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
Supreme Court				
Linda L. Kennedy	Portsmouth	Revocation	August 28, 2002	19
Circuit Court				
Dianne Theresa Carter	Newport News	2 Year Suspension w/Terms	September 1, 2003	19
Samuel B. Davis, Jr.	Newport News	Revocation	July 14, 2003	24
Joseph Graham Painter, Jr.	Blacksburg	1 Year Suspension	June 16, 2003	24
Andrew Robert Sebok	Norfolk	Public Reprimand w/Terms	August 25, 2003	25
Disciplinary Board				
Paul Cornelious Bland	Petersburg	Revocation	September 25, 2003	n/a
John Kelly Dixon	Richmond	Revocation	August 21, 2003	n/a
Lydell Lucius Fortune	Richmond	Revocation	August 21, 2003	n/a
George Robert Leach	Williamsburg	Public Reprimand w/Terms	September 11, 2003	29
George Robert Leach	Williamsburg	Revocation	September 25, 2003	31
Timothy Herbert Louk	Richmond	Revocation	August 21, 2003	n/a
Gregory Charles Mitchell	Washington, DC	90 Day Suspension	August 28, 2003	42
Helena Daphne Mizrahi	Alexandria	Public Reprimand	May 22, 2003	43
William Ralph Palmer	Raleigh, NC	Revocation	August 21, 2003	n/a
Scott George Smith	West River, MD	Revocation	September 26, 2003	n/a
District Committees				
Kristina Marie K. Fitzgerald	Richmond	Public Reprimand	October 2, 2003	47
Ann Bridgeforth Tribbey	Richmond	Public Reprimand	August 13, 2003	48

Other Actions

Respondent's Name	Address of Record	Jurisdiction	Effective Date	
Disability Suspension				
George Eldridge Leedom	Richmond	Disciplinary Board	August 18, 2003	35

Respondent's Name	Address of Record	Grounds	Effective Date
Cost Suspensions			
Khalil Wali Latif	Farmville	Failure to Pay Costs	September 23, 2003
Joseph Dee Morrissey	Richmond	Failure to Pay Costs	September 3, 2003
John Henry Partridge	Herndon	Failure to Pay Costs	October 8, 2003
James Frederick Pascal	Richmond	Failure to Pay Costs	September 5, 2003
Robert Sidney Ricks	Richmond	Failure to Pay Costs	September 3, 2003
Robert Michael Short	Vienna	Failure to Pay Costs	September 15, 2003
Kenneth Hammond Taylor	Richmond	Failure to Pay Costs	May 13, 2003
Interim Suspensions			
John Lydon McGann	Fairfax	Failure to Comply w/Court Order	June 27, 2003
Bernice Marie Stafford-Turner	Richmond	Failure to Comply w/Subpoena	September 9, 2003

Respondent's Name	Address of Record	Action	Effective Date	Page
Motion to Strike				
Thomas C. Spencer	Lexington	Dismissed	August 27, 2003	46

Supreme Court

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING
IN THE CITY OF RICHMOND
ON FRIDAY THE 27TH DAY OF JUNE, 2003

LINDA L. KENNEDY, APPELLANT
AGAINST
VIRGINIA STATE BAR
RECORD NO. 022782
CIRCUIT COURT NO. C-02-48

Upon an appeal of right from a judgment rendered by the Circuit Court of the City of Portsmouth on the 28th day of August, 2002.

Linda L. Kennedy appeals, as a matter of right, the judgment of a three-judge court finding that she violated the Code of Professional Responsibility Disciplinary Rule 2-105(A) by charging excessive fees and failing to adequately explain certain fees to her client; violated Disciplinary Rule 9-102A by disbursing settlement proceeds when the fees were in dispute; and violated Disciplinary Rule 7-102(A) by filing frivolous and bad-faith motions and arguments which another court found to be sanctionable.[1]

The three-judge court imposed sanctions of license suspension, license revocation, and public reprimand, respectively for these actions. Kennedy raises a number of challenges to the findings of the three-judge court.

In reviewing the judgment of a three-judge court in an attorney disciplinary proceeding, we make an independent examination of the record as a whole and must sustain the factual findings of the three-judge court unless they are not justified by a reasonable view of the evidence or are contrary to law. *El-Amin v. Virginia State Bar* , 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999). Upon consideration of the pleadings, briefs, record, and argument of counsel, the Court is of opinion that the three-judge court's finding that Kennedy disbursed settlement funds when fees were in dispute is supported by the record and is not contrary to law. Kennedy does not challenge the sanction imposed for this violation. Accordingly, the judgment of the three-judge court revoking Kennedy's license to practice law is affirmed. In light of this holding, it is unnecessary to address violations found pursuant to Disciplinary Rules 2-105(A) and 7-102(A). The appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the said circuit court.

A Copy,
Teste:
David B. Beach, Clerk
By: Patricia Krueger, Deputy Clerk

■■■

Endnote

1 Subsequent to the initiation of this proceeding,the Code of Professional Responsibility was replaced with the Virginia Rules of Professional Conduct. The relevant parts of Former DR 2-105 (A) are now contained in Rule 1.5 (a) and (b),of Former DR 9-102 (A) in Rule 1:15 (a)(2),and of Former DR 7-102 (A) in Rule 3.1. For purposes of this case, there were no substantive changes.

Circuit Court

IN THE CIRCUIT COURT OF THE
CITY OF NEWPORT NEWS

VIRGINIA STATE BAR EX REL
FIRST DISTRICT COMMITTEE
COMPLAINANT
V.
DIANNE THERESA CARTER
MISCELLANEOUS NO. 12496-RW

ORDER OF SUSPENSION WITH TERMS

This matter came to be heard on July 14, 2003, upon an Agreed Disposition between the Virginia State Bar, and the Respondent, Dianne Theresa Carter.

A duly appointed Three-Judge Court consisting of the Honorable Von L. Piersall, Jr., Retired, the Honorable John E. Clarkson, Retired, and the Honorable Bruce H. Kushner, Chief Judge, presiding, considered the matter by telephone conference. The Respondent, Dianne Theresa Carter, Esquire, participated in the conference with her counsel, C. Flippo Hicks, Esquire. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Upon due deliberation, it is the decision of the Three-Judge Court to accept the Agreed Disposition, subject to some modifications to the terms as set forth in this Order. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar and the Respondent, as modified, are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Dianne Theresa Carter (hereinafter Respondent or Ms. Carter) was an attorney licensed to practice law in the Commonwealth of Virginia.

02-010-0198
Complainant: Mrs. Micah Smith

2. On January 12, 2001, Mrs. Micah Smith hired Ms. Carter to assist her with a separation agreement. She paid Ms. Carter $1,000 toward an agreed fee of $2,000. Dissatisfied with Ms. Carter's lack of progress or communication in the matter, Mrs. Smith terminated her by letter, dated February 26, 2001. She asked for a refund of the $1,000. Ms. Carter refused, so Mrs. Smith brought a warrant in debt. The court held that Ms. Carter was entitled to $500 for services performed, and directed her to refund the remainder to Mrs. Smith. Mrs. Carter issued the refund on September 17, 2001.

3. Mrs. Carter met with the Virginia State Bar investigator and explained that she did not deposit the $1,000 into her trust account because she thought that she had earned it upon receipt. She explained further that she did not maintain a client ledger card, but merely made notes on the file to indicate what she had done on the case. She said that she performed quarterly reconciliations of her trust account, but could not produce any copies for the investigator.

4. On three occasions, May 24, 2001, June 8, 2001, and July 31, 2001, the Virginia State Bar's intake department sent Ms. Carter letters seeking to resolve the complaint without initiating a formal ethics inquiry. Ms. Carter, however, did not respond to any of the letters, and the bar launched a formal investigation. Mrs. Carter explained that she did not respond to the letters because of health problems.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(a), (1) and (2) * * *
(c) (3) * * *
(e) (1) (iii), (iv) and (v) * * *
(f) (4) (i), (ii); (5) (i), (ii) and (iii); (6) * * *

RULE 8.1 Bar Admission and Disciplinary Matters

(c) * * *

02-010-0199
Complainant: Mrs. Flora Smith

5. In August 2000, Mrs. Flora Smith hired Ms. Carter to assist her with an estate and land dispute matter. She paid Ms. Carter $450. Thereafter, Ms. Carter became unresponsive to Mrs. Smith's attempts to contact her. In April 2001, Mrs. Smith was able to reach Ms. Carter, who said that she did not recall the case, but would get back to her. Having heard nothing from Ms. Carter, and unable to reach her, Mrs. Smith sent her a letter, dated April 27, 2001, by certified mail, requesting a refund of her money. Receiving no response from Ms. Carter, Ms. Smith complained to the bar in June 2001.

6. Ms. Carter met with the Virginia State Bar investigator and explained that shortly after she agreed to review the case, she determined that the issues were too difficult for her to pursue. She said that she did not get far before she decided that she could not solve this problem for Mrs. Smith.

7. Ms. Carter said that she did speak with the complainant, but that when she talked to her, she could not locate her file. She issued a refund to Mrs. Smith on December 15, 2001, about five months after the bar complaint. The refund check was drawn on her general account. She explained that she considered the $450 a flat fee for service; therefore, she deposited it into her general account. She said that the delay in issuing the refund was because of her medical problems.

8. On June 27, 2001, July 17, 2001, and August 8, 2001, the Virginia State Bar's intake department sent Ms. Carter letters seeking to resolve the complaint without initiating a formal ethics inquiry. Ms. Carter, however, did not respond to any of the letters, and the bar launched a formal investigation.

II. NATURE OF MISCONDUCT

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(a) (1) and (2) * * *
(b) (4) * * *

RULE 8.1 Bar Admission and Disciplinary Matters
(c) * * *

02-010-0200
Complainant: VSB/Trust Account

9. On May 7, 2001, Wachovia Bank notified the Virginia State Bar that check number 392, drawn on Ms. Carter's attorney trust account, was drawn against insufficient funds. On June 4, 2001, June 19, 2001, and July 31, 2001, the Virginia State Bar's intake department sent Ms. Carter letters seeking to resolve the complaint without initiating a formal ethics inquiry. Ms. Carter, however, did not respond to any of the letters, and the bar launched a formal investigation. Ms. Carter met with the Virginia State Bar investigator and explained that her failure to respond to the letters was because of health problems.

10. Ms. Carter said that after ruling out other possibilities, the only explanation for the overdraft was that she thought that she had more funds in the trust account than were actually in the account. She could not tell the investigator what she thought was in the account at the time that she wrote check number 392. She said that she did not maintain any type of cash receipt or cash disbursement journal, or any kind of summary displaying deposits and disbursements from the account. She said that she did not have a check register or check book that would list a balance remaining in her account. She said that her checks for this account are loose, and when she needs to issue checks, she pulls as many as she needs and issues them. When asked how, without a check book register, she knows how much money is in her trust account at any particular time, she just calls the bank and inquires as to what funds remain in the account.

11. Ms. Carter also told the investigator that prior to December 31, 2001, she had not done any regular reconciliations of her trust account. She said that she now intends to perform monthly reconciliations. Further, she said that prior to December 31, 2001, she did not maintain any client subsidiary ledger cards. She said that her practice was merely to make notations on each client folder as to receipts and disbursements. She said that as of January 1, 2002, she started to maintain client cards, and had ordered the standard ledger sheets that had yet to come in.

II. NATURE OF MISCONDUCT

RULE 1.15 Safekeeping Property
(c) (3), (4) * * *

(e) (3) (iii), (iv), (v) * * *
(f) (4) (i), (ii); (5) (i), (ii), (iii); (6) * * *

RULE 8.1 Bar Admission and Disciplinary Matters
(c) * * *

00-010-2149
Complainant: Ada Moore

12. On May 13, 1997, Ada Moore hired Ms. Carter to assist her with the administration of her deceased mother's estate. The written fee agreement provided for Ms. Carter to "assist in qualification as administratrix and in filing all necessary documents with Newport News Circ. Ct." The agreement provided for a 5% flat fee, with $400 to be paid at the outset.

13. On May 21, 1997, with Ms. Carter's assistance, Ms. Moore qualified as executrix for the estate of Nina S. Barnes, deceased, in the Newport News Circuit Court. By letter dated May 30, 1997, the Commissioner of Accounts reminded her that the inventory was due no later than September 21, 1997, and that the first accounting was due no later than September 21, 1998. The Commissioner of Accounts sent a copy of this letter to Ms. Carter.

14. On May 21, 1997, following Ms, Moore's qualification as executrix, she and Ms. Carter went to Central Fidelity Bank where they closed the deceased's bank account and opened an estate account, styled "The Estate of Nina Shields Barnes By Ada H. Moore and Dianne T. Carter, Atty." At that time, Ms. Carter asked Ms. Moore to endorse ten estate checks to her in blank so that Ms. Carter could pay some estate bills. The same day, Ms. Carter made one of the checks to herself in the amount of $5,219.87. This represented her 5% fee, although the fee agreement provided for only $400 to be paid at the outset. Ms. Carter negotiated the check, and it cleared the bank on May 23, 1997.

15. Ms. Moore understood that Ms. Carter would prepare and file the inventory. She did not do so, however, and the Commissioner of Accounts issued a delinquency notice to Ms. Moore on October 22, 1997, with a copy to Ms. Carter. Ms. Moore tried to contact Ms. Carter but received no response until she had left several messages by telephone and facsimile. When Ms. Carter finally spoke to Ms. Moore, she assured Ms. Moore that she would attend to the inventory, but she did not. This resulted in the Commissioner of Accounts issuing a summons to Ms. Moore on April 28, 1998. At that time, Ms. Moore chose to hire another attorney, but contacted Ms. Carter first. Ms. Carter asked Ms. Moore to let her complete the work. After three days, however, she had not done so, and Ms. Moore hired another attorney.

16. The new attorney filed a first accounting on December 29, 1998, showing total assets of $111,391.73. While reviewing the inventory, the Commissioner of Accounts noticed Ms. Carter's fee of $5,219.87. By letter, dated January 22, 1999, he asked Ms. Carter to provide her time records and retainer agreement so that he could determine whether the fee was appropriate. Ms. Carter did not comply with the request, and the Commissioner of Accounts issued a subpoena duces tecum for the records on February 10, 1999, returnable on February 20, 1999 at 4:00 p.m. Ms. Carter delivered the records at 4:15 p.m. on February 20, 1999.

17. Ms. Carter explained to the Commissioner of Accounts that she had no time records because her fee was based on 5% of the gross estate. By letter dated March 3, 1999, the Commissioner of Accounts explained that it was the policy of his office never to allow a fee based on a percentage unless all of the residuary beneficiaries agreed. Further, she had not done the work contracted for. He allowed her time to provide further information in support of her fee, but she failed to do so. The Commissioner of Accounts determined that she was entitled to a fee of no more than $550, assessed a fee of $300 against her, and directed her to meet with Ms. Moore's new counsel to make arrangements for the return of the excess fees to the estate.

18. Ms. Carter did not return any of the fees, and on May 20, 1999, Ms. Moore's new counsel filed a warrant in debt for $5,750. On July 6, 1999, Ms. Carter discussed settlement with Ms. Moore's counsel, admitting that she was responsible for the fee, and admitting further that the amount was understated by $200. By letter dated July 14, 1999, Ms. Moore's counsel indicated that he would have Ms. Moore sign a release as soon as Ms. Carter paid the $5,950 as agreed. Ms. Carter failed to respond. Ms. Carter later agreed to pay $3,000, and on August 20, 1999, executed a promissory note for the balance, payable by September 24, 1999. Ms. Carter failed to pay the balance as agreed. Following numerous failed attempts to contact Ms. Carter, Ms. Moore's counsel sued Ms. Carter on the promissory note. Ms. Carter did not appear in court, and Ms. Moore's counsel obtained a judgement against her on January 27, 2000. Ms. Carter finally paid the balance on March 25, 2000, but never paid the attorney's fees.

19. In response to the bar complaint in February 2000, Ms. Carter said simply that she and Ms. Moore had resolved their differences, and that she understood that the complaint was to be withdrawn. The complaint, however, was never withdrawn.

20. On November 20, 2000, Ms. Carter met with the Virginia State Bar investigator and explained that she had very limited experience with estate work. She said that she knew that the inventory was due on September 21, 1997, and that it was not her intention to delay, but she was not sure why the delay occurred. She said that as the attorney it was her responsibility to properly guide her client in the estate matter. She said that her inexperience in estate matters lead her to have problems just figuring out how to do the estate, and what needed to be done. She explained that she deposited the $5,219.87 fee into her attorney trust account. At the time that she agreed to reimburse the estate, however, she had only $3,000 available.

