciplinary Board

BEFORE THE DISCIPLINARY BOARD OF THE
VIRGINIA STATE BAR

In the Matter of
SHERMAN WILLIAM EVERLOF, JR.
VSB Docket No. 99-070-0652

ORDER

This matter came on to be heard on December 17, 1999, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Donna A. DeCorleto, John A. Dezio, Richard J. Colten, D. Stan Barnhill, and Carl A. Eason, Chair, presiding. James W. Carroll, Jr., appeared on behalf of the Virginia State Bar. David Ross Rosenfeld and Kathleen M. Uston appeared on behalf of the respondent. The court reporter transcribing the proceedings was Catharina M.K. Blalock of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227.

The matter came before the Board upon a Petition for Expedited Hearing and Summary Suspension filed with the Virginia State Bar by mail on November 30, 1998, pursuant to Part 6, §IV, 13(C)(5)(b) of the Rules of the Supreme Court of Virginia. Respondent's license was summarily suspended by order of the Disciplinary Board entered on December 2, 1998. The hearing on the Petition was subsequently continued, at the request of Respondent's counsel, pursuant to orders entered on December 4, 1998, January 12, 1999, May 20, 1999, and September 30, 1999. Respondent also filed a Petition Pursuant to Rule 13(F) by mail on September 22, 1999, requesting the Disciplinary Board to initiate a disability proceeding and to continue the Petition for Expedited Hearing until such time as a disability finding had been made. Respondent, by counsel, later abandoned the Rule 13(F) Petition by letter to the Virginia State Bar dated November 16, 1999.

The Disciplinary Board, after hearing the testimony proffered, the stipulations of fact, the stipulations of Disciplinary

Rule violations, and reviewing the documents introduced into evidence by stipulation or testimony, makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On approximately June 5, 1998, Respondent agreed to handle as settlement agent a real estate refinancing of property located at 8004 Mourningdove Lane, Warrenton, Virginia, for Tanja Renee Ward.
3. The Fauquier Bank, the lender, conditioned the approval of the refinancing loan on various creditors of Ms. Ward receiving full payment of their outstanding balances. Pursuant to the settlement, the Fauquier Bank sent the Respondent approximately \$65,000.00 to be used to pay creditors and to provide a cash payment to Ms. Ward.
4. Pursuant to the loan instructions, the Respondent properly sent a check to Ms. Ward in the amount of \$26,667.19.
5. Pursuant to the loan instructions, the Respondent was required to use the remaining balance to pay Ms. Ward's creditors.
6. Respondent did not use the remaining \$24,408.61 of refinancing funds to pay creditors as required. Instead, the Respondent intentionally converted the funds to his own use to pay his secretary's wages and to pay some of his own living expenses.
7. Ms. Ward later learned that her creditors had not been paid when they began contacting her demanding payment. Ms. Ward thereupon contacted Respondent, who on two separate occasions falsely informed her that he had mailed the checks to the creditors.

8. As a result of Respondent's failure to make timely payment to Ms. Ward's creditors, she subsequently incurred substantial debts, suffered damage to her credit rating, and was barred from purchasing a new home.
9. At the time Respondent diverted funds due Ms. Ward's creditors to other personal and business uses, Respondent had become substantially dependent on alcohol, consuming such vast amounts that he was rendered unable to perform his professional duties on a daily basis.
10. The Virginia State Bar attempted without success to communicate with Respondent in November of 1998, ultimately learning that he had voluntarily admitted himself to a facility for alcohol dependency on November 22, 1998, from which he was discharged on December 18, 1998.
11. On November 25, 1998, at the request of the Virginia State Bar, the Circuit Court of Fauquier County entered an order appointing a receiver to take possession of Respondent's files and accounts.
12. A review of Respondent's office records subsequent to the appointment of the receiver revealed that he had not properly maintained his trust account records or his clients' files.
13. Subsequent to his discharge from the treatment facility for alcohol abuse in December of 1998, Respondent has remained sober and has obtained non-law related employment in Pennsylvania.
14. Respondent produced credible evidence at the hearing, through the testimony of two licensed Virginia attorneys and his treating physician, to show that Respondent now faithfully attends Alcoholics Anonymous meetings and has made major strides in overcoming his alcohol dependency and related personal problems which had previously interfered with his ability to practice law.
15. On December 13, 1999, Respondent paid to Ms. Ward \$29,963.98, which represented the full amount of the unpaid refinancing funds, \$750 in attorneys' fees incurred by Ms. Ward in pursuing the payment, plus interest accrued.

