Disciplinary Actions

The following 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
Disciplinary Board				
Dianne Theresa Carter	Newport News	Revocation	March 23, 2004	n/a
William J. Dougherty, Jr.	Newport News	Revocation	February 18, 2004*	20
Robert Dean Eisen*	Norfolk	Revocation	January 22, 2004	20
James Grafton Gore, Jr.	Marshall	Revocation	March 31, 2004	n/a
Christian Jarrell Griffin	Winchester	Public Reprimand w/Terms	February 12, 2004	24
Judith MacLachlan Herndon	Charlottesville	Revocation	February 10, 2004	26
Roger Cory Hinde	Richmond	Revocation	March 26, 2004	26
Killis Thurman Howard	Lynchburg	90 Day Suspension	April 21, 2004	27
Francis Gerard McBride	Fairfax	Revocation	April 2, 2004	n/a
Roger Jeffrey McDonald	Glen Allen	CRESPA Registration Violation	February 10, 2004	28
Mary Meade	McLean	Public Reprimand	March 5, 2004	29
Mary Meade	McLean	4 Month Suspension	February 28, 2004	29
Lawrence Raymond Morton	Woodbridge	2 Year Suspension	April 1, 2004	32
Michael Meade Palmer	Warrenton	Revocation	March 12, 2004	n/a
Elliot M. Schlosser	Hampton	Public Reprimand	March 17, 2004	33
John Ashton Wray, Jr.	Hampton	Public Reprimand w/Terms	February 27, 2004	35
Eric Chong Yim	Annandale	Revocation	March 4, 2004	n/a
District Committees				
Edgar Hampton DeHart, Jr.	Independence	Public Reprimand	February 27, 2004	36
David Albert Powers, III	Chesterfield	Public Reprimand w/Terms	February 25, 2004	37
Ronald Albert Robinson, Jr.	Woodbridge	Public Reprimand w/Terms	February 10, 2004	39
Kenneth Hammond Taylor	Richmond	Public Reprimand w/Terms	February 6, 2004	41

Other Actions

Respondent's Name	Address of Record	Grounds	Effective Date
Cost Suspensions			
Paul Cornelious Bland	Petersburg	Failure to Pay Costs	March 11, 2004
Samuel B. Davis, Jr.	Newport News	Failure to Pay Costs	March 15, 2004
Roger Cory Hinde	Richmond	Failure to Pay Costs	March 11, 2004
Victor Alan Motley	Richmond	Failure to Pay Costs	February 24, 2004
Beverly McLean Murray	Petersburg	Failure to Pay Costs	March 11, 2004
William R. Palmer	Raleigh, NC	Failure to Pay Costs	March 26, 2004
James Frederick Pascal	Richmond	Failure to Pay Costs	March 11, 2004
Gay Lynn Tonelli	Keysville	Failure to Pay Costs	March 23, 2004
Harrison Benjamin Wilson, III	Norfolk	Failure to Pay Costs	March 26, 2004
Interim Suspensions			
Steven Edgar Bennett	Williamsburg	Failure to Comply w/Subpoena	March 17, 2003

** Respondent has noted an appeal in the Virginia Supreme Court*

Disciplinary Board

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

CONSENT TO REVOCATION OF LICENSE TO PRACTICE LAW

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

Your Affiant, WILLIAM J. DOUGHERTY, JR., first being duly sworn, upon his oath does respectfully represent unto the Disciplinary Board the following:

1. That he was licensed by the Board of Law Examiners on September 27, 1979, to practice law in the courts of the Commonwealth, and that he did on September 27, 1979 qualify before the Supreme Court of Virginia.

2. That this consent is freely and voluntarily tendered by him pursuant to Part 6, Section IV, Paragraph 13(L) of the Rules of the Supreme Court of Virginia, that he is not being subjected to coercion or duress, and that he is fully aware of the implications of consenting to Revocation.

3. That he is aware that there are proceedings currently pending involving allegations of Misconduct (VSB Docket Numbers 02-000-1411), specifically, his convictions of eight counts of aiding in the preparation of false tax returns, a felony, in violation of 26 United States Code, Section 7206 (2), which convictions have become final.

4. That the material facts upon which the allegations of Misconduct are predicated are true; and,

5. That he submits this consent to Revocation because he knows that if disciplinary Proceedings based on the alleged Misconduct were brought or prosecuted to a conclusion, he could not successfully defend them.

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

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

GIVEN under her hand this 11th day of February, 2004
WILLIAM J. DOUGHERTY, JR.
Affiant

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VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

[Editor's Note: Respondent has noted an appeal to the Virginia Supreme Court.]

IN THE MATTER OF:
ROBERT DEAN EISEN
VSB DOCKET NUMBERS: 01-022-0845;
01-022-1356;
01-022-2414;
02-022-1800;
02-022-3844;
AND 02-022-4096.

ORDER OF REVOCATION

On January 22, 2004, a hearing was convened before a duly appointed panel of the Board, consisting of Roscoe B. Stephenson, Chair, Robert E. Eicher, Joseph R. Lassiter, W. Jefferson O'Flaherty (lay member), and Janipher W. Robinson. The Clerk of the Disciplinary System sent all notices required by law.

The Virginia State Bar was represented by Richard E. Slaney, Assistant Bar Counsel.

The Respondent, Robert Dean Eisen, appeared in person and with his counsel, James A. Evans.

* * *

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the chair, verified that they had no conflicts.

These matters came before the Board pursuant two certifications of the Second, Section II District Subcommittee as follows: (i) VSB Docket Numbers: 01-022-0845, 01-022-1356, and 01-022-2414, certified on June 7, 2002; and (ii) VSB Docket Numbers: 02-022-1800, 02-022-3844, and 02-022-4096, certified on December 17, 2002.

Bar Exhibits 1 through 36 were admitted in evidence, without objection, in VSB Docket Nos. 01-022-0845, 01-022-1356, and 01-022-2414. Bar Exhibits 1 through 28 were admitted in evidence, without objection, in VSB Docket Nos. 02-022-1800, 02-022-3844, and 02-022-4096. Respondent Ex. 1 (collectively) was admitted in evidence, without objection. Testimony ore tenus was received from witnesses called by the Bar, viz., Tazewell Hubbard, Esq., William P. Robinson, Jr., Esq., and Bar investigators Eugene Reagan and Ronald Pohrivchak. The Respondent testified on his own behalf.

FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Robert Dean Eisen (hereinafter Respondent or Mr. Eisen) was an attorney licensed to practice law in the Commonwealth of Virginia.

Docket Number 01-022-0845

2. In mid and late 1990's, Mr. Eisen represented Raymond Caldeyro (Caldeyro) in a personal injury matter.

3. In 1997, Advanced Funding Corp. (Advanced Funding) loaned Caldeyro funds against the personal injury claim being handled by Mr. Eisen. Mr. Eisen signed a document acknowledging the loan in August, 1997.

4. In April, 2000, Mr. Eisen settled Caldeyro's claim for $4,500.00, which was deposited into Mr. Eisen's Trust Account (account number 8737-4358 at First Virginia Bank) (hereinafter the Trust Account and the Bank respectively) on April 5, 2000.

5. An unexecuted Settlement Statement produced by Mr. Eisen shows deductions of $1,800.00 in attorney's fees and $546.00 in costs, for a net recovery of $2,154.00. Although the Settlement Statement shows that the $2,154.00 was to be paid to Advanced Funding, Mr. Eisen never paid Advanced Funding. Additionally, the subsidiary ledger maintained by Mr. Eisen for the Caldeyro case only shows $129.00 in costs. When interviewed by Ron Pohrivchak on October 19, 2001, Mr. Eisen could not explain the discrepancy between the subsidiary ledger and the Settlement Statement, why there were no check numbers listed in regard to the costs paid and why the expenses shown on the Settlement Statement were not shown on his disbursement journal. Mr. Eisen was also asked to produce documentation to back up the expenses listed on the Settlement Statement. Mr. Eisen indicated he would research these issues and advise Mr. Pohrivchak of his findings. Mr. Eisen has not provided any additional information or documentation on these issues.

6. After April 5, 2000, Mr. Eisen should have had at least $2,145.00 in his Trust Account for the benefit of Caldeyro and/or Advanced Funding. A review of the Trust Account bank statements for April, 2000, however, shows the balance in the Trust Account fell to $10.40 as of April 28, 2000.

7. When interviewed by Mr. Pohrivchak on March 16, 2001, Mr. Eisen acknowledged the competing interests of Caldeyro and Advanced Funding in the net proceeds from the settlement of Caldeyro's claim. Mr. Eisen indicated he would file an interpleader action regarding the net proceeds by April, 2001. No interpleader action had been filed as of May 15, 2001, and no interpleader action was filed subsequently.

Docket No. 01-022-1356

8. In November of 2000, the bank sent correspondence to the Bar indicating Mr. Eisen's Trust Account was overdrawn, although the bank had honored and paid the item which caused the overdraft.

9. On November 30, 2000 and December 13, 2000, the Bar wrote Mr. Eisen and requested an explanation of the overdraft in his Trust Account. Mr. Eisen did not respond to either letter, and a complaint file was opened. Mr. Eisen also failed to respond to a January 4, 2001 letter from the Bar indicating a formal complaint file had been opened and requesting a response.

10. The check which caused Mr. Eisen to overdraw the Trust Account was check number 1360 in the amount of $3,654.00, payable to Mr. Eisen's client, John Hall, and representing Mr. Hall's share of the proceeds from a GEICO settlement check deposited into the Trust Account on October 26, 2000. On November 6, 2000, at the time check number 1360 was paid by the bank, the Trust Account was short $117.83. Additionally, at this time Mr. Eisen should still have had $2,154.00 in the Trust Account for the benefit of Caldeyro and/or Advance Funding.

11. A review of the activity in the Trust Account showed numerous irregularities, including:

    a. On the disbursement journal there is noted a $6,000.00 loan from the Trust Account to an office account in January of 2000.

    b. A subsidiary ledger card for "R. Sachs", Mr. Eisen's now deceased mother-in-law, which shows a $15,000.00 deposit to the Trust Account and various payments to Mr. Eisen and Jeanette Eisen, his mother. Mr. Eisen could not offer Pohrivchak an explanation, asked that the Bar not interview his mother about these funds and indicated he would research the matter and respond in writing. No such response has been received.

    c. Checks of $4,000.00 and $5,000.00 were deposited into the Trust Account with the notation "S. Stein loan". Mr. Eisen told Pohrivchak these were reimbursements for repairs Mr. Eisen made to investment property owned by Mr. Eisen and Stein. It is unclear why such payments should be labeled as a loan or placed in the Trust Account.

Docket Number 01-022-2414

12. In 1998, Mr. Eisen represented Sandra Witham (Witham) in a matter regarding her ex-husband, Matthew Stavish (Stavish). The parties had agreed for Stavish to relinquish parental rights over their child, Alexandra. Stavish was represented by Tazewell Hubbard (Hubbard).

13. Stavish agreed to pay Witham's attorney's fees of $500.00, and did so in October 1998.

14. On June 2, 1999, Hubbard sent Mr. Eisen an Agreement terminating Stavish's parental rights in regard to Alexandra, which was fully executed by Stavish. Mr. Eisen sent the Agreement to Witham, who signed it and returned it to Mr. Eisen within days. Mr. Eisen, however, did not send the Agreement to Hubbard or otherwise act to effectuate the Agreement.

15. Hubbard began writing to Mr. Eisen concerning the status of the Agreement. Mr. Eisen, however, did not respond to Hubbard's letters of June 18, August 9, and November 22 (forwarded by Certified Mail).

16. On March 5, 2000, Witham wrote Mr. Eisen, indicating she had confirmed with Mr. Eisen's secretary that the signed Agreement was still in Mr. Eisen's file.

17. On March 15, 2000, Hubbard sent further correspondence to Mr. Eisen by Certified Mail. This letter indicated Witham attempted to contact Hubbard directly as Mr. Eisen had not returned telephone messages she had previously left for him.

18. On March 31, 2000, Mr. Eisen sent Hubbard the Agreement which had been executed by the parties in 1999. Thereafter, a disagreement arose between the attorneys as to which one was to prepare the Petition to be filed in court terminating Stavish's parental rights. In a letter dated June 1, 2000, Hubbard agreed to prepare and file such a Petition, and on August 28, 2000, Hubbard sent Mr. Eisen such a Petition, which required Witham's signature.