II. NATURE OF MISCONDUCT

DR 2-105. Fees
(A) * * *

DR 6-101. Competence and Promptness
(A) (1), (2); (B); (C) and (D) * * *

DR 9-102. Preserving Identity of Funds and Property of a Client.
(B) (4) * * *

01-010-0715
Complainant: Mrs. Twana D. McCoy

By agreement of the parties, this portion of the case is dismissed for lack of clear and convincing evidence, in accordance with the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.2(f)(1)

01-010-0973
Complainant: VSB/Commissioner of Accounts

21. On February 19, 1996, Mary Witherspoon Adams died without a will. On March 1, 1996, Ms. Carter qualified as administratrix of the estate. By letter, dated May 14, 1996, the Commissioner of Accounts, D. Wayne Moore, advised Ms. Carter that an inventory was due on or before July 1, 1996, and that an accounting was due within sixteen months of the date of her qualification.

22. Ms. Carter did not file the inventory, and Mr. Moore issued a delinquency notice on November 20, 1996, directing her to furnish the inventory within ten days. Ms. Carter failed to comply with the notice, and Mr. Moore issued a summons on May 13, 1997 that was served personally on Ms. Carter on May 20, 1997. Ms. Carter failed to comply with the summons, although she called Mr. Moore's office on June 19, 1997, explaining that the executor had passed away, and that she was expecting a new appointment and filing by mid-July 1997. By letter dated December 23, 1997, Mr. Moore advised her that both the inventory and accounting were delinquent, and that her message of June 19, 1997, was unclear to him, because Ms. Carter had qualified as fiduciary for the estate. His letter directed her to file the inventory and accounting within thirty days.

23. Ms. Carter failed to file the inventory and accounting as directed. On July 7, 1998, one of Mr. Moore's staff called Ms. Carter, who said that she would have the inventory the following week. This did not occur, and on August 8, 2000, Mr. Moore issued another delinquency letter, directing her to file the records or contact his office within ten days, or a summons would issue. This did not occur, and he issued a summons on September 6, 2000, that was served on James Carter at Ms. Carter's office on September 12, 2000. She did not comply with the summons, and Mr. Moore made a report of her delinquency to the circuit court, which scheduled a show-cause hearing for December 1, 2000. On December 1, 2000, the court held Ms. Carter in contempt, fined her $500, ordered her to file the inventory before December 15, 2000, to file the accountings on or before January 3, 2001, and to pay all fees and costs by February 15, 2001.

24. On December 15, 2001, Ms. Carter filed an accounting. Mr. Moore determined it to be deficient, however, because it listed an estate bank account rather than the decedent's bank accounts as of the date of death.

25. On January 4, 2001, Ms. Carter submitted an accounting that was incomplete, in improper form, and rejected by the Commissioner of Accounts. In a four-page letter, dated January 11, 2001, Mr. Moore detailed the problems with the inventory and accounting, and directed Ms. Carter to submit a revised accounting within thirty days. Among the problems he saw with the accounting were Ms. Carter's payment to herself of a 5% fiduciary fee, $3,770.92, on March 6, 1996, when she had never filed the accountings in a timely manner. He was also concerned about several disbursements that did not appear to be related to the estate.

26. On January 16, 2001, Ms. Carter met with Mr. Moore to discuss the issues set forth in his letter. Mr. Moore extended all of the deadlines to February 15, 2001. On February 14, 2001, Ms. Carter requested an extension to March 15, 2001 for medical reasons, which Mr. Moore granted. Ms. Carter, however, did not file a revised inventory or accounting as directed, and did not pay the fees and costs. Accordingly, on March 22, 2001, Mr. Moore filed another report to the circuit court, and the court scheduled another show-cause hearing for April 11, 2001.

27. On April 11, 2001, the court found Ms. Carter in contempt again, and fined her $500, suspended on the condition that she comply with the order. Among the terms of the order were that she pay all fees and costs and return to the estate her $3,770.92 fee by June 15, 2001, and file her inventory and accounting by June 1, 2001.

28. Ms. Carter did not comply with the order. Following another series of court appearances, the court removed her as administratrix on April 8, 2002.

II. NATURE OF MISCONDUCT

DR 2-105. Fees
(A) * * *

DR 6-101. Competence and Promptness
(A) (1), (2); (B), (C), (D) * * *

DR 7-105. Trial Conduct.
(A) * * *

DR 9-102. Preserving Identity of Funds and Property of a Client.
(B) (4) * * *

RULE 1.1 Competence
* * *

RULE 1.3 Diligence
(a) * * *

RULE 1.5 Fees
(a) (1), (2), (3), (4), (5), (6), (7) and (8) * * *

RULE 1.15 Safekeeping Property
(c) (4) * * *

RULE 3.4 Fairness to Opposing Party and Counsel
(d) * * *

01-010-1403
Complainant: Mr. Lee Shields, #280985

29. On January 6, 2000, the Circuit Court for the City of Newport News sentenced Mr. Lee Shields to a total of 24 years to serve upon his convictions of aggravated malicious wounding, attempted armed robbery, and related firearms offenses. Ms. Carter was his court-appointed counsel. Ms. Carter filed a Notice of Appeal, and on March 29, 2000, the Circuit Court filed the record with the Court of Appeals.

30. Rule 5A:12 of the Rules of the Supreme Court of Virginia provides that the petition for appeal must be filed no more than forty days after the filing of the record. Ms. Carter, however, never filed a petition for appeal. By order, entered May 17, 2000, the Court of Appeals dismissed the appeal accordingly. On December 8, 2000, Mr. Shields complained to the presiding judge, the Honorable Randolph T. West, that Ms. Carter had failed to respond to his inquiries about the status of the appeal. By letter, dated December 11, 2000, Judge West removed Ms. Carter as counsel, citing Ms. Carter's failure to file the petition for appeal, and appointed another attorney. The other attorney obtained habeas corpus relief for a delayed appeal.

31. On April 6, 2001, Ms. Carter advised the Virginia State Bar investigator that she could not recall whether she prepared the petition for appeal in this case, but knew that she did not file it She explained that she began to feel fatigue in 2000 and saw a physician, who wrote a letter on February 13, 2001, explaining that she had life-threatening anemia that reached its peak in January 2001, and that he instructed her to reduce her workload because increased stress could aggravate her condition.

II. NATURE OF MISCONDUCT

RULE 1.1 Competence
* * *

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a), (d), (c) * * *

III. DISPOSITION

In accordance with the Agreed Disposition, Dianne Theresa Carter's license to practice law in the Commonwealth of Virginia is hereby **Suspended** for a period of **two (2) years**, effective September 1, 2003, subject to the following terms and conditions:

1. In accordance with the Agreed Disposition, the Respondent, Dianne Theresa Carter, is hereby placed on probation for a period of two (2) years, said period to begin the date that her license to practice law is reinstated, or September 1, 2005, whichever occurs earlier. Ms. Carter 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, the Revocation of the Respondent's license to practice law in the Commonwealth of Virginia. The alternate sanction will not be imposed while Ms. Carter is appealing any adverse decision which might result in a probation violation.

2. By agreement of the parties, the terms are modified as follows:

   Before the end of her two-year period of probation, the Respondent, Dianne Theresa Carter, will pay all funds and attorneys fees owed because of her misconduct that have not already been paid, including the attorneys fees owed to counsel for Ada Moore, and attorneys fees owed to counsel for the bonding company in the *Grozier* matter. Any failure by the Respondent to pay the funds as agreed will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of the alternate sanction, the **Revocation** of the Respondent's license to practice law in the Commonwealth of Virginia

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.

Upon the suspension of her license, the Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the suspension of her license if she is handling any client matters at the time. If the Respondent is not handling any client matters on the effective date of her license suspension, she shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13.M 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 14TH DAY OF AUGUST, 2003

CIRCUIT COURT OF THE CITY OF NEWPORT NEWS
Bruce H. Kushner, Chief Judge
Three-Judge Court

Von L. Piersall, Jr., Judge
Three-Judge Court

John E. Clarkson, Judge
Three-Judge Court

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IN THE CIRCUIT COURT FOR THE
CITY OF NEWPORT NEWS

VIRGINIA STATE BAR EX REL.
FIRST DISTRICT COMMITTEE
COMPLAINANT
V.
SAMUEL B. DAVIS, JR.
RESPONDENT
CHANCERY NUMBER 12349-VC

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

ORDER OF REVOCATION

Having been set for hearing by the First District Committee of the Virginia State Bar, and the Respondent, Samuel B. Davis, Jr., having requested a hearing before a three-judge court pursuant to Virginia Code Section 54.1-3935, this cause came to be heard on February 20, 2003, by a duly convened, three-judge court consisting of the Honorable William H. Oast, Jr., Retired, the Honorable John F. Daffron, Jr., Retired, and the Honorable V. Thomas Forehand, Chief Judge. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis. The Respondent attorney, Samuel B. Davis, Jr., appeared in person, *pro se*.

The Court received evidence, including the testimony of the Respondent, and heard the arguments of counsel. After due deliberation, it was the unanimous decision of the Court that the bar had proven by clear and convincing evidence the allegations of fact and rule violations contained in its Notice of Hearing, dated September 19, 2002, a copy of which is attached hereto and incorporated herein. Specifically, the Court found that the Respondent had violated the following Rules of Professional Conduct: Rule 1.1-Competence, Rule 1.3-Diligence, Rule 3.1-Meritorious Claims and Contentions, Rule 3.4-Fairness to Opposing Party and Counsel, Rule 4.4-Respect for Rights of Third Persons, and Rule 8.4-Misconduct.

The Court then heard argument concerning an appropriate disposition, and recessed to determine what sanctions, if any, to impose. In light of the willful, deliberate, and repeated nature of the Respondent's misconduct, it was the unanimous decision of the Court to Revoke his license to practice law in the Commonwealth of Virginia.

Accordingly, it is **ORDERED** that the license of Samuel B. Davis, Jr. to practice law in the Commonwealth of Virginia be, and the same is, hereby **REVOKED**.

On February 20, 2003, the Court entered a summary order in these proceedings in accordance with Subparagraph 13(I)(2)(g), Part 6, Section IV of the Rules of the Supreme Court, a copy of which is attached hereto and incorporated herein.

Further, it appearing that, on February 12, 2003, the Respondent filed a motion to continue the hearing, to which the bar filed a response, and it appearing further that on February 14, 2003, the Chief Judge of the three-judge court heard the motion by telephone conference, to which procedure the Respondent objected, and it appearing that the Chief Judge of the three-judge court denied the motion for a continuance, and it appearing further that, on February 20, 2003, the full three-judge concurred with this decision, the Respondent's motion to continue the hearing is hereby **DENIED**.

Further, on February 14, 2003, during the telephone conference, the Respondent noted his objection to the service of retired judges on the three-judge court on the basis that such procedure violated his rights under the Equal Protection Clause and the 14th Amendment of the Constitution of the United States, which objection the court **OVERRULED**.

* * *

ENTER THIS ORDER THIS 14TH DAY OF JULY, 2003.

V. Thomas Forehand, Chief Judge
Three-Judge Court

William H. Oast, Jr., Judge (Retired)

John F. Daffron, Jr., Judge (Retired)

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IN THE CIRCUIT COURT
OF THE COUNTY OF MONTGOMERY

VIRGINIA STATE BAR EX REL.
TENTH, SECTION I DISTRICT SUBCOMMITTEE
COMPLAINANT
V.
JOSEPH GRAHAM PAINTER, JR.
RESPONDENT
CASE NO. CL3015063

ORDER

This matter came on for hearing on June 2, 2003 pursuant to Code of Virginia Section 54.1-3935, before a three-judge panel consisting of the Honorable B.A. Davis, the Honorable Perry W. Sarver and the Honorable David V. Williams, Chief Judge presiding. The Virginia State Bar appeared through its Assistant Bar Counsel, Richard E. Slaney, and the Respondent appeared in person and through his counsel, William H. Cleaveland, Esq.

Prior to the hearing and by telephone conference call, the parties submitted to the Court an Agreed Disposition, including a stipulated violation of Rule 8.4(b) of the Rules of Professional Conduct and a recommended sanction of a six month license suspension. The Court took the Agreed Disposition under advisement but asked that counsel appear at the hearing and present any evidence and witnesses they wished relating to a violation and an appropriate sanction.

At the hearing, through counsel, the parties stipulated that the actions of the Respondent, Joseph Graham Painter, Jr., Esq.

(Mr. Painter), as detailed in the agreed disposition and the Certification of the Tenth, Section I District Subcommittee, violated Rule 8.4(b) of the Rules of Professional Conduct adopted by the Supreme Court of Virginia. The Court accepted the stipulation and found by clear and convincing evidence Mr. Painter violated Rule 8.4(b) by his actions as alleged in the Certification.

The case then moved to the sanctions phase of the proceeding, and the Court heard evidence and the arguments of counsel. After considering same and after due deliberation, the Court decided to reject the recommendation of the Agreed Disposition and the recommendations of counsel at the hearing for a six month license suspension. Therefore, it is hereby

ORDERED that the license of Mr. Painter to practice law in the Commonwealth of Virginia is **SUSPENDED** for a period of twelve months beginning June 16, 2003. As stated in the Summary Order entered by the Court on June 2, 2003, it is further

* * *

ENTERED this 8th day of July, 2003

DAVID B. WILLIAMS
Chief Judge Designate of the Three-Judge Court

B.A. DAVIS
Judge Designate

PERRY W. SARVER
Judge Designate

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IN THE CIRCUIT COURT OF THE
CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE
COMPLAINANT
V.
ANDREW ROBERT SEBOK
CASE NO. CH03-202
CO3-1476

ORDER OF PUBLIC REPRIMAND WITH TERMS

This matter came to be heard on August 7, 2003, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Andrew Robert Sebok.

A duly appointed Three-Judge Court consisting of the Honorable William R. Shelton, Retired, the Honorable Alfred D. Swersky, Retired, and the Honorable William C. Andrews, III, Chief Judge, considered the matter by telephone conference. The Respondent, Andrew Robert Sebok, participated in the conference with his counsel, Michael D. Kmetz, Esquire. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

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

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Andrew Robert Sebok (hereinafter Respondent or Mr. Sebok) was an attorney licensed to practice law in the Commonwealth of Virginia, except for the period running October 13, 2000 to December 23, 2001, during which time his license to practice law was suspended by the Virginia State Bar Disciplinary Board.

01-021-1007
Complainant: Mr. Kevin Hartle, #233340

2. On December 5, 1995, the Circuit Court for the City of Norfolk sentenced Kevin Hartle to a net sentence of forty (40) years to serve in the Department of Corrections following his convictions of sodomy, rape, and aggravated sexual battery. Mr. Hartle's appointed counsel prosecuted his appeal through the Supreme Court of Virginia, which denied his appeal on September 26, 1996.

3. During the appellate process, Mr. Hartle and his fiancee', Jeany Getrost, commenced discussions with Mr. Sebok about a petition for a writ of habeas corpus. On or about March 14, 1997, after the appellate process was completed, Ms. Getrost hired Mr. Sebok to pursue a habeas corpus action for Mr. Hartle. She gave Mr. Sebok check number 1023, drawn on her joint account with Mr. Hartle at the Crestar Bank, in the amount of $5,000 (five thousand dollars), payable to Mr. Sebok. The same day, she accepted a receipt, dated March 14, 1997, that reads as follows:

"This day I received check number 1023 in the amount of $5000.00 payable to Andrew Sebok from Jeany Getrost for representation of Kevin Hartle in the appeal in the matter of the Commonwealth of Virginia v. Kevin Hartle. This payment represents a non-refundable retainer."

Mr. Sebok advised the Virginia State Bar investigator that he did not deposit the $5,000 fee into his attorney trust account.

4. In accordance with Virginia Code Section 8.01-654(A), the petition was due to be filed within one year of the final disposition of Mr. Hartle's appeal, or by September 26, 1997. Mr. Hartle and Mr. Sebok spoke by telephone, and Mr. Hartle provided Mr. Sebok with information by mail at Mr. Sebok's request. About one day prior to the filing deadline, Mr. Sebok brought Mr. Hartle a draft petition at the Greensville Correctional Center. Mr. Hartle advised Mr. Sebok that there were several errors in the petition. Mr. Hartle communicated his changes to Mr. Sebok by telephone on the morning of the day that the petition was due. Mr. Sebok then filed the petition on September 26, 1997. Thereafter, Mr. Sebok took no further action in the matter, and Mr. Hartle heard nothing more from Mr. Sebok.

5. On December 17, 1997, Assistant Attorney General Eugene Murphy filed a Motion to Dismiss the petition, and mailed a copy to Mr. Sebok. Mr. Sebok did not file a response to the Motion to Dismiss, and did not advise his client about it.

6. On November 20, 2000, having heard nothing from Mr. Sebok, Mr. Murphy tendered an Order dismissing the petition to the Norfolk Circuit Court. Since Mr. Sebok's license to practice law was suspended on October 13, 2000, Mr. Murphy did not send him a copy. The Court entered the order dismissing the petition on November 27, 2000.