I. NATURE OF MISCONDUCT

Upon consideration of all the evidence and the stipulations of the parties, the Disciplinary Board finds, by clear and convincing evidence, violations by the Respondent of the following Disciplinary Rules:

1. Violation of DR 1-102(A)(3), ***
2. Violation of DR 1-102(A)(4), ***
3. Violation of DR 6-101(B), ***

4. Violation of DR 7-101(A), ***
5. Violation of DR 9-102(B)(4), ***
6. Violation of DR 9-103, ***

II. IMPOSITION OF SANCTIONS

The Disciplinary Board has considered the fact that the Respondent has no prior disciplinary record with the Virginia State Bar and that he has been on administrative suspension from the Virginia State Bar since December 2, 1998. The Disciplinary Board further has considered the fact that since December of 1998, Respondent has made major strides in overcoming his alcohol dependency and in developing the coping skills which should enable him to live a productive life. Finally, the Disciplinary Board has considered the fact that Respondent has made restitution to a client injured by his wrongdoing, although the client's injuries cannot be cured completely by the delayed payment of the funds in question. Despite Respondent's remarkable success in dealing with his alcohol dependency and the causes of that problem, the Disciplinary Board further has concluded that the nature of Respondent's conduct prior to December 2, 1998, was such as to require appropriate sanction.

IT IS THEREFORE ORDERED pursuant to Part 6, § IV, ¶ 13(C)(6)(c)(v) of the Rules of the Supreme Court of Virginia that the license of Respondent, Sherman William Everlof, Jr., to practice law in Virginia be, and the same is hereby, **REVOKED**, effective December 17, 1999, as set forth in the Disciplinary Board's Order dated December 17, 1999, attached hereto;

IT IS FURTHER ORDERED that, in light of the fact Respondent has not practiced in Virginia since his summary suspension in November of 1998, that a court-appointed receiver has taken possession and control of all his files and records and has given notice to Respondent's former clients of his suspension, and that Respondent currently has no clients and no open legal matters, Respondent will not be required to provide the notice called for in Part 6, § IV, ¶ 13(K)(1) of the Rules of the Supreme Court of Virginia. To the extent that the bench order entered by the Disciplinary Board on December 17, 1999, directs Respondent to give such notice to his former clients, that order is amended *nunc pro tunc* to comply with this Order.

ENTERED this 14th day of January, 2000
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Carl A. Eason, Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
CHARLES DAUGHERTY FUGATE, II
VSB Docket No. 00-000-1475

RULE TO SHOW CAUSE AND
ORDER OF SUSPENSION AND HEARING

It appearing to the Board that Charles Daugherty Fugate, II, was licensed to practice law within the Commonwealth of Virginia on April 26, 1996, and,

It further appearing that Charles Daugherty Fugate, II, pleaded guilty to and was convicted of 2 counts of mail fraud, in violation of 18 U.S. Code Sections 1341 & 1346, in United States District Court for the Western District of Virginia (Abingdon Division), Case No. 99-CR-10078-3, and

It further appearing that Charles Daugherty Fugate, II, has been convicted of a crime, as defined by the Rules of Court, Part 6, §IV, ¶13(A),

It is ORDERED, pursuant to the Rules of Court, Part 6, Section IV, Paragraph 13(E), that the license of Charles Daugherty Fugate, II, to practice law within the Commonwealth of Virginia be, and the same is, hereby suspended, upon entry of this order.