19. Hubbard then corresponded with Mr. Eisen on September 22, November 9, and December 17, 2000, but never received a reply or any communication from Mr. Eisen as to the status of the Petition.

20. In late 2001, or early 2002, Witham retained another attorney to assist her.

21. Upon information, it is believed Stavish has been denied credit on several occasions due to the delay in termination of his parental rights, and Mr. Eisen failed to respond to inquiries by fax and telephone from a loan officer in early 2001 seeking to determine the status of the matter.

22. In April, 2001, Stavish filed his complaint with the Bar. The complaint was sent to Mr. Eisen by letter dated April 18, 2001. Mr. Eisen never responded to the complaint.

23. Pohrivchak, the Bar Investigator assigned to the case, experienced extreme difficulty in meeting with Mr. Eisen regarding the complaint. When they did meet on October 19, 2001, Mr. Eisen requested additional time to research the causes of the delay in the matter. Mr. Eisen did not provide additional information.

Docket Number 02-022-1800 (Gale B. Reid)

24. In mid-1999, Mr. Eisen and Complainant Gale B. Reid (Reid) discussed the Supreme Court's decision in *Commonwealth v. Baker*, 258 Va. 1 (1999), and its potential applicability to a case involving Reid's son, Tiron Hutchins (Hutchins). A habeas corpus petition was envisioned alleging one or both of Hutchins' parents were not properly notified of a criminal proceeding against Hutchins.

25. Mr. Eisen quoted a $5,000.00 fee and indicated he needed at least $2,500.00 before he would begin work on the matter. Reid or members of her family paid Mr. Eisen the following amounts:

$1,500.00	on July 15, 1999;
$900.00	on July 16, 1999;
$400.00	on July 30, 1999;
$350.00	on August 1, 1999;
$350.00	on August 6, 1999;
$500.00	on August 30, 1999;
$400.00	on September 10, 1999;
$355.00	on October 29, 1999; and
$455.00	on November 12, 1999.

Mr. Eisen failed to deposit any of the funds into his trust account.

26. Mr. Eisen did little, if any, work on the case for Reid's son. At some point during 2000, Mr. Eisen told Reid that he had filed a pleading on her son's behalf. No pleading had been actually filed. Thereafter, Reid was unable to speak to or otherwise communicate with Mr. Eisen.

27. Subsequently, in September, 2001, the Virginia Supreme Court decided several cases which severely limited the effect of the *Baker* case and eliminated the grounds for the habeas corpus petition in Hutchins' case. Thereafter, Reid learned from various sources Mr. Eisen had not filed anything on her son's behalf.

28. Reid then approached another attorney, Alan Zaleski (Zaleski), to discuss what could be done to assist her son. Zaleski indicated he would assist Reid upon payment of a fee, and would approach Mr. Eisen about refunding a portion or all of the fee paid to him.

29. Mr. Eisen, through Zaleski, indicated he would refund a substantial portion of the fee he had received, but no refund was made.

30. Reid filed a complaint against Mr. Eisen with the Bar in November, 2001. Mr. Eisen failed to respond to two letters from the Bar's Intake Department, and failed to respond to the complaint letter sent to him on January 2, 2002.

Docket Number 02-022-3844 (Lester L. Morris)

31. Complainant Lester L. Morris (Morris) was convicted of several crimes and sentenced on October 24, 2001.

32. Morris was dissatisfied with the services of his counsel at that time, and on the day he was sentenced, spoke to Mr. Eisen about representing him on appeal and in post-trial motions. Mr. Eisen indicated that he would review the matter for $1,500.00 and would undertake the appeal representation for an additional $5,000.00.

33. In late October, 2001, Mr. Eisen received $1.500.00 on Morris' behalf. Eventually, an additional $5,000.00 was paid to Mr. Eisen for Morris. None of these funds were deposited into Mr. Eisen's trust account.

34. Mr. Eisen did little or no work on Morris' case, and never entered an appearance on behalf of Morris. Then, Morris' trial counsel was appointed by the trial court to prosecute Morris' appeal. Said counsel undertook the appeal.

35. Mr. Eisen failed to communicate with Morris or members of Morris' family.

36. By letter dated February 27, 2002, Morris fired Mr. Eisen, requested a refund and return of his file materials. Despite repeated requests, Mr. Eisen never refunded any of the money he had received on Morris' behalf, and never returned Morris' file materials.

Docket Number 02-022-4096 (Dennis Rogers)

37. On January 2, 2001, the Complainant, Dennis Rogers (Rogers), paid Mr. Eisen $2,100.00 by three money orders for representation of Rogers' brother, Edward Rogers, to assist Edward Rogers in obtaining post-conviction relief. The money orders were cashed the next day, but these funds were never deposited into Mr. Eisen's trust account.

38. Thereafter, Mr. Eisen performed little or no work on Edward Rogers' behalf. Mr. Eisen did not file a petition or motion. No post-conviction relief was sought by Mr. Eisen for Edward Rogers. On information, the post-conviction relief sought by Rogers is no longer available.

39. Dennis Rogers, Edward Rogers, and other family members experienced extreme difficulty communicating with Mr. Eisen.

40. Later, Dennis Rogers' wife, Carline Rogers, spoke with Mr. Eisen by telephone. Mr. Eisen promised a partial refund and an accounting of the work he performed to justify any portion of the fee not refunded. No accounting was provided, and no refund was received.

Upon receipt of all evidence presented as to the charges of misconduct, the Board heard argument, and then retired to deliberate what violations, if any, were shown by clear and convincing evidence. Following its deliberation the Board reconvened in open session and announced that it had unanimously found by clear and convincing evidence the following violations:

Docket Number 01-022-0845

In the case of Raymond Caldeyro, the Respondent committed violations of the following rules, to wit: Rule 1.3(a), Rule 1.15(c)(3), Rule 1.15(c)(4), Rule 1.15(e), Rule 8.1(c), and Rule 8.4(b).

RULE 1.3 Diligence

(a) * * *

RULE 1.15 Safekeeping Property

(c) (3) and (4) * * *
(e) (1) (i), (ii), (iii), (iv) (v) and (2) (i), (ii) and (iii) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

(c) * * *

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) * * *

The Board did not find violations of the other rules charged under that docket number, to wit: Rule 1.15(a), Rule 1.15(c)(1), Rule 1.15(c)(2), Rule 1.15(f), and Rule 8.1(d).

Docket Number 01-22-1356

In the case of Raymond Caldeyro and the Trust Account, the Respondent committed violations of the following rules, *to wit*: Rule 1.15(a), Rule 1.15(c)(3), *quoted above*, Rule 1.15(c)(4), *quoted above*, Rule 1.15(d), Rule 1.15(e), *quoted above*, and Rule 8.1(c) *quoted above*.

RULE 1.15 Safekeeping Property

(a), (d) (1) (i), (ii), (iii), (iv) and (2) (i), (ii), (iii) * * *

The Board did not find violations of the other rules charged under that docket number, to wit: Rule 1.15(c)(1), Rule 1.15(c)(2), Rule 1.15(f), and Rule 8.1(d).

Docket Number 01-022-2414

In the case of Matthew Stavish/Sandra Witham, the Respondent committed violations of the following rules, *to wit*: Rule 1.3(a), *quoted above*, Rule 1.3(b), Rule 1.4(a), and Rule 8.1(d).

RULE 1.3 Diligence

(b) * * *

RULE 1.4 Communication

(a) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

(d) * * *

The Board did not find violations of the other rules charged under that docket number, to wit: Rule 1.4(c) and Rule 8.1(c).

Docket Number 02-022-1800

In the case of Gale B. Reid, the Respondent committed violations of the following rules, t*o wit*: DR 6-101(B), DR 6-101(C), DR 7-101(A)(1), DR 7-101(A)(2), DR 9-102(A), DR 9-102(B)(3), DR 9-102(B)(4), Rule 1.3(a), *quoted above*, Rule 1.3(b), *quoted above*, Rule 1.4(a) , *quoted above*, Rule 1.15(c)(4), *quoted above*, Rule 1.16(d), and Rule 8.1(c), *quoted above*.

DR 6-101 Competence and Promptness

(B) and (C) * * *

DR 7-101 Representing a Client Zealously

(A) (1) and (2) * * *

DR 9-102 Preserving Identity of Funds and Property of a Client

(A) (1), (2) * * *
(B) (3), (4) * * *

RULE 1.16 Declining Or Terminating Representation

(d) * * *

The Board did not find violations of the other rules charged under that docket number, *to wit*: DR 7-101(A)(3), DR 9-102(B)(2), and Rule 1.3(c). The allegation of a violation of Rule 8.4(c) was withdrawn by the Bar, and no violation was, therefore, found pursuant to that rule.

Docket Number 02-022-3844

In the case of Lester D. Morris, the Respondent committed violations of the following rules, to wit: Rule 1.3(a), Rule

1.3(b), Rule 1.4(a), Rule 1.15 (a), Rule 1.15(c)(3), Rule 1.15(c)(4), and Rule 1.16(d), *all rules previously quoted above.*

The Board did not find violations of the other rules charged under that docket number, to wit: Rule 1.15(c)(2) and Rule 1.16(e).

Docket Number 02-022-4096

In the case of Dennis Rogers/Edward Rogers, the Respondent committed violations of the following rules, t*o wit:* Rule 1.3(a), Rule 1.3(b), Rule 1.4(a), Rule 1.15(a), Rule 1.15(c)(3), Rule 1.15(c)(4), and Rule 1.16(d), *all rules previously quoted above.*

The Board did not find violations of the other rules charged under that docket number, to wit: Rule 1.3(c) and Rule 1.15(c)(2).

CONSIDERATION OF SANCTION

After announcing its findings of misconduct the Board called for evidence in mitigation or in aggravation.

The Virginia State Bar introduced Bar Exhibit 1-A, which was received in evidence without objection, showing a prior disciplinary record of (1) a private reprimand from the Board in 1985 relating to controlled substances; and (2) a Second District Committee Dismissal with Terms relating to real estate settlement procedures.

The Respondent introduced Respondent's Exhibits 2 and 3, which were received in evidence, without objection. The Respondent also presented his testimony and that of his wife.

The gist of the Respondent's testimony was that he has a long history of depression; and that a chemical deficiency in his body resulted in a dependency on opiates, and, in turn, hospitalization and treatment for depression and drug abuse. He testified that, because of medication prescribed by a Florida physician, which he began in March or April of 2003, he is doing well toward a full recovery. His local physicians' letters, dated March 14, 2003, and October 8, 2003, speak to an excellent prognosis.

The Respondent's explanation for the misconduct was that his depression, coupled with his opiate dependency, left him inattentive, unfocused, and unable to cope except for "big" cases that stimulated him. His hospital progress notes on November 18, 2002, refer to his "higher functioning when he has a big case—a big fee an [sic] lower functioning when business is slow." The misconduct did not occur with "big case" clients, yet the loyalty and diligence required of lawyers, as well as compliance with the disciplinary rules, do not vary from client to client.

However, the Respondent failed to produce any evidence from a physician or other expert establishing a cause and effect, or causal nexus, between his depression and the acts and omissions of his misconduct. Whether the Respondent's misconduct is tempered by depression, as he claims, is left to speculation in lieu of competent medical evidence. The Respondent failed to produce a letter from any physician after Dr. Goldman's conclusory letter of October 8, 2003, and failed to produce any letter from the Florida physician whose protocol the Respondent is following. This failure of Respondent's proof is fatal to his defense. The Respondent bears the affirmative burden of proof "[w]henever the existence of a Disability is alleged . . . in mitigation of Charges of Misconduct". Paragraph 13.I.6.a., Part Six, Section IV of the Rules of the Supreme Court of Virginia. The Board cannot base its findings on speculation. In the final analysis, the proof before us demonstrates that the Respondent engaged in an egregious pattern of misconduct over a considerable length of time resulting in harm to many clients. Respondent has failed to prove mitigation based on his conditions leading to his prior disability.

The Respondent testified to his doing "the right thing" in surrendering his law license for suspension in a disability hearing in the Circuit Court of the City of Norfolk, which was later restored. The Board notes that the Respondent did so only days before this Board was to convene a hearing on the disciplinary charges against him. In any event, this largely speaks to the issues of his disability suspension and later reinstatement, and not to the issues now before the Board.