7. On November 27, 2000, having heard nothing from Mr. Sebok, and having read in the newspaper about the suspension of Mr. Sebok's license to practice law, Mr. Hartle wrote to the Court to inquire about the status of his petition. (Mr. Sebok did not inform Mr. Hartle about the suspension of his license.) Mr. Hartle also filed a motion to non-suit the petition. He subsequently learned from the Court that his petition had been dismissed. He heard nothing more from Mr. Sebok. Neither Mr. Hartle nor Ms. Getrost received any refund of the fees paid.

II. NATURE OF MISCONDUCT (01-021-1007)

DR 2-105. Fees
(A) * * *

DR 2-108. Terminating Representation.
(D), (B), (C), (D) * * *

DR 7-101 Representing a Client Zealously.
(A) (2) * * *

DR 9-102. Preserving Identity of Funds and Property of a Client
(A) (1), (2) * * *

RULE 1.3 Diligence
(a), (b) * * *

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

RULE 1.16 Declining or Terminating Representation
(d) * * *

01-021-1108
Complainant: VSB/Anonymous

9. On June 13, 2000, Mr. Sebok filed a Motion for Judgement in the Circuit Court for the City of Chesapeake in the case of Joyce Hawkins v. Christian H. Gaines, a personal injury matter. The Motion for Judgement listed both Mr. Sebok and attorney Jeffrey Haverson as counsel for the plaintiff. Mr. Sebok endorsed the Motion for Judgement as counsel for the plaintiff.

10. On the same day, June 13, 2000, Mr. Sebok filed a Motion for Judgement for the co-plaintiff, Bruce Washington, in the matter of Bruce Washington v. Christian H. Gaines. As in the Hawkins matter, the Motion for Judgement listed Mr. Sebok as counsel for the plaintiff along with Mr. Haverson, and Mr. Sebok endorsed the Motion as counsel for the plaintiff.

11. Thomas C. Dawson, counsel for the defendant, would say that Mr. Sebok did most of the work in the cases. On October 12, 2000, in the Hawkins matter, Mr. Dawson filed a Motion to Compel the plaintiffs to respond to interrogatories and a request for the production of documents propounded to the plaintiff on September 5, 2000. He scheduled the Motion to be heard on November 22, 2000.

12. On October 13, 2000, while the law suits were pending, the Virginia State Bar Disciplinary Board suspended Mr. Sebok's license to practice law for a period of nine (9) months. The suspension order was with the consent of Mr. Sebok. Counsel discussed having Mr. Sebok work as a paralegal for Mr. Haverson during the suspension period.

13. On November 22, 2000, Mr. Sebok sent a facsimile to Mr. Dawson, in care of the presiding judge, the Honorable Frederick H. Creekmore, in the Hawkins matter. In the facsimile, Mr. Sebok requested that the Motion to Compel not be heard that day because "we" had substantially complied with discovery. The facsimile read as follows:

"Dear Tom/Judge Creekmore:

Attached please find unexecuted answers to interrogatories in *Hawkins v. Gaines*, which is currently on the Court's docket for a Motion to Compel. These answers were inadvertently not delivered yesterday when I dropped off the answers in a companion case at Tom's office. I called Tom's office this morning to confirm that the Motion to Compel was withdrawn and was advised that the attached answers were not received by Tom. I am delivering said answers to Tom's office now and would ask that the Motion to Compel noit [sic] be heard as we have substantially complied with the outstanding discovery which is the subject of the motion. Also, I have left word at both Tom's office and with the Docket Clerk asking Tom to call me so that I could explain all this to him and prevail upon him not to go forward with the motion.

Thank you for your attention in this matter. If you have any questions or comments, please feel free to contact me at 490-0123."

14. Mr. Sebok explained to the Virginia State Bar investigator that in sending the facsimile, he thought that he was acting as a paralegal, not as an attorney. Despite Mr. Sebok's letter, the Court entered an order granting the Motion to Compel on November 22, 2000.

15. During 1999, Mr. Sebok filed a Motion for Judgement in the Norfolk General District Court in the matter of *Pia Jackson v. T.N.G. Transport, Inc., et al*, a personal injury matter. The matter was removed to the circuit court, and Mr. Sebok continued as counsel for the plaintiff through discovery and trial preparation. The case settled. Ms. Jackson, however, died in the interim.

16. Ms Jackson having died, it was necessary for the court to appoint an administrator in order for the insurance carrier to disburse the settlement proceeds. Mr. Sebok's license to practice law was suspended on October 23, 2000 for a

period of nine months. At Mr. Haverson's direction, on January 24, 2001, while his license to practice law was suspended, Mr. Sebok requested the Clerk for the Circuit Court of the City of Norfolk to appoint him as administrator of the estate of Pia Jackson. He informed the Clerk that he sought the appointment so that the $1,500 insurance settlement could be perfected for the beneficiaries of the estate. He said that he was acting as a paralegal. The Clerk denied his request, and appointed someone else on January 30, 2001.

II. NATURE OF MISCONDUCT (01-021-1108)

RULE 3.4 Fairness to Opposing Party and Counsel
(i) * * *

RULE 5.5 Unauthorized Practice of Law
(1) (a) * * *

RULE 8.4 Misconduct
(a) * * *

01-021-2731
Complainant: Robert L. Jones, #226343

17. On April 12, 1995, the Circuit Court for the City of Hampton sentenced Robert L. Jones to fifty-three years in prison on his convictions of armed robbery, use of a firearm during the commission of a robbery, abduction, and use of a firearm during the commission of an abduction His defense counsel appealed the convictions to the Court of Appeals and the Supreme Court of Virginia. The Court of Appeals denied his petition on November 27, 1995, and the Supreme Court denied it on April 23, 1996.

18. On April 22, 1997, attorney Joseph Massie, acting on behalf of Mr. Jones, filed a petition for a writ of habeas corpus in the Hampton Circuit Court. On October 1, 1997, the court denied the petition.

19. On July 21, 1998, Mr. Jones' sister, Kathy Herring (formerly Bailey), paid Mr. Sebok $7000 to pursue a writ of habeas corpus for Mr. Jones. Mr. Sebok did not deposit the fee in his attorney trust account, but placed it in his operating account. He explained to the Virginia State Bar that he felt that he had earned the fee upon receipt, this being a flat fee for legal services.

20. On August 14, 1998, Mr. Sebok retrieved the case records from the court for review. On October 1, 1998, he filed a petition for a writ of habeas corpus in the United States District Court for the Eastern District of Virginia, Richmond Division. The Commonwealth responded with a Motion to Dismiss on November 6, 1998. Mr. Sebok, however, did not file a response to the Motion to Dismiss. On January 27, 1999, the United States District Court granted the Motion to Dismiss, making the specific finding that Jones had not responded to the Motion to Dismiss, and that the petition for a writ of habeas corpus was time-barred under 28 U.S.C. 2244(d)(1)(A).

21. On February 26, 1999, Mr. Sebok filed a Notice of Appeal of this decision to the Fourth Circuit Court of Appeals. On March 2, 1999, the Court of Appeals notified Mr. Sebok that he was required to file a $105 docketing and filing fee, or apply for leave to proceed in *forma pauperis*. Mr. Sebok did not do as directed, and on March 19, 1999, the Court of Appeals issued a Notice of Intent to Dismiss the appeal if he did not do as directed by April 5, 1999. Mr. Sebok took no further action, and the court dismissed the appeal on April 12, 1999.

22. Mr. Sebok explained to the bar that he and Mr. Jones decided to let the case "die a natural death" because, according to Sebok, "there was no legal way we could get past the Massie mistakes; they prevented the issues from being raised in federal court because they had either not been raised or properly preserved in state court and the rules required that that be the case before the federal court would consider them." Mr. Sebok explained further that his client had a better chance with a state remedy, a writ of *coram vobis*, on the basis that someone other than his client had confessed to committing the crimes. According to Mr. Sebok, he explained this to Mr. Jones and his sister, and Mr. Jones agreed to let the federal appeal lapse accordingly. Mr. Jones and Ms. Herring, however, would say that Mr. Sebok never told them that he would let the appeal lapse, and never told them the outcome of the appeal

23. On June 7, 1999, James Riddick, an inmate with Mr. Jones at the Nottaway Correctional Center, executed an affidavit confessing to the crimes that Mr. Jones had been convicted of. Mr. Sebok incorporated this in his writ of *coram vobis*, and asked for a hearing in the trial court. It is unclear when Mr. Sebok filed the writ. His certification of mailing is dated December 23, 1999. The circuit court, however, stamped it received on June 23, 2000. The Commonwealth had already filed its answer on June 1, 2000. In its answer, the Commonwealth argued for a dismissal of the writ on the basis that it was not the appropriate remedy, and that the court lacked jurisdiction. Mr. Sebok did not file a response to the Commonwealth's answer, and did not inform Mr. Jones about it. Mr. Sebok never scheduled the matter for hearing in the circuit court either, although he told Ms. Herring that he had, but that the judge went on vacation.

24. On October 13, 2000, the Virginia State Bar Disciplinary Board suspended Mr. Sebok's license to practice law. By letter, dated October 20, 2000, he notified Mr. Jones of the suspension, and asked him to contact Sebok to make arrangements in his case. On October 24, 2000, Mr. Sebok refunded $700 to Ms. Herring, and agreed in writing to refund the remainder of the $7000 in increments before February 28, 2001. Mr. Sebok never refunded any more money as promised.

II. NATURE OF MISCONDUCT (01-021-2731)

DR 2-105. Fees.
(A), (B), (C), (D) * * *

DR 9-102. Preserving Identity of Funds and Property of a Client
(A) (1), (2) * * *

RULE 1.3 Diligence
(a), (b) * * *

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

RULE 1.15 Safekeeping Property
(c) (4) * * *

RULE 1.16 Declining or Terminating Representation
(d) * * *

III. DISPOSITION

The parties agree that the Virginia State Bar Disciplinary Board previously made several findings of fact concerning a Disability suffered by the Respondent during 1996-1999 that had an impact on his ability to practice law. The Board incorporated these findings in an Order, the pertinent portions of which are as follows:

> "The Board heard evidence from several fact witnesses and two psychologists. In brief, the evidence presented was that Respondent was a respected and talented lawyer in the areas of criminal appellate work and immigration law for many years prior to 1996. The evidence was that he was extremely dedicated to pursuing his clients interests prior to that date. Beginning in 1996, Respondent experienced several emotional traumas which sent him into a state of severe depression. These events included a divorce, financial reverses, loss of his office space and witnessing the execution of one of his clients with whom he had developed a personal relationship. When these occurred, Respondent became depressed and despondent. His personality, as described by several witnesses, changed during this period. He became disorganized and incapable of keeping up with deadlines. He was in sole practice. Several of the complainants testified that they held no animus towards Respondent, as evidence by the fact that complainant Noble had not terminated her employment of him as of the date of the hearing. Moreover, the evidence presented established that once Respondent got into treatment, started taking appropriate medication, took employment with another attorney who dealt with the fees received and employed a paralegal to assist him in keeping up with deadlines, the problems evidence by his unacceptable conduct between 1996 and 1999 ceased to exist.
>
> In hearing the above evidence, the Board was mindful of Part Six, Section IV, Paragraph 13.C(6)(e) of the Rules of Court which states:
>
> 'If the Board finds that the misconduct was the result of a Disability, it may consider the disability in mitigation of any discipline imposed.'
>
> With the above evidence and guiding rule in mind, the Board heard and accepted an agreed disposition as to sanctions which was presented to the Board by Respondent and the Virginia State Bar. In doing so, the Board found by clear and convincing evidence that Respondent's misconduct was due to a disability and it exercised its discretion to consider that Disability in mitigation of the discipline imposed."

The Board imposed a nine-month suspension with terms. The Board heard ten more cases of misconduct against Mr. Sebok in February 2001, made the same findings concerning the disability between 1996 and 1999, and imposed an additional ten-month suspension of his license to practice law. On December 23, 2001, the Respondent's license to practice law was reinstated. There have been no complaints of misconduct by the Respondent since the reinstatement of his license.

The Respondent, his counsel, and Virginia State Bar agree that substantially all of the misconduct in case Numbers 01-021-1007 and 01-021-2731 stipulated to in this agreement took place during the period of his disability, and that had these cases been before the Board during the evidentiary hearing referenced above, that they likely would have been incorporated in the previous sanctions imposed.

In accordance with the Agreed Disposition, it is the decision of this Court to issue to the Respondent, Andrew Robert Sebok, a **PUBLIC REPRIMAND with TERMS**, subject to the following terms and conditions:

1. The Respondent, Andrew Robert Sebok, is hereby placed on probation for a period of two (2) years, said period to begin the date that the Court enters this Order. Mr. Sebok 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, the **Revocation** of the Respondent's license to practice law in the Commonwealth of Virginia. The alternate sanction will not be imposed while Mr. Sebok is appealing any adverse decision which might result in a probation violation.

2. Mr. Sebok will continue to comply with the Terms imposed by the Virginia State Bar Disciplinary Board in its Order, entered November 14, 2000.

3. Mr. Sebok will issue refunds to the following individuals within the times indicated:

   A. The sum of $5,000 (five thousand dollars) to Jeany Getrost and Kevin Hartle by September 1, 2005.

   B. The sum of $6,300 (six thousand three hundred dollars) to Kathy Herring by September 1, 2005.

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 the 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 25TH DAY OF AUGUST, 2003
CIRCUIT COURT OF THE CITY OF NORFOLK

William C. Andrews, III, Chief Judge
Three-Judge Court

William R. Shelton, Judge
Three-Judge Court

Alfred D. Swersky, Judge
Three-Judge Court

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Disciplinary Board

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GEORGE ROBERT LEACH
VSB DOCKET NO. 01-060-1322

ORDER
PUBLIC REPRIMAND WITH TERMS

This matter came on to be heard on August 20, 2003, upon an Agreed Disposition between the Virginia State Bar and the Respondent, George Robert Leach.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Thaddeus T. Crump, Lay Member; James L. Banks, Jr., Esq.; Peter A. Dingman, Esq.; Janipher Winkfield Robinson, Esq.; and Karen A. Gould, Esq., Vice Chair, presiding, considered the matter by telephone conference. Michael L. Rigsby, Esq., appeared as counsel for the Respondent. The Respondent, George Robert Leach, did not appear. Deputy Bar Counsel Harry M. Hirsch appeared for the Virginia State Bar.

Upon due deliberation, it is the decision of the Virginia State Bar Disciplinary Board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rules violations and Disposition are incorporated herein as follows:

I. STIPULATIONS OF FACT

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

2. In or about November 1999, Complainant Susan Miller [Susan] and her husband Arthur Miller [Arthur] [collectively, the Millers] first met with Leach for the purpose of filing and pursuing a Chapter 13 bankruptcy. At that first meeting the Millers paid Leach $300.00 and gave him certain documents and information. Leach gave the Millers a questionnaire to complete; he also advised that debts in favor of Transouth and Heilig Meyers should not be included in the bankruptcy as secured debts because the security could be repossessed.

3. The Millers had four secured debts: one in favor of Transouth regarding a truck, two in favor of Heilig Meyers regarding furniture and one in favor of Beneficial regarding a vacuum cleaner.

4. Subsequent to the first meeting, Susan completed the questionnaire, compiled requested information and went over each account with Leach's wife.

5. On or about December 1, 1999, Leach filed a bankruptcy case, docket number 99-53007 on behalf of the Millers [first case]. Frank Santoro [Santoro] was the trustee in the case.

6. Leach maintains that he sent to the Millers a letter dated December 3, 1999, informing them of the assigned case number, 99-53007, indicating that the remainder of the statements and bankruptcy schedules were due by December 16, 1999 and asking that the questionnaire be completed. The Millers did not receive this letter.

7. The remaining statements and schedules were due to be filed on or before December 16, 1999. Leach filed a Chapter 13 plan and related motions and notice on December 17, 1999.

8. At some point after the filing of the plan, the Millers received materials including a questionnaire and a notice from Santoro. The notice stated, *inter alia*:

   Your first payment MUST be made within 30 days of the date you filed your Chapter 13 plan with the court. This may fall prior to your 341 hearing. Failure to make this first payment on time will result in the automatic dismissal of your case.

9. The Millers contacted Leach about what to do with the materials; they also did not know what the payment amount in their plan was. Leach informed the Millers not to worry about the package and he would give them their payment amount at the 341 meeting.

10. The 341 hearing or first meeting of creditors occurred on January 3, 2000. At the hearing Santoro gave the Millers a booklet which gave information about Chapter 13 bankruptcies. Santoro gave the Millers another 10 days to complete the questionnaire. Santoro also showed the Millers their plan which they had not seen before. Leach did not appear at this hearing. Instead, John Raymond, Esq. [Raymond] appeared for Leach.

11. Raymond advised the Millers that all of their secured debts should be included in their plan as secured debts including Transouth, two Heilig Meyers debts and Beneficial.

