

## Disciplinary Actions

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

| Respondent's Name         | Address of Record (City/County) | Action                    | Effective Date  | Page |
|---------------------------|---------------------------------|---------------------------|-----------------|------|
| <u>Disciplinary Board</u> |                                 |                           |                 |      |
| David Bafumo              | Franklinton, NC                 | 2 Year Suspension         | June 18, 2002   | 1    |
| Paul Cornelius Bland      | Petersburg                      | 4 Month Suspension        | August 16, 2002 | 2    |
| Norvill Sherman Clark     | San Jose., CA                   | Revocation                | April 26, 2002  | 6    |
| Beverly Diane Crawford    | Richmond                        | Revocation *              | May 17, 2002    | 8    |
| Luther Cornelius Edmonds  | Norfolk                         | Public Reprimand          | May 15, 2002    | 9    |
| Luther Cornelius Edmonds  | Norfolk                         | 6 Month Suspension        | April 26, 2002  | 9    |
| Kenneth Harrison Fails II | Washington                      | Revocation *              | March 22, 2002  | 13   |
| James Daniel Kilgore      | Wise                            | Revocation                | April 26, 2002  | n/a  |
| Mary Meade                | Falls Church                    | 13 Month Suspension *     | May 17, 2002    | 17   |
| David Nicholls Montague   | Hampton                         | 90 Day Suspension         | June 28, 2002   | n/a  |
| Martin G. Mullen          | Alexandria                      | 4 Year Suspension         | May 6, 2002     | 19   |
| Oscar De Leon Noblejas    | Burke                           | Revocation                | April 26, 2002  | 21   |
| Ellen Compere Reynolds    | Danville                        | Public Reprimand          | April 6, 2002   | 22   |
| Thomas E. Smolka          | Cambria, CA                     | Revocation                | June 27, 2002   | n/a  |
| Terry Lee Van Horn        | Richmond                        | 3 Year Suspension w/Terms | May 27, 2002    | 24   |
| Patricia Maria Wright     | Portsmouth                      | Public Reprimand          | May 30, 2002    | 29   |

### District Subcommittees

|                        |              |                          |                |    |
|------------------------|--------------|--------------------------|----------------|----|
| Learned David Barry    | Richmond     | Public Reprimand w/Terms | June 26, 2002  | 31 |
| William August Boge    | Manassas     | Public Reprimand         | May 29, 2002   | 32 |
| Alexandra Divine Bowen | Richmond     | Public Reprimand w/Terms | April 22, 2002 | 33 |
| Mark Thomas Crossland  | Woodbridge   | Public Reprimand         | May 13, 2002   | 35 |
| Roger Cory Hinde       | Chesterfield | Public Reprimand w/Terms | June 25, 2002  | 36 |
| Isaac Scott Pickus     | Richmond     | Public Reprimand w/Terms | June 26, 2002  | 37 |
| Dominick Anthony Pilli | Fairfax      | Public Reprimand w/Terms | June 12, 2002  | 39 |

## Disciplinary Board

### BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
DAVID BAFUMO, ESQUIRE  
VSB Docket # 00-051-1567

#### ORDER

Came this matter to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Fifth District Committee Section I. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Richard J. Colten, Esquire, Karen A. Gould, Esquire, Roscoe B. Stephenson III, Esquire, Thaddeus T. Crump, Lay Member and William M. Moffet, Esquire, presiding.

Noel D. Sengel, Esquire, representing the Bar, and the Respondent, David Bafumo, Esquire, by his counsel Timothy J. Battle, Esquire, presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed

Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

- At all times relevant hereto, the Respondent, David Bafumo, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
- The Respondent represented Seyed Hassan Ghasemi Hosseini, the complainant in a divorce action, *Hosseini v. Mashalian*, In Chancery No. 157702, in the Fairfax County Circuit Court. The Respondent filed a Bill of Complaint in the case on September 23, 1998. On March 9, 1999, the Respondent filed a Final Decree, VS-4 form and a notarized Waiver of Service of Process and Notice (hereinafter Waiver), which appeared to have been signed before a Notary Public by the defendant, Afsane Mashalian, on December 24, 1998. Ms. Mashalian's signature on the Waiver was notarized by Azar M. Menhaji, a staff person at Tate & Bywater, the law firm where the Respondent was employed. The Final Decree was entered on May 28, 1999 by the Honorable Circuit Court Judge Stanley P. Klein, awarding custody of the couple's children to the Respondent's client.
- Sometime later, because the Respondent was unavailable, Mr. Ghasemi hired new counsel in order to enforce the custody provisions of the Final Decree in his divorce. On

or about July 16, 1999, an emergency custody hearing was held in the Circuit Court of Fairfax County. Afsane Mashalian attended the hearing and denied having signed the Waiver. She filed a Bill of Complaint seeking to invalidate the decree of divorce.

4. By letter dated July 29, 1999, the Respondent informed his former client, Mr. Ghasemi, that he had become aware that Ms. Mashalian had not signed the Waiver before a Notary Public. The Respondent noted that under Disciplinary Rule 4-101(D)(2), he, the Respondent, was obligated to reveal to the Court any information which establishes that a client has perpetrated a fraud upon a tribunal. The Respondent requested that Mr. Ghasemi himself inform the Court of the fraud, or he, the Respondent, would have to do so.
5. By letter dated August 10, 1999, the Respondent wrote to Judge Stanley P. Klein, who had presided over the Ghasemi divorce, to inform him that the Respondent's former client Mr. Ghasemi "had perpetrated a fraud upon the Court in connection with the case." The Respondent stated that Mr. Ghasemi had admitted that Ms. Mashalian had not signed the Waiver in front of a Notary Public. The Respondent stated further that, "The Waiver of Service and Notice was signed and notarized in Fairfax County on December 24, 1998, and mailed to his office."
6. On November 16, 1999, a hearing was held on Ms. Mashalian's Bill of Complaint seeking to invalidate the divorce decree. Testimony was taken regarding the signing and notarization of the Waiver. At that hearing, the Respondent testified that he had instructed his client in person and Ms. Mashalian by a cover letter attached to the Waiver that Ms. Mashalian had to sign the Waiver in front of a Notary Public. The Respondent testified that he first learned that Ms. Mashalian had not signed the Waiver before a Notary Public when he talked to counsel for Mr. Ghasemi after the July 16, 1999 hearing. The Respondent also testified that he spoke with Mr. Ghasemi and Mr. Ghasemi assured him that Ms. Mashalian had signed the Waiver, and had done so before witnesses, though not in front of a Notary Public because of time constraints.
7. Azar M. Menhaji, an attorney admitted to practice in New Jersey and an applicant to the Virginia State Bar, was an administrative employee at Tate & Bywater. At the same hearing, Ms. Menhaji testified that she notarized Ms. Mashalian's signature without Ms. Mashalian appearing before her to sign the document in her presence or to acknowledge her signature in anyway. At the conclusion of the hearing, after the testimony of additional witnesses, the court determined that Ms. Mashalian had signed the Waiver, though not in front of a Notary Public, and awarded Mr. Ghasemi \$800.00 in attorney's fees for his defense in the matter, to be paid by Ms. Mashalian.
8. The Respondent now admits that he allowed Ms. Menhaji to notarize Ms. Mashalian's signature on the Waiver without Ms. Mashalian appearing before Ms. Menhaji to sign or acknowledge her signature. The Respondent notes that he and Ms. Menhaji both believed the signature to be genuine. The Respondent further admits that the statements he made in his letter of August 10, 1999 to Judge Klein were misleading, and that he testified falsely about the notarization of the Waiver during the November 16, 1999, hearing.

9. Mitigating factors recognized by the ABA include the following:
  - (A) The Respondent has no prior disciplinary record.
  - (B) At the time of events outlined above, the Respondent had been actively engaged in the practice of law for little more than a year. Not long after these events, the Respondent stopped practicing law, and obtained other non-law related employment.
  - (C) The Respondent has made full and free disclosures during the course of the investigation and has exhibited a cooperative attitude during these proceedings.
  - (D) The Respondent is remorseful for his behavior in this instance and accepts full responsibility for his misconduct.
  - (E) The Respondent has witnesses who would testify to his good character and reputation.

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

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

Upon consideration whereof, it is ORDERED that the Respondent shall receive effective this date a two-year suspension of his license to practice law.

\* \* \*

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

\* \* \*

Enter this Order this 18th day of June, 2002.

VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: William M. Moffet, Chair



BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

In the Matter of  
**PAUL CORNELIUS BLAND**  
VSB Docket Nos.: 99-031-0907  
99-031-0921  
99-031-1708  
00-031-2092  
00-031-3456

ORDER

This matter came on April 23, 2002, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Third District, Section One Subcommittee. The Agreed Disposition was con-

sidered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Anthony J. Trenga, Theophilise L. Twitty, Robert L. Freed, Chester J. Cahoon, Jr., and Randy I. Bellows, presiding.

Charlotte P. Hodges, representing the Bar and Respondent, Paul C. Bland, appearing pro se, presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition. The Board incorporated two changes which included the stipulation of facts and rule violations pertaining to VSB Docket #00-031-3456 (Anthony Thomas), as they were outlined in the Certification dated and the alternate disposition should Respondent fail to fulfill any of the terms, which were ratified by Assistant Bar Counsel and Respondent.

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

1. At all times relevant hereto, the Respondent, Paul Cornelius Bland (hereinafter Bland or Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

**VSB DOCKET NO. 99-031-0907 (Birchett)**

2. On August 14, 1996, Complainant met with Beverly McLean Murray (hereinafter Murray) at Respondent's law office. On that day he signed a fee agreement to have Respondent's law firm represent him in a divorce. On August 19, 1996, Complainant wired \$1,000 to Respondent's escrow account per instructions he was given.
3. On August 22, 1996, and September 23, 1996, Respondent received two \$500 checks made payable to him from funds held in escrow for Complainant before some or all of the fee had been earned.
4. At the time Respondent withdrew the money, the only entry on the work sheet for Complainant's case was for the preparation of the Bill of Complaint on September 11, 1996.
5. Depositions were scheduled for August 25, 1997, at opposing counsel's office. Murray, who could not make the depositions, made arrangements for Bland to handle them in her absence. Bland, however, failed to show for the depositions and did not advise Complainant that he would not be attending. Thereafter, he told Complainant he knew nothing about the scheduled depositions. A notation in opposing counsel's file indicates Bland called to advise opposing counsel he might have to continue the deposition that day.
6. A short time after the aborted depositions, Murray left Respondent's law office and he became solely responsible for handling Complainant's divorce matter.
7. On several occasions, Complainant attempted to contact Respondent about his case via letter and phone. However, he was unsuccessful in reaching Respondent.

8. Respondent did not refund any money to Complainant in this matter.

The Disciplinary Board finds by clear and convincing evidence that such conduct on the part of Paul Cornelius Bland constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

**DR 6-101.** (C) \* \* \*

**DR 9-102.** (A)(1) and (2), (B)(3) and (4) \* \* \*

**VSB DOCKET NO. 99-031-0921 (Moorer)**

11. Sometime around mid 1987, Bessie Moorer (hereinafter Moorer or Complainant) hired Respondent to help settle her late uncle's estate.
12. The initial work Respondent handled for Complainant involved a partition suit, which took place approximately three years after she hired him.
13. After the sale of the home was accomplished, Respondent disbursed the proceeds to the heirs with the exception of Milton Scott (hereinafter Scott), a brother of the deceased. Family members advised Respondent that Scott had disappeared some 18-20 years earlier.
14. In 1991, Bland advised Moorer that he would file a Bill of Complaint to declare Scott legally dead, at which point he would be able to make the disbursements of Scott's share of the uncle's estate.
15. Thereafter, Respondent neglected to diligently pursue the suit to declare Milton Scott legally dead. Although the partition suit and sale of the home was concluded in 1991, the Bill of Complaint Respondent advised Moorer he would file was not filed until sometime in 1995.
16. Following the filing of the suit, there were inordinately lengthy gaps of time between each of the steps Respondent took to move the suit along.
17. Complainant and other heirs of the estate Respondent was handling attempted to contact Respondent on numerous occasions over the eight year period in which he was supposedly working on the Bill of Complaint to declare Scott dead.
18. Respondent failed to adequately communicate with Moorer or any of the other heirs about the status of the case he was handling despite numerous phone calls and letters by the Complainant and her siblings.
19. During the representation of Moorer, Respondent loaned Complainant approximately \$650 to pay bills and have her car repaired.

The Disciplinary Board finds by clear and convincing evidence that such conduct on the part of Paul Cornelius Bland constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

**DR 5-103.** (B) \* \* \*

**DR 6-101.** (B) and (C) \* \* \*

**VSB DOCKET NO. 99-031-1708 (Charles)**

20. On January 13, 1997, Respondent was appointed to represent James Charles (hereinafter Charles or Complainant) on a delayed appeal of convictions in the Petersburg Circuit Court, after his previous attorney failed to file the appeal.
21. Respondent properly and timely filed the Appeal to the Court of Appeals of Virginia and a Motion for Reconsideration by three judge panel on behalf of Complainant. The Court of Appeals denied the petition for appeal on October 1, 1997, and the request for three judge panel was denied on October 29, 1997.
22. On November 1, 1997, Complainant sent Respondent a letter requesting that he appeal his case to the Supreme Court of Virginia.
23. Respondent failed to appeal Complainant's case to the Supreme Court of Virginia.
24. During the time Respondent represented Complainant, he failed to adequately communicate with him regarding the status of his case, despite Complainant's attempts to contact him.

The Disciplinary Board finds by clear and convincing evidence that such conduct on the part of Paul Cornelius Bland constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

**DR 6-101.** (B) and (C) \* \* \*

**VSB DOCKET NO. 00-031-2092 (VSB/DC Bar)**

25. In June 1990, Respondent began handling a case for his cousin, Gloria Wright (hereinafter Wright), who had been injured on her job in Washington, D.C.
26. Respondent, who is also licensed to practice in the District of Columbia, took the case believing it would settle.
27. Wright provided Respondent with the name and address of Dynaelectric as the responsible party for her injuries, as well as a contact person with the FECA division at the Department of Labor (DOL).
28. In August 1990, Wright wrote to DOL and identified Respondent as her attorney. In February, 1991, DOL responded by letter, sending information about Wright's claim, including information about her medical providers, and offering additional assistance if needed.
29. Respondent did not respond to DOL until August 21, 1991, when he sent a one line letter identifying himself as Wright's attorney.
30. By April of 1992, Respondent had taken no action on Wright's claim. He had not filed a lawsuit, nor had he attempted to contact her medical providers.
31. Respondent was unsure of the address, and the spelling of the defendant company's name. Therefore, he filed suit in

the Circuit Court for Fairfax County on May 6, 1992, and in the Circuit Court for the City of Richmond on May 18, 1992. He then advised Wright and DOL that the lawsuits had been filed.

32. At the request of Dynaelectric's counsel and without first consulting his client, Respondent agreed to non-suit the Richmond lawsuit in August 1992 and proceed with the Fairfax case. Afterward, he did not inform his client about the dismissal.
33. Dynaelectric's counsel represented to Respondent that Dynaelectric was not present at the time of the accident and pressed Respondent to dismiss the lawsuit against Dynaelectric. A representative from Cafritz Management Company, the building manager made a similar representation to Respondent.
34. In October, without conducting further discovery and fearing sanctions, Respondent sent a pleading to non-suit the Fairfax action to Dynaelectric's counsel, who refused to sign it, because he believed that plaintiff was only entitled to one non-suit by right, and that one had already been granted in the Richmond case.
35. Defense counsel insisted upon a dismissal of the case with prejudice. Respondent agreed, again without seeking his client's permission or informing her about the dismissal.
36. In April 1993, Respondent informed his client that the Fairfax action had been non-suited because Dynaelectric was not present on the date of the accident. He advised her that he would file a new lawsuit in Superior Court in the District against Donahue, the contractor renovating the office, and Cafritz. The lawsuit was filed in May 1993.
37. Defendant Cafritz sought discovery in the form of requests for production of medical records and interrogatories from Wright in August 1993.
38. Respondent filed incomplete and unverified answers and failed to produce the requested medical reports. He did not advise his client the information had been requested, nor did he seek her help in obtaining it.
39. In January 1994, after deposing Wright, Defendant Cafritz threatened to seek sanctions if the case was not dismissed. Therefore, without his client's knowledge or consent, Respondent agreed to a dismissal of Cafritz with prejudice.
40. In late 1993, and early 1994, Respondent communicated with Wright infrequently. He gave her last minute notice of a scheduled independent medical exam and of her need to obtain her medical records. He did not inform her that defendant Donahue moved for summary judgement or that Respondent had filed a response on her behalf one month late.
41. Defense counsel for both defendants (Donahue & Dynaelectric) continued to press Respondent to no avail for complete interrogatory answers from Wright and for medical reports so that the nature of their client's involvement and the extent of plaintiff's medical damages could be determined.