The Respondent stated that he deeply regrets the harm he caused his clients, and that he intends to refund all moneys wrongfully taken from clients. But he made it equally clear that he has made no attempt to reconcile or audit his trust account to determine what is missing, and thereby ought to be refunded.

We are left with only one conclusion. The Respondent's misconduct was egregious and unmitigated. It was fraught with dishonesty and neglect. His trust account was a misnomer. He repeatedly took money from clients for services he did not render. He used money that was not his. His conduct prejudiced clients. His conduct mocked a fiduciary relationship with his clients. He did so knowingly.

Upon receipt of all evidence presented in mitigation or aggravation of the findings of misconduct, the Board heard argument, and then retired to deliberate what sanction should be imposed. Following its deliberation the Board reconvened in open session and announced that it had unanimously found that the Respondent's license to practice law in the Commonwealth of Virginia should be revoked. Accordingly, it is ORDERED that the license of the Respondent, Robert Dean Eisen, to practice law in the Commonwealth of Virginia be and hereby is REVOKED effective January 22, 2004.

ENTERED, this 5th day of March, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: ROSCOE B. STEPHENSON, III, Chair

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VIRGINIA:
VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
CHRISTIAN JARRELL GRIFFIN
VSB Docket No: 02-070-1142, 02-070-3507, 03-070-2941

ORDER

This matter came on the 11th day of February, 2004, to be heard on the Agreed Disposition of the Virginia State Bar and

the Respondent, based upon the Certification of the Seventh District Committee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of James L. Banks, Jr., Larry B. Kirksey, Joseph R. Lassiter, Jr., Werner H. Quasebarth, Lay Member, and Robert L. Freed, Second Vice Chair, presiding.

Claude V. Worrell, II, Esquire, representing the Bar, and the Respondent, Christian Jarrell Griffin, Esquire, by his/her counsel, David R. Rosenfeld, Esquire, presented an endorsed Agreed Disposition.

Having considered the Certification and 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:

1. At all times relevant hereto, the Respondent, Christian Jarrell Griffin, (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

Virginia State Bar Docket Number 02-070-1142

2. Alida O'Neal, Clerk of the Clarke County General District Court (hereinafter the Complainant), informed the Virginia State Bar that the Respondent received a parking meter violation ticket on September 12, 2000 in Berryville, Virginia. The Respondent did not pay the fine within the required 24 hours.

3. On July 12, 2001, the Respondent tendered a check to the Clerk's Office of Clark County General District Court to pay the aforementioned fine, interest, and assessed court costs. The check was drawn on the Respondent's trust account. The check was returned to the Clerk's Office unpaid by the Respondent's bank. On September 19, 2001, the Clerk's Office notified the Respondent that his trust account check had been returned by his bank unpaid. On November 1, 2001, the Respondent paid his fine, costs, bad check fee and town interest by personal check.

Virginia State Bar Docket Number 02-070-3507

4. The Respondent received four citations, three for parking and one for failing to display a city or county decal.

5. On May 2, 2002, the Respondent went to the clerk's office to pay his fines and costs. The Respondent wrote a check from his trust account payable to the "General District Court" in the amount of $118.68.

Virginia State Bar Docket Number 03-070-2941

6. On February 15, 2003, the Respondent wrote two checks from his trust account check number 4055 in the amount of $140.74 and check number 4056 in the amount of $131.99, both to pay for personal expenses.

7. During the Bar's investigation of the above-referenced cases, the Respondent admitted that he was using his trust account as his operating and personal account. The Respondent indicated that he had been using his trust account as his operating and personal account for two and a half years. He indicated that he started using his trust account as his operating account because the bank closed his operating account due to little or no activity. There is no evidence that the Respondent used client funds to pay any personal or operating expenses.

The Board finds by clear and convincing evidence that such conduct on the part of Christian Jarrell Griffin, Esquire constitutes a violation of the following Rule(s) of the Virginia Code of Professional Responsibility:

RULE 1.15 Safekeeping Property

* * *

It is hereby ORDERED that the Respondent shall receive a Public Reprimand with Terms effective upon entry of this order as representing an appropriate sanction if this matter were to be heard. The terms and conditions shall be met by July 1, 2004, are as follows:

1. The Respondent shall certify in writing to the Virginia State Bar that he has established separate trust and operating accounts. The existence of these accounts shall be verified by the Virginia State Bar. Furthermore, the Respondent shall make his records available for review upon request of the Virginia State Bar.

2. The Respondent shall read Rule of Professional Conduct 1.15, and shall certify in writing to Assistant Bar Counsel assigned to this case that he has done so. The Respondent shall establish an office policy that conforms to the requirements of Rule 1.15. The Respondent shall certify in writing that he has done so.

If, however, the terms and conditions have not been met by July 1, 2004, the alternative sanction shall be a thirty day suspension of Mr. Griffinís license to practice law in the Commonwealth of Virginia.

It is further ORDERED that, pursuant to the *Rules of the Supreme Court of Virginia*, Pt. 6, § IV, Para. 13.B.8.c., the Respondent shall be assessed an administrative fee and costs for this Agreed Disposition proceeding.

It is further ORDERED that this matter be removed from the Board's docket and placed among the closed files, since there is no further action to be taken unless the Respondent fails to comply with the terms imposed by the Disciplinary Board, in which case a show-cause proceeding will be initiated.

It is further ORDERED that upon representation by the Assistant Bar Counsel to the Virginia State Bar Disciplinary Board that the Respondent has failed to comply with the terms and conditions as set forth above, a show-cause proceeding will be initiated before the Disciplinary Board seeking imposition of the alternative sanction. Any show-cause proceeding will be considered a new matter, and under Pt. 6, § IV, Para. 13.B.8.c. of the *Rules of the Supreme Court of Virginia*, the Respondent will be assessed an administrative fee and costs of such show-cause proceeding.

* * *

Enter this Order this 12th day of February, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, 2nd Vice Chair

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
JUDITH MacLACHLAN HERNDON
VSB DOCKET NO. 03-070-0771

AFFIDAVIT DECLARING CONSENT TO REVOCATION

Judith MacLachlan Herndon, after being duly sworn, states as follows:

1. That she was licensed to practice law in the Commonwealth of Virginia on June 8, 1976;

2. That pursuant to Part 6, § IV, ¶ 13(L) of the *Rules of the Virginia Supreme Court*:

   a. her consent to revocation is freely and voluntarily rendered, that she is not being subjected to coercion or duress, and that she is fully aware of the implications of consenting to a revocation;

   b. she is aware that there is a proceeding against her involving allegations of misconduct, the specific nature of which shall be set forth in the Statement of Facts attached to and incorporated in this Affidavit;

   c. she acknowledges that the material facts upon which the allegations of misconduct are predicated are true;

   d. she submits this Affidavit and consents to the revocation because she knows that if disciplinary proceedings based on the alleged misconduct were brought or prosecuted to a conclusion, she could not successfully defend them.

Dated this 5th day of February, 2004.
Judith MacLachlan Herndon

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF:
ROGER CORY HINDE
VSB DOCKET NO. 04-000-2442

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board on March 26, 2004, pursuant to the Motion and Notice of Show Cause Hearing to Revoke Respondent's License to Practice Law for His Failure to Comply with the Rules of Court filed by the Virginia State Bar, pursuant to Part Six, Section IV, Paragraph 13.M. of the Rules of Court. The hearing was held before a duly convened panel of the Board consisting of Robert E. Eicher, Peter A. Dingman, Ann N. Kathan, Chester J. Cahoon, Jr., Lay Member, and Karen A. Gould, First Vice Chair.

The Virginia State Bar was represented by Barbara Ann Williams, Bar Counsel. Roger Cory Hinde (the "Respondent") failed to appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. All required notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

The Chair opened the hearing by calling the case both in the hearing room and in the adjacent hall. The Respondent did not answer or appear. The panel was then polled as to whether any member had any conflict of interest, any apparent conflict of interest, or other reason why the member should not participate in the hearing. Each panel member, including the Chair, answered in the negative.

The Bar then presented evidence through duly admitted documents and testimony that the Respondent had failed to comply with the terms of the Summary Order entered on April 25, 2003, the Order of Suspension entered on May 12, 2003, and the Order entered on November 20, 2003, which all directed the Respondent to comply with the notice requirements of Part 6, Section IV, Paragraph 13.M. of the Rules of Court. Specifically, the Respondent was required, among other things as set forth in the Rules of Court, to send notice, by certified mail, of his suspension to practice law in the Commonwealth of Virginia to all clients for whom he was handling matters and to all opposing attorneys and the presiding judges in pending litigation. The evidence presented by the Bar showed that the Respondent had failed to fulfill the notice requirements of Part 6, Section IV, Paragraph 13.M. of the Rules of Court.

Findings and Sanction

Under Rules of Court, Part 6, Section IV, Paragraph 13.M. the Disciplinary Board is empowered to impose a sanction of revocation or suspension for an attorney's failure to comply with the notice requirements of this rule. The Board finds that the Bar has furnished uncontroverted evidence that the Respondent did not comply with the notice requirements of Rules of Court, Part Six, Section IV, Paragraph 13.M. and that the sanction of revocation is appropriate. The Board further finds that the Respondent has failed to show cause as to why such sanction should not be imposed.

Based on the evidence presented by the Bar, the Respondent's failure to show cause as to why his license should not be revoked in the Commonwealth of Virginia, and the Respondent's lengthy disciplinary record, the Board believes the appropriate sanction is the revocation of the Respondent's license.

Accordingly, it is so ORDERED that the license of Roger Cory Hinde to practice law in the Commonwealth of Virginia is hereby REVOKED, effective March 26, 2004.

* * *

ENTERED this 31st day of March 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, First Vice Chair

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
KILLIS THURMAN HOWARD
VSB Docket No. 03-090-0468

ORDER OF SUSPENSION OF 90 DAYS

On October 14, 2003, a subcommittee of the Ninth District Committee certified this matter to the Virginia State Bar Disciplinary Board ("Board") for hearing which was set to be heard on April 23, 2004 before a duly convened panel. On March 26, 2004, this matter was presented for approval of an agreed disposition to a duly convened panel consisting of Peter A. Dingman, Robert E. Eicher, Ann N. Kathan, Mr. Chester J. Cahoon, Jr., and Karen A. Gould, First Vice-Chair.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶ 13.B.5.c., the Virginia State Bar, represented by Paul D. Georgiadis, Assistant Bar Counsel, and the Respondent, represented by counsel R. Paul Childress, Jr., entered into a proposed agreed disposition and presented it to the convened panel. Killis Thurman Howard, the Respondent, also appeared before the panel.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, verified that they had no conflicts.

I. FINDINGS OF FACT

1. During all times relevant hereto, Killis Thurman Howard ("Respondent") was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or around October 28, 1999, Mrs. S retained Respondent to represent her as a defendant to her husband's divorce suit that alleged, *inter alia*, fault grounds of adultery committed by Mrs. S. with a Mr. C.

3. Thereafter, Respondent filed a motion for an extension citing the parties' interest in reconciliation and counseling.

4. By agreement of the parties, the Court dismissed the divorce suit on or about January 13, 2000.

5. At some point thereafter, Respondent engaged in an ongoing sexual relationship with Mrs. S. There is a conflict in the evidence as to when the sexual relationship commenced, with the parties agreeing that there is no direct evidence to corroborate the conflicting accounts of Mrs. S and Respondent.

6. Mrs. S contends that as Respondent negotiated with husband's counsel to withdraw the pending divorce suit, Respondent himself entered into adulterous relations with Mrs. S while in his law office and while in his residential quarters attached to his law office, and in other locations which continued through the Spring of 2002.

7. Respondent contends that he did not begin to engage in said relationship until after he terminated his attorney-client relationship with Mrs. S in April, 2000.

8. In March, 2000, husband confronted Mrs. S with allegations of her engaging in an on-going adulterous relationship with Respondent and demanded that the affair end for further reconciliation to occur. As part of the reconciliation, husband required Mrs. S. to enter into a post-nuptial agreement to include a contingent custody clause by which Mrs. S would waive her claim to spousal support, and stated that should Mrs. S. commit further adultery or file for separation, husband would have sole legal custody of their infant child.