12. After the 341 hearing, the Millers contacted Leach and told him that they wished to include the truck and furniture debts as secured debts in the plan. Leach advised them the easiest way to do that was to let the current case be dismissed and refile a new one. Leach also advised the Millers not to make any payments on the plan while waiting for the case to be dismissed.

13. Santoro filed objections to confirmation of the first plan which were heard on March 10, 2000. As a result of the hearing, Leach either had to amend the current plan or allow the case to be dismissed and refile.

14. The Millers provided Leach with additional financial information in a memo dated April 5, 2000.

15. On May 1, 2000, a consent order was entered in the bankruptcy sustaining certain objections to confirmation, denying confirmation of the plan and requiring the filing of a modified plan by March 23, 2000 or the case would be dismissed.

16. The first bankruptcy case, number 99-53007, was dismissed on June 14, 2000.

17. Leach filed a second bankruptcy case for the Millers, number 00-51538 [second case], on June 16, 2000. A Chapter 13 plan, related motions, schedules and statement of financial affairs were filed by Leach on July 3, 2000. George Neal [Neal] was the assigned trustee.

18. A 341 hearing was held in the second case on August 7, 2000. At that time, Neal provided the Millers with the amount of the required payment, when they were due, and that the first payment was overdue, i.e., an initial payment on the plan had not been made within thirty days of the filing of the plan. According to the Millers, Leach again had not provided them with a copy of the plan or the payment amount in the second case before the 341 hearing.

19. On or about August 10, 2000, Neal filed a certificate of failure to commence payments and the second case was dismissed on August 11, 2000, for failure to pay the initial plan payment.

20. Upon receipt of notice of the dismissal of the second case, the Millers telephoned Leach who admitted the dismissal was his fault and he would refile again. Leach denies the admission and asserts that the Millers simply failed to save their money so they could have made the initial payment.

21. On August 18, 2000, Leach filed a Motion to Vacate Order of Dismissal seeking reinstatement of the case on the court docket on the basis that, "It was unclear to the Debtors exactly when their first payment was due and consequently they did not set aside sufficient monies to make this payment."

22. Leach filed a third Chapter 13 bankruptcy on behalf of the Millers, number 00-52045 [third case], on August 15, 2000. His application to pay the filing fee in installments was approved on August 17, 2000. Leach filed the Chapter 13 plan and related motions on August 31, 2000.

23. A 341 hearing was held in the third case on October 2, 2000.

24. Neal filed objections to confirmation of the plan. Transouth also filed objections to confirmation of the plan, one of which was that no proof of insurance coverage for the truck had been provided. Transouth also filed a motion for relief from the bankruptcy stay.

25. With respect to the insurance on the truck, the Millers had a telephone conversation with Leach in which he instructed them to put Transouth on the insurance policy for the truck as the insured. Susan questioned Leach why Arthur should not remain as the insured since he was the primary driver; but Leach insisted that Transouth should be the insured on the policy. After contacting the insurance company directly, Susan learned that Transouth should be listed as the loss payee which was then effected.

26. On November 17, 2000, a hearing was held on the objections to confirmation. Neal's objections were sustained. The Millers were given 10 days within which to file an amended plan and the Millers were ordered to provide Transouth with evidence of insurance by 5 p.m. that date or relief from the stay would be granted to Transouth.

27. On November 22, 2000, Susan filed a complaint with the Virginia State Bar.

28. On November 27, 2000, an order was entered denying the motion for relief from stay filed by Transouth and denying confirmation of the plan filed in the third case.

29. On November 30, 2000, Leach filed an amended plan in the third case with related motions.

30. Transouth filed a proposed order granting it a relief from the bankruptcy stay because Leach had not yet provided the required evidence of insurance as previously ordered. A relief from the stay would have allowed Transouth to take possession of the truck. On December 11, 2000, Leach filed a letter objection to entry of the proposed order. A hearing on the matter was held on December 15,

    2000 at which time Leach appeared and gave counsel for Transouth the required evidence of insurance.

31. Neal and Transouth filed objections to confirmation of the amended plan in the third case. On January 23, 2001, after receipt of the bar complaint, Leach filed a motion to substitute John Raymond as counsel for the Millers.

32. On January 26, 2001, a hearing was held on the objections to the amended plan and the motion for substitution of counsel. Neal's objections to confirmation of the plan were sustained and an order substituting Raymond as counsel was entered.

33. On January 31, 2001, confirmation of the amended plan was denied.

34. On February 2, 2001, Raymond filed amended schedules, statements and a modified plan on behalf of the Millers.

35. On April 3, 2001, a consent order was entered settling the motion for relief from stay of Transouth based upon evidence of proof of insurance. The consent order included language as follows:

> ". . . in the event the . . . case is dismissed by reason of the Debtors' failure to pay the required payments to the . . . trustee pursuant to the terms of any and all plans confirmed in this case or by reason of any other failure . . . to comply with the terms of such plans and/or should this case be converted to a case under any other chapter . . . , Transouth . . . shall be granted immediate relief from the . . . stay without further order of this Court . . . ."

36. The modified plan filed by Raymond was confirmed in June of 2001.

II. DISCIPLINARY RULES

The above factual stipulations include conduct which constitute violations of the following provisions of the Virginia Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 6-101. Competence and Promptness.
(A) (1) (2) (B) (C) * * *

RULE 1.1 Competence
* * *

RULE 1.3 Diligence
(a) * * *

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

III. DISPOSITION

Upon consideration whereof, the Board hereby issues a Public Reprimand with Terms to the Respondent, George Robert Leach, effective upon entry of this Order. The terms of the disposition, which shall be a predicate for the disposition of a Public Reprimand with Terms shall be complied with by November 1, 2003. Said terms are as follows:

1. Respondent shall attend and complete six hours of continuing legal education on the subject of representation of debtors in a Chapter 13 bankruptcy. Said hours shall be in addition to those hours which the Respondent must attend in order to fulfill his mandatory continuing legal education requirements for licensure.

2. Respondent shall attend and complete four hours of continuing legal education on the subject of legal ethics. Said hours shall be in addition to those hours which the Respondent must attend in order to fulfill his mandatory continuing legal education requirements for licensure.

3. Respondent shall certify in writing to Deputy Bar Counsel Harry M. Hirsch that he has attended and completed said additional continuing legal education as stated above.

Subsequent to the approval of the Agreed Disposition and before entry of an order, it was noted that the Agreed Disposition did not contain an alternate sanction. The parties, by endorsement of counsel hereon, agree to an alternate sanction of a Sixty Day Suspension in the event there is a lack of compliance with the terms herein. The Virginia State Bar Disciplinary Board accepts the alternate sanction.

ENTERED THIS 11TH DAY OF SEPTEMBER, 2003
VIRGINIA STATE BAR DISCIPLINARY BOARD

By Karen A. Gould, Vice Chair

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF:
GEORGE ROBERT LEACH
VSB DOCKET NO. 02-060-3754

ORDER OF REVOCATION

This matter, on August 21, 2003, came before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Roscoe B. Stephenson, III, Chair, William C. Boyce, Jr., Chester J. Cahoon, Jr., Lay Member, Robert E. Eicher and David R. Schultz, pursuant to a Subcommittee Certification from the Sixth District Committee. The Virginia State Bar was represented by Deputy Bar Counsel Harry M. Hirsch. George Robert Leach was present and represented by Michael L. Rigsby. The proceedings were recorded by Tracy J. Stroh, a registered professional reporter, of the firm of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

The hearing commenced promptly at 9:00 a.m. in Courtroom C of the State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. The Chair polled the members of the Board as to whether any of them had a personal or financial interest or bias in this matter which would preclude any of them from serving fairly and objectively on this panel. Each member, including the Chair, answered in the negative.

The hearing then proceeded with the admission of a stipulation of fact endorsed by the parties, containing twenty (20) points of agreement. Numerous documents offered into evidence by the Bar were admitted, and oral testimony was received from Marlene Simmons, Morgan D. Galbreath, III, Carl A. Peter, and George Robert Leach.

Following argument by the parties, the Board retired to deliberate. The Board found the following facts to have been established by clear and convincing evidence.

1. At all times relevant to this matter, George Robert Leach has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On December 4, 1992, George Robert Leach entered into a contingency fee agreement with Stephan Simmons to pursue a claim against Michael Stephen Smith ("Smith") for intentional infliction of emotional distress arising out of his employment with Smith. The agreement recited a fifty percent (50%) contingency fee.

3. On August 9, 1995 a non-dischargable judgment was obtained against Smith in Bankruptcy Court in the amount of $32,790.00 consisting of $290.00 of compensatory damages, $25,000.00 of punitive damages, $7,500.00 for emotional distress, civil battery, and defamatory publications.

4. Mr. Smith owned two adjoining ten acre parcels of land in King and Queen County, Virginia.

5. Mr. Leach filed a Bill of Complaint against Smith in the Circuit Court of King and Queen County, Virginia on February 12, 1998 to force the sale of the property in satisfaction of the judgment.

6. The Circuit Court entered a decree ordering sale of the property on September 23, 1998.

7. On October 19, 1998 Mr. Simmons died intestate. Mr. Simmons was survived by his parents and one sister. No one sought, nor was anyone appointed as administrator of Mr. Simmons' estate until 2002.

8. Nevertheless, Mr. Leach continued to pursue the collection of the judgment and the creditor's suit without authority from Mr. Simmons' estate, or any of his successors in interest.

9. An auction was held pursuant to the Court's decree on December 1, 1998 at which Mr. Smith bid $25,500.00 for the property. Mr. Smith did not have adequate funds to consummate the purchase and a second auction took place on January 5, 1999.

10. Prior to the second auction, Mr. Leach borrowed $20,000.00 from a friend, Morgan Galbreath, III, so that he (Mr. Leach) could bid for the property at the January 5, 1999 auction. The terms of the loan were oral, the loan was unsecured, and was personal in nature to Mr. Leach.

11. Mr. Leach successfully purchased the property at the auction with a bid of $20,000.00.

12. A special commissioner's report was prepared by Mr. Leach and presented to the Special Commissioner, Carl A. Peter, who filed it with the court on January 14, 1999. The report presented to Mr. Peter and subsequently filed by Mr. Peter makes no mention of the fact that Stephan Simmons was deceased. In his role as Special Commissioner, Mr. Peter was a judicial official and any fraud perpetrated on Mr. Peter is a fraud on a tribunal.

13. In or about February or March of 1999, Mr. Leach sent Stephan Simmons' parents' copies of the report of the special commissioner, Mr. Leach's Notice of Entry of a Decree of Confirmation and the Decree, and Mr. Leach's Petition for an Order to Show Cause why Mr. Smith should not be held in contempt for failing to buy the property after a successful bid at the first auction.

14. The contempt petition, as filed with the court, did not state that Mr. Simmons was deceased. Such a filing constitutes fraud on the tribunal.

15. Mr. Leach prepared a Decree of Confirmation for entry by the court. The Decree of Confirmation did not report that Mr. Simmons was deceased. The Decree of Confirmation was entered by the court on March 10, 1999. The omission of the fact of Mr. Simmons' death constitutes a fraud on the tribunal.

16. Mr. Leach prepared the Special Commissioner's Deed which conveyed the property to Mr. Leach ". . . in his capacity as attorney for Stephan Simmons, deceased, in fee simple absolute . . . ." The Special Commissioner's Deed was executed on March 10, 1999 and recorded in the land records of King and Queen County Circuit Court on March 26, 1999.

17. An order authorizing disbursement of the auction proceeds was entered on March 30, 1999. Neither did the Order report that Stephan Simmons was deceased nor was the court otherwise informed of this fact.

18. Pursuant to the order of disbursement, the clerk of the King and Queen County Circuit Court issued a check to Mr. Leach for the net proceeds from the sale, $13,290.00, dated March 31, 1999. Mr. Leach did not deposit the check in his trust account, but endorsed the check directly over to Mr. Galbreath, in partial satisfaction of Mr. Leach's personal debt to Mr. Galbreath. This diversion of funds was accomplished without informing Mr. Simmons' parents, or anyone who might be considered Mr. Leach's client.

19. Subsequent to the auction of the real property, it was agreed between Mr. Leach and Mr. Galbreath that Mr. Leach would convey the property to Mr. Galbreath. In return, Mr. Galbreath would pay to Mr. Leach the sum of $7,800.00 at the time of the conveyance. Mr. Galbreath would then market the property, and upon its sale, pay $7,800.00 to Mr. Simmons' parents. Mr. Galbreath would retain any additional money realized by that sale.

20. The agreement was executed on April 19, 1999 when Mr. Leach conveyed the property to Mr. Galbreath. Mr. Leach received the $7,800.00 which he considered his own, and spent to his personal benefit, being of the opinion that one of the ten acre parcels was rightly his pursuant to the original fifty percent contingent fee agreement with Mr. Simmons. Mr. Galbreath subsequently sold the property and, as agreed, paid Mr. Simmons' parents $7,800.00. At no time prior to or at the time of the conveyance to Mr. Galbreath was the agreement or the exchange of funds revealed to Mr. Simmons' parents.

21. On June 11, 2001, Mr. Leach filed a garnishment action against Mr. Smith relating to the original debt. In the

action, Mr. Smith is given credit for $13,290.00, with an additional claim of $56.00 of court costs for a total due of $19,556.00. The garnishment ended upon Mr. Smith's assertion of bankruptcy.

22. By letter dated November 15, 2001, Mr. Leach wrote to Roy Lasris, Esq. indicating, among other things, that he was prepared to recommend to Mr. and Mrs. Simmons that they settle the outstanding judgment against Smith for the amount of $12,500.00 and stating that the payoff amount was about $25,000.00. Mr. Leach had no authority to act as counsel to Mr. and Mrs. Simmons. Mr. Leach admitted to the Board that his letter to Mr. Lasris may have given Mr. Lasris the impression that Mr. Leach was acting as counsel to Mr. and Mrs. Simmons. The Board finds that the letter was intended to do so.

23. In 2002, Mr. Leach filed a garnishment against Mr. Smith and put a lien against Mr. Smith's house.

24. On May 17, 2002, in a garnishment hearing in the Circuit Court for the City of Williamsburg and County of James City Mr. Smith objected to the fact that he had not been given credit for the sale of his property. The court made certain inquiries of Mr. Leach the answers to which caused the court to investigate the circumstances before proceeding further.

25. In a letter dated April 22, 2002, Mr. and Mrs. Simmons demanded that Mr. Leach provide information relating to any money received for their son. In this letter Mr. and Mrs. Simmons stated "You are not to assume that you are our lawyer."

26. In a letter dated May 16, 2002, Mr. Leach wrote to Mrs. Simmons, and enclosed a copy of his and Stephan Simmons' fee agreement. He informed Mrs. Simmons that judgments had been obtained against Mr. Smith, that a garnishment summons was pending, and that someone needed to qualify to administer Mr. Stephan Simmons estate. The letter did not reveal to Mrs. Simmons the Galbreath loan or the Galbreath agreement.

27. In a letter dated May 28, 2002 to the Honorable Samuel T. Powell, III, Mr. Leach enclosed a copy of his May 16, 2002 letter to Mrs. Simmons. The May 28, 2002 letter did not reveal to the court the circumstances of the Galbreath loan or the Galbreath agreement.

28. In a letter dated June 3, 2002, Mr. Leach revealed to Mr. and Mrs. Simmons, for the first time, many of the facts concerning the Galbreath loan and agreement. A copy of this letter was sent to Judge Powell.

29. On June 5, 2002 Mr. and Mrs. Simmons qualified as co-administrators of the Estate of Stephan Simmons.

30. On or about July 8, 2003, Mr. Leach filed a claim against Mr. and Mrs. Simmons in the General District Court for the City of Williamsburg and County of James City claiming attorney's fees, in *quantum meruit*, in the amount of $10,000.00. Mr. Leach also claimed $4,950.00 against Mr. and Mrs. Simmons stating that Mr. and Mrs. Simmons engaged in efforts to ". . . (1) tortiously interfere with plaintiffs [sic] contract with their son to (2) injure him in his reputation and profession in violation of Virginia Code Section 18.2-499 to (3 [sic] perpetrate a fraud on the court above and on the plaintiff and to (4) defame the plaintiff per se in that the reasonable inference to be drawn from the words used in their letter delivered to Judge Powell falsely imputed to plaintiff the crime of embezzlement."

In consideration of the foregoing factual findings, the Board finds that Mr. Leach has engaged in professional misconduct as follows:

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

Mr. Leach's scheme to collect his former client's judgment, and in so doing Mr. Leach's fee, including negotiating a personal loan in order to purchse the land at auction, the transfer of the proceeds from the auction to Mr. Galbreath, and the transfer of title to the property to Mr. Galbreath, al without informing Mr. and Mrs. Simmons or any successors to Stephan Simmons interest of his actions, constitutes a deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law. This being the cse, the Board need not decide if such action constitutes the crime of embezzlement.

DR 2-105. Fees
(A) * * *.