42. In late August 1994, Dynalectric filed a motion for judgement on the pleadings for summary judgement to which Respondent did not respond and filed a motion to compel discovery which the Court granted. At that time, Respondent informed Wright that Dynalectric had been brought into the lawsuit, however, he did not inform her that she had no legal recourse against Dynalectric or why.
43. Following the August motions, Respondent became even more unresponsive to Wright's case. He submitted interrogatory answers that were not signed by his client; he attended a scheduled mediation on November 8, 1994 without full preparation; he did not attend the second deposition of Donahue, and he did not prepare and circulate a pretrial statement to opposing counsel in January 1995 as required by the Court's scheduling order.
44. The week before the pretrial conference set for Monday, January 23, 1995, Respondent received notice of a hearing scheduled for the same day in a case in federal court in the Eastern District of Virginia.
45. On the Friday before the pretrial conference, Respondent called opposing counsel and advised him that Wright would provide him with her medical reports and that Respondent would be unable to attend the pretrial conference.
46. He faxed a letter to Wright informing her that it was appropriate for him to withdraw from the case, citing a conflict in his schedule and the distant location of his office.
47. On the morning of the pretrial conference, Respondent placed a telephone call to the chambers of the presiding judge and sought to withdraw from the case. When his request was rejected by the Court, Respondent did not appear for the pretrial conference.
48. The conference went forward resulting in the dismissal of the case.

The Disciplinary Board finds by clear and convincing evidence that such conduct on the part of Paul Cornelius Bland constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

**DR 2-108.** (C) and (D) \*\*\*

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

**DR 7-101.** (A) (1) and (3) \*\*\*

**VSb DOCKET NO. 00-031-2092 (Thomas)**

49. Respondent represented Anthony Thomas (hereinafter Thomas or Complainant) at a criminal trial in the Petersburg Circuit Court in October 1998. Thomas was found guilty, and on November 23, 1998, Respondent filed a Notice of Appeal with the Court of Appeals.
50. On March 24, 1999, Complainant wrote Respondent requesting a copy of the petition for appeal. On April 1, 1999, Respondent wrote to Complainant advising him the petition had not yet been prepared. On May 3, 1999,

Complainant wrote again to Respondent and asked for a copy of the petition for appeal.

51. Respondent filed the petition on June 16, 1999, but did not forward a copy of the petition to Complainant.
52. The Court of Appeals denied Complainant's appeal on September 9, 1999. On October 1, 1999, Respondent attempted to send Complainant a copy of the notice at the Mecklenburg Correctional Center, where he was no longer housed. The letter was returned to Respondent notifying him Respondent was no longer at that facility.
53. On October 7, 1999, Respondent filed a petition for appeal with the Supreme Court of Virginia, which was denied on January 14, 2000.
54. On February 18, 2000, Respondent once again wrote to Complainant at the Mecklenburg Correctional Center to advise him that his appeal to the Supreme Court was denied. This letter was also returned to Respondent and placed in Complainant's file.
55. Respondent would argue that following the return of the second letter, his office contacted the Department of Corrections, which confirmed Complainant's new address.
56. During the time he prepared Complainant's appeals to the Court of Appeals and the Supreme Court, Respondent failed to adequately communicate with Complainant.
57. Complainant discovered after eight (8) months and many attempts to contact Respondent, that his appeal to the Supreme Court had been denied.

The Disciplinary Board finds by clear and convincing evidence that such conduct on the part of Paul Cornelius Bland constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

**DR 6-101.** (C) and (D) \*\*\*

Upon consideration hereof, it is **ORDERED** that Respondent comply with the following terms:

1. **Respondent shall be suspended from the practice of law for a period of four (4) months beginning August 16, 2002**, and shall not accept any new clients between the date of the acceptance of this agreement by a panel of the Virginia State Bar Disciplinary Board and August 16, 2002, who require anything more than consultations and/or the preparation of documents.
2. Respondent agrees to hire a law office management consultant (approved by the Virginia State Bar) to help organize his practice. **The consultant should be hired and in a position to complete his/her work prior to Respondent's return from suspension.** Respondent shall pay all costs associated with the consultant.
3. Respondent shall enroll and attend four (4) hours of Continuing Legal Education Credits in state Civil Procedure, which four (4) hours shall not be applied toward your annual Mandatory Continuing Legal Education requirements. **You are to certify in writing your com-**

**pliance with this term directly to Assistant Bar Counsel Charlotte P. Hodges on or before April 24, 2003.**

4. Respondent shall enroll and attend two (2) hours of Continuing Legal Education Credits in federal Civil Procedure, which two (2) hours shall not be applied toward your annual Mandatory Continuing Legal Education requirements. **You are to certify in writing your compliance with this term directly to Assistant Bar Counsel Charlotte P. Hodges on or before January 24, 2003.**
5. Respondent shall enroll and attend two (2) hours of Continuing Legal Education Credits in Appellate Advocacy or Procedure, which two (2) hours shall not be applied toward your annual Mandatory Continuing Legal Education requirements. **You are to certify in writing your compliance with this term directly to Assistant Bar Counsel Charlotte P. Hodges on or before January 24, 2003.**
6. Respondent shall enroll and attend two (2) hours of Continuing Legal Education Credits in a Real Property course which covers partition suits, which two (2) hours shall not be applied toward your annual Mandatory Continuing Legal Education requirements. **You are to certify in writing your compliance with this term directly to Assistant Bar Counsel Charlotte P. Hodges on or before April 24, 2003.**
7. Respondent shall enroll and attend two (2) hours of Continuing Legal Education Credits in trust account and/or client fund management, which two (2) hours shall not be applied toward your annual Mandatory Continuing Legal Education requirements. **You are to certify in writing your compliance with this term directly to Assistant Bar Counsel Charlotte P. Hodges on or before October 24, 2002.**
8. Respondent shall contact the Virginia Law Foundation and obtain a copy of the publication, *Lawyers and Other People's Money*. You are to obtain a copy of this publication by **June 24, 2002, and certify in writing your compliance with this term directly to Assistant Bar Counsel Charlotte P. Hodges on or before June 24, 2002.**
9. You are to provide the Virginia State Bar with a written office policy outlining your procedures for accepting incoming clients and opening files for new cases, for docketing and tracking filing deadlines in cases, and for handling incoming client calls and returning those calls. **You are to provide a copy of this policy to Assistant Bar Counsel Charlotte P. Hodges on or before June 24, 2002.**
10. You will be placed on probation for a period of one (1) year from the period of the end of your suspension (December 16, 2002). During this probationary time period, you shall not engage in any professional misconduct as defined by the Rules of Professional Conduct. Any final, non-appealable determination of misconduct determined by any District Committee, the Disciplinary Board or a Three-Judge panel to have occurred during said one

year period shall be deemed a violation of the terms and conditions of this Agreed Disposition. Any currently pending matters are excepted from this agreement.

If Respondent fails to fulfill any of the terms outlined in the Agreed Disposition, the Board will impose, and Respondent will agree to an eighteen (18) month suspension.

The court reporter for this hearing was Tracey J. Stroh, Chandler & Halasz, Inc.

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

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Enter this Order this 26th day of April, 2002.

VIRGINIA STATE BAR  
DISCIPLINARY BOARD

By:  
Randy I. Bellows  
2nd Vice Chair



BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

IN THE MATTER OF  
**NORVILL SHERMAN CLARK**  
VSB Docket No. 02-000-2153

OPINION

On the 26th day of April 2002, this Show Cause Hearing was held before a panel of the Board, consisting of William C. Boyce, Jr., Chester J. Cahoun, Frank B. Miller III, Gordon P. Peyton, Jr., and Roscoe B. Stephenson III, Acting Chair. The Court Reporter was Donna Chandler of Chandler & Halasz, Post Office Box 1644, Richmond, Virginia 23218-1644. The Respondent appeared in person, *pro se*, and the Bar was represented by Edward L. Davis, Assistant Bar Counsel.

The Show Cause hearing was heard pursuant to the "Rule to Show Cause and Order of Suspension at Hearing" from the Virginia State Bar Disciplinary Board entered March 29, 2002, suspending the license of Respondent on the grounds that Respondent had been convicted of a crime, as defined by Rules of Court, Part 6, Section IV, ¶13(A), by reason of his conviction, based on his guilty plea to misdemeanor charges in the Circuit Court of Raleigh County, West Virginia, of forging and uttering stolen checks, on December 14, 2001, Case Number 01-F-180-H. The felony charges then pending against Respondent were dismissed as part of the plea bargaining.

Respondent admitted that he has not practiced law in Virginia since 1981<sup>1</sup> and since 1993 in California where he was also licensed until he surrendered his license following his arrest and sentencing for forging and uttering checks belonging to his father.<sup>2</sup> Respondent has not petitioned the Supreme Court of California for reinstatement of his license.

The Respondent advised that, in 1993, following his arrest, he entered a long term treatment center for substance abuse,

where he remained for five years. Following discharge, he moved to the State of West Virginia, where his mother lived. At the time of his discharge from the long-term facility, Respondent advises that he did not understand the need for aftercare and, after working in the State of West Virginia for approximately three years, relapsed into substance abuse. After so relapsing in May 2001, Respondent committed the offenses for which he was charged and convicted. After completing treatment in two facilities, Respondent advises that he has been free from drugs and has been participating in both Narcotics Anonymous and Alcoholics Anonymous and that he planned to continue his participation on a regular basis.

Respondent further advised that he has been employed locally in West Virginia since his rehabilitation.<sup>3</sup> He advises that he now has “checks” in his lifestyle to make sure that the compulsion to engage in drugs will not occur again. He explained that helping others in recovery helps him and that, without this activity, “. . . you can kiss my life goodbye.”

The Respondent was very candid in admitting that he was not current on his dues or his continuing legal education requirements in the Commonwealth of Virginia. He thought he had completed almost eight hours of CLE courses.

Respondent further advised that he wishes to activate his Virginia license so as to be able to “waive” into the State of West Virginia where he hoped to assist Appalachian Rural Legal Aid of West Virginia.

The Board was impressed with the fact that Respondent had paid approximately \$1,300.00 back of the \$2,100.00 stolen through the forged checks and that Respondent is performing approximately thirty hours per week of volunteer work in Ridgewood, West Virginia with the Peer Recovery Network.

The Board was impressed with the candor and forthrightness of the testimony of the Respondent, especially the fact that he felt a Suspension of his license to practice law in the Commonwealth of Virginia for a period of two years would be appropriate. Respondent felt that he would not be in condition to practice law for that period of time.<sup>4</sup>

Based on the testimony of Respondent and the Exhibits introduced in evidence at the hearing, the Board was of the opinion that Respondent had not shown cause why his license to practice law in the Commonwealth of Virginia should not be further suspended or revoked.

In deliberating whether to further suspend or revoke the license of Respondent to practice law in the Commonwealth of Virginia, the Board considered the evidence that Respondent, in California, forged and uttered checks belonging to his father, Christopher Clark, with whom he was living at the time, and in the State of West Virginia, forged and uttered checks belonging to James Argent, for whom he performed certain work in Bekley, West Virginia, both victims are persons who were close to Respondent and who placed trust in him.

After considering all of the facts introduced at the hearing, including the testimony of Respondent and the exhibits tendered by both parties, the Board is of the opinion and doth ORDER that the license to practice law in the Commonwealth of Virginia of Respondent be and the same is hereby REVOKED.

In revoking the license to practice law in the Commonwealth of Virginia of Respondent, the Board considered the nature and circumstances of the Misconduct, along with the severity thereof. The Board further considered the character, maturity and experience of Respondent at the time the offenses were committed.<sup>5</sup>

The Board was further impressed with the information contained in letter received from the employer of Respondent and the punishment undergone for the offenses committed. The Board is not unaware of the fact that Respondent has also committed offenses in Raleigh County, West Virginia for which sentencing had not occurred at the time of the hearing. Petitioner appeared sincere, frank and truthful in presenting and discussing factors relating to the crimes which has committed in the States of California and West Virginia. His candor was admirable.

The Board felt Revocation was more appropriate than a suspension for a number of reasons. Respondent has not practiced law in any state, since 1993 and, by his own admission, was not current in his continuing legal education. For this reason, the Board was concerned about his familiarity with the Rules of Professional Responsibility and his proficiency in the practice of law.

The Board noted that, despite five years of treatment for his addiction in the State of California following the theft of money from his father, Respondent, in the State of West Virginia, succumbed once again to the addiction and stole money from one close to him. The Board, is of the opinion that while Respondent has admirable goals and is performing admirable community service at this time, Respondent should come to the Supreme Court and this Board to prove that he has done what he said he was going to do.

\* \* \*

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13.K.(10) of the Rules of the Supreme Court.

So ORDERED, this 20th day of May, 2002.  
Virginia State Bar Disciplinary Board  
By: Roscoe B. Stephenson, III  
Acting Chair

FOOTNOTES \_\_\_\_\_

- 1 Petitioner advised that his license in Virginia has been on “inactive” status since that time.
- 2 While the Order of the Supreme Court of California (State Bar Court Case No. 93-Q-15992) accepting Respondent’s resignation is dated April 13, 1994, the Transmittal of this license was marked “received” by the Supreme court of California on November 3, 1993. (VSB Exhibit 4) This Exhibit 4 also contains documents from the Municipal Court Southern Branch showing Respondent made a Nolo Contendere plea to the charges of forging and uttering.
- 3 The Board received in evidence, without objection, as Respondent Exhibit 2, a letter from Elizabeth Hanna, Secretary, Richwood City Building Commission. This Exhibit was also considered by the Board in its deliberations.
- 4 Respondent was placed on probation by the Circuit Court of Raleigh County, West Virginia for a period of two years, effective December 14, 2001, as his penalty for the crimes of which he was convicted.
- 5 According to the documents, Respondent was born on July 8, 1952.



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

BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

IN THE MATTER OF  
BEVERLY DIANE CRAWFORD  
VSB Docket No. 98-032-1130

ORDER OF REVOCATION

THIS MATTER came on January 25, 2002, and again for further proceedings on May 17, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board ("Board"), comprised of John A. Dezio, Chair, Chester J. Cahoon, Jr., Lay Member, Bruce T. Clark, Richard J. Colten, and Peter A. Dingman, pursuant to a Subcommittee Determination (Certification) from the Virginia State Bar Third District, Section 2, Subcommittee. At the first hearing on this matter, on January 25, 2002, Beverly Diane Crawford ("Respondent") appeared in person and at the hearing which was conducted on May 17, 2002, the Respondent did not appear after her request for a continuance had been denied. The Respondent, through these proceedings, has not been represented by counsel, with the exception that she had an attorney previously move for a continuance prior to the January hearing. That lawyer did not enter a general appearance on behalf of the Respondent. The Virginia State Bar appeared by counsel, Harry M. Hirsch, Deputy Bar Counsel.

The matter was called for the first hearing on January 25, 2002, at 9:00 a.m., in the Supreme Court of Virginia Building, Hearing Room A, Richmond, Virginia. The Respondent did not answer the call of the docket, and the Clerk repaired to the hallway and called her name three times. There was no response from the Respondent or her representative. However, at 9:04 a.m., the Respondent entered the hearing room and was present until the hearing was continued during the proceedings. Respondent had filed two prior motions for a continuance of this hearing, one on January 22, 2002, and the second on January 24, 2002. Both motions were denied. The Respondent addressed the Board and stated that she had no witnesses and that she was prepared to proceed at that time. The Chair then swore the Court Reporter, Victoria V. Halasz, Chandler and Halasz, Inc., Post Office Box 9349, Richmond, Virginia 23227 (phone number: 804/730-1222), and polled the members of the Board sitting for this hearing as to whether any of them had any personal or financial interest which would interfere with or influence their unbiased determination of these matters. Each member of the Board, including the Chair, responded in the negative. Thereafter, the Bar called its first witness, Eric T. Hill, who submitted to direct examination. Part way through cross-examination, the Respondent asked for a recess and then moved for a continuance based upon her feeling ill. At 10:25 a.m., the matter was continued to May 17, 2002, at which time the Board reconvened with the same Board members present.

The matter, after due notice, was again called on Friday, May 17, 2002, at the State Corporation Commission, Courtroom C, in Richmond, Virginia. There was no answer by the Respondent to the calling of the docket, and Respondent's name was called three times in the hallway at 9:05 a.m. Again, there was no answer by the Respondent or a representative.

The Clerk called the Respondent's name in Courtroom B as well, and still there was no answer. Respondent's Motion for a further continuance, filed with the Board on May 16, 2002, had been denied and the matter proceeded. The Bar's witnesses returned and the Bar was again represented by Harry M. Hirsch, Deputy Bar Counsel. All exhibits submitted by the Bar were admitted into evidence, and further testimony and argument was taken before the identical members of the Board who were present at the January 25, 2002, hearing. At this time, the Court Reporter was Jennifer L. Hairfield, also employed by the registered professional reporting firm of Chandler and Halasz, Inc., located at Post Office Box 9349, Richmond, Virginia 23227 (phone number: 804/730-1222).