9. A post-nuptial agreement was drafted by Respondent. In paragraph 3 of said agreement, Respondent included the contingent custody clause. At the same time, Respondent had received a separate document, entitled Separation Agreement, from husband's attorney which had been drafted on March 27, 2000, in which husband demanded sole custody of their infant child, without any contingency for such provision.

10. On April 12, 2000, Mrs. S executed the agreement at Respondent's office. Respondent billed Mrs. S. for his time in preparing such agreement.

11. On or about June 11, 2001, Husband re-filed the divorce Bill of Complaint alleging fault grounds of adultery based upon repeated instances of Mrs. S's adultery with Respondent, whom he named in the bill of complaint.

12. On or about February 26, 2002, the Circuit Court entered a *pendente lite* order requiring Mrs. S to have no contact with Respondent while Mrs. S had her infant child in her care.

13. On July 26, 2002, the Court entered the final decree, finding Mrs. S guilty of adultery with Respondent. Taking into consideration the adultery found, the Court awarded sole custody of their child to husband. The Court further affirmed, ratified, and incorporated the validity of the post-nuptial agreement dated April 3, 2000, except for paragraph 3 of the agreement.

II. NATURE OF MISCONDUCT

The Board finds that the conduct on the part of the Respondent set forth above in the agreed Findings of Fact violates:

RULE 1.7 Conflict of Interest: General Rule

(b) (1) and (2) * * *

IMPOSITION OF SANCTION OF SUSPENSION OF NINETY (90) DAYS

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions,

ORDERS pursuant to Part 6, Sec. IV, Para. 13.I .2.f.(2)(c) of the Rules of the Virginia Supreme Court that the license of the Respondent, Killis Thurman Howard, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for ninety (90) days, effective April 21, 2004.

* * *

ENTERED this 31st day of March, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Karen A. Gould, First Vice-Chair

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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
ROGER JEFFREY McDONALD
VSB DOCKET NO. 01-000-0634

ORDER

This matter came on for hearing on February 10, 2004, before the Virginia State Bar Disciplinary Board upon an Agreed Disposition between the Virginia State Bar and the Respondent, Roger Jeffrey McDonald.

A duly convened panel consisting of Thaddeus T. Crump, Lay Person; William C. Boyce, Jr., Esq.; Peter A. Dingman, Esq.; Glenn M. Hodge, Esq.; and Robert L. Freed, Esq., Vice Chair, presiding, heard the proceeding.

The Respondent, Roger Jeffrey McDonald, Esq., appeared pro se. Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

Each member of the hearing panel stated on the record that he had no business, financial or personal interest that would impair his ability to hear the matter impartially and fairly.

Mr. Hirsch presented to the panel the Agreed Disposition with a correction to the factual recitation within the agreement, and the prior record of Mr. McDonald consisting of a 1997 dismissal with terms and a 2000 private reprimand with terms. Mr. McDonald presented argument to the panel and restated his agreement to the disposition.

Having considered the Agreed Disposition and the representations of counsel, the Disciplinary Board accepts the Agreed Disposition and finds by clear and convincing evidence as follows:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Roger Jeffrey McDonald [McDonald], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. At all times relevant hereto, the Virginia State Bar has maintained and continues to maintain a listing of all registered real estate settlement agents including attorney settlement agents pursuant to the Virginia Consumer Real Estate Settlement Protection Act, Sections 6.1-2.19 through 6.1-2.29, Code of Virginia, 1950, as amended [CRESPA] and the Virginia State Bar Regulations issued pursuant to CRESPA [Regulations].

3. In order to act as a settlement agent in the Commonwealth of Virginia, as defined by CRESPA, an attorney must be registered with the Virginia State Bar pursuant to CRESPA and the Regulations.

4. From September 29, 1997 until February 25, 2000, McDonald was registered with the Virginia State Bar as an attorney settlement agent to perform settlements pursuant to CRESPA and the Regulations.

5. On February 25, 2000, McDonald's Virginia State Bar CRESPA file was closed based upon the cancellation of McDonaldís surety bond. In order to be registered pursuant to CRESPA and the Regulations, McDonald was and is required to maintain, *inter alia*, a surety bond. Upon the closing of McDonald's CRESPA file, McDonald was no longer registered pursuant to CRESPA and the Regulations.

6. By letter dated February 25, 2000 Diana Balch, Director of Membership for the Virginia State Bar, notified McDonald at his address of record of the closing of his CRESPA file and that, if he "should start performing escrow, closing, or settlement services, [he] must re-register as a settlement agent under CRESPA."

7. McDonald re-registered as a settlement agent under CRESPA on August 31, 2000.

8. In response to correspondence from the bar, McDonald sent a letter to the bar dated September 25, 2000, addressed to James M. McCauley, Esq., in which McDonald stated that he did perform real estate closings from February to August of 2000 and the failure to register was an oversight on his part.

9. During the time period from February 25, 2000 until August 31, 2000:

   a. McDonald was the only attorney in his law firm, Roger J. McDonald & Associates, and was not authorized to act as a settlement agent pursuant to CRESPA or the Regulations;

   b. Without authority, McDonald acted as a settlement agent, as defined by the CRESPA, in 158 residential real estate transactions involving the purchase of or lending on the security of real estate located in the Commonwealth of Virginia containing not more than four residential dwelling units [transactions];

   c. McDonald, or his law firm employees acting as his agents, prepared settlement statements, as defined by CRESPA, with respect to each of said transactions [HUD-1's];

II. NATURE OF MISCONDUCT

The Disciplinary Board finds by clear and convincing evidence that such conduct by Roger Jeffrey McDonald constituted violations of the following:

a. Va Code Section 6.1-2.21. Licensing requirements, standards and financial responsibility, Consumer Real Estate Settlement and Protection Act [CRESPA],

b. 15 VAC 5-80-30. Registration; Re-registration; Required Fee, Virginia State Bar Regulation Issued Pursuant to CRESPA , and

c. 15 VAC 5-80-50. Attorney Settlement Agent Compliance, Virginia State Bar Regulations Issued Pursuant to CRESPA

III. DISPOSITION

IT IS ORDERED that the Respondent, Roger Jeffrey McDonald, shall remit to the Virginia State Bar, c/o the Clerk of the Disciplinary System, Suite 1500, 707 East Main Street, Richmond, VA 23219, the penalty of Five Thousand Dollars ($5,000.00) no later than February 15, 2004.

* * *

ENTERED THIS 10th DAY OF FEBRUARY, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, 2nd Vice Chair

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VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
MARY MEADE, ESQUIRE
VSB DOCKET NUMBER 02-052-3877

OPINION AND ORDER OF PUBLIC REPRIMAND

THIS MATTER came to be heard on February 27, 2004, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Robert L. Freed, Second Vice Chair, Peter A. Dingman, Janipher W. Robinson, Bruce T. Clark and V. Max Beard, Lay Member.

The Respondent, Mary Meade, appeared with her counsel, Daniel M. Gray. Yvonne D. Weight, Special Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The chair made inquiry of all Panel members as to whether they had any personal or financial interest or any bias that would preclude them from hearing this matter fairly and impartially. Each member and the Chair answered such inquiry in the negative.

STATEMENT OF FACTS

1. At all times relevant hereto, Mary Meade, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2.. On May 17, 2002, the Respondent was suspended by the Virginia State Bar Disciplinary Board for thirteen months. On June 3, 2002, the Respondent filed a pleading in *Berney, et al. v. Bevan, et al.*, At Law No. 189711, in the Circuit Court of Fairfax County. The Respondent's pleading informed the Court of her suspension, but after her signature on the pleading, she titled herself "Co-counsel for the Complainant (sic)."

FINDING OF MISCONDUCT

The Panel finds the above act to be a technical violation of the following disciplinary rules:

RULE 8.1 Bar Admission And Disciplinary Matters

(a) * * *

RULE 3.3 Candor Toward The Tribunal

(a) (1) * * *

As reported above, in this matter, it was the opinion of the Panel that the Respondent committed technical violations of DR 8.1 (a) and 3.3 (a) (1) which the Panel is willing to concede may well have occurred due to a mistaken understanding on the part of the Respondent rather than an intention on her part to act in a manner which violated her ethical obligations. However, the Panel is unwilling to ignore her actions in this case as it must be clearly understood by all whose licenses to practice law are suspended that the moment a suspension takes effect, the attorney who has been suspended must terminate any and all activity which is reserved for those holding valid licenses to practice and likewise must in no manner represent himself to others as licensed attorneys. For this reason,

It is ORDERED that the Panel issues the Respondent a **PUBLIC REPRIMAND** effective upon entry of this order.

ENTERED this 5th day of March, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, Second Vice Chair

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VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTERS OF
MARY MEADE, ESQUIRE
VSB DOCKET NUMBERS 02-052-1241
AND 03-052-0062

OPINION & ORDER OF SUSPENSION

THIS MATTER came to be heard on February 27, 2004, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Robert L. Freed, Second Vice Chair, Peter A. Dingman, Janipher W. Robinson, Bruce T. Clark and V. Max Beard, Lay Member.

The Respondent, Mary Meade, appeared with her counsel, Daniel M. Gray. Yvonne D. Weight, Special Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The chair made inquiry of all Panel members as to whether they had any personal or financial interest or any bias

that would preclude them from hearing this matter fairly and impartially. Each member and the Chair answered such inquiry in the negative.

STATEMENT OF FACTS

1. At all times relevant hereto, Mary Meade, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia. The Panel was charged with consideration of three matters involving the Respondent as follows:

As to VSB Docket Number 02-052-1241

2. The Respondent represented the husband in a divorce case, *Garcia v. Garcia*. The Complainant, Carol L. Ehlenberger, Esquire, represented Ms. Garcia.

3. Subsequent to a trial held in the Garcias' divorce, negotiations were undertaken and motions were filed by both parties regarding the terms of the final decree of divorce to be entered in the cause. As part of these actions, Ms. Ehlenberger received a letter from the Respondent dated April 2, 2001 addressing six issues concerning the contents of the proposed final decree several of which were items still in dispute and others which were ministerial in nature. Subsequently, Ms. Ehlenberger filed a motion to reconsider on behalf of her client to which, on May 1, 2001, Respondent filed a response. In such response, Respondent attempted to characterize the opposing parties as being unresponsive to efforts undertaken by the Respondent and her client to reach an accord without requiring further intervention by the court. In support of this position, Respondent quoted at length portions of her letter of April 2, 2001. Respondent stated that Ms. Ehlenberger had refused to respond to the issues raised in the quoted passages thereby placing Ms. Ehlenberger and her client in an unfavorable light. However, the passages quoted by the Respondent were not in the version of the letter of April 2, 2001 which had been sent to Ms. Ehlenberger.

4. Subsequently, on June 28, 2001, Ms. Ehlenberger received a motion for entry of a final decree of divorce from the Respondent which incorporated additional references to the letter of April 2, 2001 citing such letter to demonstrate the willingness of the Respondent's client to agree upon the terms of a final order in the matter. The Respondents's letter of April 2nd was attached as a supporting exhibit to Respondent's pleading. When Ms. Ehlenberger examined the letter filed, she realized for the first time that it was substantially different from the original version she had received in April. In the version filed with the court, a paragraph regarding child support had been added to the bottom of the first page which had not been in the version sent to her. This paragraph appeared as a footnote squeezed on the bottom of the first page of the letter typed in a different font than the remainder of the letter using spacing which was also different from the balance of the letter. In addition, the second page of the letter filed with the court incorporated another lengthy additional paragraph, addressing a motion to reconsider. It was this paragraph which had been quoted in Respondent's pleading of May 1st. While this second version of the letter did not alter the final outcome in the case, it constituted a misrepresentation to the court concerning the ongoing dialogue between the parties in a manner which placed Ms. Ehlenberger's client in a less favorable light.

5. During her testimony before the Panel, the Respondent stated that her original draft of the letter of April 2nd had contained the paragraphs which were missing from the version sent to opposing counsel and that upon reflection she had decided to remove them before posting the letter. She then testified that the draft had inadvertently been referred to in the two pleadings. However, the exhibit filed with the pleading of June 28th was not marked as a draft, and was signed by the Respondent.

6. Ms. Ehlenberger also testified that upon checking the court file, she discovered copies of numerous letters and notices which were addressed to her that the Respondent had filed with the Court but which she had never received. In all, Ms. Ehlenberger identified six letters dated from June 9, 2000 through May 21, 2001 and one change of address notice filed among the court's records which she had no record of receiving.