It is further ORDERED that Charles Daugherty Fugate, II, appear before the Virginia State Bar Disciplinary Board at the State Corporation Commission, Tyler Building, 1300 East Main Street, Second Floor, Courtroom A, Richmond, Virginia 23219, at 9:00 a.m., on January 28, 2000, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

It is further ORDERED that a copy of a letter dated December 28, 1999, and attached United States District Court for the Western District of Virginia (Abingdon Division), Case No. 99-CR-10078-3 Criminal Docket Sheet, be attached to this rule to Show Cause and Order of Suspension and Hearing and made a part hereof.

ENTERED this Order this 7th day of January, 2000
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Carl A. Eason, Chair

/Editor's Note: Attachment is available upon request. Case continued. Mr. Fugate's license remains suspended./



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
ROBERT BROWN PATTERSON
VSB Docket No. 98-070-1736

ORDER

THIS MATTER came to be heard on December 17, 1999, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of William M. Moffet, Acting Chair presiding, Bruce T. Clark, Anthony J. Trenga, Karen A. Gould and Werner H. Quasebarth, Lay Member.

The Respondent, Robert Brown Patterson, was represented by Rhetta M. Daniel. Richard C. Vorhis, Special Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

This matter came before the Board by certification of a subcommittee of the Seventh District, dated June 14, 1999. The matter was considered by the subcommittee on June 29, 1998.

Upon opening of the hearing, the parties advised the Board that they had reached an agreement stipulating certain facts and further stipulating that the Respondent had, in fact, violated DR 1-102-A(3) and DR 1-102-A(4). The Bar withdrew the allegation of violation of DR 7-102-A(5).

The violations stipulated to are as follows:

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

The Bar's exhibits, numbered 1, 2 and 3 were admitted without objection and the factual counts set forth in the Subcommittee certification of June 14, 1999 were stipulated as true, save for a correction in Count 5 in which the date October 28, 1997 was amended to read October 27, 1997. The facts as stipulated to were as follows: (The following is a verbatim extract of the subcommittee certification.)

1. On September 21, 1990, Robert Brown Patterson, Esquire (hereinafter the Respondent), became licensed to practice law in the Commonwealth of Virginia.
2. On October 16, 1997, the Respondent's license was suspended for administrative purposes. The Respondent was sent a notice from the Virginia State Bar advising of the suspension and the Respondent accepted service of the notice on October 20, 1997.
3. On October 23, 1997, the Respondent appeared in the Loudoun County Circuit Court. The Respondent appeared representing a criminal client before Judge Carleton Penn. Judge Penn had just seen a notice from the Virginia State Bar advising that the license of the Respondent was suspended.
4. Judge Penn advised the Respondent that he had just seen a notice from the Virginia State Bar advising that

the Respondent's license had been suspended for administrative reasons. The Respondent told Judge Penn that "This is news to me, your Honor." The Respondent had also just appeared at a parole violation hearing representing the same defendant. The Respondent did not tell the judge that he had received notice from the Virginia State Bar three days before that his license was suspended.

- 5. Mr. Patterson has stated to the Virginia State Bar that he knew his dues were due in July of that year. He admitted that he did not pay his dues at that time. The Respondent states that he received the first warning notice from the Bar in the fall of 1997. This notice was sent to him on approximately September 23, 1997. The notice informs the Respondent that he must pay the annual dues by October 15, 1997, or his license will be suspended. The Respondent states that when he received this notice, he did send a check to the Bar. The Respondent said that he assumed that the check and the notice of suspension that Judge Penn had seen had crossed in the mail. The Bar did not receive this payment. The Respondent sent a second check which was received October 27, 1997. (This date corrected at the Board hearing by stipulation.)
- 6. The Respondent has alleged that the first check was never deposited. In March of 1998, the Respondent was asked by the Virginia State Bar to produce a photocopy of his checkbook register showing when the first check was written. The Respondent states that he did not maintain it and routinely destroys the register after reconciliation.