Additional testimony was taken from Linda W. Carpenter, custodian of the Commissioner of Accounts' records, Fletcher D. Watson, Commissioner of Accounts for the Allegheny County Circuit Court, William T. Stone and Eric T. Hill, who was briefly recalled for further testimony. It appeared from the testimony and the exhibits introduced into evidence that the Respondent, Beverly Diane Crawford, represented the Estate of George D. Hill, Jr., as well as the Executrix of the same Estate, Gladys Hill Johnson, now also deceased. It was also proved by the Bar, by clear and convincing evidence, that all accountings of the Estate, with the exception of the second such accounting, were filed late, incomplete, and each with numerous errors and/or omissions. The evidence further established, by clear and convincing evidence, that the Commissioner of Accounts filed several delinquency reports with the Circuit Court. Three Show-Cause Rules were entered by the Circuit Court, and the Respondent failed to address or remedy the exceptions to the accountings filed by the Commissioner of Accounts. The exceptions included issues involving attorneys' fees found to be unreasonable and excessive, based on services rendered, Executrix fees, which were unjustified, and failure to account for estate property having a balance of approximately \$80,000 in value. The evidence further established that the final accounting was defective, and there has not yet, nine and three-quarters years after the qualification of the Executrix (August 6, 1992), been a final distribution of the estate to Eric T. Hill. It should be noted that in or about October 1996, the Circuit Court for Allegheny County ordered that the remaining assets of the Estate of George D. Hill, Jr., be distributed to Eric T. Hill. As of May 17, 2002, Mr. Hill testified he has not yet received the residual of the estate.

The Board unanimously finds that the Bar failed to prove by clear and convincing evidence that the Respondent, Beverly Diane Crawford, violated DR7-105(A) and that charge is therefore dismissed. The Board unanimously found that the Bar sustained its burden, by clear and convincing evidence, that the Respondent, Beverly Diane Crawford, violated DR2-105(A)-A *lawyer's fees shall be adequately explained to the client*. Although the Respondent had been admonished numerous times by the Commissioner of Accounts regarding the unreasonableness of the fees charged by the Respondent to the Estate, she ignored the admonitions and failed to respond or remedy the problem. The Commissioner of Accounts testified that the fees charged, in excess of \$21,000, were "unconscionable." The Board further unanimously finds that the Respondent, Beverly Diane Crawford, violated DR6-101(B)-A *lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client*. It is obvious from the testimony and exhibits that the evidence clearly and convinc-

ingly established that the Estate has not yet been properly administered and distributed. The administration of the Estate has been pending for nine and three-quarters years. Throughout the handling of the administration of the Estate, the Respondent failed to file accurate or timely accountings. Property remains unaccounted for, and the October 19, 1996, Order from the Allegheny Circuit Court has not yet been complied with.

**IMPOSITION OF SANCTIONS**

The Board took into consideration all of the evidence in the instant matter as well as the prior disciplinary record of the Respondent. There have been two prior private reprimands and two prior public reprimands issued against the Respondent. The Board further took into consideration the ABA sanction guidelines as well as the Respondent's unwillingness to cooperate with the disciplinary system, and specifically the Board, in this instant matter. The Show Cause Rule entered on January 29, 2002, by this Board based upon Respondent's failure to comply with a prior Order entered by the Board is found to be moot and is thereby dismissed.

Accordingly, it is ORDERED that the license to practice law in the Courts of this Commonwealth heretofore issued to Beverly Diane Crawford be, and the same hereby is REVOKED effective May 17, 2002.

It is further ORDERED that costs shall be assessed against the Respondent in accordance with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13(k)(10), and the Respondent shall comply therewith.

ENTERED this 11th day of June, 2002.  
 VIRGINIA STATE BAR DISCIPLINARY BOARD  
 By: John A. Dezio, First Vice Chair



**BEFORE THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD**

IN THE MATTER OF  
**LUTHER CORNELIUS EDMONDS**  
 VSB Docket No. 98-022-2497

**ORDER AND OPINION**

This matter came before the Virginia State Bar Disciplinary Board for hearing on April 26, 2002, before a duly convened panel of the Board consisting of Thaddeus T. Crump, Lay Member, J. Rudy Austin, Robert L. Freed, Joseph R. Lassiter Jr., and William M. Moffet, presiding, pursuant to a certification of the Second District, Section II Subcommittee of the Virginia State Bar served on the Respondent, Luther Cornelius Edmonds (the "Respondent"), on August 1, 2001.

Richard E. Slaney ("Assistant Bar Counsel") appeared as Counsel for the Virginia State Bar (the "VSB"). Respondent appeared *pro se*. The court reporter for the proceeding, Valerie L. Schmit, RPR, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by Mr. Moffet, the Chair of the Board. All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. The Chair

polled the Board members and determined that no member had a conflict of interest that would preclude him from serving.

The exhibits presented by Assistant Bar Counsel on behalf of the VSB were admitted into evidence as Exhibits 1 through 17 without objection. The exhibits presented by Respondent were admitted as Exhibits 2 through 4 without objection and 5 over objection.

As Respondent's Answer filed in the above referenced matter admitted almost all of the allegations of fact set out in the Certification, very little of the evidence presented was in controversy.

The evidence may be summarized as follows:

1. At all times material to this hearing, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent formerly served as a Judge of the Norfolk Circuit Court and resigned his judgeship during a hearing on charges against him held before the Commonwealth of Virginia Judicial Inquiry and Review Commission (the "JIRC"). Respondent became involved in a dispute with the other judges of the Norfolk Circuit Court regarding bonds posted by bondsmen in the Norfolk Circuit Court. During a heated discussion, one of the judges accused Respondent of having a relationship with a certain Ms. Battle, a bondswoman. The alleged conflicts of interest arising out of Respondent's handling of bond cases involving Ms. Battle led to a the JIRC inquiry. As a result of these events, Respondent resigned his position as a circuit court judge.
3. Respondent thereafter filed a civil suit (civil action no. 2:97cv364) (the "JIRC Suit") in the United States Federal District Court for the Eastern District of Virginia (the "Federal Court") against eight of his former judicial colleagues (the "Norfolk Judges"), Albert Teich, Clerk of the Norfolk Circuit Court ("Teich"), JIRC and its former chairman, and Reno Harp III, former Counsel to JIRC (collectively, the "Defendants"). The JIRC Suit consisted of eight counts presenting claims regarding the motivation and conduct of the persons who brought certain matters to the attention of JIRC, who testified in its proceedings, or who conducted its proceedings. The relief sought in the JIRC Suit included compensatory damages of Forty Million and 00/100 Dollars (\$40,000,000.00), punitive damages of Ten Million and 00/100 Dollars (\$10,000,000.00), injunctive relief requiring that Respondent be reinstated as a state circuit court judge, and Respondent's attorney's fees and costs in bringing the JIRC Suit.
4. The Defendants moved to dismiss the JIRC Suit on several grounds. Following the filing of written briefs and oral argument, the Honorable Robert E. Payne ("Judge Payne") ruled: "Having sought to discern the basis for Edmonds' claims, the Court concludes that they are highly suspect, if not entirely lacking in merit. However, it is not necessary to reach the merits of Edmonds' federal claims because the Court is without jurisdiction to entertain them." *Edmonds v. Clarkson, et al.*, 996 F.Supp. 541 (E. D. Va. 1998). Judge Payne held that an established constitutional principle known as the Rooker-Feldman Doctrine clearly precluded

the Federal Court from addressing Respondent's constitutional claims that were asserted or could have been asserted in state court. Essentially, federal district courts cannot act as appellate courts to review constitutional claims that are inexorably intertwined with state court decisions. Judge Payne found that Respondent could not short-circuit the state judicial review proceedings by resigning (without presenting any of his constitutional claims to JIRC or the Virginia Supreme Court) and by then filing suit in federal district court on constitutional grounds attacking his "forced" resignation. Judge Payne also held that, as the Federal Court had no federal jurisdiction in this matter, it had no supplemental jurisdiction over related state law claims made by Respondent.

5. After the JIRC Suit was dismissed, the Defendants filed a motion for sanctions pursuant to Rule 11 and for attorney's fees pursuant to 42 U.S.C. Section 1988. In analyzing the JIRC Suit under the objective test of Rule 11, Judge Payne found the claims against Teich had no basis in law or in fact, and that the claims against the remaining Defendants had no basis in law. He noted Respondent did not even attempt to distinguish the relevant case law, and that a reasonable investigation of the law would have shown the JIRC Suit to be baseless under the Rooker-Feldman Doctrine. Judge Payne found several counts failed to set forth any cognizable federal or state law claims, and the principal relief sought (reinstatement as a state circuit court judge) was clearly not available from a federal forum. Judge Payne also found each of Respondent's state law claims lacked any basis in state law. In a separate analysis within the same opinion, Judge Payne found the JIRC Suit was filed and prosecuted for an improper purpose (for harassment or some purpose other than to vindicate rights through the judicial process). In an opinion dated April 7, 1998, Judge Payne awarded Rule 11 sanctions in the amount of One Thousand and 00/100 Dollars (\$1,000.00) to Teich and Fourteen Thousand Six Hundred 00/100 Dollars (\$14,600.00) to the other Defendants.
6. Respondent appealed the decision to dismiss the JIRC Suit and to sanction him to the U.S. Court of Appeals for the Fourth Circuit, that affirmed both the dismissal and the sanctions.
7. At the VSB hearing on April 26, 2002, Respondent testified that while in law school he had been taught that "the law is a vehicle for social change" citing *Brown v. Board of Education* as an example thereof. Respondent testified as to his education, experience, public service, and service as judge in the Virginia judicial system. He also testified that the circumstances leading up to the JIRC investigation forced him to resign, and that he believed that the filing of the JIRC Suit was the only alternative available to him. Respondent testified that he had violated no law, that he did not bring the JIRC Suit for the purpose of harassing anyone, that he believed he had good faith arguments to support his pleadings, and that he had in good faith argued for an extension, modification, or reversal of existing law with regard to the Rooker-Feldman Doctrine. After filing the JIRC Suit, Respondent, while incarcerated in the Norfolk City jail, prepared and filed a seventy-three (73) page brief in support of his claims that devotes only two (2) pages to the Rooker-Feldman Doctrine.

The Board finds by clear and convincing evidence that Respondent violated DR 2-107(A)(2) that provides in relevant

part that: "A lawyer shall not accept or continue employment on behalf of a person if he knows or it is obvious that such person wishes to: . . . (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law."

The Board also finds by clear and convincing evidence that Respondent violated DR 7-102(A)(2) that provides in relevant part that: "In his representation of a client, a lawyer shall not: . . . (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."

All other Charges of Misconduct with regard to VSB Docket Number 98-022-2497 are dismissed.

It is hereby ORDERED that, pursuant to Part 6, §IV, ¶13.C of the Rules of the Supreme Court of Virginia, a Public Reprimand be and is hereby issued against Respondent in VSB Docket Number 98-022-2497, effective upon the entry of this order.

We hasten to point out that the imposition of sanctions by a federal or state court will not, in and of itself, automatically result in the imposition of discipline under our rules. The responsibility of every lawyer, as Respondent testified, is to use the law "as a vehicle for change" when change is required and a good faith argument for such change may be made. However, for an attorney licensed to practice in the Commonwealth of Virginia, the change must be brought in a lawful manner and in compliance with the Code of Professional Conduct or the Rules of Professional Responsibility. Here we find by clear and convincing evidence that Respondent presented and pursued claims that were *both* unwarranted under existing law *and* unsupported by any good faith argument for an extension, modification, or reversal of existing law. It is these failures that serve as the predicate for the imposition of discipline.

We also note that even if we were to accept that Respondent had no intent to harass or injure anyone with his pleadings, that being "pure of heart" is not a defense to the imposition of discipline, when, even under a clear and convincing evidentiary standard, there is more than ample evidence to show objectively that the filing and prosecution of the JIRC Suit were *both* unwarranted under existing law *and* unsupported by any good faith argument for an extension, modification, or reversal of existing law.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, §IV, ¶13.K(10) of the Rules of the Supreme Court of Virginia.

SO ORDERED, this 15th day of May, 2002.  
By: William M. Moffet, Chair



BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

IN THE MATTER OF  
**LUTHER CORNELIUS EDMONDS**  
VSB Docket No. 00-022-1227

## ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board for hearing on April 26, 2002, before a duly convened panel of the Board consisting of Thaddeus T. Crump, Lay Member, J. Rudy Austin, Robert L. Freed, Joseph R. Lassiter, Jr., and William M. Moffet, presiding, pursuant to a certification of the Second District, Section II Subcommittee of the Virginia State Bar served on the Respondent, Luther Cornelius Edmonds (the "Respondent"), on August 1, 2001.

Richard E. Slaney ("Assistant Bar Counsel") appeared as Counsel for the Virginia State Bar (the "VSB"). Respondent appeared *pro se*. The court reporter for the proceeding, Valerie L. Schmit, RPR, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by Mr. Moffet, the Chair of the Board. All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. The Chair polled the Board members and determined that no member had a conflict of interest.

The exhibits presented by Assistant Bar Counsel on behalf of the VSB were admitted into evidence as Exhibits 1 through 17 without objection. The exhibits presented by Respondent were admitted as Exhibits 2 through 4 without objection and 5 over objection.

As Respondent's Answer filed in the above referenced matter admitted almost all of the allegations of fact set out in the Certification, very little of the evidence presented was in controversy.

The evidence may be summarized as follows:

1. At all times material to this hearing, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In VSB Docket No. 98-022-2497, a companion matter, we determined on April 26, 2002, that:
  - a. Respondent formerly served as a Judge of the Norfolk Circuit Court and resigned his judgeship during a hearing on charges against him held before the Commonwealth of Virginia Judicial Inquiry and Review Commission (the "JIRC"). Respondent became involved in a dispute with the other judges of the Norfolk Circuit Court regarding bonds posted by bondsmen in the Norfolk Circuit Court. During a heated discussion, one of the judges accused Respondent of having a relationship with a certain Ms. Battle, a bondswoman. The alleged conflicts of interest arising out of Respondent's handling of bond cases involving Ms. Battle led to a the JIRC inquiry. As a result of these events, Respondent resigned his position as a circuit court judge.
  - b. Respondent thereafter filed a civil suit (civil action no. 2:97cv364) (the "JIRC Suit") in the United States Federal District Court for the Eastern District of Virginia (the "Federal Court") against eight of his former judicial colleagues (the "Norfolk Judges"), Albert Teich, Clerk of the Norfolk Circuit Court ("Teich"), JIRC and its former chairman, and Reno Harp, III, for-

mer Counsel to JIRC (collectively, the "Defendants"). The JIRC Suit consisted of eight counts presenting claims regarding the motivation and conduct of the persons who brought certain matters to the attention of JIRC, who testified in its proceedings, or who conducted its proceedings. The relief sought in the JIRC Suit included compensatory damages of Forty Million and 00/100 Dollars (\$40,000,000.00), punitive damages of Ten Million and 00/100 Dollars (\$10,000,000.00), injunctive relief requiring that Respondent be reinstated as a state circuit court judge, and Respondent's attorney's fees and costs in bringing the JIRC Suit.

- c. The Defendants moved to dismiss the JIRC Suit on several grounds. Following the filing of written briefs and oral argument, the Honorable Robert E. Payne ("Judge Payne") ruled: "Having sought to discern the basis for Edmonds' claims, the Court concludes that they are highly suspect, if not entirely lacking in merit. However, it is not necessary to reach the merits of Edmonds' federal claims because the Court is without jurisdiction to entertain them." *Edmonds v. Clarkson, et al.*, 996 F.Supp. 541 (E. D. Va. 1998). Judge Payne held that an established constitutional principle known as the Rooker-Feldman Doctrine clearly precluded the Federal Court from addressing Respondent's constitutional claims that were asserted or could have been asserted in state court. Essentially, federal district courts cannot act as appellate courts to review constitutional claims that are inexorably intertwined with state court decisions. Judge Payne found that Respondent could not short-circuit the state judicial review proceedings by resigning (without presenting any of his constitutional claims to JIRC or the Virginia Supreme Court) and by then filing suit in federal district court on constitutional grounds attacking his "forced" resignation. Judge Payne also held that, as the Federal Court had no federal jurisdiction in this matter, it had no supplemental jurisdiction over related state law claims made by Respondent.
- d. After the JIRC Suit was dismissed, the Defendants filed a motion for sanctions pursuant to Rule 11 and for attorney's fees pursuant to 42 D.S.C. Section 1988. In analyzing the JIRC Suit under the objective test of Rule 11, Judge Payne found the claims against Teich had no basis in law or in fact, and that the claims against the remaining Defendants had no basis in law. He noted Respondent did not even attempt to distinguish the relevant case law, and that a reasonable investigation of the law would have shown the JIRC Suit to be baseless under the Rooker-Feldman Doctrine. Judge Payne found several counts failed to set forth any cognizable federal or state law claims, and the principal relief sought (reinstatement as a state circuit court judge) was clearly not available from a federal forum. Judge Payne also found each of Respondent's state law claims lacked any basis in state law. In a separate analysis within the same opinion, Judge Payne found the JIRC Suit was filed and prosecuted for an improper purpose (for harassment or some purpose other than to vindicate rights through the judicial process). In an opinion dated April 7, 1998, Judge Payne awarded Rule 11 sanctions in the amount of One Thousand and 00/100 Dollars (\$1,000.00) to Teich and Fourteen

Thousand Six Hundred 00/100 Dollars (\$14,600.00) to the other Defendants.