7. The Panel finds that the above actions of the Respondent violated the following Disciplinary rules:

RULE 3.3 Candor Toward The Tribunal

(a) (1) * * *

RULE 4.1 Truthfulness In Statements To Others

(a) * * *

RULE 8.4 Misconduct

(b) * * *

As to VSB Docket Number 03-052-0062

8. In 2001, the Respondent represented Matthew James Smith, the defendant in a divorce action, *Smith v. Smith*, In Chancery No. 01-281.

9. On July 20, 2001, the Plaintiff's attorney, Amy Hadley, Esquire, responding to demands made by the Respondent in a letter dated July 18, 2001, delivered discovery to the Respondent's office shortly after three in the afternoon, which discovery materials she believed to be fully responsive to a request for the same she had previously received. Whether such response was, in fact, complete is open to question, but such issue has no impact on the matters before this Panel.

10. By letter dated July 20, 2001 and received by Ms. Hadley on Monday, July 23, 2001, the Respondent notified the Lewis Law Firm where Ms. Hadley was employed that one of Respondent's staff, under instructions given by the Respondent, had sent a motion to the court by courier to compel additional discovery and seeking sanctions which motion was to be heard that Friday, July 27, 2001. Ms. Hadley, believing that her response and Respondent's notice had crossed, then sent a letter, dated July 23, 2001, to the Respondent, requesting that the motion to compel be removed from the Court's docket, since her office had delivered the discovery documents to the Respondent on July 20, 2001.

11. After hearing nothing further from the Respondent regarding the motion, Ms. Hadley, on July 26, 2001, called the Arlington County Circuit Court Clerk's Office to find out which judge would be hearing the motion, at which time she was informed that the motion was not on the docket. Ms. Hadley assumed that the Respondent had removed the motion after she realized that she had received the Plaintiff's discovery on July 20th and had read her letter of July 23rd. Later that afternoon, however, Ms. Hadley spoke with someone who identified herself as Ms. Janie Hunt, the Respondent's purported long-time legal assistant. Ms. Hunt informed Ms. Hadley that she had confirmed with the Clerk's Office that their Motion was, in fact, still on the Court's docket for July 27, 2001. Ms. Hadley's conversation with Ms. Hunt took place after the Clerk's Office had closed, so Ms. Hadley herself could not call to confirm whether the motion was actually on the docket. She then expressed her concern over this matter to Glenn C. Lewis, Esquire, senior partner of her firm, who was able to reach a law clerk still at the courthouse. This clerk checked each judge's docket for Friday motions and again found no listing for the case.

12. After Ms. Hadely's conversation with Ms. Hunt, Ms. Hadley received a fax from Ms. Hunt, dated July 26, 2001, stating that the Arlington County Circuit Court Clerk's Office "confirmed to me that they do have our Motion when I called to see if your firm had filed a response, thus our offic (sic) will be there tomorrow for this Motion."

13. The next morning, July 27, 2001, Ms. Hadley drove from her office in Washington, D.C. to the Arlington County Circuit Court for the sole purpose of checking the Court's docket for herself. The Respondent's motion was not on the Court's docket for that day. Ms. Hadley returned to her office, where, a few minutes after 10:00 a.m., she received a phone call from Lori Lewis, Esquire, who was employed by and was standing in for the Respondent at the hearing on the motion to compel. Ms. Lewis told Ms. Hadley that she did not know what had happened but that the Respondent's motion was supposed to be on the Court's docket for that day. Ms. Lewis requested that Ms. Hadley return to court so that they could make a joint request to the Court that the motion be heard that day. Ms. Hadley refused the request since she believed that she and Mr. Lewis, her co-counsel, had already complied with discovery. Thereafter, Ms. Lewis went ahead and motioned the sitting judge, Judge Sheridan, to hold the hearing despite the fact that it was not on the Court's docket. Judge Sheridan continued the matter until July 31, 2001.

14. At the July 31, 2001 hearing, a dialogue occurred between the bench and counsel concerning the missing motion. A search of the clerk's office had been undertaken, including both a search of the computer records to determine whether a filing was logged in and a physical search to determine if the filing had inadvertently been improperly handled. Both searches revealed nothing.

15. When the judge questioned the Respondent concerning the missing motion, she again asserted that it had been filed. When asked where the motion might have gone, the Respondent stated that the motion had been filed, that she had not touched the file, but that counsel for the opposing party, Ms. Hadley, had certainly gone through the file the following Friday. Such statements were taken by the bench as an accusation by the Respondent that Ms. Hadley was responsible for the removal of the motion. Were this true, Ms. Hadley would be guilty of a felony. Due to the serious nature of the accusation, the judge scheduled a full hearing on the issue of the missing motion advising everyone involved to bring any and all witnesses with them for that hearing. The judge also instructed the Honorable David Bell, Clerk of the Arlington County Circuit Court, and his staff to conduct an extensive search for the Respondent's missing motion. They did not find it.

16. At the hearing before Judge Alper on October 2, 2001, Janie Hunt, the Respondent's legal assistant, whom the Respondent had said made arrangements for the filing of the motion, did not appear. Instead, the Respondent produced what she said was a courier's receipt which indicated that an envelope had been signed for by a deputy clerk in the Clerk's Office. That deputy clerk testified that the signature appeared to be hers. She also testified that she signs for many deliveries during a given day without knowing exactly what is being delivered.

17. After hearing all the testimony, Judge Alper ruled that the Respondent had never filed the motion to compel and sanctioned her $5,000.00, to be paid by her, not by her client. Judge Alper later filed this complaint with the Virginia State Bar.

18. The Panel notes without further comment that, as in the *Garcia* case, Ms. Hadley testified that upon reviewing the court's file, she discovered correspondence which had been filed therein which had been addressed to her, but which she had never received.

19. The Panel finds the above actions of the Respondent violate the following Disciplinary rules:

RULE 3.4 Fairness To Opposing Party And Counsel

(i) * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) * * *

ORDER AND IMPOSITION OF SANCTION

It goes without saying that litigation, especially litigation in the practice of domestic relations, are intensely contested matters. However, no matter how intense a litigated matter may be, the foundation of our trial system demands that counsel at all times be fully candid with the court and opposing counsel. Misrepresentations, whether through acts of commission or omission, cannot be tolerated.

For these reasons, it is ORDERED that the Respondent's license to practice law within the Commonwealth be **SUSPENDED** for a period of four months commencing on February 28, 2004 or the last day of any suspension of the Respondent's license which may currently be in effect, whichever last occurs.

ENTERED this 5th day of March, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, Second Vice Chair

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VIRGINIA :

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
LAWRENCE RAYMOND MORTON, ESQUIRE
VSB Docket Nos. 03-053-0871, 03-000-2094

ORDER

This matter came on to be heard on February 24, 2004, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District—Section III Subcommittee, and upon a Motion to Show Cause issued against the Respondent for his having failed to comply with Rules of the Supreme Court of Virginia, Part Six, § IV, ¶ 13(K)(1). The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, Esquire, Robert E. Eicher, Esquire, Glenn M. Hodge, Esquire, W. Jefferson O'Flaherty, lay member, and Karen A. Gould, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Lawrence Raymond Morton, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated February 19, 2004, reflecting the terms of the Agreed Disposition.

Having considered the Certification, the Motion to Show Cause, and 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:

1. At all times relevant hereto, Lawrence Raymond Morton, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia, although not at all times in good standing.

AS TO VSB DOCKET NO. 03-053-0871:

2. On the 26th day of June, 2002, the Virginia State Bar Disciplinary Board entered an Order suspending the Respondent's license to practice law in the Commonwealth of Virginia for a period of sixty (60) days, commencing on the 1st day of August, 2002. The suspension was the product of a negotiated settlement of misconduct charges against the Respondent, which settlement was reached between the Respondent and the Virginia State Bar, and approved by the Disciplinary Board at a telephone conference in which the Respondent participated on or about June 25, 2002.

3. The Respondent was duly served by certified mail on July 3, 2002, with a copy the Order suspending his license, and he was otherwise personally aware of the effective date and term of his suspension because he personally participated in the process which resulted in the said suspension.

4. On or about the 13th day of September, 2002, a date falling during the term of the said suspension, the Respondent signed and sent a letter to the "Office of the Commonwealth's Attorney" in Prince William County, Virginia, on letterhead identifying the Respondent as "Attorney at Law." The letter represented that it was written on behalf of Respondent's "client" in a certain criminal matter, and the contents of the letter constituted Respondent's effort to advance the legal interests of the client. Respondent's action in drafting, signing, and sending the letter in question, and in taking other actions on behalf of the client during the term of Respondent's said suspension, constituted his unauthorized practice of law in the Commonwealth of Virginia.

5. The Virginia State Bar opened a formal Complaint respecting the Respondent's aforesaid actions. On October 2, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

AS TO VSB DOCKET NO. 03-000-2094:

6. On June 26, 2002, the Virginia State Bar Disciplinary Board (hereafter "Board") entered an Order suspending the Respondent's license to practice law in the Commonwealth of Virginia for a period of sixty (60) days, commencing on the 1st day of August, 2002. The Order directed that Respondent comply with Rules of the Supreme Court of Virginia, Part Six, § IV, ¶ 13(K)(1) ([currently ¶ 13M], and hereafter referred to as "K-1 Provisions").

7. On July 3, 2002, the Clerk of the Disciplinary System served the aforesaid Order upon the Respondent via a cover letter which made reference to and set forth verbatim the K-1 Provisions. The Clerk's letter informed the Respondent that he was to provide the Clerk with proof of compliance with the K-1 Provisions notice requirement on or before September 29, 2002. The letter also enclosed forms which the letter identified as being "acceptable to the Disciplinary Board in order to be in compliance" with the K-1 Provisions.

8. On December 12, 2002, the Clerk of the Disciplinary System mailed the Respondent a letter advising him that the Clerk had not received proof of compliance with the aforesaid notice requirements, urging him to comply therewith, and advising him of the consequences of noncompliance.

9. Notwithstanding service upon Respondent of the aforesaid documents concerning his compliance with K-1 Provisions, all as set forth above, the Respondent has failed to so comply inasmuch as, *inter alia*, he has at no time following service of the said Order, letters, and sample compliance forms, furnished any proof whatsoever to the Clerk of the Disciplinary System that he had taken any of the measures required by the K-1 Provisions.

The Board finds by clear and convincing evidence that such conduct on the part of Lawrence Raymond Morton, Esquire, constitutes a violation of the following Rules of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

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

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

Upon consideration whereof, it is ORDERED that the Respondent shall receive a two (2) year suspension of his license to practice law in the Commonwealth of Virginia, to commence on the 1st day April, 2004, as representing an appropriate sanction if this matter were to be heard. The Respondent shall accept no new clients between the date of entry of this Order and the effective date of his suspension, inclusive; and it is further

* * *

ENTERED this 24th day of February, 2004.
Karen A. Gould, 1st Vice Chair
Virginia State Bar Disciplinary Board

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
ELLIOT M. SCHLOSSER
VSB DOCKET: 01-010-1990

ORDER

This matter came before a duly constituted Panel of the Virginia State Bar Disciplinary Board on February 27, 2004, pursuant to a certification of a Subcommittee of the First District Disciplinary Committee. The Panel consisted of Roscoe B. Stephenson, III, Chairman, James L. Banks, Jr., William C. Boyce, Jr., Chester J. Cahoon, Jr., Lay Member, and David R. Schultz. The Respondent, Elliot M. Schlosser, appeared and was represented by Michael L. Rigsby. The Bar was represented by Assistant Bar Counsel Edward L. Davis.

The Chair polled the Panel members to determine whether any member had a personal or financial interest in the matter which might affect or could reasonably be perceived to affect his ability to be impartial in the proceeding. Each member, including the Chairman, answered in the negative.

I. FINDINGS OF FACT

The following findings were stipulated by the parties:

1. During all times relevant hereto, the Respondent, Elliot M. Schlosser (hereinafter Respondent or Mr. Schlosser) was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On June 5, 2001, the Juvenile and Domestic Relations District Court for the City of Norfolk convicted Mr. Schlosser of stalking his estranged wife, Janet M. Schlosser, between November 200 and February 2001, in violation of Virginia Code Section 18.2-60.3 (1950) as amended. The court sentenced him to six months in the Norfolk City Jail, suspended, conditioned upon good behavior for a period of one year.