Mr. Leach's taking of $7,800.00 in partial satisfaction in what he considered to be his fee was without explanation to anyone. The fact that Mr. Leach's client was deceased does not relieve him of his responsibility to adequately explain this fee to the former client's lawful representative or the court.

DR 2-108. Terminating Representation
(A) (1) * * *

Mr. Leach's failure to withdraw as counsel upon the death of his client or to apply to the court for direction is inconsistent with the disciplinary rules, as well as the fundamental principles controlling the lawyer client relationship in that a lawyer has no client upon that client's death.

DR 7-102. Representing a Client Within the Bounds of the Law.
(A) (2), (3), (5) * * *

Mr. Leach's filing of a creditor's bill subsequent to his former client's death is a claim that is unwarranted under existing law, as he then had no client to represent.

Mr. Leach's failure to disclose Stephan Simmons death constitutes a failure to disclose that which he is legally required to reveal.

Mr. Leach's various filings subsequent to his former client's death without revealing the fact of such death constitutes a false statement of fact.

DR 9-102. Preserving Identity of Funds and Property of a Client.
(A) (1), (2) * * *
(B) (1), (2) * * *

A violation of these rules was admitted by Mr. Leach.

RULE 1.15 Safekeeping Property
(c) (4) * * *

Mr. Leach's failure to remit funds to Mr. and Mrs. Simmons, or to the court, following Mr. and Mrs. Simmons inquiry regarding their son's estate constitutes a violation of this Rule.

RULE 1.16 Declining or Terminating Representation.
(a) (1) * * *

Mr. Leach's continued purported representation of Stephan Simmons subsequent to January 1, 2000 constitutes a violation of this Section. Further, the Board finds that Mr. Leach represented himself as counsel to Mr. and Mrs. Simmons in his November 15, 2001 letter to Roy Lasris, Esquire. Mr. Leach, in his own testimony, acknowledged that his letter could have had the effect of suggesting a lawyer client relationship between Mr. Leach and Mr. and Mrs. Simmons.

RULE 3.3 Candor Toward the Tribunal
(a) (1) * * *

Mr. Leach's failure to give Mr. Smith credit for the previous sale of his real property in the garnishment action filed against Mr. Smith constituted a false statement of fact to the tribunal.

RULE 8.4 Misconduct.
(b) (c) * * *

Once again, Mr. Leach's failure to give Mr. Smith credit for the sale of his property in the garnishment action filed against Mr. Smith violated this Rule. In addition, Mr. Leach's continued participation in legal proceedings such as the garnishment subsequent to January 1, 2000, constitutes a violation of this rule.

Mr. Leach's letter to Mr. Lasris, in which he implied that he was acting as counsel for Mr. and Mrs. Simmons was deceitful conduct in violation of this Rule.

DR 5.101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.
(A) * * *

RULE 1.5. Fees.
(a) (1), (2), (3), (4), (5), (6), (7), (8) * * *

The Board finds insufficient evidence to support violations of these Rules. The Board is of the opinion however that the filing of the suit against Mr. and Mrs. Simmons for fees would constitute a violation of these Rules but for the fact that the filing occurred subsequent to this certification. The Board therefore will not consider the actions of Mr. Leach which occurred following certification in a consideration of alleged Rule violations.

RULE 1.15 Safekeeping property.
(a) (1), (2) * * *

The Board finds that none of Mr. Leach's offending behavior in regard to safekeeping of property occurred subsequent to the effective date of this Rule, January 1, 2000.

(c) (1), (2) * * *

The Board finds that none of Mr. Leach's offending behavior in regard to receipt and identification of property occurred subsequent to the effective date of this Rule, January 1, 2000.

RULE 3.1 Meritorious Claims And Contentions
* * *

The Board is of the opinion that this Rule relates to the merits of a particular claim. We do not find that Mr. Leach's claims were without merit.

Following the Board's announcement of its findings, the Bar introduced Mr. Leach's disciplinary record. Mr. Leach's record consists of three prior instances of discipline.

Mr. Leach was found to have engaged in misconduct on December 19, 1990. The misconduct was the failure to file a criminal petition for appeal. The matter was dismissed with terms, specifically, that Mr. Leach attend a professional respon

sibility course offered by the Committee on Lawyer Discipline. Mr. Leach complied with this term and the matter was closed.

Mr. Leach was disciplined on December 7, 1999 as a result of his mishandling his accounting responsibilities as the executor of an estate. Mr. Leach was privately reprimanded.

Finally, Mr. Leach was disciplined on August 20, 2003 for mishandling a bankruptcy case. Mr. Leach received a public reprimand with terms.

Mr. Leach presented two witnesses in mitigation of his misconduct. Mr. Leach's first witness was Leslie Wilmer Bailey, Jr., a practicing lawyer in Tennessee and Virginia. Mr. Bailey was an Assistant Commonwealth's Attorney in Scott County and the Lee County Attorney. He testified he has known Mr. Leach since law school. He is of the opinion that Mr. Leach's level of integrity is very high and that Mr. Leach cares greatly about his clients.

Dr. John Lanzalotti testified in support of Mr. Leach. He stated that he has known Mr. Leach for approximately twenty-one years and that Mr. Leach has great integrity. He is greatly surprised by the nature of these allegations.

Finally, Mr. Leach testified in his own behalf in mitigation. Mr. Leach testified that he takes great pride in his profession and enjoys the practice of law. He states that he was embarrassed by his mistakes. He further stated that "perhaps I got a little carried away."

The Board was impressed with the quality and sincerity of Mr. Leach's character witnesses. Both are highly respected men in their communities whose opinions are entitled to significant respect. Nevertheless, the opinions of these gentlemen cannot negate the egregious nature of Mr. Leach's admitted conduct.

The Board considers the following factors to be aggravating: Mr. Leach's record as previously discussed in this Order; Mr. Leach's selfish motives throughout this course of events; that Mr. Leach engaged in multiple instances of misconduct; Mr. Leach's refusal or reluctance to acknowledge the wrongful

nature of his conduct; the fact that the victims of Mr. Leach's misconduct were vulnerable due to their age and the death of their son; and Mr. Leach's substantial experience.

The Board finds Mr. Leach's conduct to be reprehensible. Despite the fact of Mr. Leach's client's death, he continued the farce of representation for an additional four years. One could possibly understand an initial misstep due to the unusual circumstance of the death of a client, but no reasonable person could continue the deception for so long unless it was intentional.

It is apparent from the facts of this case that Mr. Leach's motivation for his misconduct was selfish. In every instance, he put his interest ahead of his deceased client's interest. Mr. Leach's sole concern in this case was to protect and collect his fee. Mr. Leach made the case his own, misappropriated Mr. Simmons' estate's money, and in essence misappropriated the action.

Perhaps most revealing, is the fact that Mr. Leach simply doesn't appreciate the gravity of his misconduct. He describes his conduct as a mistake in judgment and as having been "carried away". Mr. Leach's written response to Judge Powell's legitimate inquiry can only be described as defiant. Perhaps worst of all, Mr. Leach saw fit only a few weeks prior to this hearing, to sue Mr. and Mrs. Simmons for his fee and for defamation. Mr. Leach felt defamed by the fact that Mr. and Mrs. Simmons asked "where is this money?" Although the Board refrained from considering this suit in the misconduct phase of this hearing, the Board feels it is appropriate to consider it in the sanction phase. We find it to be a significant aggravating factor.

The Board is of the unanimous opinion that the only appropriate sanction sufficient to protect the public from Mr. Leach is revocation of his license to practice law. It is so ordered.

* * *

ENTERED this 25th day of September, 2003.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Roscoe B. Stephenson, III, Chair

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GEORGE ELRIDGE LEEDOM
RESPONDENT
VSB DOCKET NO. 01-032-1956
02-032-0968
02-032-1140
02-032-1240
02-032-1439
02-032-2170
02-032-2292
02-032-2734
02-032-2976

ORDER OF DISABILITY SUSPENSION

These matters came to be heard on August 18, 2003 upon an Agreed Disposition between the Virginia State Bar, the Respondent, George Elridge Leedom, and the Respondent's counsel, Joseph W. Kaestner, Esquire.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Thaddeus T. Crump, Lay Member, James L. Banks, Esq., H. Taylor Williams, IV, Esq., David R. Schultz, Esq., and Robert L. Freed, Esq., Second Vice-Chair, presiding, considered the matter by telephone conference. The Respondent's counsel, Joseph W. Kaestner, Esq., appeared on behalf of the Respondent. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar. The Respondent, George Elridge Leedom, did not participate.

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

I. STIPULATIONS OF FACT

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

VSB Docket No. 01-032-1956
Complainant: VSB/Holton

2. In or about November 2000, Meredith April Swoope [Swoope] met with Leedom regarding representation on an assault charge pending against her in the Juvenile and Domestic Relations District Court for the City of Richmond [Richmond case]. Leedom agreed to represent Swoope on the charge which was set to be heard on January 24, 2001. Swoope paid Leedom $250.00 for the representation. Leedom also agreed to take certain action regarding an alleged violation of a protective order pending in the Chesterfield Circuit Court against the father of Swoope's child, which was set to be heard on December 14, 2000 [Chesterfield case].

3. Swoope sent Leedom faxes on November 9, 2000, November 20, 2000 and November 27, 2000 regarding the Chesterfield case.

4. Although Swoope expected Leedom to appear in the Chesterfield case on December 14, 2000, he did not do so. The Chesterfield case was continued to February 14, 2001.

5. On or about December 14, 2000, Swoope called Leedom's office to talk with Leedom and spoke to someone named Cedric instead. Swoope asked Cedric why Leedom had not returned her telephone calls and was told Cedric would have Leedom contact Swoope. About a week later, having not heard from Leedom, Swoope again called Leedom's office and reached Cedric. Swoope again inquired why Leedom was not answering her telephone calls. Swoope was informed that Leedom was in alcohol rehabilitation and another attorney was handling his cases. Swoope then decided to obtain new counsel.

6. On or about December 29, 2000, Swoope met with and retained Sherri Thaxton, Esq. [Thaxton] to handle the Richmond case and paid Thaxton $200.00.

7. By her letter to the Juvenile and Domestic Relations District Court for the City of Richmond dated January 23, 2001, Thaxton sought a continuance of the Richmond case due to her schedule. In the letter Thaxton also stated that Leedom ". . . has apparently disappeared without leaving a forwarding address."

8. On or about the night of January 23, 2001, Swoope received a telephone call from an older man who said he worked with Leedom and was going to represent Swoope at the hearing the next day.

9. The Richmond case was continued from January 24, 2002 and heard March 15, 2001. Swoope was convicted of vandalism.

10. In or about late March 2001, Leedom telephoned Swoope and, *inter alia*, stated that he would refund to Swoope the retainer she had paid him for the Richmond case. On March 27, 2001, Swoope wrote a letter to Leedom asking him to refund the retainer by May 15, 2001 so she could pay court costs and fines associated with the Richmond case. In April Swoope saw Leedom at the Chesterfield Circuit Courthouse and Leedom told her he would send her a check.

11. In his April 3, 2001 letter in response to the bar complaint which is based upon a report from a judge of a Juvenile and Domestic Relations District Court, Leedom stated, *inter alia*:

> When I contacted [Swoope] regarding Judge Holton's letter, she told me that she had no problem, knew I had arranged for counsel, and specifically refused my offer to return the $250.00 she had paid on account towards my fee.

Swoope maintains that this statement regarding a refund is a lie.

12. In or about July 2001, Leedom did refund the $250.00 to Swoope.

13. Leedom deposited the $250.00 retainer paid by Swoope directly into his operating account.

14. Leedom has a history of being either late or failing to appear for proceedings in the Juvenile and Domestic Relations District Court for the City of Richmond. That history includes the following instances:

June 30, 1997;
Leedom failed to appear for two cases set at 9:00 a.m. and 9:20 a.m. respectively. He called the court at 9:00 a.m.

May 6, 1998;
Leedom was late for court. The court received a message from Leedom after the case was finished that he was in Chesterfield.

May 19, 1998;
Leedom was late for court. The case was a 9:45 a.m. case which was called at 9:50 a.m.

June 11, 1998;
Leedom failed to appear for a 9:15 a.m. case which was called twice. Leedom called the court and indicated that he had slept late, thought the power had gone out, and apologized.

September 1, 1998;
Leedom was late for court. Leedom called the court and Indicated he was on the way from Henrico, pavement problems.

October 2, 1998;
Leedom failed to appear as a guardian ad litem in a case which was called at 9:15 a.m. and 9:25 a.m. The case was dismissed due to lack of appearance by parties. Leedom appeared at 9:35 a.m. and apologized to the court.

October 16, 1998;
Leedom failed to appear in a case which had been continued to this date and the file indicated Leedom had been notified of the continuance date.

October 29, 1998;
Leedom failed to appear.

December 2, 1998;
Leedom was late for a case. Leedom had two cases in one courtroom at 9:00 a.m. and 9:30 a.m. respectively and he had another case in another courtroom scheduled for 9:55 a.m. The 9:00 a.m. case ran over. On Leedom's representation that the 9:55 a.m. case in the other courtroom would be short, he was allowed to go to the 9:55 a.m. case before the 9:30 a.m. case. As of 10:20 a.m. Leedom had not returned to the first courtroom for the 9:30 a.m. case. Leedom was admonished not to schedule his cases so close together. Leedom apologized to the court.

March 20, 2000;
Leedom failed to appear for a 10:35 a.m. case. Another attorney eventually appeared saying Leedom had a scheduling difficulty. The case was heard two hours late. Leedom informed the court that he was stuck in Henrico in a case which he did not have in his docket book.

15. Leedom was removed from the court-appointed list of the Juvenile and Domestic Relations District Court for the City of Richmond for, inter alia, failures to appear in court-appointed cases.

16. According to Leedom during that time, he was out of town on personal medical leave from December 8, 2000 until the beginning of February 2001. Leedom was actually in an alcoholism or substance abuse treatment program or facility during said time period.

II. NATURE OF MISCONDUCT

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

DR 2-108. Terminating Representation.
(A) (1), (2) and (C) * * *

DR 6-101. Competence and Promptness.
(B) and (C) * * *

DR 9-102. Preserving Identity of Funds and Property of a Client.
(A) (1) and (2) * * *

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a) * * *.

RULE 1.15 Safekeeping Property
(c) (4) * * *

RULE 1.16 Declining or Terminating Representation
(a) (1), (2) and (c) * * *

VSB Docket No. 02-032-0968
Complainant: Craig Sampson, Esq.

18. On September 28, 2001, in the Circuit Court for the City of Richmond, Mr. Leedom pled guilty to misdemeanor charges of trespass and destruction of property occurring on June 12, 2001. Pursuant to a plea agreement, the charges were reduced from felony indictments that charged him with burglary and grand larceny. The victim of the offenses was Mr. Leedom's girlfriend. Pursuant to the plea agreement, the imposition of sentence was suspended for a period of three years, conditioned upon Mr. Leedom's good behavior, completion of supervised probation, attendance at alcoholics anonymous, therapy with a psychiatrist, and completion of a Family Violence Counseling Prevention program.

19. On October 3, 2001, while he was on probation, Mr. Leedom was arrested again for assaulting his girlfriend, stealing her keys, and stealing her cellular telephone on October 2, 2001. He was also arrested for making lewd and threatening telephone calls to her on October 3, 2001. Following his arrest, he was held in the Richmond City Jail without bond until October 11, 2001.

20. On October 4, 2001, Mr. Leedom called his assistant and his receptionist from the jail. He instructed them to let his answering machine respond to any incoming calls, and to advise any client that came to the office that he "wasn't available." The attorney sharing office space with Mr. Leedom would say that seven of Mr. Leedom's clients came to the office during that time looking for Mr. Leedom, and that some were irate. Mr. Leedom advised the bar that no one was handling his cases during this time, and that while he was incarcerated, he missed four hearing dates for clients who had retained him, and some other court-appointed hearings.

21. On December 18, 2001, Mr. Leedom appeared in the Richmond Circuit Court on a show-cause for violating the terms of probation from his September 28, 2001 plea agreement. Court personnel smelled an odor associated with alcohol on his breath, and advised the court. Mr. Leedom was given a breath test that revealed a blood alcohol content of nearly three times the legal limit for driving. The court found that he had violated the terms of his probation, and sentenced him to twelve months in jail on each of the charges.

22. On January 14, 2002, Mr. Leedom appeared in the Circuit Court for the City of Richmond on the charges of assault and battery, petit larceny, and using obscene language. Mr. Leedom had previously been convicted of these offenses in the district court and appealed the convictions to the circuit court. The court accepted his pleas of guilty to assault and battery, and using obscene language. He pled not guilty to the charge of petit larceny, however, the court found him guilty of that offense as well. He received active jail sentences of two months on the assault and battery, and three months on the petit larceny, to be served concurrently.