Twelve Thousand One Hundred Sixty-nine and 90/100 Dollars (\$12,169.90).

- e. Respondent appealed the decision to dismiss the JIRC Suit and to sanction him to the U.S. Court of Appeals for the Fourth Circuit, that affirmed both the dismissal and the sanctions.
  - f. At the VSB hearing on April 26, 2002, Respondent testified that while in law school he had been taught that "the law is a vehicle for social change" citing *Brown v. Board of Education* as an example thereof. Respondent testified as to his education, experience, public service, and service as judge in the Virginia judicial system. He also testified that the circumstances leading up to the JIRC investigation forced him to resign, and that he believed that the filing of the JIRC Suit was the only alternative available to him. Respondent testified that he had violated no law, that he did not bring the JIRC Suit for the purpose of harassing anyone, that he believed he had good faith arguments to support his pleadings, and that he had in good faith argued for an extension, modification, or reversal of existing law with regard to the Rooker-Feldman Doctrine. After filing the JIRC Suit, Respondent, while incarcerated in the Norfolk City jail, prepared and filed a seventy-three (73) page brief in support of his claims that devotes only two (2) pages to the Rooker-Feldman Doctrine.
  - g. By clear and convincing evidence we found that Respondent violated DR 2-107(A)(2) that provides in relevant part that: "A lawyer shall not accept or continue employment on behalf of a person if he knows or it is obvious that such person wishes to: . . . (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law."
  - h. By clear and convincing evidence, we found that Respondent violated DR 7-102(A)(2) that provides in relevant part that: "In his representation of a client, a lawyer shall not: . . . (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."
  - i. We issued a Public Reprimand against Respondent in VSB Docket Number 98-022-2497.
3. In June of 1997, Respondent filed a suit in Chesapeake Circuit Court on behalf of the corporation Elite Child, Inc. ("Elite Child") against Greenbrier Mall (the "Mall") in Chesapeake, Virginia. Elite Child leased space at the Mall, and sought to enjoin a threatened eviction and recover damages for alleged racial discrimination in connection with the eviction. Ms. Battle was a principal in Elite Child.
  4. After a hearing on the matter, the Honorable E. Preston Grissom ("Judge Grissom"), Judge of the Chesapeake Circuit Court, entered judgement in favor of the Mall. Upon motion made by the Mall, Judge Grissom also awarded attorney's fees and costs as provided for under the terms of the lease agreement in the total amount of
  5. Respondent either failed to file or purposely did not file an appeal to the Virginia Supreme Court on behalf of Elite Child. Thereafter, Respondent sought an enlargement of time in which to file a petition for appeal to the Virginia Supreme Court. The Court denied the motion and, no petition for appeal having been filed, the record was returned to the Chesapeake Circuit Court.
  6. In May, 1998 (less than thirty (30) days after the issuance of the decision by Judge Payne to dismiss the JIRC Suit and to sanction Respondent) Respondent filed suit in the Federal Court against the Mall and against Judge Grissom (civil action no. 2:98cv488, the "Grissom Suit"). Two of the five counts in the Grissom Suit essentially accused Judge Grissom of racial discrimination in rendering his decision against Elite Child. The relief requested was for injunctive relief from the Federal Court enjoining Judge Grissom's order in favor of the Mall, declaratory relief stating that Elite Child's constitutional rights had been violated, compensatory damages in the amount of One Million and 00/100 Dollars (\$1,000,000.00), punitive damages in the amount of One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00), and Elite Child's costs and attorney's fees in the action.
  7. Both the Mall and Judge Grissom filed motions to dismiss on the grounds that the Federal Court lacked jurisdiction pursuant to the Rooker-Feldman Doctrine. The Honorable Richard L. Williams ("Judge Williams") found there was no jurisdiction in the Federal Court pursuant to the Rooker-Feldman Doctrine and dismissed the Grissom Suit in an Order dated November 10, 1998.
  8. Thereafter, Judge Grissom filed a motion for sanctions pursuant to Rule 11 and for attorney's fees pursuant to 42 U.S.C. Section 1988. Judge Williams ruled that the legal theories asserted by Respondent in the Grissom Suit were jurisdictionally barred by law and that he offered no non-frivolous arguments for the extension, modification, or reversal of that law, and awarded Judge Grissom attorney's fees in the amount of Seven Thousand Nine Hundred Thirty-five and 00/100 Dollars (\$7,935.00) under Section 1988, sanctions in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) under Rule 11, and enjoined Elite Child, Sherry Battle, and Respondent from filing any federal suit against any Virginia state court judge absent authority from a federal judge to do so.
  9. Respondent appealed both the dismissal of the Grissom Suit and the sanctions to the Fourth Circuit, which affirmed on both points. In late 2000, the U.S. Supreme Court refused a petition for *certiorari*.
- The Board finds by clear and convincing evidence that Respondent violated DR 7-102(A)(1) and (2) that provide in relevant part that: "In his representation of a client, a lawyer shall not: (1) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another, [or] (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law."

All other Charges of Misconduct with regard to VSB Docket Number 00-022-1227 are dismissed.

It is hereby ORDERED that, pursuant to Part 6, §IV, ¶13.C of the Rules of the Supreme Court of Virginia, the license of Respondent to practice law in the Commonwealth of Virginia shall be, and is hereby, SUSPENDED for a period of six months, effective April 26, 2002.

We hasten to point out that the imposition of sanctions in a federal or state court will not, in and of itself, automatically result in the imposition of discipline under our rules. The responsibility of every lawyer, as Respondent testified, is to use the law "as a vehicle for change" when change is required and a good faith argument for such change may be made. However, for an attorney licensed to practice in the Commonwealth of Virginia, the change must be brought in a lawful manner and in compliance with the Code of Professional Conduct or the Rules of Professional Responsibility. Here we find by clear and convincing evidence that Respondent presented and pursued claims that were *both* unwarranted under existing law and unsupported by any good faith argument for an extension, modification, or reversal of existing law. It is these failures that serve as the predicate for the imposition of discipline.

In imposing a suspension, rather than the public reprimand that we imposed in VSB Docket Number 98-022-2497, we note five very important differences between the facts in the Grissom Suit and the facts in the JIRC Suit. First, Judge Payne issued the Order for Sanctions in the JIRC Suit less than thirty (30) days before Respondent filed the Motion for Judgment in the Grissom Suit. Respondent was therefore on notice regarding the applicability of the Rooker-Feldman Doctrine when he filed the Motion for Judgment in the Grissom Suit. Second, Respondent had to have known that meritless claims would simply not be tolerated in the Federal Court given the Order for Sanctions issued by Judge Payne in the JIRC Suit. Third, Respondent either purposefully or negligently failed to perfect the appeal to the Virginia Supreme Court in the suit filed on behalf of Elite Child. Fourth, given Respondent's service as a judge in this Commonwealth, he must have known, or he should have known, the outcome of filing meritless claims in the Grissom Suit. Fifth, upon questioning by a panel member, Respondent could not or would not summarize the Rooker-Feldman Doctrine for the panel, a doctrine absolutely crucial to *both* the JIRC and Grissom Suits.

Despite Respondent's testimony to the contrary, we conclude that Respondent purposefully filed the Grissom Suit to harass or maliciously injure Judge Grissom solely because he ruled against Respondent's client, Elite Child, and that this filing by Respondent was egregiously outrageous.

Again, we state that the imposition of sanctions by a court will not automatically result in the imposition of discipline under the Code of Professional Responsibility or the Rules of Professional Conduct. It was Respondent's complete disregard for the facts and law that resulted in the imposition of discipline in this matter.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, §IV, ¶13.K(10) of the Rules of the Supreme Court of Virginia.

SO ORDERED, this 15th day of May, 2002.  
By: William M. Moffet, Chair



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

**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF

**KENNETH HARRISON FAILS II**

|                 |             |
|-----------------|-------------|
| VSB Docket Nos. | 00-042-2504 |
|                 | 00-042-2638 |
|                 | 01-042-1308 |
|                 | 01-042-1309 |
|                 | 01-042-1387 |

**ORDER OF REVOCATION**

On March 22, 2002 this matter came on for hearing upon certification by the Fourth District Committee, Section II, of the Virginia State Bar. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of William M. Moffet, Chair, presiding, and James L. Banks, Jr., Thaddeus T. Crump, Karen A. Gould, and Roscoe B. Stephenson III.

The Clerk of the Disciplinary System sent all notices required by law.

The Respondent, Kenneth Harrison Fails, II ("Respondent" or "Mr. Fails") appeared in person and with his counsel, Michael L. Rigsby, Esquire, who stated that his representation of Mr. Fails was limited to representing him on his demand pursuant to Va. Code § 54.1-3915 that these complaints be tried by a three judge panel rather than by the Disciplinary Board. After the hearing on that demand, Respondent and his counsel excused themselves from the remainder of the proceedings.

Seth M. Guggenheim, Esquire appeared as counsel for the Virginia State Bar.

The Chair opened the hearing by polling all members of the panel as to whether there existed any conflict or other reason why any member should not sit on the panel. Each, including the Chair, responded in the negative.

Before proceeding upon the case in chief, Respondent, by counsel, was heard on his demand pursuant to Va. Code § 54.1-3915. The Board acknowledges that William M. Moffet, Chair of the Virginia State Bar Disciplinary Board, previously heard this matter by telephone conference on March 18, 2002. Upon consideration of the argument of counsel, this panel hereby affirms the order of Chair William M. Moffet entered March 19, 2002. Respondent's demand for the three-judge panel is untimely and is denied for the reasons set out in that order, which order is hereby incorporated by reference and adopted by this panel. Thereafter, Respondent and his counsel excused themselves from the remainder of these proceedings.

The Virginia State Bar filed twenty-three exhibits which were received and accepted into the evidence without objection.

The Board finds that the following facts have been established by clear and convincing evidence:

**General Findings of Fact**

1. At all times relevant to the charges in this matter, Respondent Kenneth Harrison Fails, II, has been an attorney licensed to practice law in the Commonwealth of Virginia.

**Findings of Fact for VSB Docket Nos. 00-042-2504 and 00-042-2638**

2. In 1999 and 2000, the Respondent represented Joseph Geraci and Theresa Geraci in litigation against CRI Mechanical, Ltd., which originated in the Fairfax County, Virginia, General District Court, and which was concluded in the Fairfax County, Virginia, Circuit Court, as an appeal from the General District Court.
3. In the General District Court action, a Motion for Summary Judgment was granted on or about October 27, 1999, in favor of CRI Mechanical, Ltd., because the Respondent failed to file and serve a Bill of Particulars on behalf of his client by the deadlines set by the Court. As an excuse for his failure to file and serve the required Bill of Particulars on time, the Respondent stated that he had to go to his sister's wedding and that his copy machine had been broken.
4. In consequence of the adverse judgment rendered by the General District Court, the Respondent appealed his clients' case to the Circuit Court on or about November 19, 1999. The case was subsequently set for trial, *de novo*, in the Circuit Court, on February 24, 2000.
5. Although correspondence regarding settlement of the case was exchanged between Respondent and defense counsel, no settlement had been reached as of January 28, 2000. Defense counsel therefore served discovery requests upon Respondent on or about that date.
6. The Respondent failed to make any discovery responses on behalf of his clients, when due. Defense counsel contacted Respondent by facsimile transmission and by phone on February 21, 2000, regarding the outstanding discovery and settlement of the case. On that date, and for the first time, Respondent stated to defense counsel that he might have a scheduling conflict with the trial date, and suggested to defense counsel that the trial, set for February 24, 2000, be continued.
7. Defense counsel discussed the matter of a continuance with his client, and thereafter advised the Respondent, via a facsimile transmission on February 21, 2000, that the defendant would not consent to a continuance of the case from its scheduled trial date.
8. When it became clear to the Respondent that the case could not be continued by agreement, he telephoned defense counsel on the evening of February 23, 2000, to determine if the case set for trial at 10:00 a.m. the following day, might be settled. Without the prior knowledge or consent of his client, the Respondent agreed to settle their case against CRI Mechanical, Ltd., for \$500.00.

9. Pursuant to the settlement agreement reached, the Respondent was to draft and forward to defense counsel a proposed release and "Stipulation of Dismissal with Prejudice." Defense counsel was to forward a check on behalf of his client in the sum of \$500.00 following defense counsel's receipt of those documents.
10. On March 14, 2000, defense counsel telephoned the Respondent because he had received no settlement documents from the Respondent. The Respondent stated to defense counsel at that time that he, the Respondent, had not informed his clients that he had settled the case; that he was going to inform his clients that he had settled the matter for \$2,500.00, and not the \$500.00 that he had agreed to with defense counsel; and that he, the Respondent, was going to make up the \$2,000.00 difference between the two amounts using his own money.
11. In aid of the Respondent's scheme to misrepresent to his client the particulars of the settlement agreement actually reached on their behalf, the Respondent asked defense counsel to have his client sign a release that would state that the case had been settled for "the sum of \$500.00 and other good and valuable consideration." The Respondent further stated to defense counsel that he, the Respondent, would represent to his clients that the "other consideration" of \$2,000.00 had already been paid by CRI Mechanical, Ltd. and that was the explanation for the settlement proceeds being paid by two checks and the reason for the wording of the release.
12. Defense counsel informed the Respondent that he would have no part of the scheme detailed in Paragraphs 10 and 11. Thereafter, inasmuch as the Court, *sua sponte*, had entered a dismissal order on March 6, 2000, to become effective 35 days thereafter, Respondent filed a "Motion to Vacate Order of Dismissal." The Respondent's motion was heard and denied on March 31, 2000. At argument on the Motion the matters set forth in the preceding paragraphs were brought to the attention of the Court. Thereafter, both the presiding Circuit Court Judge and defense counsel separately brought these matter to the attention of the Virginia State Bar.
13. The Respondent acknowledged to a Virginia State Bar investigator that his clients were first informed of the actual outcome of their case at the time that he responded to the Virginia State Bar on or about May 1, 2000.

**Nature of Misconduct for VSB Docket Nos. 00-042-2504 and 00-042-2638**

The Board unanimously finds, by clear and convincing evidence, that Respondent violated the following Rules of the Virginia Rules of Professional Conduct:

RPC 1.4(a), (b) and (c)

RPC 8.4(a)

The facts clearly establish that the Respondent did not keep his clients advised of the status of the matter or of negotiations. He not only failed to explain developments to his clients but he sought to deceive his clients about negotiations.

These findings support violations of RPC 1.4(a), (b) and (c). This scheme to attempt to mislead his clients into believing that the defendant had paid more in settlement than it had and his efforts to enlist opposing counsel's assistance in this scheme clearly violate RPC 8.4(a)

**Findings of Fact for VSB Docket No. 01-042-1308**

14. In or around the fall of 1999, Medical Science Technologies, Inc., ("MST"), engaged the Respondent to pursue claims against Laborie Medical Technologies, Inc., ("LMT"). On January 3, 2000, the Respondent filed suit on behalf of MST against LMT in the United States District Court for the Eastern District of Virginia, Alexandria Division.
15. During the course of the litigation, and among other wrongful and neglectful conduct Respondent:
  - a. failed to provide discovery responses in accordance with a consent order compelling such responses, which failure drew a sanction in the sum of \$500.00;
  - b. failed to comply with the terms of the Court's scheduling order and the Federal Rules of Civil Procedure by failing to make disclosures of witnesses and present trial exhibits prior to and at the pretrial conference conducted in the case;
  - c. served interrogatories and requests for production of documents upon LMT long after the discovery cutoff date set in the case, and without having first obtained leave of Court to do so;
  - d. certified to the Court that he had faxed and hand-delivered an opposition to a motion filed by LMT, when, in fact, he had not done so;
  - e. stated in an opposition to a motion filed by LMT that Respondent had served witness and exhibit designations upon LMT when in fact no such documents had been served; and
  - f. moved for voluntary dismissal of his client's case, citing as reasons for having to file such motion that he had no support staff, had only been practicing for three years, had little federal court experience, and "had great difficulty in keeping up with his practice and obligations."
16. By Order entered on September 14, 2000, and amendments thereto entered thereafter, the aforesaid District Court dismissed MST's complaint, without prejudice, but conditioned its re-filing upon Respondent's personal payment, in advance, of LMT's attorneys' fees in the sum of \$30,000.00 and the aforesaid sanction in the sum of \$500.00. The Court also ordered that Respondent may neither file any pleading in this court nor appear before any judge of the United States District Court for the Eastern District of Virginia unless he has associated with him an attorney who has experience practicing before this court. This restriction will not be lifted until [Respondent] provides evidence that he successfully completed a Continuing Legal Education course focusing on federal practice in the United States District Court for the Eastern District of Virginia.

17. At a hearing on motions filed in the matter, the United States District Judge noted for the record that Respondent was late for court; that he had "been consistently late in fulfilling [his] obligations in [the] case"; that he had "failed to conduct any discovery in [the] case"; and that he had "failed adequately to respond to [LMT's] discovery." The Court also stated that the Respondent had "totally failed to comply with the scheduling order in terms of providing at the pretrial meeting [a] list of witnesses or exhibits" and that Respondent had "failed to obtain proper leave of court to file out of time."