   The court also convicted Mr. Schlosser of failure to appear on May 22, 2001, and contempt of court, in violation of Virginia Code Section 18.2-456. The case was originally set for trial on March 15, 2001. Mr. Schlosser's counsel asked for a continuance, and advised the court that the date of May 22 was available. The court did not accept Mr. Schlosser's explanation for failing to appear, and sentenced Mr. Schlosser to ten days in jail, with eight suspended, for a period of one year, conditioned upon good behavior.

4. In finding Mr. Schlosser guilty of contempt of court, the court specifically noted in its order that Mr. Schlosser had lied to the court about the reason for the continuance. The court announced that it had to "sleuth around" to get to the truth, that Mr. Schlosser not only had conflicts with other district courts on May 22, but was in the Hampton Circuit Court on May 22, 2001 where he was being admonished by that court for failing to appear there the day before as well.

5. Mr. Schlosser explained to the court that when he learned that the judge's secretary was handling the case, he put in a call to the judge's secretary and indicated to her that if for any reason the court was upset about the continuance situation or would not grant the continuance that he would immediately continue his cases and come over, and that he asked her to please call the office in the event that that situation developed.

6. Patricia Northcutt would say that she is the one who talked with both Mr. Schlosser and his counsel's secretary on May 21, 2001, the day before trial. She would say that she is the "Tricia" mentioned in VSB Exhibit 6, a letter from Mr. Smith, Schlosser's counsel, to the court, dated May 21, 2001. She was one of two court clerks working for this judge at the time, and was handling this case with the other clerk. She would say that she cannot remember the exact substance of her conversation with Mr. Schlosser and Mr. Smith's secretary, but that she would not have said that the attorneys did not need to appear on May 22, 2001, because she did not have the authority to do so. She would say further that if she had been asked to contact the attorney if there was a problem with the continuance, she would have said that she had no authority to excuse the attorneys from appearing the next day, but that they could submit a letter and take their chances, which is what they did. She would say that the court called the case for hearing on May 22, 2001, but that neither Mr. Schlosser nor his attorney was present, although the complaining witness, Janet Schlosser, was present. She would say that the judge issued rules to show-cause against the attorneys, and had her call several courts to try and locate Mr. Schlosser.

7. Mr. Schlosser appealed the convictions to the circuit court. On August 15, 2001, he appeared in the circuit court and plead nolo contendere to both charges. This court accepted his pleas, and fined him $50 plus costs on the contempt charge. It also released him on the stalking charge, conditioned on participation in anger management counseling, a substance abuse evaluation, and submission of a monitoring agreement within ten days.

8. On various occasions during their marriage, from the mid-1990's to early 2001, Ms. Schlosser worked for Mr. Schlosser at his law office. One of her duties was to prepare petitions in bankruptcy for Mr. Schlosser's bankruptcy clients.

9. On several occasions, Mr. Schlosser directed Ms. Schlosser to endorse the bankruptcy petitions in the attorney's block, and then to file the petitions with the bankruptcy court without Mr. Schlosser reviewing them. Ms. Schlosser was not, and has never been, an attorney.

10. Mr. Schlosser explained to the Virginia State Bar investigator that this was not his standard practice, but that it was done to expedite the filing of the petitions when he could not be in the office.

The following additional facts were found to have been established by clear and convincing evidence:

11. In each bankruptcy filing on which Mr. Schlosser's secretary signed Mr. Schlosser's name, a declaration of divisional venue was also filed. These declarations were also signed by Mr. Schlosser's secretary in Mr. Schlosser's name, without Mr. Schlosser's review.

12. Regarding the language in stipulation number 7 which says that the circuit court "released him on the stalking charge, conditioned on . . .", the court actually imposed a so-called suspended imposition of sentence, which was suspended for three years conditioned on Mr. Schlosser completing anger management, substance abuse evaluation, and the entry into a monitoring agreement. Mr. Schlosser abided by the court's conditions, and the stalking charge was eventually dismissed.

II. MISCONDUCT

The Board finds by clear and convincing evidence that Mr. Schlosser violated the following rules:

DR 3-101 Aiding unauthorized practice of law.

(1) A lawyer shall not aid a nonlawyer in the unauthorized practice of law.

Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy petitions and declarations of divisional venue, without his review, requires the secretary to make legal judgments which are reserved to licensed lawyers. The secretary's actions were not mere ministerial acts.

The result of the filing of these bankruptcy petitions is, among other things, to stay foreclosures and other proceedings to collect debts. This directly affects the rights of the creditors. It is distinctly possible that such a stay might arise in a case in which a petitioner was actually unqualified for bankruptcy. To deprive these creditors of their rights without reviewing the petition is to aid the unauthorized practice of law.

DR 3-104 Nonlawyer Personnel

(1), (3), (4) * * *

For the reasons cited in the discussion of Disciplinary Rule 101, Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy pleadings without his review constitutes a violation of this disciplinary rule.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

(1) * * *

For the reasons cited in the discussion of Disciplinary Rule 101, Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy pleadings without his review constitutes a violation of this disciplinary rule.

RULE 5.5 Unauthorized Practice of Law

A lawyer shall not:

(1) * * *

For the reasons cited in the discussion of Disciplinary Rule 101, Mr. Schlosser's direction to his secretary to sign his name to the bankruptcy pleadings without his review constitutes a violation of this disciplinary rule.

RULE 3.4 Fairness to Opposing Party And Counsel

A lawyer shall not:

(4) * * *

The Board finds by clear and convincing evidence that Mr. Schlosser violated this rule in that he disregarded standing rules of the United States Bankruptcy Court. The local rules of the United States Bankruptcy Court for the Eastern District of Virginia state as follows:

Rule 5005-1

(B) (4) * * *

RULE 8.4 Misconduct

(1) * * *

The Board finds by clear and convincing evidence that Mr. Schlosser's conduct in stalking his wife constitutes a violation of this Rule. Likewise, Mr. Schlosser's being held in contempt of court violates this Rule. While the effect of a suspended imposition of sentence followed by dismissal of the original criminal charge can be argued, the Board is of the opinion that a conviction is not a prerequisite to a violation of this Rule.

III. SANCTION

The Board was impressed with Mr. Schlosser's actions since these violations occurred. Mr. Schlosser completed his misdemeanor probation relating to the stalking charge. He also completed the required counseling and followed his counselor's suggestions strictly. Mr. Schlosser has expressed remorse and has had no contact with his former wife for approximately three and one-half years. Mr. Schlosser's entire disciplinary record consisted of a 1997 dismissal with terms relating to the mishandling of a client's appeal. After consideration of the foregoing mitigating and aggravating factors, as well as Mr. Schlosser's disciplinary record, the Board determined that the appropriate sanction is to impose a public reprimand. It is so ordered.

* * *

ENTERED this 17th day of March, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Roscoe B. Stephenson, III, Chairman

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VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
JOHN ASHTON WRAY, JR.
VSB DOCKET NO. 01-010-2860

ORDER OF PUBLIC REPRIMAND WITH TERMS

This matter came to be heard on February 19, 2004, upon an Agreed Disposition between the Virginia State Bar, the Respondent, John Ashton Wray, Jr. and his counsel, Timothy G. Clancy, Esquire.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of H. Taylor Williams IV, Esquire, Bruce T. Clark, Esquire, James L. Banks, Jr., Esquire, Thaddeus T. Crump, Lay Member, and Roscoe B. Stephenson, III, Esquire, Chair, considered the matter by telephone conference. The Respondent, John Aston Wray, Jr., Esquire, appeared with his counsel, Timothy G. Clancy, Esquire. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Upon due deliberation, it is the unanimous decision of the board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar, the Respondent and his counsel are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, John Ashton Wray, Jr. (hereinafter Respondent or Mr. Wray) was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On May 21, 2001, in the United States District Court for the Eastern District of Virginia, Newport News Division, Mr. Wray pled guilty to a one-count criminal information charging him with Failure to Pay Income Tax, in violation of Title 26, United States Code, Section 7203, a misdemeanor. Mr. Wray's plea was pursuant to a plea agreement.

3. The criminal information charged that Mr. Wray received taxable income of $335,756 during tax year 1996, on which he owed $130,661 in federal income tax, but that he willfully failed to pay the tax

4. During Mr. Wray's guilty plea hearing, the United States Attorney advised the court that during the 1980's, Mr. Wray had been involved with several investors in some investment projects with Saudi Arabia, importing computer equipment, trying to contract to clean an airport there, and importing Caterpillar earth moving equipment. He also engaged several other investors for a clothing manufacture venture in Newport News, Virginia. The investment projects all failed. For several years, Mr. Wray wrote off the interest paid to the investors as a business income tax deduction.

5. The U. S. Attorney reported further that, in November 1993, the United States Tax Court ruled that Mr. Wray could not write off the interest payments as business expenses. This had the unfortunate effect of giving Mr. Wray a substantial tax liability for tax years 1980 to 1994 that, with interest and penalties, approached two million dollars. Further, Mr. Wray's liability to his investors totaled millions of dollars, and many of them obtained judgments against him.

6. The U. S. Attorney also reported that Mr. Wray filed his income tax returns as required, but did not pay all of the taxes. From 1993 through 1997, based on an IRS analysis, Mr. Wray had a total taxable income of $1,952,000, and a personal income tax liability of more than $741,000. He paid more than $934,000 to the investors, but paid only $9,000 in withholding taxes.

7. For the 1996 tax year, in addition to the facts charged in the criminal Information, Mr. Wray paid $64,017 to the investors, leaving him with about $271,000 in funds available. Of those funds, the IRS determined that he spent approximately $36,000 in child support, $4,000 in health insurance, $16,000 in condominium rent, $6,000 in car payments, and approximately $11,600 in American Express payments. According to the U. S. Attorney's summary, this left Mr. Wray with approximately $197,939 unaccounted for, and the Government could not establish where this money went, but that he did not use it to satisfy the tax liability for that year. Similarly, in 1997, he had about

$200,000 remaining after equivalent payments, but the IRS could not account for the remaining money, and none of it was paid toward his tax liability.

8. In his plea agreement with the Government, Mr. Wray stipulated that the relevant total tax loss was $909,249 for tax years 1993-1999.

9. Mr. Wray's attorney advised the court that what the U.S. Attorney told the court was a fair summary of what he would expect the evidence to show. He stipulated to the evidence that the Government presented to the court, with some additional comments. Specifically, he noted that there was no suggestion of fraud in the case, that it was not a situation where someone concealed income in an attempt to avoid tax liability, that the IRS found that Mr. Wray had properly filed his income tax returns, but that he did not pay the taxes owed. The United States Attorney advised the court that he had no disagreement with the representations made by Mr. Wray's counsel.

10. Likewise, Mr. Wray himself addressed the court and said that the summary presented by the United States Attorney was a fair summary of the evidence he would have expected the Government to present, and that with the inclusions made by his attorney, it was a fair representation of what happened.

11. On August 23, 2001, in accordance with mandatory sentencing guidelines, the court sentenced Mr. Wray to twelve months in prison, supervised release for a period of one year, restitution in the amount of $250,000 to the Internal Revenue Service, and a $25 assessment. The court recommended that he spend all or a substantial amount of his sentence in a halfway house, and stated further that it did not oppose his being allowed to practice his profession during regular business hours.

12. At sentencing, the court announced that there was no evidence to suggest that Mr. Wray ever attempted to defraud the United States with regard to what his obligation was, that he simply did not pay the amount, and that he tried to pay the creditors from whom he borrowed money. On the record, the court said, "You're a great lawyer, but you're a lousy businessman."

II. DISCIPLINARY RULE VIOLATIONS

The parties agree that the foregoing facts give rise to violations of the following Disciplinary Rules and Rules of Professional Conduct:

DR 1-102. Misconduct.

(A) (3) * * *

III. DISPOSITION

In accordance with the Agreed Disposition, it is the decision of the Disciplinary Board to Issue a Public Reprimand, and the Respondent, John Ashton Wray, Jr., is hereby reprimanded effective upon entry of this order and subject to the following terms and conditions:

1. The Respondent, John Ashton Wray, Jr., is hereby placed on disciplinary probation for a period of two (2) years, said period to begin the date that this order is entered. Mr. Wray will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such two-year probationary period. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of the alternate sanction, a suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a period of six (6) months. The alternate sanction will not be imposed while Mr. Wray is appealing any adverse decision which might result in a probation violation.