Following the offering of the above stipulations, testimony was given by the Respondent.

Following such presentation of evidence, the Board deliberated and determined that based upon the stipulation made and testimony given, clear and convincing evidence existed to find that the Respondent has violated DR 1-102-A(3) by representing a client in a court action, knowing at such time his license to practice had been suspended, and has violated DR 1-102-A(4) by knowingly making a misrepresentation to the judge of that court concerning his (the Respondent's) knowledge concerning such suspension.

Based upon the above findings, the Board ORDERS, pursuant to Part 6, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia that the license of the Respondent, Robert Brown Patterson, is suspended for a period of ninety (90) days commencing January 1, 2000, as set forth in the Board's Order, dated December 17, 1999, attached hereto; and

ENTERED this Order this 26th day of January, 2000
VIRGINIA STATE BAR DISCIPLINARY BOARD
By William M. Moffet, Acting Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
DREW VIRGIL TIDWELL
VSB Docket No. 00-000-1453

RULE TO SHOW CAUSE AND
ORDER OF SUSPENSION AND HEARING

It appearing to the Board that Drew Virgil Tidwell was licensed to practice law within the Commonwealth of Virginia on May 31, 1977, and

It further appearing that Drew Virgil Tidwell has been disbarred from the practice of law in New York, by Order entered by the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, on September 17, 1999, and

It further appearing that such disciplinary action has become final.

It is ORDERED, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13(G), that the license of Drew Virgil Tidwell to practice law within the Commonwealth of Virginia be and the same is hereby suspended, upon entry of this order.

It is further ORDERED that Drew Virgil Tidwell appear before the Virginia State Bar Disciplinary Board at the State Corporation Commission, Tyler Building, 1300 East Main Street, Second Floor, Courtroom A, Richmond, Virginia 23219, at 9:00 a.m., on January 28, 2000, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

It is further ORDERED that a copy of the Order of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, entered September 17, 1999, be attached to this rule to Show Cause and Order of Suspension and Hearing and made a part hereof.

ENTERED this Order this 29th day of December, 1999
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Carl A Eason, Chair

[Editor's Note: Attachment is available upon request. Case continued. Mr. Tidwell's license remains suspended.]



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
KENNETH XAVIER WARREN
VSB Docket No. 00-000-1529

RULE TO SHOW CAUSE AND
ORDER OF SUSPENSION AND HEARING

It appearing to the Board that Kenneth Xavier Warren was licensed to practice law within the Commonwealth of Virginia on May 25, 1982, and

It further appearing that Kenneth Xavier Warren has been disbarred from the practice of law in the State of Maryland, by Order entered by the Court of Appeals of Maryland, on August 13, 1999, with attachment, and

It further appearing that such disciplinary action has become final.

It is ORDERED, pursuant to Rules of Court, Part Six, Section IV, Paragraph 13(G), that the license of Kenneth Xavier Warren to practice law within the Commonwealth of Virginia be and the same is hereby suspended, upon entry of this order.

It is further ORDERED that Kenneth Xavier Warren appear before the Virginia State Bar Disciplinary Board at the State Corporation Commission, Tyler Building, 1300 East Main Street, Second Floor, Courtroom A, Richmond, Virginia 23219, at 9:00 a.m., on January 28, 2000, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

It is further ORDERED that a copy of the Order of the Court of Appeals of Maryland, entered August 13, 1999, and attachment, be attached to this Rule to Show Cause and Order of Suspension and Hearing and made a part hereof.

ENTERED this Order this 7th day of January, 2000
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Carl A. Eason, Chair

[Editor's Note: Attachment is available upon request. License surrendered with disciplinary charges pending, effective January 20, 2000.]