**Nature of Misconduct for VSB Docket No. 01-042-1308**

The Board unanimously finds, by clear and convincing evidence, that Respondent violated the following Rules of the Virginia Rules of Professional Conduct:

- RPC 1.1
- RPC 1.3(a).

There can be no question that Respondent did not provide competent representation of his client in the matter at issue as required in RPC 1.1. He admitted as much when he filed the motion for voluntary dismissal referred to above. Moreover, the record clearly establishes his failure to act with reasonable diligence and promptness in his representation of his client as required by RPC 1.3(a).

**Findings of Fact for VSB Docket No. 01-042-1309**

18. The Respondent's license to practice law was "administratively" suspended by the Virginia State Bar between November 17, 2000, and December 19, 2000, for his failure to perform all of his membership and Mandatory Continuing Legal Education obligations. The Respondent, by service of certified mail upon his agent, received notice of the commencement of such suspension on November 20, 2000.
19. Notwithstanding the administrative suspension of his license to practice law, Respondent continued to practice law during the period of the suspension. Respondent appeared in open court on December 8, 2000, as counsel for the defendant in *United States of America v. Gilchrist*, Docket No. 00-M-1063-ALL, pending in the United States District Court for the Eastern District of Virginia, Alexandria Division. He advised the Virginia State Bar investigator that he had actual notice of his suspension and went to court that morning with the intention of advising his client, opposing counsel and the court of his suspension, but changed his mind and decided to proceed on as counsel because the U.S. Attorney offered his client such a good deal. Thereupon, he proceeded on with the hearing without advising the court or opposing counsel of his suspension.
20. At the time of Respondent's appearance in Court on behalf of defendant Gilchrist, the restrictions imposed by the U.S. District Court on September 14, 2000, and as set out in Paragraph 16 above had not been complied with or lifted. Respondent represented defendant Gilchrist in Court without first having associated counsel experienced in practice before said Court. His explanation for this conduct offered to the Virginia State Bar investigator was that he thought

the restriction only applied to civil cases even though there is no such limitation in the language of the order.

### **Nature of Misconduct for VSB Docket No. 01-042-1309**

The Board unanimously finds, by clear and convincing evidence, that Respondent violated the following Rules of the Virginia Rules of Professional Conduct:

RPC 8.4(b) and (c).

The record establishes that he knew he was suspended and knew that he was not supposed to appear in court, yet he did so any way because it was expedient to do so. Thus, he committed a criminal or deliberately wrongful act. His failure to advise the court of his status was a misrepresentation of his status to the court. This failure to abide by the laws of the Commonwealth and to do so in open court reflect adversely on the Respondent's honesty, trustworthiness and fitness to practice law. Moreover, these actions involved dishonesty, fraud, deceit and misrepresentation. Thus, the violations of RPC 8.4 (b) and (c).

### **Findings of Fact for VSB Docket No. 01-042-1387**

21. In 2000, the Respondent represented the debtor in In Re: Ida Altamirano, Debtor, Case No.: 00-12362-SSM, in the United States Bankruptcy Court, Eastern District of Virginia, Alexandria Division. This representation occurred, in part, during the period when Respondent's license to practice law in Virginia was "administratively" suspended, as set forth in Paragraph 18 hereof.
22. In the course of his representation of the debtor in the aforesaid matter, Respondent filed a document with the court late which resulted in his client losing the benefit of her homestead exemption. As a consequence, the court ordered the debtor to pay the trustee the \$4,138.92 amount she was attempting to exempt. The Respondent tendered his own personal check to the trustee in the amount of \$4,138.92. However the check was returned for insufficient funds.
23. The Respondent stated to a Virginia State Bar investigator that the bankruptcy matter was Respondent's first bankruptcy case and that the payment made to the trustee was from his personal funds because he had erred in filings required to preserve his client's homestead exemptions.
24. The trustee in bankruptcy procured an Order to Show Cause against the Respondent due to the tender of the worthless check. The matter was ultimately dismissed because the worthless check was made good with a replacement check, and the Respondent reimbursed the trustee for the bank fees incurred by the trustee on account of the worthless check.

### **Nature of Misconduct for VSB Docket No. 01-042-1387**

The Board unanimously finds, by clear and convincing evidence, that Respondent violated the following Rules of the Virginia Rules of Professional Conduct:

RPC 1.1

RPC 1.3(a).

Respondent's conduct demonstrated that he lacked the requisite competency to practice in this area of the law, yet he did

so anyway. His lack of competency resulted in his client's rights being prejudiced. Then, he compounded the situation by tendering his own check which was dishonored because of insufficient funds. This conduct violated both RPC 1.1 and RPC 1.3(a).

### **IMPOSITION OF SANCTIONS**

After the Board made its findings of Misconduct on the above matters, the Bar introduced the Respondent's prior disciplinary record into evidence and presented the Bar's argument regarding sanctions. In order to put the Board's action in these matters in proper perspective, it is necessary to briefly review the Respondent's prior disciplinary record.

The first matter is VSB Docket No. 99-042-2832. From October 29, 1998, to August 19, 1999, Respondent was administratively suspended from the practice of law for his failure to comply with similar requirements as were involved in VSB Docket No. 01-042-1309 discussed above. Even though he had notice of that administrative suspension, he continued to practice law during that almost ten month period of time. On July 13, 2000, the Fourth District Committee found the above facts to have been proven by clear and convincing evidence and imposed a private reprimand with terms. However, the Respondent did not comply with the terms and the matter was certified to the Disciplinary Board for a trial de novo. At an August 24, 2001, hearing, the Disciplinary Board found that his conduct, as described above, violated DR 1-102 in that he committed a crime or other deliberately wrongful act that reflected adversely on his fitness to practice law and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation which reflected adversely on his fitness to practice law. Accordingly, the Board imposed a three month suspension of his license to practice law.

In the next matter, VSB Docket No. 01-042-1310, the Respondent received a public reprimand upon the Respondent for conduct during 2000. In the underlying matter, the Respondent was hired by his clients to represent them in a fairly simple litigation matter which involved a dispute between his clients and a home improvement contractor. During the course of that representation, the Fourth District Committee found that his conduct violated RPC 1.1 in that he failed to represent his client competently and RPC 1.4 in that he failed to communicate with his clients and keep them reasonably informed about their case.

Thus, even though he practiced from October 29, 1998, to August 19, 1999, while his license was suspended and he was put on notice that the Bar took this misconduct very seriously in 1999 when VSB Docket No. 99-042-2832 complaint was initiated; even though he was treated relatively leniently by the Fourth District Committee when it imposed a private reprimand with terms for this misconduct on July 13, 2000; he took action or inaction which resulted in his license being administratively suspended again just a few short months later on November 17, 2000. Then, with full knowledge of this administrative suspension, he deliberately elected to practice during the time of said suspension because it was expedient to do so. Mr. Fails has received a private reprimand with terms, which he failed to comply with. Then, that matter was certified to the Board and he was given a three month suspension. Then, in November of 2001 he was given a public reprimand for failing to act competently and failing to communicate with his clients in a matter he handled in 2000. Now, in the matters currently before the Board, it has been established that in the first matter he

engaged in conduct in 2000 which involved not only the failure to keep his client informed about negotiations, but a consciously conceived scheme to deceive his clients about the true terms of the settlement; in the second matter he handled a matter which he was not competent to handle and his incompetence resulted in prejudice to his client; in the third matter he knowingly and deliberately practiced law when he knew he was not licensed to do so because it was expedient to do so; and in the fourth matter he again handled a matter he was not competent to handle and his incompetence resulted in prejudice to his client. Thus, in the few short years he has been practicing in Virginia, Respondent has been found to have engaged in misconduct in six separate instances ( the four involved in this hearing and the two involved in the prior misconduct proceedings).

In consideration of all of the above, the Board finds that Respondent is either unwilling or unable to comply with the Rules of Professional Conduct and, as such, presents an ongoing threat and danger to the public who might engage Respondent for legal services. Moreover, his misconduct in these four matters alone warrant revocation of his license. However, when his misconduct in these four matters is considered in conjunction with his prior disciplinary record and the risk of future harm to the public, it is abundantly clear that revocation is the appropriate sanction herein.

The Board notes that Respondent chose to not participate in the hearing on these matters after being heard on his demand pursuant to Va. Code § 54.1-3915 that these complaints be tried by a three judge panel rather than by the Disciplinary Board. Mr. Fails' election not to participate had absolutely no bearing upon the Board's findings and imposition of sanctions in this matter. The Board's decision was based solely upon the evidence presented at the hearing.

Accordingly, it is ORDERED that the license to practice law in the Commonwealth of Virginia of KENNETH HARRISON FAILS II, be, and the same is, REVOKED, effective March 22, 2002.

\*\*\*.

Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, was the reporter for the hearing and having been duly sworn, transcribed the proceedings.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, Paragraph 13(K)(10) of the Rules of the Virginia Supreme Court.

ENTERED THIS 6TH DAY OF MAY, 2002  
 VIRGINIA STATE BAR DISCIPLINARY BOARD  
 By William M. Moffet  
 Chair



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

**BEFORE THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD**

IN THE MATTER OF  
**MARY MEADE**  
 VSB DOCKET: 00-051-1849

**ORDER**

This matter was certified to the Virginia State Bar Disciplinary Board by the Fifth District Committee, Section I, and was heard on May 17, 2002, by a duly convened panel of the Disciplinary Board consisting of William M. Moffet, Chair, William C. Boyce, Jr., Thaddeus T. Crump, lay member, Karen A. Gould, and Joseph R. Lassiter, Jr. The Respondent, Mary Meade, appeared pro se and participated in the hearing in its entirety, but departed prior to the Board announcing its decision regarding sanctions. Seth M. Guggenheim, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The proceedings were transcribed by Donna T. Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

All required legal notices were properly sent by the Clerk of the Disciplinary System.

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

**Findings of Fact**

- (1) At all times relevant to this proceeding, the Respondent, Mary Meade has been an attorney licensed to practice law in the Commonwealth of Virginia.
- (2) Mary Meade hired Patricia Ronay, a court reporter, to report a deposition held on June 14, 1999.
- (3) At the conclusion of the hearing, Ms. Meade requested Ms. Ronay to provide an expedited transcript with next day delivery. It was agreed that payment would be made upon receipt of the transcript.
- (4) The following day Ms. Ronay delivered the transcript to the residence of Ms. Meade, and submitted a bill of \$505.00. Payment was not made.
- (5) Thereafter, Ms. Ronay made many attempts to collect the debt. At various times she spoke to Janie Hunt, a member of Ms. Meade's staff, Ms. Meade's accountant, and others. Despite her efforts, payment was not forthcoming.
- (6) Finally, Ms. Ronay filed a complaint with the Bar.
- (7) On December 22, 1999, Mary W. Martelino, Assistant Intake Counsel of the Virginia State Bar, wrote Ms. Meade a letter in which she requested that Ms. Meade respond to certain questions and provide the Virginia State Bar with the facts relevant to the dispute in an effort to resolve the matter informally, without a formal ethics inquiry (VSB Exhibit #C-4). Specifically, Ms. Martelino asked Ms. Meade if Ms. Meade had received any funds from her client or on behalf of her client for the payment of the court reporter's bill. Ms. Meade's response was requested within ten days.
- (8) On January 6, 2000, Ms. Martelino sent Ms. Meade another letter in which she enclosed a copy of the December 22, 1999 letter and requested a response (VSB Exhibit #C-5).

- (9) On February 3, 2000, Ms. Martelino sent Ms. Meade a letter in which she notified Ms. Meade that the file was being referred to Assistant Bar Counsel Noel D. Sengel for further investigation (VSB Exhibit #C-5).
- (10) On February 16, 2000, the Bar received a letter from the Law Offices of Mary S. Meade, Esquire, dated December 28, 1999, and addressed to Mary W. Martelino in which Ms. Meade states, among other things, that she had "sent Ms. Ronay no less than three separate checks for her invoice in the amount of \$505.00" (VSB Exhibit #C-6). Ms. Meade claimed that Ms. Ronay asserted that she did not receive the first two checks and that the third check was marked "refused." Ms. Meade further stated that she finally caused a check to be hand-delivered to Ms. Ronay. Ms. Meade asserted that Ms. Ronay accepted the third check but never cashed it. Enclosed in the letter to Ms. Martelino was yet another check in the amount of \$505.00 made payable to Patricia Ronay. This check was taped to the letter in such a fashion that it could not be separated from the paper without mutilating it and, therefore, in the opinion of the Virginia State Bar was not negotiable. The letter from Ms. Meade to Ms. Martelino was postmarked December 28, 1999, but was apparently mis-delivered by the Post Office and not received by the Virginia State Bar until February 16, 2000.
- (11) Upon being assigned the case, Noel D. Sengel, Senior Assistant Bar Counsel, sent Respondent a letter dated February 9, 2000, informing her of the complaint and requesting that she answer the complaint within twenty-one days. This letter was returned to Ms. Sengel with stamped notations on the envelope of "no longer at this address" and "unable to forward" (VSB Exhibit #C-7). The Bar had received no notice of a change of address of record, as required by the rules of court.
- (12) Ms. Sengel sent a second letter on March 1, 2000, which was returned for the same reasons (VSB Exhibit #C-8).
- (13) As a result of the return of the second letter to Ms. Meade, Ms. Sengel sent Bar Investigator James W. Henderson to determine if Ms. Meade's office was still located at her address of record. Mr. Henderson determined that Ms. Meade's office was actually located at the address on the letters.
- (14) Finally, Ms. Sengel sent a certified letter on March 10, 2000, which was received and signed for by Nancy A. Gross on March 13, 2000 (VSB Exhibit #C-9).
- (15) Receiving no response from Ms. Meade, Ms. Sengel referred the matter to Mr. Henderson for further investigation. Investigator Henderson interviewed Ms. Meade on November 7, 2000. During the interview, Ms. Meade said she issued four checks to Ms. Ronay, two were mailed and the third was picked up at Ms. Meade's office by Ms. Ronay. She said that the one she sent to the Bar with her December 28, 1999, letter was the fourth check she had issued to Ms. Ronay.
- (16) For reasons not explained to Mr. Henderson during the November 7, 2000, interview, Ms. Meade was unable to show Mr. Henderson the check register, the ledger card, copies of the checks, or the receipt for the check which was allegedly picked up by Ms. Ronay. Ms. Meade said it would take her ten days to produce these items. These materials were not provided to Mr. Henderson.
- (17) As a result, on February 6, 2001, Ms. Sengel wrote Ms. Meade a letter reiterating the request for the materials previously requested by Investigator Henderson. Ms. Sengel requested that they be produced no later than March 1, 2001. No response was received from Ms. Meade.
- (18) Subsequent to the February 6, 2001, letter, Ms. Sengel began to attempt to reach Ms. Meade by telephone. Ms. Sengel estimates that on her twentieth attempt, on May 21, 2001, Ms. Meade answered.
- (19) As a result of the May 21, 2001, conversation, Ms. Sengel faxed to Ms. Meade a copy of the February 6, 2001 letter at the fax number provided by Ms. Meade. Still no response was forthcoming.
- (20) This matter was heard by a panel of the Fifth District Disciplinary Committee, Section I, on October 9, 2001.
- (21) Ms. Meade testified, under oath, that, as previously stated, she sent Ms. Ronay two checks through the mail, and the third was picked up by Ms. Ronay at Ms. Meade's office.
- (22) At the hearing, Ms. Meade introduced into evidence a document which she claimed was a receipt which Ms. Ronay signed when she picked up the third check. None of the other documents previously requested by the Bar were produced by Ms. Meade at the hearing. Ms. Ronay testified at the District Committee hearing that she never received the two checks which were mailed, and that she never picked up a check at Ms. Meade's office. When shown the receipt with the signature "Pat Ronay" displayed thereon, Ms. Ronay testified that the signature was not hers and that, furthermore, she would not sign "Pat" but would sign "Patricia".
- (23) The Board finds that Ms. Ronay's signature on the receipt was forged, but is unable to determine, by clear and convincing evidence, by whom.
- (24) At the hearing of this matter before the Board, Ms. Ronay reiterated her testimony before the District Committee. Ms. Meade did not testify at the hearing before this Board, but her testimony before the District Committee came into evidence through the transcript of the District Committee hearing (VSB Exhibit #C ).
- (25) The Board finds, by clear and convincing evidence, that Ms. Meade's statements/testimony to Ms. Martelino, Mr. Henderson, Ms. Sengel, and the Fifth District Committee, regarding the mailing of first two checks to Ms. Ronay, the delivery of the third check to Ms. Ronay, and the existence of related records were false.
- The Board finds, by clear and convincing evidence, that the following Rules have been violated:
- DR 1-102. (A) (3) and (4) \*\*\*
- RULE 8.1 Bar Admission And Disciplinary Matters  
\*\*\* (c) and (d)

RULE 8.4 Misconduct  
 \*\*\* (b) and (c)

DR 1-102. (A)(3) and (4) were violated when she wrote the December 28, 1999, letter and misrepresented to the Virginia State Bar that she had mailed the first two checks to Ms Ronay and when she misrepresented that the third check was hand-delivered to Ms. Ronay. We find by clear and convincing evidence that these statements were false and that Ms. Meade knew they were false when she wrote the letter. Such conduct constitutes a deliberately wrongful act which reflects adversely on Ms. Meade's fitness to practice law. That same conduct involves dishonesty and misrepresentation which reflect adversely on Ms. Meade's fitness to practice law.