2. The Respondent will continue to comply with the existing Order of Restitution as specified in the sentencing order imposed by the United States District Court.

Failure to comply with any of the foregoing terms and conditions will result in the imposition of the alternate sanction, the Suspension of the Respondent's license to practice law in the Commonwealth of Virginia for a period of six (6) months.

The imposition of the alternate sanction will not require a hearing before the Three-Judge Court or the Virginia State Bar Disciplinary Board on the underlying charges of misconduct stipulated to in this Agreed Disposition if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. The imposition of the alternate sanction shall be in addition to any other sanctions imposed for misconduct during the probationary period. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

* * *

ENTERED THIS 27TH DAY OF FEBRUARY, 2004
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
By Roscoe B. Stephenson, III, Chair

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District Committees

VIRGINIA:

BEFORE THE TENTH DISTRICT
SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDGAR HAMPTON DEHART, JR.
VSB DOCKET NO.03-101-0706

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND)

On February 17, 2004, a hearing in this matter was held before a duly convened Tenth District—Section I Committee

panel consisting of Richard Waters Davis, Jr., Esq., Harriet Dickenson Dorsey, Esq., Frederick Marlin Kellerman, Jr., Charles Crockett Lacy, Esq., Barbara Lou Rich Long, Esq., Charles H. Richards, Jr., and Charles Roscoe Beller, III, Esq., Chair presiding.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13.H.l.(2)(d) the Tenth District—Section I Committee of the Virginia State Bar hereby serves upon the Respondent Edgar Hampton DeHart, Jr., the following Public Reprimand.

I. FINDINGS OF FACT

By clear and convincing evidence, the Committee finds the following facts:

1. At all times relevant to this matter, Respondent Edgar Hampton DeHart, Jr. was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Respondent represented Complainant at an equitable distribution hearing held in the Circuit Court of Grayson County, sitting in Independence, on August 31, 2001. Complainant's ex-husband was not present nor represented at the hearing. Complainant was awarded a 1983 pickup truck, a Harley Davidson motorcycle, and a 4-wheeler all terrain vehicle.

3. Following the hearing, Respondent told Complainant that he would promptly prepare and present an order reflecting the award. However, Respondent did not present or file the order at any time.

4. Over the period of a year, Complainant called Respondent approximately 15-20 times regarding the order. Respondent returned her calls only after she left a message stating that she intended to file a bar complaint. Respondent returned approximately five calls from Complainant.

5. During one call, Respondent advised Complainant that he had lost her file. During another call, he told Complainant that he did not have time to prepare the order because he had taken a job as Assistant Commonwealth's Attorney.

6. Later, Respondent advised Complainant that he had prepared the order and sent it to counsel for Complainant's ex-husband for review. However, counsel did not receive any such order from Respondent.

7. Respondent then told Complainant that the order had been signed by opposing counsel and that Respondent had sent it to the judge for entry. However, at no time did Respondent file the order or send it to the judge for entry.

II. NATURE OF MISCONDUCT

Such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

(a), (b) * * *

RULE 1.4 Communication

(a) * * *

RULE 8.4 Misconduct

(c) * * *

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand on Respondent Edgar Hampton DeHart, Jr. and he is so reprimanded.

* * *

Tenth District—Section I Committee
Of the Virginia State Bar
By: Charles Roscoe Beller, III, Esq.
Chair Presiding

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VIRGINIA:
BEFORE THE THIRD DISTRICT COMMITTEE,
SECTION III, OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DAVID ALBERT POWERS, III
VSB Docket No. 03-033-1314

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On February 10, 2004, a hearing in this matter was held before a duly convened Third District Committee, Section III, panel consisting of Joyce Rene Hicks, attorney member; Cullen D. Seltzer, attorney member; John D. Sharer, attorney member; Andrew J. Gibb, lay member and Charlotte Peoples Hodges, Esquire, chair designate.

David Albert Powers appeared in person pro se and Linda Mallory Berry, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Third District Committee, Section III, of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms.

I. FINDINGS OF FACT

1. At all times relevant hereto, **David Albert Powers, III** (hereinafter Mr. Powers or Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Charles Entwistle (hereinafter C. Entwistle) retained Mr. Powers, on October 29, 2001, to represent him in his appeal of two felony convictions. Mr. Powers was paid a $5, 000.00 retainer and a $500.00 escrow fee for transcripts.

3. When C. Entwistle's appeal was noted in the Virginia Court of Appeals (Court of Appeals), Mr. Powers did not order the volumes of transcript of the October 6, 1998, October 22, 2001, and January 17, 2002, hearings nor did

the Petersburg Circuit Court order them, as anticipated by Mr. Powers.

4. On October 31, 2001, the Notice of Appeal was filed in the Circuit Court of Petersburg, and a copy was mailed to the Assistant Commonwealth Attorney for Petersburg. The Notice of Appeal was filed in the Court of Appeals without the necessary filing fee. The fee was paid on or before March 11, 2002.

5. On March 1, 2002, the Court of Appeals issued a Show Cause why the appeal should not be dismissed, as the volumes of transcript of the hearings in the matter were not timely filed in the case. Mr. Powers filed his answer on March 13, 2002. Mr. Powers stated that the transcripts were essential to the determination of the issues on appeal and that they were filed as soon as they were prepared by the court reporter. He also stated, "[t]hese [volumes of transcripts] took some time, as the reporter had difficulty in finding and preparing her transcript from 1998." Mr. Powers did not reveal that he had not even ordered the transcripts until January 30, 2002.

6. In fact, Accu-Beta Court Reporting reported that their records show that Mr. Powers contacted their office on January 12, 2002, to get an estimate for the hearing volumes of transcript, but Mr. Powers did not order them. On January 30, 2002, Mr. Powers ordered the transcripts. The volumes of transcripts for the October 22, 2001, and the January 17, 2002, hearings were sent to Mr. Powers on February 18, 2002. The October 6, 1998, transcripts were sent to Mr. Powers by Accu-Beta Court Reporting on or about February 1, 2002. The transcripts were filed with the Court of Appeals with Mr. Powers's request to consider them timely filed.

7. On April 3, 2002, the Virginia Court of Appeals dismissed C. Entwistle appeal because the transcripts, essential to the appeal, had not been timely filed, Record No. 0462-02-2.

8. When the appeal was noted on October 31, 2002, no appeal bond was set for Mr. Entwistle, but Mr. Powers arranged for a bond hearing before the trial judge on December 6, 2002. Mr. Powers said that it was clear to all during the bond hearing that C. Entwistle was returning to Illinois and that the address of C. Entwistle's brother was given as C. Entwistle's place of residence for the immediate future.

9. After bond was set and while the paperwork was being addressed, C. Entwistle was told that he could not leave the Commonwealth by a deputy clerk of the Petersburg Circuit Court. C. Entwistle questioned this requirement to remain in Virginia. The clerk and the bondsman told C. Entwistle to get in touch with his lawyer for clear direction. C. Entwistle called Mr. Powers, questioned the restriction, directed Mr. Powers to get things right at the courthouse and was told by Mr. Powers that he could return to Illinois.

10. C. Entwistle remained for approximately a week in Virginia as he suffered another stroke and had to be hospitalized in John Randolph Hospital. C. Entwistle's family contacted Mr. Powell who, without ever referencing the recognizance papers on which C. Entwistle was released, again okayed his return to Illinois.

11. When the Virginia Court learned of C. Entwistle departure from the Commonwealth, on January 2, 2003, the Court issued a detainer for C. Entwistle's return. After waiving extradition, C. Entwistle was brought back to Virginia.

12. On January 17, 2002, Mr. Powers made an appearance on behalf of C. Entwistle in an attempt to remove the detainer. Mr. Powers said that he was unaware of any problem with C. Entwistle's release until he received a call almost a month later from C. Entwistle informing him that C. Entwistle had been detained. Mr. Powers argued that he believed that the Court had authorized C. Entwistle to return to Illinois pending appeal and stated that the bondsman knew that C. Entwistle would be in Illinois pending appeal.

13. At the January 17, 2002, detainer hearing, despite Mr. Powers's arguments to the contrary, the Court stated, "the record, so far as I'm advised by the clerk, is void of any reference as to him [C. Entwistle] leaving the state." The Court refused to lift the detainer.

14. C. Entwistle filed a complaint with the Virginia State Bar against Mr. Powers on November 13, 2002. Mr. Powers responded to the Bar complaint in April 2003. Mr. Powers's response to the Bar compliant was sent to C. Entwistle and, in it, he read for the first time that his appeal had been denied; however, Mr. Powers did not give reason for the dismissal in the April 2003 bar response.

15. On January 30, 2003, Robert Entwistle (R. Entwistle), brother and attorney-in-fact for Charles Entwistle, requested that Mr. Powers continue representing C. Entwistle "in legal matters involving the State of Virginia and possible transfer to an Illinois Department of Corrections facility." On February 12, 2003, Mr. Powers advised R. Entwistle that he "…need[ed] the bar issues dismissed before [he] can continue in [his] efforts on Charlie's behalf."

16. To that end, Mr. Powers drafted a letter to the Virginia State Bar (VSB) which Mr. Powers believed would accomplish the dismissal of the bar complaint. On February 14, 2003, Mr. Powers hand-delivered to Assistant Bar Counsel a copy of the letter and represented it as an unsigned copy of R. Entwistle's writing, on its way by express mail, to Assistant Bar Counsel.

17. R. Entwistle wrote to Assistant Bar Counsel explaining that the letter was drafted for his signature by Mr. Powers and alleging two false statements made by Mr. Powers in the letter to the VSB that Mr. Powers drafted for R. Entwistle's signature. In his letter, received by the VSB on February 24, 2003, R. Entwistle denied more than two conversations at any time with Mr. Powers, and he stated that C. Entwistle nor R. Entwistle nor any member of C. Entwistle's family was fully or partially satisfied with Mr. Powers's representation of C. Entwistle.

II. NATURE OF MISCONDUCT

RULE 1.1 Competence

* * *

RULE 1.3 Diligence

(a) * * *

RULE 1.4 Communication

(a) * * *

RULE 4.1 Truthfulness In Statements To Others

(a) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

(a) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions shall be met by the dates specified in each of the numbered paragraphs below. In each instance, the Respondent shall certify in writing to Assistant Bar Counsel, Linda Mallory Berry, by the specific dates specified, that he has done the following:

1. **No later than February 20, 2004**, the Respondent shall inform Mr. Nikas of this determination by the Third District Committee, Section III. Such information shall be in writing and may be accomplished by providing Mr. Nikas a copy of this determination accompanied by the Respondent's cover letter.

2. **No later than March 10, 2004**, the Respondent shall refund the amount of $5,500.00 to Robert and James Entwistle.

3. Mr. Powers shall arrange for the services of a consultant to conduct a field audit of his law practice. The cost of such an audit shall be borne completely by Mr. Powers. Mr. Powers shall present the credentials and the identity of the proposed consultant for approval to the Office of Bar Counsel prior to the decision. Powers to engage a specific Powers. Mr. Powers shall employ the consultant **no later than March 10, 2004**. The consultant shall review and make recommendations concerning proposed changes in and improvements to the everyday operation of Mr. Powers's law practice. The report and recommendations made by the consultant shall be provided to the Office of Bar Counsel **no later than September 10, 2004**. The consultation shall include a follow-up and a final report of compliance with a copy to be to the Office of Bar Counsel no later than **December 1, 2004**.

4. Mr. Powers shall develop a Call Log for use in his law practice. He shall provide a copy of the protocol outlining the procedures developed for recording and detailing calls received for him and calls returned by him to the Office of Bar Counsel **no later than March 10, 2004**, and shall implement the protocol into his law office practice as soon as possible.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified, a Show Cause will be issued and, upon a finding that you filed to comply with any of these terms, this District Committee shall direct a Certification for Sanction Determination to the Disciplinary Board, pursuant to Part Six, Section IV, Paragraph 13.H.2.p.(2)(a).