23. On October 16, 2001, Mr. Leedom endorsed a release of information permitting the Virginia State Bar investigator to speak with Lawyers Helping Lawyers about Mr. Leedom. Thereafter, Mr. Leedom failed to keep several appointments with the Virginia State Bar investigator. The last appointment was scheduled for November 1, 2001. On November 1, 2001, he called the investigator to say that he was in court and that his case had not been called, but that he hoped to meet the investigator later that day. The investigator's caller ID, however, indicated that Mr. Leedom placed the call from his home.

24. Pursuant to the release executed by Mr. Leedom, the investigator spoke with Lawyers Helping Lawyers, and ascertained that Mr. Leedom had entered into a contract with Lawyers Helping Lawyers following a referral from the Richmond Juvenile and Domestic Relations District Court in 1999. That referral resulted from Mr, Leedom appearing at court with an odor associated with alcohol on his breath. He relapsed and was in violation of the contract, alcohol and cocaine abuse noted. Between 2000 and 2001, Mr. Leedom participated in a series of inpatient programs, but relapsed on each occasion.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) * * *.

RULE 1.4 Communication
(a) * * *

RULE 8.4 Misconduct
(d) and (e) * * *

VSB Docket No. 02-032-1140
Complainant: Connie Horn-St. Clair

25. On November 21, 2000, Connie Horn St. Clair (Horn) hired Mr. Leedom to represent her in a child custody matter pending in the Powhatan Juvenile and Domestic Relations District Court. Mr. Leedom's records reflect that she paid him $350 for the representation.

26. Trial was held on April 11, 2000. The court determined that Horn was an unfit mother, and awarded custody to Horn's former spouse. Mr. Leedom noted an appeal. Following a series of continuances, trial was scheduled for October 9, 2001 in the Powhatan Circuit Court. Mr. Leedom was incarcerated in the Richmond City Jail from October 3 to October 12, 2001. On October 9, 2001, the case came to trial. Horn appeared, but Mr. Leedom did not appear because of his incarceration. Having been unable to reach Mr. Leedom, Horn had no idea where he was, and asked for a continuance. The court refused, however, because of the prior continuances, and forced Horn to proceed without a lawyer. The court sustained the prior decision of the Juvenile and Domestic Relations District Court.

27. On October 10, 2001, Horn went to Mr. Leedom's office and learned for the first time that he had been incarcerated. She left a written request for the return of her file by October 17, 2001. Receiving no response, she complained to the bar on October 23, 2001. Mr. Leedom met with the Virginia State Bar investigator on November 15, 2001, and provided the file. Horn received her file after the bar investigator copied and sent it to her in December 2001.

28. Horn would say that Mr. Leedom missed several appointments, and that he had an odor associated with alcohol on his breath when he appeared in court.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence
* * *

RULE 1.4 Communication
(a) * * *

RULE 1.16 Declining Or Terminating Representation
(a) (2) and (d) * * *

VSB Docket No. 02-032-1240
Complainant: Asson Johnson

29. In 2000 and 2001, Mr. Leedom provided representation to Asson Johnson in various criminal and child support matters. Mr. Leedom would receive the fees, costs and support payments from a trust fund maintained for Mr. Johnson's benefit in the state of Ohio.

30. On September 23, 2000, Mr. Johnson was arrested in Chesterfield County and charged with two counts of misdemeanor possession of marijuana and one count of distributing marijuana to a minor, a felony. Mr. Leedom made an entry of appearance in the Chesterfield County General District Court. On November 9, 2000, the court convicted Mr. Thomas of the two misdemeanor charges and certified the felony charge to the grand jury. Mr. Leedom noted appeals of the misdemeanor convictions to the circuit court. By letter, dated December 4, 2000, the Circuit Court advised Mr. Leedom that he was counsel of record in the cases. Trial was set for February 22, 2001.

31. On February 22, 2001, the case was called for trial. Neither Mr. Leedom nor his client was present. The court issued a capias for the arrest of Mr. Thomas, and rescheduled the trial for March 12, 2001. On March 12, 2001, Mr. Johnson appeared, however, Mr. Leedom once again failed to appear. The Court called Mr Leedom, who indicated no knowledge of the trial date, and rescheduled it for March 29, 2001.

32. On March 29, 2001, Mr. Leedom and his client appeared; however, Mr. Leedom asked for more time to negotiate with the prosecutor. The Court denied his request, and Mr. Leedom entered a plea of guilty on behalf of his client. Sentencing took place on July 12, 2001, and Mr. Thomas was sentenced to 20 years in prison, with 19 suspended.

33. On April 23, 2001, pursuant to Mr. Leedom's request, Mr. Thomas' trustee obtained permission from the court to distribute $18,498.46 of Mr. Thomas' trust funds to Mr. Leedom. Of the funds, $729.21 was for the payment of fines and court costs, $6,969.25 was for the payment of child support arrearages, $1,200 was for back rent, and the remaining $10,800 was for Mr. Leedom's legal fees, $10,000 of which was for the previously referenced representation in Chesterfield County. Although the Chesterfield case was still pending at the time, and the rest of the funds belonged either to his client or other parties, Mr. Leedom deposited the entire trust fund check into his operating account. Thereafter, he transferred $6,969.25 to his trust account and made a check in the same amount to the Department of Child Support Enforcement.

34. Mr. Thomas complained that throughout the matter, Mr. Leedom failed to communicate with him or respond to his telephone calls.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(a) (1) and (2) * * *

VSB Docket No. 02-032-1439
Complainant: Alvin Scarborough

35. On September 4, 2001, Alvin Scarborough hired Mr. Leedom to represent him in a divorce and property settlement matter. He signed a fee agreement and paid Mr. Leedom $2,100 with his credit card. Mr. Leedom did not deposit the funds into his attorney trust account. A hearing was already scheduled to take place in the Richmond Circuit Court in September 2001. Mr. Leedom contacted

opposing counsel and arranged a continuance to October 5, 2001.

36. From October 3, 2001, to October 12, 2001, Mr. Leedom was incarcerated in the Richmond City Jail. On October 5, 2001, the Circuit Court for the City of Richmond called Mr. Scarborough's case. Mr. Scarborough was present, however, Mr. Leedom failed to appear. Mr. Scarborough advised the court that he had no idea where his attorney was. The court allowed him to call Mr. Leedom's office, where a staff member simply told him that Mr. Leedom was not there, and that she did not know where he was. The court denied Mr. Scarborough's motion to continue the matter, and forced him to proceed without an attorney. The court made a final ruling on the divorce that day.

37. Thereafter, Mr. Scarborough made several efforts to contact Mr. Leedom, but could not reach him. Mr. Leedom did not return his calls. During November 2001, Mr. Scarborough went to Mr. Leedom's office without an appointment, found Mr. Leedom, and asked him for a refund. Mr. Leedom wrote a note to the effect that the credit card should be credited back, but did not give his client a copy. He never told his client why he failed to appear in court.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) and (b) * * *

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(a) (1) and (2) * * *

RULE 1.16 Declining Or Terminating Representation
(d) * * *

VSB Docket No. 02-032-2170
Complainant: Beverly R. Haynesworth

38. On August 8, 2001 Beverly R. Haynesworth hired Mr. Leedom to represent her in a child custody matter. Ms. Haynesworth had already filed a petition in the Richmond Juvenile and Domestic Relations District Court, and a hearing was scheduled for September 10, 2001. The child was with the father at the time. Ms. Haynesworth wanted Mr. Leedom to take whatever action was necessary to obtain temporary custody so that she could enroll her child in the Henrico County Schools, the district where she resided. Mr. Leedom agreed to work the case for $1500. Ms. Haynesworth paid him a total of $900 between August 8 and September 4, 2001, as reflected by Mr. Leedom's receipts.

39. Prior to the hearing, Ms. Haynesworth felt that Mr. Leedom had done nothing toward her request for temporary custody or enrolling her child in the Henrico County Schools. On September 9, 2001, she spoke to Mr. Leedom, who said that he would meet her at the courthouse on the 10th. Ms. Haynesworth appeared at the hearing as scheduled. Mr. Leedom, however, failed to appear, and the case was continued to October 9, 2001.

40. Mr. Leedom told Ms. Haynesworth that he failed to appear at the hearing because of personal reasons, and offered to reduce his fee by $250. He said that he would be at the hearing on October 9, 2001, and told her to be there 15 minutes early. Once again, Ms. Haynesworth appeared at the hearing as directed, but Mr. Leedom failed to appear. (Mr. Leedom was incarcerated from October 3 to October 12, 2001.) The case was continued again to February 25, 2002. Ms. Haynesworth called Mr. Leedom everyday, but he did not return her calls. In December 2001, she called and discovered that his telephone had been disconnected..

41. On February 25, 2002, Ms. Haynesworth appeared with another attorney, and the court awarded her custody. She enrolled her child in the Henrico public schools. Until that time, her child had been enrolled in the Richmond public schools. Mr. Leedom's office had no file to return to Ms. Haynesworth, and her name was not on the client list. Ms. Haynesworth never received any refund of her $900.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) and (d) * * *

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(c) (4) * * *

RULE 1.16 Declining Or Terminating Representation
(d) * * *

VSB Docket No. 02-032-2292
Complainant: Thomas R. Duck

42. On May 31, 2001, Thomas R. Duck hired Mr. Leedom, his long-term attorney, to complete his divorce. Mr. Duck and his wife previously separated on December 10, 2000, and executed a property settlement agreement on May 29, 2001. There were no children born of the marriage. Mr. Leedom agreed to handle the matter for $464, saying that it would be a simple matter. Mr. Duck paid Mr. Leedom the $464 by check on May 31, 2001.

43. During the course of the following summer and fall, Mr. Duck would call Mr. Leedom periodically to ascertain the status of the case. Mr. Leedom would tell him that he was working on it, but that he was busy with other cases. On an unknown date before Christmas, 2001, Mr. Duck received a call from Mr. Leedom's assistant, advising him that the paperwork on his case was completed and that he needed to come to the office to sign "some papers." When

Mr. Duck went to Mr. Leedom's office, he found it closed and locked, and learned that Mr. Leedom's telephone had been disconnected. Subsequently, he ascertained that Mr. Leedom was incarcerated, and complained to the Virginia State Bar.

44. By letter, dated March 20, 2002, Mr. Leedom's attorney advised Mr. Duck that Mr. Leedom was no longer practicing law, and that he could pick up his file. Mr. Leedom's file reflected that his staff had redrafted the property settlement agreement, but that no action had been taken toward the filing of a bill of complaint for divorce, although there was a note in the file that read, "Also client (Tom) paid in full - so please draft + file divorce."

45. Mr. Duck never received a refund of his advanced fee.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) and (b) * * *

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(a) (1), (2) and (c) (2) * * *

RULE 1.16 Declining Or Terminating Representation
(d) * * *

VSB Docket No. 02-032-2734
Complainant: Carl Wells

46. On August 7, 2001, Joanne and Carl Wells hired Mr. Leedom to represent them in their efforts to obtain visitation with their grandchildren. They paid Mr. Leedom a fee of $3000 drawn on their credit card. Mr. Leedom told Mr. and Mrs. Wells that they had a good case, and that he would file a petition for visitation and joint custody. Mr. Leedom did not deposit the funds into his attorney trust account.

47. Thereafter, on several occasions Mr. and Mrs. Wells called Mr. Leedom to ascertain the status of the matter, but he did not return their calls. Toward the end of August 2001, Mr. Leedom called Mrs. Wells and told her that he had filed the petitions, but that the courts were backed up because of September 11, and that the case would be heard around Thanksgiving. Mr. and Mrs. Wells heard nothing further from Mr. Leedom. Mrs. Wells called him shortly after Thanksgiving, and Mr. Leedom said that the case would be heard on December 10. Mr. Leedom called Mrs. Wells a few days later and said that the case would not be heard on December 10, and that he was still awaiting a court date. He said that he was moving his office, and that the telephone company had "screwed up" and disconnected his telephone. He gave Mrs. Wells another telephone number, saying that he could be contacted at that number at any time.

48. Having heard nothing from Mr. Leedom, Mrs. Wells called the number around Christmas and learned that Mr. Leedom was incarcerated. She was advised to call another attorney, who promised to get back to her, but never did. Mr. and Mrs. Wells never learned whether Mr. Leedom had done anything on their behalf.

49. Mr. Leedom advised the Virginia State Bar investigator that he never filed the petitions. He said that he was released from the Richmond City Jail on March 29, 2002 and was enrolled in two different outpatient programs that he attended four times a week. He also said that he attended Alcoholics Anonymous and was scheduled to begin an anger management program.

50. The clerk of the Henrico County Juvenile and Domestic Relations District Court advised the Virginia State Bar investigator that the court was not backed up because of September 11, and that it was "business as usual."

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) and (b) * * *.

RULE 1.4 Communication
(a) * * *

RULE 1.15 Safekeeping Property
(a) (2) * * *

RULE 1.16 Declining Or Terminating Representation
(d) * * *

RULE 8.4 Misconduct
(c) * * *

02-032-2976
Complainant: Rosa M. Penaloza

51. On August 1, 2000, Rosa M. Pendaloza hired Mr. Leedom to represent her in divorce and custody matters pending in the Richmond Circuit Court. The written engagement agreement provided for a $1,500 flat fee. She paid $800 on August 7, 2000, $400 more on August 17, 2000, and an additional $600 on September 29, 2000, according to Mr. Leedom's receipts. Mr. Leedom filed a response to the husband's bill of complaint, and filed a petition for pendente lite relief. Thereafter, Ms. Penaloza had two hearings in the Richmond Circuit Court that Mr. Leedom did not attend.

52. For one of the hearings, held in April 2001, Mr. Leedom sent another attorney, Conrad Lewane, to represent Ms. Penaloza without advising her in advance. Ms. Penaloza had never met Mr. Lewane. Mr. Leedom advised the Virginia State Bar that he asked Mr. Lewane to attend because he had a hearing in another court at the same time. Mr. Lewane, however, advised the Virginia State Bar that Mr. Leedom asked him to attend because Leedom was in a treatment facility. (Mr. Leedom did advise the bar that

he was in the Harrison House treatment program in Northern Virginia from December 2000 until he was "kicked out" in March 2001 for drinking.) Mr. Leedom's request to appear was so late that Mr. Lewane had to appear in court without a necktie, drawing a comment from the bench about his attire.

53. Ms. Penaloza would say that she was unable to reach Mr. Leedom in the summer and fall of 2001. Unable to reach him, she went to his office in the fall of 2001, and was informed that he had not been in the office for days. She called his home and learned for the first time that he was incarcerated. Likewise the husband's attorney, Christian A. Parrish, said that Mr. Leedom was not responding to his correspondence concerning visitation. For this reason, he scheduled a hearing to take place on September 10, 2001. Meanwhile the guardian ad litem, Robin Morgan, prepared a consent order of visitation indicating that Ms. Penaloza was *pro se*. Although he was her counsel, Mr. Leedom endorsed the order on September 5, 2001, and forwarded it to counsel. The court entered the order on October 12, 2001.

54. On March 20, 2002, another attorney sent a letter to Ms. Penaloza, advising her that Mr. Leedom was no longer practicing law, that he could not finish her case, and that she could pick up her file from this attorney. Ms. Pendaloza retrieved her file and ascertained that her husband's attorney had sent a draft separation agreements to Mr. Leedom on August 17, 2001 and September 12, 2001. Mr. Leedom never provided Ms. Penaloza with copies of the drafts, and she had no idea that Mr. Leedom had received them. (Mr. Leedom would say that he advised her about the drafts, but that they were not what she wanted.)

55. Ms. Penaloza had to hire another attorney to complete her divorce. Mr. Leedom never refunded any of her advanced fees.

56. Mr. Leedom advised the Virginia State Bar investigator that he had been convicted in the Henrico County Circuit Court for drunken driving, but that the court held the matter over. He said that when he was discharged from the Harrison House for drinking, the court sentenced him to 20 days in jail, and that he served the time during October 2001.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) and (b) * * *

RULE 1.4 Communication
(a) * * *

RULE 1.16 Declining Or Terminating Representation
(e) * * *

RULE 8.4 Misconduct
(b) and (f) * * *

III. DISPOSITION

The facts and Rule violations set out above are true and constitute Misconduct in this and all subsequent proceedings regarding this Respondent. Counsel for the Respondent and the Virginia State Bar having advised the Board during the telephone conference that the foregoing provision is acceptable, it is the decision of the Board to accept this Agreed Disposition.

The Respondent and his counsel having agreed that Mr. Leedom does not desire to practice law at this time because he suffers from a Disability as set forth in Paragraphs 13(A) and (I)(5), Part 6, Section IV, of the Rules of the Supreme Court of Virginia, that the Respondent suffered from the same disability at all times relevant to the complaints involved in these proceedings, and the Respondent having consented to the Board entering an Order suspending his license to practice law in the Commonwealth of Virginia for an indefinite period of time because of the Disability, in accordance with Paragraph 13(I)(5),

The Respondent's license to practice law in the Commonwealth of Virginia is hereby **SUSPENDED** for an **INDEFINITE PERIOD OF TIME**, in accordance with Paragraph 13(I)(5), Part 6, Section IV of the Rules of the Supreme Court of Virginia immediately upon the entry of this Order, retroactive to May 14, 2002, when Mr. Leedom was released from jail, Mr. Leedom having not practiced law since that time.