Rule 8.1(c) and (d) were violated when Ms. Meade failed to respond to Mr. Henderson's lawful demand for information and records regarding her November 7, 2000, statements to Mr. Henderson and when Ms. Meade failed to respond to Ms. Sengel's lawful demands in writing and orally for information and documents regarding her November 7, 2000, statements to Mr. Henderson and other issues in this matter.

Rule 8.4(b) and (c) were violated when she misrepresented to Mr. Henderson on November 7, 2000, that she had mailed the first two checks to Ms. Ronay and when she misrepresented that the third check was hand-delivered to Ms. Ronay. In addition, these rules were violated when she testified before the District Committee on October 9, 2001, to the same effect. We find by clear and convincing evidence that her testimony under oath and her statements to Mr. Henderson in this regard were false and that she knew they were false when she made them. As such, these false statements and this false testimony were knowing violations of these rules and were deliberately wrongful acts which reflect adversely on Ms. Meade's fitness as a lawyer.

**Sanction**

Due to the dishonest nature of the misconduct which goes to the very essence of an attorney's fitness to practice law and due to Ms. Meade's obstructionist actions during the course of the investigation, which in and of itself is a violation of the rules, we believe that the sanction should be severe. Thus, we are ordering that Mary Meade's license to practice law in the Commonwealth of Virginia be, and hereby is, suspended for thirteen (13) months, effective May 17, 2002.

It is further ordered pursuant to paragraph 13K(10) of the Rules of the Supreme Court of Virginia, that the Clerk of the Disciplinary System shall assess costs against the Respondent.

ENTERED this 21st day of June, 2002.  
 VIRGINIA STATE BAR DISCIPLINARY BOARD  
 By: William M. Moffett, Chair



BEFORE THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD

IN THE MATTER OF:  
**MARTIN G. MULLEN**  
 VSB Docket No. 02-000-1877

ORDER OF SUSPENSION

THIS MATTER came on February 22, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), comprised of William M. Moffet, Chair, Chester J. Cahoon, Jr. (Lay Member), Bruce T. Clark, Peter A. Dingman and Joseph R. Lassiter, Jr., pursuant to a Rule to Show Cause and Order of Suspension and Hearing entered January 25, 2002, (the "Order of Suspension"). Martin G. Mullen ("Respondent") appeared in person and was represented by counsel, Timothy J. Battle. The Virginia State Bar (the "Bar") appeared by Assistant Bar Counsel Richard E. Slaney. The matter was reported by Leslie Etheredge, Registered Professional Reporter, Inge Snead & Associates, Ltd., 4444 Arrowhead Road, Richmond, Virginia, 23235 (telephone number 804-272-7054).

The Order of Suspension was issued upon the Board receiving notification that Respondent had been suspended from the practice of law before the United States Patent and Trademark Office (the "PTO") for a period of four (4) years commencing November 3, 2001, by an order entered on October 4, 2001 by the Acting Director of the PTO. The Rules of the Virginia Supreme Court, Part Six, Section IV, Paragraph 13.G (the "Rule" or "Paragraph 13.G"), require the Board, upon notice that an attorney admitted to practice in the Commonwealth of Virginia has been disbarred or suspended from practice in "another jurisdiction," to impose the same sanction that was imposed in that "other jurisdiction" unless the attorney can show cause why such sanction should not be imposed. The Rule sets forth the only three grounds which are sufficient to show cause as to why the same sanction should not be imposed. The Rule also states that the Respondent has a certain amount of time after the mailing of the Suspension Order to him to state in writing which of those three grounds he will be attempting to prove at the hearing. Failure to file such a written response within that time specified or failure of the Respondent to establish the ground set forth in the written response will result in the same discipline being imposed.

The hearing commenced with the Chair polling the panel as to whether any member had any personal or financial interest in the matter to be heard. Each member, including the Chair, responded in the negative.

Thereupon, the Bar moved to preclude Respondent from presenting any evidence at the hearing on the ground that the Respondent had not filed an answer or other written response to the Suspension Order specifying which of the three grounds set out in the Rule he was going to attempt to prove to avoid imposition of the same sanction as was imposed by the PTO. In response, Respondent moved for leave to file a written response making the required specification at the hearing. After due deliberation and consideration of argument presented by both sides on this point, the Board denied Respondent's motion to file an answer late because the Rule states that, "within fourteen days of the date of mailing [of the Suspension Order], the Respondent shall file a written response, which shall be confined to the allegations that . . . [then the three grounds are set out]." The Rule goes on to state:

The Respondent **shall** have the burden of producing the record upon which he relies to support allegations (1), (2), or (3) above, and he **shall** be limited at the hearing to reliance upon the allegations of his written response. Except to the extent the allega-

tions of the Respondent's written response are established, the findings in the other jurisdiction **shall** be conclusive of all matters for the purposes of the proceeding before the Board.

***If at the time fixed for hearing the Respondent has not filed a written response*** or shall not appear or if the Board, after hearing, shall determine that the Respondent has failed to establish the allegations of his written response, ***the Board shall impose the same discipline that was imposed in the other jurisdiction.***

Paragraph 13.G (emphasis added). Accordingly, the Board ruled that Respondent would be permitted to participate at the hearing, but would not be permitted to present evidence in an effort to establish one of the three grounds set forth in the Rule discussed above.

Then, the Bar introduced as its exhibits the final order of the PTO, the settlement agreement entered into by the PTO and the Respondent and the PTO investigative report.

Then, the Bar rested its case and moved the Board to enter an order imposing the same four year suspension upon Respondent as was imposed by the PTO.

Respondent's counsel then addressed the Board and argued in opposition to the imposition of the four year suspension. During his argument, counsel for Respondent conceded that his client was afforded due process in the disciplinary proceeding before the PTO (thereby conceding the first ground set forth in the Rule justifying the non-imposition of the same discipline). He further conceded that the conduct reported in the PTO investigative report upon which the PTO final order was based would be grounds for disciplinary action if shown independently in a proceeding before the Board (thereby conceding the third ground for non-imposition of the same discipline). Even though the Board had previously ruled that Respondent's failure to file a written response precluded Respondent from relying upon any of the three grounds set forth in the Rule to avoid the imposition of the same discipline, Respondent's counsel argued that to impose the same discipline in this matter would result in grave injustice as contemplated by Part Six, Section IV, Paragraph 13.G(2). In addition, Respondent's counsel argued that the PTO is not "another jurisdiction" as contemplated by the Rule and, therefore, the Board had no authority under Paragraph 13.G to impose the same discipline as was imposed by the PTO.

The Board then retired to consider the arguments of counsel and the evidence introduced at the hearing. Thereupon, the Board held that the Respondent had failed to show cause as to why the same discipline as was imposed by the PTO should not be imposed by the Virginia State Bar Disciplinary Board, if the PTO was "another jurisdiction" as that term is used in Paragraph 13.G. The Board requested that both parties brief the limited issue of whether the PTO is "another jurisdiction" within the meaning of the Rule, in as much as that term is not a defined term in Paragraph 13.G.

The parties submitted their briefs on this issue and the panel was reconvened by conference call on April 9, 2002. After careful consideration of the record in this case and the arguments and authorities submitted by the parties, the Board

finds that the PTO constitutes "another jurisdiction" as contemplated by the Rule. As stated above, the term is not defined in the Rules of the Supreme Court of Virginia. This is an issue of first impression before the Board. In fact, no decision by any court has specifically addressed this issue. However, in 2000 the Connecticut Court of Appeals affirmed the decision of a lower court in which reciprocal discipline was imposed upon a lawyer who had been suspended from practice before the PTO. *Statewide Grievance Committee v. Klein*, 1998 WL 563533 (Conn. Super. Ct.), *aff'd*, 56 Conn. App. 903, 742 A.2d 443 (Conn. App. Ct. 1999), petition for appeal denied, 252 Conn. 940, 747 A.2d 6 (Conn. 2000). While the issue of whether the PTO was "another jurisdiction" was not specifically addressed, the Court held that it would impose the reciprocal discipline imposed by the PTO under a rule which required the imposition of the same discipline as that imposed in "another jurisdiction" absent the same type of exceptional circumstances set forth in the Virginia rule.

In addition, it is significant to note that the PTO adopted the Code of Professional Responsibility as the Canons and Disciplinary Rules governing its members (the same rules Virginia had in effect during the time of Mullen's misconduct herein). *See* 37 C.F.R. § 10.20 -10.112. Also, the PTO has the authority to reprimand, suspend or revoke a member (37 C.F.R. § 10.130), and has established procedures for disciplinary investigations, the filing and service of the notice of charges and answers, and a myriad of procedural rules relating to motions, hearings, appeals and even petitions for reinstatement. *See* 37 C.F.R. § 10.130-10.160. In short, the PTO's disciplinary system and procedures are very similar to that of the mandatory state bars, including that of Virginia.

The Board further notes that the settlement agreement in the PTO disciplinary proceeding herein was agreed to and signed by Respondent and includes the term that: "[t]he OED Director give notice to the Virginia State Bar that Respondent has been suspended by the USPTO Director pursuant to 35 U.S.C. § 32. *See* 37 C.F.R. § 10.159(a)" It would appear that by agreeing to the inclusion of this paragraph in the settlement agreement both the PTO and Respondent acknowledged at least the possibility that the Virginia State Bar would take action upon receipt of this notice under Paragraph 13.G. In consideration whereof, the Board finds that the PTO is "another jurisdiction" within the meaning of Paragraph 13.G and that reciprocal discipline under Paragraph 13.G should be imposed upon the Respondent under the circumstances of this case.

In consideration whereof, it is ORDERED that Respondent be, and he hereby is, suspended from the practice of law in the Commonwealth of Virginia for the period of four (4) years from the date of entry of this Order; and it is further

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ORDERED that the Clerk of the Disciplinary System shall assess costs against the Respondent pursuant to Paragraph 13.K(10); and it is further

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So ordered this 6th day of May, 2002.

VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: William M. Moffet, Chair.

**DISSENTING OPINION**

Joseph R. Lassiter, Jr., in dissent:

The Virginia State Bar (“the Bar”) seeks to suspend the license of Martin Mullen to practice law on the grounds that the attorney has had his license to practice before the United States Patent and Trademark Office (“PTO”) suspended. Mullen entered into a settlement agreement with the Director of Enrollment and Discipline of the PTO whereby he agreed to a four year suspension. A final order was entered by the PTO on October 4, 2001.

The Bar argues that the PTO is “another jurisdiction” under Part 6 Section IV, Paragraph 13(G), which provides for reciprocal discipline of “. . . an Attorney admitted to practice in this State [who] has been disbarred or suspended from practice in another jurisdiction. . . .” The Respondent is allowed fourteen days from notification of a Show Cause hearing to file a written response alleging (1) denial of notice or opportunity to be heard in the prior proceeding, (2) grave injustice, or (3) that the alleged conduct would not be grounds for discipline in Virginia. The burden is on the Respondent to establish one of these grounds of defense. The Disciplinary Board is not permitted to depart from the discipline meted out by the other jurisdiction. Proof of one of the three grounds of defense would appear to result in no suspension at all. “Jurisdiction” is not defined anywhere in the Rules. If the Bar is not allowed to proceed under Paragraph 13(G), the Bar still has the option to institute such disciplinary proceedings against the Respondent as may be appropriate.

The Respondent contends that another “jurisdiction” as defined in Paragraph 13(G) should not be read to include an “administrative” agency such as the PTO. Respondent argues that “jurisdiction” refers to judicial action by judges of a tribunal, and does not include quasi-judicial action. As noted in the majority opinion, Respondent essentially admitted that defenses #1 and #3 in the preceding paragraph do not apply. Counsel for Respondent attempted to argue that it would constitute grave injustice to impose the same four year suspension of Respondent’s Virginia State Bar license that was imposed by the PTO when it suspended his license to practice before the PTO, even though Respondent had failed to file a grounds of defense asserting “grave injustice” within the mandatory fourteen day period. It is not clear that the “grave injustice” defense would apply, even if the PTO were to be found to be “another jurisdiction” under Paragraph 13(G).

I remain unconvinced as to what constitutes another “jurisdiction” as used in Paragraph 13(G). That provision references “an Attorney admitted to practice in this State” who has been disbarred or suspended from practice in another jurisdiction, and my initial understanding was that the reference was to an attorney disbarred by another state bar. If “jurisdiction” is read to include more than another state bar, what might that include? Federal courts? The U.S. Bankruptcy Court for the Western District of Virginia, or the District of South Carolina, or any other district? The bar of the Benefits Review Board? CRESPA certification? The Patent and Trademark Office? While it is not clear to me that “jurisdiction” as used in Paragraph 13(G) is limited to state bars, I am uncomfortable with broadening the definition to include any tribunal which might elect to adopt rules of admission for lawyers appearing before that tribunal.

Furthermore, characteristics of the bar of one specialized tribunal, such as the PTO, might cause differences in adjudication. For example, behavior that might result in denial of privileges to appear before the bankruptcy court might be less significant in evaluating whether an attorney should be completely suspended or disbarred from the practice of law in Virginia. Likewise, a personal injury attorney responsible for maintenance of a huge docket of personal injury cases might be suspended from practice for permitting the statute of limitations to expire on 14 personal injury cases, but it is not clear that a four year suspension would ensue following a first offense.

Mullen voluntarily agreed to the suspension of his license to practice before the PTO for a period of four years based upon discovery that 14 patent applications had become abandoned due to failure to properly diary them for review. (Filing of correspondence and other documents was not properly attended to in Mullen’s branch office of a firm that had offices in Iowa and Nebraska.) Attorneys, as well as non-attorneys, are allowed to perform numerous functions in patent law firms without being licensed to practice before the PTO. Conversely, non-attorneys can be licensed to appear before the PTO. The terms of Mullens’ suspension require him to maintain a patent prosecution docket for a registered patent attorney for a period of at least one year before he can qualify to get his PTO license back. It would appear that Mullen’s suspension by the PTO did not necessarily contemplate suspension of his license to practice law in any form for four years.

The tendency in law, as has occurred in other professions, is towards specialization. Under the circumstances, it would appear that it would be best to define “jurisdiction” narrowly, and let the Supreme Court clarify or revise the rules as it sees fit if it wishes to establish a broad definition of the phrase “another jurisdiction”. I would limit the effect of “jurisdiction” in Paragraph 13(G) to state bars who license attorneys for the practice of law. This would not deny the Bar the right to seek suspension for inappropriate acts following suspension by an administrative bar, but would permit the Disciplinary Board to fashion its own sanction following presentation by another licensing entity.



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF  
**OSCAR DE LEON NOBLEJAS**  
VSB DOCKET: 02-000-2794

**ORDER OF REVOCATION**

This matter came before the Virginia State Bar Disciplinary Board on April 26, 2002, pursuant to a rule to show cause issued in accordance with Virginia State Bar Disciplinary Board Rules of Procedure IV(D)(11). The hearing was held before a duly convened panel of the Board consisting of Roscoe B. Stephenson III, Acting Chair, William C. Boyce, Jr., Chester J. Cahoon, Lay Member, Frank B. Miller III, and Gordon P. Peyton, Jr.

All required notices were sent by the Clerk of the Disciplinary System. The Virginia State Bar was represented by

Noel D. Sengel. Neither the Respondent nor any counsel acting on his behalf appeared. The proceedings were reported by Donna Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

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

The Prior Proceedings

This matter arises out of discipline imposed by this Board on November 16, 2001, at which time the Board found that the Respondent had violated Disciplinary Rules 1-102(A)(3), 1-102(A)(4), 6-101(B), and 9-102(B). The Board imposed a Public Reprimand with Terms with an alternative sanction of revocation if the Respondent should fail to comply with the terms by February 1, 2002. The Board now alleges, by sworn affidavit, that the Respondent has failed to comply with the terms. Accordingly, a Rule was issued requiring the Respondent to show cause why the alternative sanction should not be imposed.

Findings

The Board finds that the Respondent has failed to show cause as to why the alternative sanction should not be imposed.

Sanction

The Board, therefore, imposes the alternative sanction, and the Respondent's license to practice law in this Commonwealth is hereby revoked, effective April 26, 2002.

Duties of the Respondent

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It is further ordered pursuant to paragraph 13K(10) of the Rules of the Supreme Court of Virginia, that the Clerk of the Disciplinary Board shall assess costs against the Respondent.

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ENTERED this 21st day of June, 2002.  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: Roscoe B. Stephenson III, Acting Chair



BEFORE OF THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

IN THE MATTERS OF  
**ELLEN COMPERE REYNOLDS**  
VSB Docket No. 00-090-2733 (VSB/Fitzpatrick)  
VSB Docket No. 00-090-2892 (Coleman)

ORDER

THIS MATTER came to be heard on March 22, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Randy Ira Bellows, Second

Vice Chair presiding, Richard J. Colten, William C. Boyce, Jr., Donna A. DeCorleto, and Theophlise L. Twitty.