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THIRD DISTRICT COMMITTEE, SECTION III,
OF THE VIRGINIA STATE BAR
By Charlotte Peoples Hodges, Chair Designate

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VIRGINIA:
BEFORE THE FIFTH DISTRICT SECTION II
COMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
RONALD ALBERT ROBINSON, JR., ESQ.
VSB DOCKET NUMBER 03-052-1294

COMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On January 20, 2004, a hearing in this matter was held before the duly convened Fifth District Committee Section II consisting of Thomas P. Sotelo, Esq., Donald Francis King, Esq., Daniel M. Rathbun, Esq., Joseph C. Fleig, William V. Hanson, John DiZeriga, and Stephen H. Ratliff, Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(B)(6) of the rules of the Supreme Court, the Fifth District Committee Section II of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Ronald Albert Robinson, Jr., Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. The Complainant, Julieanne Hessler, and her husband hired the Respondent to assist them in filing a Chapter 7 bankruptcy. They provided the Respondent with the information he requested in September of 2001. Mrs. Hessler called the Respondent repeatedly to find out if the petition had been filed. Mrs. Hessler and her husband wished to stop the harassing telephone calls from creditors as soon as possible. The Respondent did not return Mrs. Hessler's calls. Mr. and Mrs. Hessler learned from the Respondent's assistant that their petition was filed on November 21, 2001.

3. A 341 hearing was held in the Hesslers' case on December 27, 2001. The Trustee informed the Respondent that he needed to file a homestead deed to protect the Hesslers' retirement funds and bank accounts within five days of the hearing. At that time, the Trustee also asked the Respondent for more information regarding the Hesslers' retirement accounts. The Respondent told the Hesslers that he would file the homestead deed as required to exempt their retirement account and bank account funds. Mrs.

Hessler called the Respondent's office several times to check on the filing and was informed that the Respondent had filed the homestead deed properly. In fact, the Respondent filed the homestead deed late.

4. In late January of 2002, the Hesslers received a notice from the Bankruptcy Court that the Trustee had filed an objection to their exemptions claimed under the homestead deed, and were given a date to appear in court. The Hesslers called the Respondent's office numerous times in attempts to learn what the notice meant. Finally, a few days before the date of their court appearance, the Respondent informed them that they did not have to go to court and that all was fine.

5. On February 26, 2002, the Trustee's motion was heard and granted, denying the Hesslers' claimed exemptions because their homestead deed had been filed late. Neither the Respondent nor the Hesslers were present for the hearing.

6. The Hesslers received a discharge in bankruptcy on March 7, 2002. However, on March 11, 2002, the trustee wrote to the Respondent asking that the Hesslers send the Trustee $2,800.00, the amount originally believed to be not exempt because of the Respondent's failure to file the homestead deed in a timely manner. In addition, the Trustee requested date of filing statements for the retirement accounts and bank account listed in the late-filed homestead deed.

7. On April 2, 2002, having not received the money or the requested items from the Respondent, the Trustee wrote to the Respondent again stating he would request a show cause against the Hesslers and that their discharge be revoked if he did not receive the requested items by April 8, 2002.

8. Concerned about the letters from the Trustee, the Hesslers contacted the Respondent who advised them not to pay the Trustee, and that he, the Respondent, would resolve the issue. However, concerned that the Respondent was not doing anything to solve the problem which he had created, the Hesslers called the Trustee themselves and began making installment payments on the amount owed.

9. After repeated efforts by the Trustee to collect the full amount owed and obtain correct information from the Respondent, the Trustee wrote the Respondent a letter dated November 4, 2002, outlining his failed efforts to work with the Respondent. He informed the Respondent that if he had not received full payment by November 13, 2002, he would file a request for the issuance of a rule to show cause for contempt against the Hesslers and request that their discharge be revoked.

10. Concerned about the Trustee's letter of November 4, 2002 and the advice they were receiving from the Respondent, the Hesslers hired another attorney. The Hesslers' new attorney negotiated a settlement with the Respondent, dated April 24, 2003, whereby the Respondent agreed to pay the amount owed to the Trustee because of the Respondent's failure to file the homestead deed in a timely manner. The amount due to the Trustee was paid by the Respondent.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence
* * *

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a), (b) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Committee to impose a Public Reprimand with Terms, compliance with which by December 31, 2004 shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by December 31, 2004 are:

1. The Respondent shall pay to the Complainant $1068.75 within sixty days of the date of this Committee Determination as reimbursement for costs expended by the Complainants. The Respondent shall provide the assistant Bar Counsel handling this matter with satisfactory proof that he has done so.

2. The Respondent shall forthwith engage the services of and fully cooperate with a law office management consultant acceptable to the Bar, to conduct a full and complete review and make written recommendations concerning the Respondent's law practice policies, methods, systems, and procedures, including, but not limited to, his billing practices, scheduling, tickler/calendaring systems which remind him of important dates, and a system for monitoring possible conflicts. The Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by the approved law office management consultant following the evaluation of the Respondent's practice. The Respondent shall grant the law office management consultant access to his law practice from time to time, upon request, for purposes of ensuring that Respondent has instituted and is complying with the law office management consultant's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to the law office management consultant's findings and recommendations, as well as the assessment of the Respondent's level of compliance with the recommendations. Respondent will have discharged his obligations respecting the terms contained in this Paragraph 2 if he has fulfilled and remained in compliance with all of the terms contained herein through December 31, 2004.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed. If, however, the terms and conditions have not been met by December 31, 2004, the matter shall be certified to the State Bar Disciplinary Board upon the facts and violations of the Rules of Professional Conduct as stated herein for the sole propose of the imposition of an alternative sanction.

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FIFTH DISTRICT COMMITTEE SECTION II
OF THE VIRGINIA STATE BAR
By Stephen H. Ratliff, Chair

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VIRGINIA:
BEFORE THE THIRD DISTRICT COMMITTEE,
SECTION III, OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KENNETH HAMMOND TAYLOR
VSB Docket No. 03-033-2774

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On January 13, 2004, a hearing in this matter was held before a duly convened Third District Committee, Section III, panel consisting of Joyce Rene Hicks, attorney member; Cullen D. Seltzer, attorney member; John D. Sharer, attorney member; Dr. Fredrick Rahal, lay member and Charlotte Peoples Hodges, Esquire, chair designate.

Kenneth Hammond Taylor appeared in person *pro se* and Linda Mallory Berry, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Third District Committee, Section III, of the Virginia State Bar hereby serves upon the Respondent the following or Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Kenneth Hammond Taylor (hereinafter Respondent or Mr. Taylor), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In May 2001, Hugh Daniel Burkhart, Jr. (hereinafter Mr. Burkhart) retained Mr. Taylor to represent him in an employment matter. The Engagement Letter sent to Mr. Burkhart from Mr. Taylor after their initial interview called for a retainer in the sum of $2,500.00, which Mr. Burkhart paid on May 12, 2001.

3. According to the Engagement Letter, Mr. Taylor was to file an Employee Retirement Income Security Act (ERISA) action on Mr. Burkhart's behalf, and, in the Engagement Letter, Mr. Taylor stated that the litigation would be tried "to a jury verdict." Mr. Taylor represented himself to the Burkharts as a lawyer quite proficient and highly knowledgeable in ERISA matters.

4. The Engagement Letter called for the action to be brought in the U.S. District court for the Eastern District of Virginia against the Plan Administrator of Mr. Burkhart's employer Merck, Sharp and Dhome (Merck), for wrongful termination of long-term disability benefits according to the Health and Welfare Plan of Merck.

5. In 2001, the Merck's plan was administered by MetLife and, despite the fact that Mr. Burkhart had been re-evaluated that same year by Social Security and remained qualified since 1993 for Social Security disability benefits, MetLife did not find Mr. Burkhart "totally disabled."

6. In 2001, Mr. Burkhart was under the care of a pain management counselor, a pain expert/psychiatrist, a psychiatrist and a neurosurgeon for low back pain, chronic pain and attendant depression and none of these health care specialists were willing to dismiss Mr. Burkhart from care.

7. As part of what he described to the Burkharts as his winning legal strategy, Mr. Taylor advised Mr. Burkhart that it was prudent to ask Merck to re-hire Mr. Burkhart, and Mr. Burkhart did so in July 2001.

8. Merck interviewed Mr. Burkhart in August 2001, but, by September 24, 2001, the situation had deteriorated to a point where Merck designated Mr. Burkhart's dismissal date. Merck declared that, unless re-hired by September 30, 2001, Mr. Burkhart would lose all benefits of his Health, Prescription Drug and Dental Plans.

9. On November 13, 2001, Mr. Burkhart was denied employment with Merck. His benefits continued until December 31, 2002, due to a paperwork hold-up not attributable to Mr. Burkhart.

10. After September 2001, Mr. Burkhart was unable to contact Mr. Taylor by any means despite many efforts to do so. Mr. Burkhart believed that Mr. Taylor totally abandoned his case.

11. On December 13, 2001, Mr. Burkhart filed a complaint with the Virginia State Bar (the Bar) citing his inability to contact Mr. Taylor by telephone, facsimile, e-mail, first-class mail or certified mail, return receipt requested. He also complained of his inability to retrieve his file from Mr. Taylor for review by another attorney.

12. Mr. Burkhart also asked for assistance in getting a detailed billing statement from Mr. Taylor. At the request of Intake, Mr. Taylor sent Mr. Burkhart an itemized billing statement on March 19, 2002, which showed that Mr. Burkhart was entitled to a refund from Mr. Taylor for the sum of $750.00.

13. In his cover letter to the itemized billing, Mr. Taylor admitted in his to Mr. Burkhart that, "I did not complete the matter."

14. No refund was received by Mr. Burkhart and so he again enlisted the Bar's assistance. Because Mr. Burkhart's original complaint was closed after Mr. Taylor responded to the Bar and to Mr. Burkhart in March 2001, this disciplinary file was opened in March 2003. Mr. Taylor did not respond to this complaint; however, in April 2003, while being interviewed on an unrelated matter, Mr. Taylor admitted to the Bar that he neglected to refund Mr. Burkhart the sum of $750.00, representing unearned fees.

15. Mr. Taylor agreed to refund the money and to notify Bar Counsel when he did so. The Bar received no notification from Mr. Taylor regarding his compliance. In late

September 2003, Mr. Burkhart complained to Bar Counsel that the refund had not been received. To date, the refund has not been paid to Mr. Burkhart by Mr. Taylor.

II. NATURE OF MISCONDUCT

RULE 1.1 Competence

* * *

RULE 1.3 Diligence

(a), (b) * * *

RULE 1.15 Safekeeping Property

(a) (2) * * *

(c) (4) * * *

RULE 1.16 Declining Or Terminating Representation

(d), (c) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions shall be met by the dates specified in each of the numbered paragraphs below.

1. **No later than February 13, 2004**, you shall certify in writing to Assistant Bar Counsel, Linda Mallory Berry, that you have done the following:

   a) have executed an agreement with Lawyers Helping Lawyers;

   b) have provided necessary authorization and/or releases to Lawyers Helping Lawyers so they can provide quarterly reports to the Virginia State Bar;

   c) have provided necessary authorization and/or releases allowing any therapists, counselors or medical providers to communicate with Lawyers Helping Lawyers and/or the Virginia State Bar concerning your treatment; and

   d) ensure that Lawyers Helping Lawyers provides a quarterly report to the Virginia State Bar on the fifteenth of each month, beginning May 15, 2004, for the period February through April 2004, to continue for the term of your agreement with Lawyers Helping Lawyers.

2. **No later than July 13, 2004**, the Respondent shall refund the amount of $750.00 to Hugh Daniel Burkhart.

3. **No later than January 13, 2005**, the Respondent shall complete 2 hours of continuing legal education in Ethics **and** shall attend either the full spring risk management program by Prolegia or the full fall risk management program by ANLIR. His continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdiction in which he may be licensed to practice law. He shall certify his compliance with the term set forth in this paragraph by delivering full and properly executed Virginia MCLE Board Certification of Attendance Forms to the Assistant Bar Counsel, Linda Mallory Berry, promptly following his attendance of such CLE program(s).

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified, a Show Cause will be issued and, upon a finding that you filed to comply with any of these terms, this District Committee shall direct a Certification for Sanction Determination to the Disciplinary Board with its recommendation for suspension.

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THIRD DISTRICT COMMITTEE, SECTION III,
OF THE VIRGINIA STATE BAR
By Charlotte Peoples Hodges
Chair Designate