Further, in accordance with the Agreed Disposition, all records relating to the Respondent's disability and treatment are admissible and shall be incorporated in the Board's file.

In accordance with Paragraph 13(I)(5).e.2, the Respondent may seek to terminate this Disability suspension upon application to the Board; however, the burden of proving the termination of the Disability shall be on the Respondent, in accordance with Paragraph 13(I)(5).b. In accordance with Paragraph 13(I)(5).e.2, the Board shall hold a hearing on the issue of termination of the Disability upon receipt of a request from the Respondent. The suspension shall be terminated only upon determination by the Board that the disability no longer exists. Further, in accordance with the Agreed Disposition, the Board may impose discipline for the stipulated misconduct in the event the Respondent(s license to practice law is restored. The Board, however, may also consider the finding of Disability as mitigation if it finds that the stipulated misconduct resulted from the Disability.

* * *

ENTERED THIS 19TH DAY OF AUGUST, 2003
THE VIRGINIA STATE BAR DISCIPLINARY BOARD

BY ROBERT L. FREED, ESQUIRE
SECOND VICE-CHAIR

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GREGORY CHARLES MITCHELL
VSB DOCKET NO: 01-000-1888

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board on September 17, 2003 upon an Agreement to Imposition of Reciprocal Discipline, as a result of a Rule to Show Cause and Order of Suspension and Hearing entered on August 28, 2003. A duly convened panel of the Virginia State Bar Disciplinary Board consisting of V. Max Beard, lay member, William C. Boyce, Jr., Glenn M. Hodge, H. Taylor Williams, IV, and Karen A. Gould, presiding, heard the matter. Noel D. Sengel, Senior Assistant Bar Counsel, appeared as Counsel to the Virginia State Bar ("VSB"), and David R. Rosenfeld appeared as counsel for the Respondent.

Having considered the Agreement to the Imposition of Reciprocal Discipline, the Board finds by clear and convincing evidence as follows:

STIPULATIONS OF FACTS

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

2. On February 27, 1989, Louise A. Mitchell, a resident of Virginia and the Respondent's wife, was injured when the automobile she was driving was struck from behind by an vehicle driven by an employee of R.V. Upperman & Sons, Inc. ("Upperman & Sons"). Mrs. Mitchell hired the Respondent to represent her interests in any legal action stemming from the accident.

3. A physician at Washington Circle Orthopedic Group referred Mrs. Mitchell to W.S. Medical Systems, Inc. ("W.S. Medical") for treatment of her injuries. Mrs. Mitchell signed a Patient Registration Form for W.S. Medical, indicating that her matter was a legal case and that the Respondent was her attorney.

4. In June of 1990, Mrs. Mitchell executed W.S. Medical's Authorization and Assignment Agreement ("A&A"), whereby she authorized W.S. Medical to provide the Respondent with its medical reports related to her injuries, and directed the Respondent to "pay from the proceeds of any monies recovered in [her] case to W.S. Medical Systems, Inc. for their professional services, including fees for preparation and testimony."

5. On June 19, 1990, after reviewing the A&A, the Respondent executed the document, thereby agreeing to "withhold such sums from any settlement, judgment or verdict as may be necessary to adequately protect W.S. Medical Systems, Inc." After the Respondent signed the A&A, he returned it to W.S. Medical.

6. W.S. Medical provided Mrs. Mitchell with a "Tens" unit, an electronic pain-reduction device, and the equipment that accompanies the unit. Since the first Tens unit was ineffective and Mrs. Mitchell returned it, W.S. Medical provided a second unit to Mrs. Mitchell. The cost and services provided by W.S. Medical to Mrs. Mitchell was $1,031.00.

7. On February 21, 1992, the Respondent, on behalf of his wife and himself, filed a civil suit in the District of Columbia Superior Court, styled *Mitchell, et al. v. R.V. Upperman & Sons, Inc.,* CA No. 92-2437. On April 17, 1992, Robert Boraks, Esquire filed a praecipe entering his appearance as co-counsel for Mrs. Mitchell and the Respondent.

8. A jury trial commenced on April 18, 1994. On April 22, 1994, a judgment was entered for $150,000.00 in favor of Mrs. Mitchell and $20,000.00 in favor of the Respondent, plus interest at five percent per annum. On May 18, 1994, the defendants filed a motion for a new trial, for remittitur, and for a judgment notwithstanding the verdict. In June of 1994, a member of the Respondent's staff informed W.S. Medical about the April, 1994 verdict.

9. From 1994 through 1999, W.S. Medical called the Respondent on numerous occasions to learn the status of the matter. From the end of June of 1994 until March of 1995, the Respondent failed to return telephone calls from W.S. Medical.

10. On April 19, 1995, following a hearing on the defendant's motions, the trial court vacated in part the original judgment against Upperman & Sons. Simultaneously, Upperman & Sons was ordered to pay $125,000.00 to Mrs. Mitchell and $20,000.00 to the Respondent. Additionally, Upperman & Sons was ordered to make interest payments on the amended judgment award until it was fully satisfied. The interest was to accrue beginning on April 22, 1994, the date of entry of the original judgment.

11. On April 25, 1994, Upperman & Sons' insurance provider, Travelers Property Casualty ("Travelers"), mailed the Respondent two checks. The first check was in the amount of $125,000.00 and the second was in the amount of $20,000.00. On May 19, 1995, the Respondent deposited both insurance checks into his IOLTA account at Crestar Bank, Account Number 202381544.

12. At the time he received the checks, the Respondent did not notify W.S. Medical that the original judgment had been vacated in part and that a modified judgment had been entered. Likewise, he failed to inform W.S. Medical that he had received the two checks from Travelers in satisfaction of the judgment award.

13. A handwritten, unsigned disbursement sheet dated May 30, 1995 reflects the Respondent's receipt of the $125,000.00 check and the $20,000.00 check from Travelers. The disbursement sheet also reflects a distribution of $36,250.00 to Mr. Boraks and $108,750.00 to Mrs. Mitchell.

14. On May 30, 1995, the Respondent issued to Mr. Boraks a trust account check in the amount of $36,250.00 as payment for Mr. Boraks' legal services. On June 2, 1995, the Respondent issued a trust account check in the amount of $108,750.00 to Mrs. Mitchell. As of June 5, 1995, the balance in the Respondent's trust account was $95.38 without any funds having been sent to W.S. Medical in payment of Mrs. Mitchell's bill.

15. On August 14, 1995, Travelers issued an interest payment to the Respondent and Mrs. Mitchell in the amount of $7,250.00. The payment of $7,250.00 in interest is not reflected on any disbursement sheet. However, Mrs. Mitchell approved a loan in that amount to the Respondent's business.

16. On March 23, 1995, the Respondent informed W.S. Medical that Mrs. Mitchell's lawsuit was being appealed. The Respondent and/or members of his staff continued to lead W.S. Medical to believe that Mrs. Mitchell's lawsuit remained on appeal form March of 1995 until April of 1998. In fact, no appeal was ever taken from the 1994 judgment or the amended 1995 judgment.

17. On or about April 3, 1998, the Respondent made efforts to return the Tens unit to W.S. Medical and requested that Mrs. Mitchell's outstanding bill be reduced. On or about February 19, 1999, W.S. Medical agreed to reduce Mrs. Mitchell's outstanding bill from $1,031.00 to $550.00, which the Respondent agreed to pay. However, after agreeing to pay $550.00, the Respondent sent no money to W.S. Medical. Subsequent to the initiation of the Bar complaints, the Respondent paid W.S. Medical the amount owed.

18. There was a Bar complaint filed in this matter in the District of Columbia as well as in Virginia. The complaint was litigated in the District of Columbia and by Opinion Order dated May 8, 2003, the District of Columbia Court of Appeals suspended the Respondent's license to practice law in the District of Columbia for a period of ninety (90) days. The Respondent and the Bar agree that the same sanction should be imposed in Virginia.

STIPULATIONS OF MISCONDUCT

The aforementioned conduct on the part of the Respondent constitutes a violation of the following Disciplinary Rules and Rules of Professional Conduct:

DR 9-102. Preserving Identity of Funds and Property of a Client.
(A) (1), (2) * * *

RULE 1.15 Safekeeping Property
(b) * * *

DR 7-102. Representing a Client Within the Bounds of the Law.
(A) (5) * * *

RULE 4.1 Truthfulness In Statements To Others
(a) * * *

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

RULE 8.4 Misconduct
(c) * * *

Upon consideration of the Agreement to Imposition of Reciprocal Discipline before this panel of the Disciplinary Board, it is hereby ORDERED that, pursuant to Part 6, ¶ IV, § 13(I)(6) of the *Rules of Virginia Supreme Court* the license of Respondent, Gregory Charles Mitchell, Esquire, to practice law in the Commonwealth of Virginia shall be, and is hereby, suspended for a period of ninety days, commencing August 28, 2003, the date of the original Rule to Show Cause and Order of Suspension and Hearing.

SO ORDERED, this 25th day of September, 2003.

By: Karen A. Gould
1st Vice Chair of the Disciplinary Board

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BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
HELENA DAPHNE MIZRAHI
VSB DOCKET NUMBER 00-042-1528

ORDER

On May 16, 2003 this matter came before a duly constituted panel of the Virginia State Bar Disciplinary Board upon certification of the Fourth Committee, Section II. The Panel consisted of Karen A. Gould, 2nd Vice Chair, Chester J. Cahoon, Jr., lay member, Bruce T. Clark, Larry B. Kirksey and Richard J. Colten. The Respondent appeared and was represented by Darrin P. Sobin. Yvonne L. Weight, Special Assistant Bar Counsel, appeared for the Virginia State Bar.

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 or her ability to be impartial in the proceeding. Each member, including the chair, verified that they had no known conflicts

I. FINDING OF FACTS

1. At all times relevant hereto, Helena Daphne Mizarhi (hereinafter the Respondent), has been an attorney licensed to practice law in The Commonwealth of Virginia.

2. The Respondent represented Landon T. A. Summers in Fairfax County Circuit Court post-divorce custody and visitation litigation. The Complainants in this matter, Joseph A. Condo and David Roop represented Marcia L. B. Summers in that litigation, with Mr. Roop acting as lead counsel. At the time of the events giving rise to these proceedings, issues concerning the prior order of the court addressing custody and visitation were on appeal to Virginia's appellate court.

3. On October 21, 1999, Circuit Court Judge Stanley P. Klein issued a Rule to Show Cause against Marcia L.B. Summers at the request of the Respondent and her client. The Rule was authorized by Judge Klein in a letter opinion to coun-

sel dated October 19, 1999. In this letter, Judge Klein held that his court retained the authority to issue certain sanctions if Ms. Summers was found to be in violation of the court's prior custody and visitation order, but as this order was on appeal, the court could not consider amending the terms of the prior custody and visitation order without leave of the appellate court.

4. In his letter of October 19,1999, Judge Klein advised counsel that while The Rule was returnable to November 5, 1999, he was of the view that a hearing would, "clearly take longer than thirty minutes." Under the local rules of the Fairfax Circuit Court, motions expected to take longer than thirty minutes were not to be heard on normal motions days, but were to be set for hearing when more time was available. Judge Klein therefore encouraged counsel to contact the calendar control judge to get a trial date for a hearing on the Rule. Judge Klein also noted to counsel that as the Rule could not be heard on the Show Cause return date in reference to consideration of a change in the prior custody order unless and until leave of the Virginia Court of Appeals was obtained thereby allowing further hearings in the Circuit Court of Fairfax addressing these issues, counsel needed to give due regard to the time which would be required for one or both parties to move the appellate court for such leave.

5. On October 28, 1999, Mr. Roop wrote to the Respondent discussing several matters involving the case. One issue addressed was the need to contact the court's Calendar Control to obtain a date for hearing the pending Rule. In a response letter dated October 29, the Respondent replied that the hearing on the Rule had been set for November 5th and asked Mr. Roop to clarify his request to go to Calendar Control.

6. On November 3, 1999, the Respondent and Mr. Roop held one or more telephone conversations (Mr. Roop thought there might have been more than one phone conversation that day) addressing the issue of continuance. According to Mr. Roop, the Respondent advised him that she was unavailable to go to Calendar Control prior to November 5th although she gave no firm reason why. She further advised Mr. Roop that if he desired a continuance, he could present his request and the reasons for it on the 5th prior to the hearing. The Respondent had a different recollection of these conversations and stated that she advised Mr. Roop that she would agree to such a continuance. The Board find that the weight of the evidence prevails in favor of Mr. Roop's version of the Respondent's position because the Respondent followed up the conversation(s) with a letter addressed to Mr. Roop, (VSB Exhibit 8) dated November 3, 1999, which clearly demonstrates that as of the 3rd, she was not in agreement with a continuance. The contents of that letter are as follows:

Dear Mr. Roop:

In response to our telephone conference today, Judge Klein's Order dated October 19, 1999, wherein Ms. Summers is ordered to appear in the Fairfax Circuit Court on November 5, 1999, at 10:00 a.m., prevails over the Judge's letter that you reference. Therefore, it appears that your client must appear in Fairfax Circuit Court on November 5, 1999, at 10:00 a.m., before Judge Klein.

As you know, as Ms. Summer's attorney, you received Judge Klein's Order several weeks ago. Presumably, you informed your client of it. In addition, your client was personally served on November 2, 1999, as ordered. Therefore, I look forward to seeing you and your client on November 5, 1999, as ordered.

Additionally, I do not foresee the hearing taking longer than 30 minutes. The 13 exhibits that you wish to introduce are not relevant. In addition, the Judge has had these exhibits as an attachment to Ms. Summer's motion to bar entry of the Rule since September 1999.

7. Upon receiving the above letter on November 3rd, Mr. Roop faxed a notice to the Respondent that he intended to obtain a hearing/trial date from the Calendar Control Judge the following morning, November 4th. (Respondent's Exhibits, page 139.) The Respondent responded, via a letter faxed to Mr. Roop, which stated that she was unavailable the following morning. (Respondent's Exhibits, page 138.) In this letter, she gave no reason for her unavailability. She again advised Mr. Roop that if he desired a continuance, he could request it when the parties appeared before Judge Klein on November 5th. She did not advise Mr. Roop in this letter that she was in favor of a continuance, as she testified was the case at the hearing.

8. On November 4, 1999, in accordance with the notice sent to the Respondent, Mr. Roop was heard by Judge Leslie Alden, sitting as calendar control judge. Mr. Roop advised Judge Alden of the Respondent's objections and gave her a copy of the Respondent's letter which had been faxed to him the previous day. Judge Alden set March 29, 2000, as the trial date and continued all matters, including the Rule to Show Cause, to such date. Late in the afternoon of the 4th, Mr. Roop faxed a letter to the Respondent advising her of the trial date set by Judge Alden. (Respondent's Exhibits at pages 141-42.) Both the Respondent and her client, whom she called as a witness on her behalf, acknowledged that they knew the continuance had been granted, because of this November 4th fax.

9. Due to the short passage of time between the entry of Judge Alden's order of continuation and the preparation of the Motions Day docket for November 5th, the clerk of the court failed to remove the Rule to Show Cause from the following day's schedule where it was shown as being set before Judge Marcus D. Williams. Nevertheless, all parties were aware prior to the morning of the 5th that the case was not to be heard that date.

10. Notwithstanding the above, the Respondent and her client appeared in Fairfax County Circuit Court on Friday, November 5, 1999. Mr. Roop, understanding that the matter was no longer on the Friday docket, was not present. However, Mr. Condo, Mr. Roop's partner who was aware of the case and its status, was by chance in Judge

William's courtroom that morning in reference to another matter. Mr. Condo noted that the Respondent and her client were there.

11. Mr. Condo approached the Respondent and advised her that the date for the Rule and other matters had been continued to March 29, 2000, and, therefore, the matter should not have remained on the Friday motion's docket. Mr. Condo testified that the Respondent told him she understood that a trial date had been set, but she nonetheless intended to proceed before Judge Williams.

12. When the case was called, Mr. Condo testified that the Respondent advised Judge Williams that The Rule had been properly issued and served upon the Complainant and the Complainant had failed to appear. It was Mr. Condo's recollection that the Respondent did not inform Judge Williams of Judge Klein's directive to get a trial date nor did she advise Judge Williams that Judge Alden had already set a trial date continuing the matter in its entirety to March 29, 2000. The Respondent and her client testified that she did inform Judge Williams of the continuance, but she was seeking a different, earlier date than had been set the day before.