The Respondent, Ellen Compere Reynolds, appeared in person and was represented by Michael L. Rigsby, Esquire. Paul D. Georgiadis, Esquire, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The proceedings were recorded by Donna T. Chandler, Chandler & Halasz, Inc., registered professional reporters, whose address is Post Office Box 9349, Richmond, Virginia 23227, and whose phone number is 804/730-1222.

This matter came before the Board by Certification of a Subcommittee of the Ninth District dated November 14, 2001. The Ninth District Certification consolidated both VSB docket numbers.

The factual basis of complaints considered by this Board is a result of complaints filed by David W. Coleman and a three-Judge panel of the Court of Appeals of Virginia. The latter complaint was filed on April 17, 2000, and was a result of the circumstances surrounding an appeal to that court wherein the Respondent, Ellen Compere Reynolds, was Special Counsel for and represented the Virginia Division of Child Support Enforcement, a division of the Department of Social Services. In order to address the issues raised in the Ninth District Subcommittee's Certification, each paragraph set out in the Findings of Fact and the Nature of Misconduct, as reported by the Subcommittee, will be set forth below in the same sequence, followed immediately thereby with this Board's findings and disposition.

The Certification to this Board is as follows:

I. FINDING OF FACT

- 1. At all times material to these allegations, Ellen Compere Reynolds, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.

The Panel finds that the Respondent, at all times relevant to this matter, has been an attorney licensed to practice within the Commonwealth of Virginia. Ellen Compere Reynolds has practiced in Virginia for in excess of six years.

- 2. On May 6, 1999, Reynolds appeared in Danville Circuit Court as Special Counsel for the Department of Child Support Enforcement in the case of DCSE ex rel. *Brenda Hutcherson v. David Coleman*. Hutcherson was appealing the J & D Court's reduction of Coleman's monthly child support to \$298.58. David Coleman, hereinafter "Coleman", appeared pro se at this and subsequent proceedings.

The Panel finds that this Finding of Fact is accurate, and that the Respondent does not contest this allegation.

- 3. Following the hearing, Respondent tendered to the Court an order entered on May 24, 1999. The order included a finding for child support arrearage of \$1,094.70, although neither the pleadings nor the evidence mentioned a current child support arrearage. As the Court dispensed with the requirement of presentment and signature per Rule 1:13, the Respondent tendered the order directly to the Court for entry without giving Coleman a chance to object.

The Panel confirms the accuracy of this finding, and it is not contested by the Respondent.

4. Respondent drafted the order and presented it for entry with a direction to the Clerk of the Court to mail the order to Coleman at 218 Third Avenue West, Danville, VA 24540, an address where Coleman had not lived for a number of years. During the course of several years of prior proceedings with Coleman, Respondent had served process upon Coleman at his current two addresses of 816 Shephard Avenue, Danville, VA or 4611 Raven Drive, Climax, N.C. Moreover, Respondent's first question at the hearing of May 6, 1999, asked and confirmed Coleman's physical address at the Climax, North Carolina, address.

The Panel again finds the allegation to be accurate, and it is not disputed by the Respondent. However, the Respondent claims that she made an error in reviewing the Division's computerized records and used an "old" address, which was no longer valid, notwithstanding both that the computer records indicated that Mr. Coleman had moved from that address and that the Respondent acknowledged having served process upon Mr. Coleman at his correct address both prior and subsequent to the service in question. Respondent claims that she had no ulterior motive in using the invalid address for Mr. Coleman, and the Panel finds that the Bar has failed to sustain its position that suggested that the Respondent intentionally inserted the wrong address so that Mr. Coleman would not receive appropriate notice of the contents of the erroneous order specifying the arrearage.

5. As a result of Respondent's use of an old address, Coleman did not receive the erroneous order directly.

The Panel finds that this is an accurate representation. The Respondent did not offer any evidence to suggest otherwise, but maintains that her error was unintentional and based on her failure to obtain Mr. Coleman's accurate address from the computer records.

6. Upon learning of the arrearage order, Coleman moved the Court to vacate the order and was heard on July 27, 1999. Despite the lack of any evidence being presented to the Court at the May 6, 1999, hearing, Respondent represented to the Court that arrearage had been at issue at the May 6, 1999 hearing.

The Panel finds that this allegation has been established, by clear and convincing evidence, and is a basis for a finding of misconduct, which will be referred to below. The Bar proved, by clear and convincing evidence, a violation of DR 7-105(C)(1).

7. Coleman filed his appeal to the Virginia Court of Appeals and served Respondent with his Appellant's brief on or about September 25, 1999. Coleman's brief presented only two (2) issues in his Question Presented, with the first being the lack of evidence for finding an arrearage.

The Panel finds that this is an accurate statement, and the Respondent does not contest. However, Respondent states that she may have only "skimmed" the Appellant's (Coleman's) brief, and it did not become evident to her that Mr. Coleman's major complaint was that the May 24, 1999, Circuit Court order contained the arrearage adjudication without any evidence hav-

ing been presented to the Court. The Respondent's statement strains credulity but the Board could not conclude, based on the evidence before it, that the respondent was deceptive with this Board.

8. Notwithstanding Coleman's briefing of the arrearage issue, Respondent failed to report the issue in her memorandum dated October 7, 1999, to her superiors and supervisors at the Office of Attorney General.

The Panel finds this allegation to be accurate. The Respondent does not contest its accuracy, although she continues to claim that she omitted discussion of the "arrearage issue" because she was essentially unaware of its significance notwithstanding Mr. Coleman's previously filed Motion to Vacate the May 24, 1999, Circuit Court order and his Appellant's brief filed on or about September 25, 1999, with the Virginia Court of Appeals. Both filings by Mr. Coleman clearly articulated his concern that the Respondent improperly inserted an erroneous finding in the May 24, 1999, order.

9. On October 21, 1999, Respondent filed her Appellee's brief with the Court of Appeals. Therein, Respondent failed to address, acknowledge, or attempt to explain the unsupported provision in the decree for the child support arrearage.

The Panel finds this allegation to be established. The Respondent's position is that the inclusion of the arrearage finding in the May 24, 1999, Circuit Court order was "harmless error" or, in the alternative, the Appellant (Coleman) was barred from presenting his argument to the Court of Appeals because he did not adequately preserve the issue in the Court below for appropriate appeal to the Court of Appeals. By maintaining that position up to and until confronted by the Judges of the Court of Appeals, this Panel believes that the Respondent participated in further misconduct, which will be addressed below. The Bar proved, by clear and convincing evidence, a violation of Rule 3.1.

10. Only when expressly confronted by a three judge panel of the Court of Appeals did Respondent acknowledge that she had no defense to the arrearage provision. As a result of Coleman's pro se appeal, the Court of Appeals reversed the trial court's award of the child support arrearage.

The Panel finds that this allegation is accurate. The Respondent claims that she brought her error to the attention of the Court of Appeals as soon as practicable. The Panel believes otherwise, and the Respondent's failure to disclose her error in including the arrearage in the May 24, 1999, order until confronted by the Judges of the Court of Appeals was continuing misconduct by the Respondent and a violation of Rule 3.1.

The Ninth District Subcommittee certified the following alleged violations of the Disciplinary Rules of the Virginia Code of Professional Responsibility and Virginia Rules of Professional Conduct:

## II. NATURE OF MISCONDUCT

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

The Panel finds that the Virginia State Bar did not prove, by clear and convincing evidence, a violation of DR 1-102, and the charge is therefore dismissed.

**Rule 8.4.** Misconduct.

(c) \*\*\*

The Panel finds that the Virginia State Bar did not prove, by clear and convincing evidence, a violation of Rule 8.4, and the charge is therefore dismissed.

**DR 7-105.** Trial Conduct.

(C) (1), (2), (3), (4), (5) and (6) \*\*\*

The Panel finds, by clear and convincing evidence, that the Respondent did violate DR 7-105(C)(1), in that the Respondent did state or allude to a matter that she had no reasonable basis to believe was relevant to the case or that would not be supported by admissible evidence. This violation essentially results from the Respondent's misleading the Circuit Court Judge when the trial Court addressed Mr. Coleman's Motion to Vacate the May 24, 1999 order, by erroneously informing the trial Court that, at the May 6, 1999 hearing, evidence had been presented that Mr. Coleman was in arrears in his child support. Violations of DR 7-105(C)(2), (3), (4), (5) and (6) have not been proven by clear and convincing evidence and those charges are, therefore, dismissed. In other words, the Board found that Reynolds did misstate the facts to the trial court, and had no reasonable basis to make the statement she made, but the Board also found that the Bar failed to carry its burden of proving that the misstatement was a knowing and intentional false representation.

**RULE 3.4.** Fairness to Opposing Party and Counsel.

(c), (d), (f) and (i) \*\*\*

The Panel finds that violation of Rule 3.4 has not been proven by clear and convincing evidence, and the charge is, therefore, dismissed.

**DR 7-102.** Representing a Client Within the Bounds of the Law.

(A) (1), (2), (3), (4), (5), (6), (7) and (8) \*\*\*

The Panel finds that the Virginia State Bar has failed to prove a violation of DR 7-102, and that allegation is, likewise, dismissed.

**RULE 3.1.** Meritorious Claims And Contentions.

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The Panel finds, by clear and convincing evidence, that the Respondent violated Rule 3.1. The Respondent was in a position to acknowledge her error regarding the "arrearage issue" prior to or at least when she filed her Appellee's brief with the Court of Appeals on October 21, 1999, and she continued to be under an obligation to acknowledge her error on numerous occasions prior to arguing before the Court of Appeals. It should be noted that the Rules of Professional Conduct became effective January 1, 2000, slightly more than two months after the Respondent filed the Appellee's brief with the Court of Appeals. However, the Panel believes that the Respondent violated the Rule, in a continuing fashion, in that she consistently defended her position regarding the "arrearage issue" without a reasonable basis in fact or law. The Respondent's failure to correct or modify her position up until her argument before the Court of Appeals on April 4, 2000, is a violation of Rule 3.1 and has been established by clear and convincing evidence.

**RULE 3.3.** Candor Toward The Tribunal.

(6) (1) and (2) \*\*\*

The Panel finds that the Virginia State Bar has failed to establish a violation of Rule 3.3 by clear and convincing evidence, and the charge is thereby dismissed.

The Board, after considering the testimony of eight witnesses, including the Respondent, plus a *de bene esse* deposition of The Honorable Sam J. Coleman, Judge of the Court of Appeals of Virginia, and after reviewing 24 exhibits introduced by the Virginia State Bar and 17 exhibits introduced by the Respondent, all without objection from opposing counsel, and having considered the Motion to Strike made by the Respondent, and denying same, and having heard argument, the Board deliberated. After an equally aggressive prosecution and defense, the Board unanimously determined that the Respondent be given a PUBLIC REPRIMAND inasmuch as the Board finds, by clear and convincing evidence, that the Respondent, Ellen Compere Reynolds, violated DR 7-105(C)(1) and Rule 3.1. Upon consideration of these matters, the Panel hereby issues a PUBLIC REPRIMAND effective upon entry of this Order.

The Clerk of the Disciplinary System shall assess costs pursuant to Part IV, Paragraph 13(k)(10) of the Rules of the Virginia Supreme Court.

ENTERED this 6th day of April, 2002.

VIRGINIA STATE DISCIPLINARY BOARD

By: Randy Ira Bellows, Second Vice Chair



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF:

**Terry Lee Van Horn**

VSJ Docket Nos. 99-033-3099;

00-033-3186;

01-033-1633

**ORDER OF SUSPENSION**

THESE MATTERS came on April 26, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), comprised of Randy Ira Bellows (Chair), Richard J. Colten, Donna DeCorleto (Lay Member), Carl Eason and Peter A. Dingman, pursuant to a Subcommittee Determination and Certification from the Virginia State Bar Third District Committee, Section III. Terry Lee Van Horn ("Respondent" or "Van Horn") appeared in person and was represented by counsel, Michael L. Rigsby. The Virginia State Bar (the "Bar") appeared by its counsel, Barbara Ann Williams.

The matter was called at 9:00 a.m., in the Green Courtroom of the United States Fourth Circuit Court of Appeals, Richmond, Virginia. As a preliminary matter, the Bar withdrew paragraph 16 of the Certification. The Chair then swore the Court Reporter, Vicki Halasz, and polled the members of Board sitting for this hearing as to whether any of them had any personal or financial interest which would interfere with or influence their unbiased determination of these matters. Each member of the Board, including the Chair, responded in the

negative. Respondent, by counsel, also informed the Board that he was withdrawing his objection to consolidation of these matters for hearing.

Various proceedings followed which, however, were rendered moot by the ultimate disposition of this matter. After consultation, Counsel for the Bar and Counsel for Respondent advised the Board that the parties had reached an agreement as to the appropriate disposition of all three matters raised in the Certification. Respondent and the Bar stipulated and agreed that, had the hearing proceeded to completion, the evidence produced would be sufficient to sustain, by clear and convincing evidence, findings of misconduct as to each violation of a Disciplinary Rule set forth in the Certification. The allegations set forth in the Certification were as follows:

**VSJ Docket No. 99-033-3009**

**Complainant: Commissioner of Accounts**

A. Factual Allegations

1. On or about March 6, 1992, Mr. Van Horn qualified as executor of the Estate of Rosella Gibbs Groves.
1. Mrs. Rosella Groves's son Robert George Groves, Jr. was the only heir to his mother's estate.
2. Mr. Groves, who resided in Norwich, England, passed away in 1997; he is survived by his wife Joyce Groves, who resides in England.
3. On or about September 15, 1994, Richard C. Manson, Jr., Commissioner of Accounts of the Circuit Court of the City of Richmond, issued a summons to Mr. Van Horn for his failure to file an inventory of the estate; an account of all money and other property he had received as fiduciary, including vouchers for all disbursements of monies or personal property; and broker confirmations of securities the respondent held as fiduciary, along with a statement or certificate of every bank in which money was deposited.
4. Mr. Van Horn did not comply with the summons; therefore, on December 12, 1994, the Commissioner of Accounts requested the Honorable Randall G. Johnson to set the matter for hearing on January 17, 1995.
5. A Show Cause Order was issued on December 13, 1994.
6. On or about January 13, 1995, Mr. Van Horn submitted an Inventory and First Accounting.
7. The Show Cause hearing was continued until March 13, 1995, based upon Mr. Van Horn's partial compliance with the statutory requirements.
8. On June 1, 1995, the Commissioner of Accounts wrote Mr. Van Horn inquiring, among other things, what had happened to approximately \$4,200.00 remaining in the estate.
9. Mr. Van Horn did not reply to the Commissioner of Accounts's letter dated June 1, 1995.
10. On July 10, 1995, the Commissioner of Accounts's Office left a telephone message with Mr. Van Horn's office indicating that a response was needed to the Commissioner's letter dated June 1, 1995.
11. On September 20, 1995, the Commissioner of Accounts issued a summons to Mr. Van Horn for his failure to provide supporting documentation for the first accounting he filed for the period March 6, 1992 to February 22, 1994, and to file an accounting for the period beginning February 23, 1994.
12. On September 22, 1995, Mr. Van Horn wrote the Commissioner of Accounts but not address the issue of what had happened to the approximately \$4,200.00 remaining in the estate.
13. On November 21, 1995, the Commissioner of Accounts faxed Mr. Van Horn a copy of his September 22, 1995 letter, indicating that he hoped to resolve all issues by mid-October, and requesting the respondent to provide a status report.
14. On February 22, 1996, the Commissioner of Accounts mailed Mr. Van Horn a copy of a letter from McDaniel Rucker Insurance Agency, inquiring about the status of Mrs. Rosella Groves's estate, and added a handwritten note: "Pls. Advise me the exact status of these, in writing, no later than 2/29/96."
15. Mr. Van Horn did not reply to the Commissioner's request. [WITHDRAWN BY THE BAR]
16. On March 8, 1999, the Commissioner of Accounts again requested Mr. Van Horn to provide final documentation indicating what final distributions were made and to provide receipts therefore.
17. After Mr. Van Horn failed to respond fully to the summons issued on September 20, 1995, the Commissioner of Accounts caused a Show Cause Order to be issued by the Circuit Court of the City of Richmond on or about June 9, 1999.
18. On or about June 21, 1999, the Commissioner of Accounts reported to the Virginia State Bar, pursuant to Virginia Code 26-18, that Mr. Van Horn had failed to make the required settlement within thirty days after service of the summons issued on September 20, 1995.
19. In a letter to Bar Counsel dated July 16, 1999, Mr. Van Horn stated that the summons issued in September 1995 had been dismissed after he filed the required accounting, which was approved. Mr. Van Horn also acknowledged receiving approximately \$4,000.00 "in satisfaction of my fees for services as Executor and to the beneficiary for services rendered in his absence," and indicated that at the show cause hearing on June 28, 1999, "the Court seemed satisfied with my explanation, which is basically what I have included in this response, and continued the matter until July 26, 1999 for receipt of the accounting and final disposition of the issue."