13. In response, Mr. Condo advised Judge Williams of Judge Klein's directive to counsel and of Judge Alden's decision to set a trial date. Upon hearing this from Mr. Condo, Judge Williams directed that the Respondent and Mr. Condo needed to go to Judge Alden's courtroom to resolve the matter. Mr. Condo had another matter requiring his attendance in Judge William's courtroom and as the Respondent indicated that she was unwilling to wait for him, Mr. Condo made a call to his office advising Mr. Roop to hurry to the courthouse to take care of the matter. As Mr. Roop had not anticipated being called to court that date, he was not appropriately dressed and therefore needed to return to his home to change before his appearance. For this reason, it was mid to late morning before he arrived at the court. At that time, Mr. Condo was still in Judge William's court and was unaware that Mr. Roop had arrived and was present in another courtroom.

14. Mr. Roop, having arrived at court, appeared with the Respondent before Judge Alden. According to the Respondent, before she was even permitted to speak, Judge Alden stated that she had previously set the hearing for March 29, 2000 and was unwilling to reopen the matter that morning. Judge Alden advised the Respondent that if she objected to what had occurred, the only appropriate action for the Respondent would be to file a motion for reconsideration in which case she (the Judge) would agree to reconsider the matter. Mr. Roop recalled the argument before Judge Alden differently and recalled that the Respondent presented her argument as to why the matter should be heard sooner than March 29th.

15. Believing the issues to have been now resolved, Mr. Roop left the courthouse, never having seen Mr. Condo. The Respondent, however, did not do leave the courthouse, choosing instead to see if she could arrange a meeting with the Chief Judge, The Honorable Bruce Bach, in order to seek his advice on what had happened and in the Respondent's words, "what she had done wrong." The Respondent was not able to see Judge Bach, but was able to speak with a clerk who, having heard the Respondent's story approached Judge Klein and obtained initial consent from Judge Klein to hear her request to the matter that same day even though the matter had already been heard that morning by both Judge Williams and Judge Alden. The Respondent had not requested that Judge Klein hear the matter, however, when the Respondent was advised that Judge Klein was willing to make himself available to hear the matter, she did not then advise the Judge's clerk that the matter had already been considered that very morning by two other judges. Instead, in compliance with the instructions of Judge Klein, she called Mr. Roop and left a message instructing him to again return to the courthouse and to report to Judge Klein's courtroom. The same message was conveyed by note to Mr. Condo, who was still in Judge Williams' courtroom.

16. Following the completion of his appearance before Judge Williams, Mr. Condo went to Judge Klein's courtroom. Once again, the Respondent restated her motion to be immediately heard on the Rule. According to the testimony of Mr. Condo, the Respondent failed to advise Judge Klein that the matter had been before both Judge Alden and Judge Williams earlier the same day. Mr. Condo himself did not yet know that Judge Alden had denied the Respondent's motion only an hour or so earlier.

17. Judge Klein, being unaware that Judge Alden had already ruled in the same matter just hours before, but recognizing that Judge Alden had ruled the previous day, declined to act in the matter and again advised the Respondent that the only proper thing for her to do would be to file a motion before Judge Alden for reconsideration of the scheduling order entered on the 4th.

18. The testimony of Mr. Condo stating that the Respondent had never mentioned to Judge Klein or to him that she had appeared earlier that same day before Judge Alden was supported by that of Mr. Roop. Having received the call to return to the courthouse, Mr. Roop arrived sometime around 1:30 p.m. While entering the court from the parking garage, he ran into Mr. Condo who had just left the hearing with the Respondent and Judge Klein. Being unaware that Mr. Roop had already been to the court and gone, Mr. Condo believed he was there for the first time in response to the call placed to him early that morning. As both Mr. Roop and Mr. Condo described it, Mr. Condo expressed strong displeasure with what he believed was Mr. Roop's failure to handle the matter in an appropriate manner. It was only after Mr. Roop explained to Mr. Condo that he had been present in Judge Alden's courtroom, following which Mr. Condo advised Mr. Roop what had just transpired in Judge Klein's court, that they both understood what had occurred.

19. At some point following the hearing before Judge Klein, the Respondent went to the Clerk's Office to obtain a copy of Judge Alden's Order of November 4th continuing the case. When it was provided to her, the Respondent related that she was upset to see that the order recited that she had "failed to appear" the previous day before the

Calender Control Judge. In response, and for reasons which are difficult for the Panel to fathom, the Respondent then elected to file with the clerk an Order she had apparently prepared in anticipation of having the Rule heard on the 5th. This Order, which was endorsed by the Respondent and her client, contained serious misrepresentations of fact. For example, it recited that Ms. Summers failed to appear on November 5th, although in reality, she was under no obligation to do so as the case had been continued. In addition, the Order sought a transfer of custody from Ms. Summers to the Respondent's client even though the Respondent was fully aware that this issue was on appeal and as a matter of law was not a relief that could be granted by the circuit court absent leave of the Court of Appeals. No copy of the order as filed was sent to opposing counsel nor were they advised such a filing had been made.

II. FINDINGS OF THE PANEL

While the Panel is not unsympathetic to the Respondent and her apparent frustration and concerns in having her client's matter continued for an extended period, the Panel believes there is a definite line which exists between counsel's duty to zealously represent the interests of a client and counsel's duty as an officer of the court. In this case, whether well intentioned or not, the Panel finds the line between these sometimes conflicting duties was crossed.

While Respondent acknowledges that she had been advised by Mr. Roop in his letter of November 4th and again by Mr. Condo when he saw her in Judge William's court on the morning of the 5th that the case had been continued and while she represents that she appeared at the court on November 5th for the sole purpose of verifying the status of the case, and to be assured she was in attendance in the event the matter was not in fact continued, her prior correspondence addressed to Mr. Roop and the fact that she arrived in possession of an Order endorsed by both her and her client finding Ms. Summers in contempt for failure to appear on that date, November 5, 1999, run contrary to the Respondent's representations. We find that the Respondent's attempt to advance her case before Judge Williams, knowing it had been continued the previous day, and her failure to fully advise the judge of the events which had transpired before Judge Alden the previous day, along with her subsequent presentation before Judge Klein, at which time she failed to clearly advise the court or Mr. Condo that Judge Alden had only hours before refused to rehear the issue of scheduling the Summers case, constitute misrepresentation in violation of DR 1-102 (A) (1) and DR 1-102 (A) (4) which read as follows:

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

The Panel further finds that the filing of the Order in the Court's file on the afternoon of November 5th after the issue of the continuance had been addressed not once, but three separate times before three separate judges, which order contained both material misrepresentations of fact and sought relief which as a matter of law, the Respondent knew were not within the authority of the circuit court to grant in light of the pending appeal, violates DR 1-102 (A) (1), DR 1-102(A) (4) and DR 7-102 (A) (2) which read as follows:

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

DR 7-102. Representing a Client Within The Bounds of The Law.
(A) (2) * * *

FOR THE REASONS SET FORTH ABOVE, respondent not having any prior disciplinary record, it is hereby **ORDERED** that the Respondent shall receive a **PUBLIC REPRIMAND** effective upon entry of this Order.

* * *

ENTER THIS ORDER THIS 22nd day of May, 2003.
VIRGINIA STATE BAR DISCIPLINARY BOARD

BY: Karen A. Gould, Second Vice Chair

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BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
THOMAS C. SPENCER
VSB DOCKET NO. 98-080-0660

ORDER SUSTAINING MOTION TO STRIKE

On August 22, 2003, a hearing in this matter was held before a duly convened panel of the Virginia State Bar Disciplinary Committee consisting of Robert L. Freed, Chair; W. Jefferson O'Flaherty (lay member), Bruce T. Clark, James L. Banks, Jr. and H. Taylor Williams, IV. The Chair polled the members of the Panel as to whether any of them was conscious of any personal or financial interest or bias which would prevent him from fairly and impartially hearing the matter. Each member, including the Chair, answered in the negative.

The Respondent appeared in person represented by R. Paul Childress. The Virginia State Bar was represented by Edward L. Davis, Assistant Bar Counsel.

* * *

Upon completion of the Bar's case, counsel for the Respondent moved to strike the evidence presented by the Bar. In considering such a motion, the Panel is to determine if sufficient evidence was presented by the Bar that would under any set of circumstances support a conclusion that the Respondent engaged in the alleged misconduct that is the subject of the motion to strike. In undertaking such consideration, however, the Panel must not lose sight of the fact that no misconduct can be found unless the Bar has carried its burden by presenting clear and convincing evidence of the same.

In the cases at hand, the Panel finds that the Bar has failed to carry this burden. The documentary evidence and testimony presented by the Bar in these matters standing alone is found by the Panel to be insufficient to support a finding of misconduct. Through no fault of the Bar, the evidence which may have allowed the Bar to carry its burden is not available. Of the three key witnesses to these matters, two are known to be

dead. The current whereabouts of the third are unknown. Based upon the information provided, it appears that he too may be deceased.

Whether the testimony of these missing witnesses would have vindicated the Respondent or faulted him will be forever unknown. The Panel has no authority to speculate upon such issues.

Accordingly, it is ORDERED that this matter be DISMISSED.

* * *

ENTER: the 27th day of August, 2003
Robert L. Freed, Second Vice Chair

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District Subcommittees

BEFORE THE DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
KRISTINA MARIE K. FITZGERALD
VSB DOCKET NO. 03-032-0801

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND

On October 2, 2003, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Richard Newman, John Daly and William Viverette, Chair.

Pursuant to Part 6, Section IV, Paragraph 13.G.4. of the Rules of the Virginia Supreme Court, the Third District, Section II, Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. Kristina Marie K. Fitzgerald (Ms. Fitzgerald) was licensed to practice law in the Commonwealth Virginia on May 18, 1988, and at all times relevant to these proceedings, Ms. Fitzgerald was and attorney in good standing to practice law in the Commonwealth of Virginia.

2. Robert J. Merritt (Mr. Merritt) fell on September 12, 2000, at Auditorium Auto Parts, which is insured by CNA Insurance Company. Mr. Merritt suffered long bone fractures of his left femur and right humerus.

3. In October 2000, Mr. Merritt and Kristina Marie K. Fitzgerald (Ms. Fitzgerald) met about his personal injury case, and Ms. Fitzgerald agreed to represent Mr. Merritt on a contingency fee basis.

4. Mr. Merritt signed a retainer agreement with Ms. Fitzgerald and medical release forms for the VA and MCV Hospitals records for her.

5. In the early spring of 2001, Mr. Merritt told Ms. Fitzgerald to contact CNA Insurance to get the $5000.00 med-pay funds, but Ms. Fitzgerald did not do so at that time. Ms. Fitzgerald told Mr. Merritt that she felt that accepting money from the insurance company would show fault on Mr. Merritt's part.

6. From the early spring of 2001 until August 2002, Mr. Merritt called Ms. Fitzgerald's office to speak with her but was unable to do so. He estimates the number of calls during this time at 30 to 50 calls.

7. Ms. Fitzgerald admits that from the time she was retained in October 2000, until the time she filed the demand letter on November 12, 2001, most of Mr. Merritt's communication with her office was with her legal assistant, Renee Hardy.

8. On November 12, 2001, Ms. Fitzgerald sent the demand letter for the $5000.00 med-pay funds. According to that demand letter, the case had a settlement value of $300,000.00, and Mr. Merritt's medical specials total $69,769.38

9. By letter of February 15, 2002, CNA Insurance Company wrote to Ms. Fitzgerald acknowledging receipt of her demand letter and declining payment. According to CNA Insurance Company, the insuring agreement stated clearly that the medical expenses would be paid "provided that the expenses are incurred and reported to us within one year of the date of the accident." The demand for the med-pay funds by Ms. Fitzgerald was made on November 12, 2001, over one year from Mr. Merritt's September 2000, fall at Auditorium Auto Parts.

10. Ms. Fitzgerald told the VSB Investigator that she thought there was a five-year contract on the med-pay and not the one-year statute of limitations that was stated in the insurance contract.

11. By letter of February 15, 2002, CNA Insurance Company wrote to Ms. Fitzgerald acknowledging receipt of her demand letter and declining payment. On February 20, 2002, Mr. Fitzgerald's legal assistant, Renee Hardy, wrote to Mr. Merritt advising that CNA denied the claim.

12. This letter to Mr. Merritt also stated that, if he wanted Ms. Fitzgerald to file suit, Mr. Merritt would have to pay expenses and filing fees in advance. According to a handwritten note on a copy of that letter provided to the bar, Mr. Merritt agreed to provide Ms. Fitzgerald with "1/2 of everything."

13. Ms. Fitzgerald asserts that she also told Mr. Merritt that, in order to prevail, he would need a different statement from the doctor in order to proceed. No record of a letter to that effect has been provided by Ms. Fitzgerald.

14. On May 13, 2002, Ms. Fitzgerald told Ms. Ardy Kidd (Ms. Kidd), legal assistant to Benjamin H. Hansel II (Mr. Hansel), Regional Counsel for the Department of Veterans Affairs, that it was no longer cost effective for Ms. Fitzgerald to pursue Mr. Merritt's claim. During the telephone call of May 13, 2002, Ms. Fitzgerald also provided the med-pay information to the Department of Veterans

Affairs even though the claim had been denied, and she had been notified that any demand after September 12, 2001, was not timely.

15. The Department of Veterans Affairs verified the med-pay information with Ms. Fitzgerald on July 2, 2002, and then filed a claim for the med-pay funds. By letter of July 18, 2002, CNA notified the Department of Veterans Affairs by letter to Ms. Kidd of their previous denial of Mr. Merritt's claim and the reason for that denial.

16. On June 14, 2002, Ms. Fitzgerald wrote to Mr. Hansel and stated that her office no longer represented Mr. Merritt; however, she did not send Mr. Merritt a letter to that effect until August 25, 2002. On September 4, 2002, Ms. Fitzgerald wrote the Department of Veterans Affairs that her office no longer represented Mr. Merritt.

17. Ms. Fitzgerald admits that she did not visit the scene of the accident nor did she interview any witnesses.

II. NATURE OF MISCONDUCT

Assistant Bar Counsel, Linda Mallory Berry, and the Respondent, Kristina Marie K. Fitzgerald, agree that the above factual stipulations could give rise to findings of violations of the following Disciplinary Rules.

Rule 1.3 Diligence
(a) * * *

Rule 1.4 Communication
(a) * * *

Rule 1.16 Declining or Terminating Representation
(b) (1), (2), (3), (4), (5), (6) * * *
(c) * * *

Rule 4.1
(a) * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a PUBLIC REPRIMAND and the Respondent is hereby so reprimanded.

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THIRD DISTRICT, SECTION II, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By William Viverette, Subcommittee Chair

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BEFORE THE THIRD DISTRICT COMMITTEE,
SECTION I, OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ANN BRIDGEFORTH TRIBBEY
VSB DOCKET NO. 04-031-0042

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND)

On August 13, 2003, a show cause hearing was held before a duly convened district committee panel consisting of Edwin A. Bischoff, Esquire, Ray P. Lupold, III, Esquire, Marcus D. Minton, Esquire, Melvin E. Rosen, Jr., lay member, and H. Martin Robertson, Esquire, presiding.

The Respondent, Ann Bridgeforth Tribbey, appeared *pro se*. Barbara Ann Williams appeared as counsel for the Virginia State Bar.

The Respondent was required to appear and show cause why the district committee should not issue a Public Reprimand for the Respondent's alleged failure to comply with a term previously imposed in connection with a Private Reprimand with Terms. On May 26, 2002, the district committee issued the Private Reprimand with Terms pursuant to an agreed disposition in VSB Docket Nos. 99-031-2269, 00-031-0017 and 00-031-1180. In those matters, the Respondent admitted she had violated DR 9-102(A)(1) and (2), as well as 9-102(B)(4). These trust account rules relate to preserving and disbursing client and other funds held in escrow.

One of the terms imposed in connection with the Private Reprimand required the Respondent to Ahire and pay the cost of a Certified Public Accountant to review [her] financial records for the past year (June 2001 – July 2002) to determine whether or not [she was] maintaining [her] financial records in compliance with the Rules of Professional Conduct relating to trust accounts. The term also required the Respondent to furnish the certified public accountant a copy of the Rules of Professional and Conduct to trust accounts and further provided: "Upon completion, a report should be generated and forwarded to **Assistant Bar Counsel Charlotte P. Hodges on or before March 25, 2003**" (emphasis in the original).

Based upon the evidence the Respondent and the bar presented at the show cause hearing, including the testimony of Frank C. Deal, a certified public accountant and partner in the accounting firm of Burgess & Co., the district committee found that the Respondent failed to prove by clear and convincing evidence that she had complied in a timely fashion with the term requiring an audit of her trust account records and generation of a report documenting the audit findings.

Wherefore, pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Third District Committee, Section I, of the Virginia State Bar hereby serves upon the Respondent a Public Reprimand, the alternate sanction provided in the Private Reprimand with Terms issued on May 6, 2002.

* * *

THIRD DISTRICT COMMITTEE, SECTION I, OF THE VIRGINIA STATE BAR

By H. Martin Robertson, Esquire, Vice Chair

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