20. On or about July 23, 1999, Mr. Van Horn submitted a Final Account, which states that the balance in Dominion Bank Account No. 74-346680446 of \$4,181.90 was "transferred to Terry L. Van Horn [in] Satisfaction of Executor Fees, Attorneys Fees for Services Rendered, Beneficiary Robert G. Groves, Jr."
23. On July 23, 1999, Mr. Van Horn sent Bar Counsel a letter stating his letter dated July 16, 1999, incorrectly indicated that the required accounting had been filed and approved.
24. On July 27, 1999, the Commissioner of Accounts wrote Mr. Van Horn, seeking more information about when, how and why the \$4,181.90 fee was paid to him, whether the beneficiary consented to the payment and how it was documented.
25. Mr. Van Horn did not reply to the Commissioner of Accounts' letter dated July 27, 1999.
26. On or about August 16, 1999, after Mr. Van Horn filed the final accounting, the Show Cause Order was dismissed even though the accounting was deficient.
27. On September 14, 1999, the Commissioner of Accounts again wrote Mr. Van Horn requesting information necessary to resolve the accounting and advising that the Commissioner would take formal exception to the accounting filed with the court if Mr. Van Horn failed to provide the requested information.
28. Mr. Van Horn did not reply to the Commissioner of Accounts's letter dated September 14, 1999.
29. On or about October 4, 1999, the Commissioner of Accounts issued a report disallowing fees claimed by Mr. Van Horn as executor in the amount of \$4,181.90.
30. Mr. Van Horn received fees totaling \$2,500.00 for his work as executor and another \$1,500.00 as attorney's fees, in addition to the \$4,181.90 he claimed as fees.
31. The Groves believed that Mrs. Rosella Groves's estate was closed in 1994 and did not know \$4,181.90 remained in the estate.
32. The Groves never approved disbursement of \$4,181.90 to Mr. Van Horn as fees.

**B. Charges of Misconduct**

The foregoing allegations give rise to the following charges of misconduct under Code of Professional Responsibility; each Disciplinary Rule (DR) allegedly violated is set out separately:

**DR 1-102. Misconduct.**

- (A) A lawyer shall not:  
(4) \*\*\*

**DR 2-105. Fees.**

- (A) \*\*\*

**DR 6-101. Competence and Promptness.**

- (C) \*\*\*

**VSB Docket No. 00-033-3186**

**Complainant: Shirley R. Crittenden**

**A. Factual Allegations**

1. In June 1996, Shirley R. Crittenden consulted Mr. Van Horn about her marital situation.
2. Mrs. Crittenden was subsequently served with divorce papers; and on or about October 13, 1999, she paid Mr. Van Horn \$3,500.00 to represent her in the divorce proceedings.
3. When Mr. Van Horn agreed to represent Mrs. Crittenden, she had already been served with a bill of complaint, interrogatories and requests for production, and a pre-equitable distribution hearing had been noticed for October 19, 1999.
4. At their October 13th meeting, Mrs. Crittenden reviewed the outstanding discovery requests with Mr. Van Horn and provided information responsive to the requests.
5. Mr. Horn made handwritten notes about the discovery responses on a legal pad.
6. Mr. Van Horn told Mrs. Crittenden that McClanahan Ingles, her husband's counsel, would have to subpoena the information she did not have and advised her not to attend the pre-equitable distribution hearing on October 19th.
7. After the pre-equitable distribution hearing, Mr. Van Horn advised Mrs. Crittenden that Mr. Ingles was unwilling to discuss anything and that a commissioner would be assigned to the case.
8. On or about October 21, 1999, Mr. Van Horn wrote Mr. Ingles a letter, assuring him that Mrs. Crittenden's discovery responses, which were overdue, would be completed no later than October 27, 1999.
9. Mrs. Crittenden was unaware that Mr. Van Horn had failed to serve her discovery responses, or that on or about November 8, 1999, Mr. Ingles had filed and served a motion to compel and notice that a hearing on the motion would be held on January 18, 2000.
10. Early in November 1999, after Mrs. Crittenden called to inquire about the status of the divorce proceedings, Mr. Van Horn told her that he had not heard from her husband's counsel, that he did not know whether a commissioner had been assigned and that he would let Mrs. Crittenden know when he heard something.
11. On or about November 15, 1999, after Mrs. Crittenden's husband complained that Mr. Van Horn was over-complicating things and would not speak to his attorney, Mrs. Crittenden advised Mr. Van Horn that her husband was willing to negotiate and instructed Mr. Van Horn to arrange a meeting.
12. Mr. Van Horn scheduled a meeting in December 1999, but his secretary subsequently called Mrs. Crittenden and informed her that her husband's attorney had canceled the meeting, stating that he did not have enough information to conduct a meaningful meeting.

13. Mrs. Crittenden followed up with Mr. Van Horn the same day, and Mr. Van Horn assured her that Mr. Ingles had everything he needed to know.
14. Early in January 2000, Mrs. Crittenden called Mr. Van Horn to inquire about the status of the divorce proceedings; Mr. Van Horn told her that no date had been set with the commissioner and not to worry.
15. Mr. Van Horn did not appear at the hearing on January 18, 2000, at which time the court ordered Mrs. Crittenden to file full responses to the outstanding discovery requests no later than February 1, 2000, and to pay Mr. Ingles \$450.00.
16. The court entered an order to this effect on January 24, 2000; Mrs. Crittenden knew nothing about the hearing or the order.
17. On or about February 15, 2000, Mrs. Crittenden was served with a motion for sanctions for failing to abide by the court order and notice of a hearing to be held on the sanctions motion on April 11, 2000.
18. After she was served with the motion and notice, Mrs. Crittenden tried unsuccessfully to contact Mr. Van Horn over a three-day period.
19. Finally, Mr. Van Horn directed his secretary to set up a meeting with Mrs. Crittenden on or about February 18, 2000, at which time, Mrs. Crittenden again reviewed her responses to the outstanding discovery requests with Mr. Van Horn.
20. On February 29, 2000, Mrs. Crittenden executed responses that Mr. Van Horn had prepared to the outstanding discovery requests.
21. On or about March 10, 2000, Mrs. Crittenden sought a second opinion about the seriousness of the sanctions motion from attorney Susanne Schilling, who advised Mrs. Crittenden that she was in big trouble and that Mr. Van Horn would have to get the contempt matter dismissed before Ms. Schilling would get involved.
22. On or about March 13, 2000, Mrs. Crittenden met with Mr. Van Horn, who assured her that he would take care of the contempt matter, stating that he was in trouble, not her.
23. Mr. Van Horn told Mrs. Crittenden that Mr. Ingles had all the information he needed and that it would not be necessary for Mrs. Crittenden to appear at the contempt hearing, asking her to "trust him."
24. During the weeks of March 20 and 27, Mrs. Crittenden called Mr. Van Horn several times to find out whether the contempt matter had been dismissed and spoke to Mr. Van Horn's secretary.
25. On April 7, 2000, Mr. Van Horn's secretary left Mrs. Crittenden a voice mail message, confirming that she did not have to go to court because Mr. Van Horn said he would go to court and "get his wrist slapped."
26. Worried about the gravity of the situation, on April 11, 2000, Mrs. Crittenden appeared in court, only to learn that

Mr. Van Horn had failed to advise her that the hearing had been continued.

27. When Mrs. Crittenden spoke to Mr. Van Horn the next day, he told her that she did not have to attend the hearing, which had been continued to April 14, 2000.
28. Mr. Van Horn did not tell Mrs. Crittenden that he had not provided the discovery responses she executed on February 29, 2000, to opposing counsel until April 11, 2000.
29. On April 14, 2000, Mrs. Crittenden appeared in court with Mr. Van Horn and was shocked when Mr. Van Horn answered "both" in response to the court's question as to whether she or Mr. Van Horn were responsible for the failure to respond to the outstanding discovery requests.
30. After hearing the evidence, the court struck Mrs. Crittenden's answer and cross-bill, barred from presenting any evidence in the divorce proceedings and ordered her to pay Mr. Ingles another \$450.00 by May 1, 2000.
31. Mrs. Crittenden obtained new counsel, Terrence R. Batzli, who was substituted as her counsel in the divorce action and filed a motion for reconsideration.
32. The hearing on the motion for reconsideration was set for June 6, 2000; on or about that date, the parties entered into a Memorandum of Agreement.
33. The Final Decree of Divorce was entered on June 20, 2000.
34. After Mrs. Crittenden filed a bar complaint against him, Mr. Van Horn sent her an itemized statement and a \$355.00 refund from the \$3,500.00 retainer she had paid him.

**B. Charges of Misconduct**

The foregoing allegations give rise to the following charges of misconduct under the Code of Professional Responsibility and the Rules of Professional Conduct. Each DR relates to misconduct that occurred before January 1, 2000, and each Rule of Professional Conduct ("ARPC") relates to misconduct that occurred after that date:

**DR 2-105. Fees.**

(A) \*\*\*

**DR 6-101. Competence and Promptness.**

(A) (1) and (2) \*\*\*  
(B), (C) and (D) \*\*\*

**DR 7-101. Representing a Client Zealously.**

(A) (1), (2) and (3) \*\*\*

**RULE 1.3 Diligence**

(a), (b) and (c)

**RULE 1.4 Communication**

(a), (b) and (c) \*\*\*

**RULE 1.5 Fees**

(a) (1), (2), (3), (4), (5), (6), (7) and (8) (b) \*\*\*

**RULE 3.4 Fairness To Opposing Party And Counsel**

(c) \*\*\*

**VSJ Docket No. 01-033-1633**

**Douglas O. Tice, Chief Judge, United States Bankruptcy Court, Eastern District of Virginia, Richmond Division**

**A. Factual Allegations**

1. In August 1997, Christopher N. Babcock and Brenda G. Babcock consulted Mr. Van Horn to obtain advice about their bankruptcy options; the Babcocks subsequently retained Mr. Van Horn to prepare and file a chapter 7 bankruptcy petition, schedules, statement of affairs, statement of intent, to render advice with respect to scheduling of their property and potential exemptions of such property, to represent them at the first creditors' meeting and assist in the administration of their chapter 7 case.
2. The Babcocks paid Mr. Van Horn a \$450 retainer.
3. Mr. Van Horn filed a chapter 7 petition on January 13, 1998, listing the total value of the Babcocks' scheduled assets as approximately \$14,300.00.
4. On March 3, 1998, the trustee filed an objection to the debtors' claimed exemptions.
5. The Babcocks promptly contacted Mr. Van Horn when they received the objection, and he assured them that he would respond to the trustee's objection.
6. The trustee repeatedly attempted to contact Mr. Van Horn concerning the objection and, after receiving no response, wrote the Babcocks and instructed them to park their vehicles and to advise the trustee of the vehicles' location.
7. The Babcocks immediately contacted Mr. Van Horn, who advised them that they did not have to heed the trustee's instructions and that he would contact the trustee directly to resolve the matter.
8. Two hearings were held on the trustee's objection, and Mr. Van Horn failed to appear at either hearing despite having received proper notice.
9. Mr. Van Horn failed to file any response to the trustee's objection and instructed the Babcocks not to appear at the hearings.
10. The court entered an order denying the Babcocks' claimed exemptions on March 18, 1999.
11. On March 13, 1999, the Babcocks attended a Rule 2004 examination, at which time they fully cooperated with the trustee and testified that Mr. Van Horn had advised them not to abide by the trustee's directions and requests.
12. The trustee failed a complaint on July 13, 1999, seeking turnover of the Babcocks' assets and monetary damages.

13. After Mr. Van Horn failed to file an answer to the trustee's complaint, the trustee filed a motion for default.
14. A hearing was held on September 22, 1999, on the motion for default; the court entered an order on November 23, 1999, revoking the Babcocks' chapter 7 discharge and granting judgment in favor of the trustee for \$14,300.00, as well as awarding monetary sanctions against the debtors in the amount of \$4,527.60.
15. On June 1, 2000, the Babcocks' new bankruptcy counsel, the Boleman Law Firm, P.L.C., as new bankruptcy counsel, they filed a motion to determine whether the fees they had paid Mr. Van Horn exceeded the reasonable value of the legal services he provided.
16. Mr. Van Horn filed no response, and on June 22, 2000, the court entered an order finding that Mr. Van Horn's compensation exceeded the reasonable value of his services and requiring Mr. Van Horn to return the \$450.00 that the Babcocks had paid him.
17. Mr. Van did not comply with the court's order.
18. The Babcocks' new counsel subsequently requested the court to reinstate their discharge under chapter 7, to hold Mr. Van Horn in contempt for his violation of the court's June 22, 2000, order awarding him to refund his fee, and to allow the Babcocks' to recover attorney's fees and costs in the amount of \$2,563.00 as further sanctions against Mr. Van Horn.
19. The court granted the Babcocks' motion for contempt and awarded them monetary sanctions in the amount of \$2,563.00, in addition to the sum of \$450.00 that Mr. Van Horn was ordered to pay the Babcocks on June 22, 2000, but the court declined to reinstate the Babcocks' chapter 7 discharge.

**B. Charges of Misconduct**

The foregoing allegations give rise to the following charges of misconduct under the Code of Professional Responsibility and the Rules of Professional Conduct. Each DR relates to misconduct that occurred before January 1, 2000, and each RPC relates to misconduct that occurred after that date:

**DR 2-105. Fees.**

(A) \*\*\*

**DR 6-101. Competence and Promptness.**

(A)(1) and (2) \*\*\*  
(B), (C) and (D) \*\*\*

**DR 7-101. Representing a Client Zealously.**

(A)(1), (2) and (3) \*\*\*

**DR 7-105. Trial Conduct.**

(A) \*\*\*

**RULE 1.5 Fees**

(a)(1), (2), (3), (4), (5), (6), (7) and (8) \*\*\*

**RULE 3.4 Fairness To Opposing Party And Counsel**  
(d) \*\*\*

**AGREED DISPOSITION**

The Board having considered the agreement of the parties and deeming it to be reasonable, well taken and in the best interests of the public, the Bar and Respondent, the Board accepted the agreed disposition, the terms of which are as follows.

A **SUSPENSION** of Respondent's license for a period of three years, commencing on May 27, 2002, and conditioned upon Respondent's satisfaction of the following conditions:

1. Within one hundred eighty (180) days after April 26, 2002, Respondent will secure, at his sole cost and expense, complete physical, psychiatric and neuropsychological examinations and reports from one or more competent healthcare professionals to be agreed by Respondent and the Bar. Respondent will execute all necessary releases and direct the healthcare professionals to provide copies of such reports and all underlying notes, test results and other data related to the examinations to the Bar.
2. Such examinations and reports will be repeated not less often than annually during the term of the suspension, with a final report to be delivered to the Bar, including an evaluation of Respondent's fitness to resume the practice of law, on a date not less than sixty (60) days prior to May 27, 2005.
3. Respondent and the Bar further stipulated and agreed that should Respondent fail to obtain the examinations and reports and to secure the delivery of the reports, together with all underlying notes, test results and other data, to the Bar as contemplated in the foregoing conditions, then the appropriate alternative discipline to be imposed upon such a violation of these conditions shall be revocation of Respondent's license. Upon consideration of the stipulations and agreements of the parties, the Board does find as follows:

That, the Bar has sustained its burden, by clear and convincing evidence, upon the stipulation and agreement of the parties, in establishing that Respondent is guilty of each and every act of misconduct and violation of the Disciplinary Rules and Rules of Professional Conduct charged in the Certification; and

That, the disposition agreed to by the parties is appropriate.

In consideration whereof, it is

ORDERED that Respondent be, and he hereby is, suspended from the Bar of the Supreme Court of Virginia for a period of three (3) years, commencing on May 27, 2002, and conditioned upon Respondent's prompt and complete satisfaction of the conditions hereinabove set out. In the event of any failure of Respondent to satisfy these conditions, the Bar may proceed by Petition for Rule to Show Cause to establish such fact and, in the event that such fact is established, by clear and convincing evidence, then Respondent's license shall be revoked.

\*\*\*

ORDERED that the Clerk of the Disciplinary System shall assess costs against Respondent pursuant to Paragraph 13K(10), of Part VI of the Rules of the Supreme Court of Virginia.

\*\*\*

So ordered this 20th day of May, 2002.  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: Randy Ira Bellows, Chair



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTERS OF  
**PATRICIA MARIA WRIGHT**  
VSB Docket No. 99-021-1381 (Shirley Charlton)  
VSB Docket No. 99-021-0223 (Carolyn S. Cuffee)

**ORDER**

On May 30, 2002, came the Virginia State Bar by its Assistant Bar Counsel, Paul D. Georgiadis, and came Respondent Patricia Maria Wright, pro se, to be heard on the Virginia State Bar's motion to dismiss these appeals of public reprimands issued by the Second District Committee - Section 1 on March 29, 2002. Whereupon, upon consideration of the Motion and upon argument of Assistant Bar Counsel and Respondent and it appearing proper to do so,

It is accordingly ORDERED that the appeals be, and they hereby are, dismissed, and the public reprimands imposed by the Second District Committee—Section 1 are hereby AFFIRMED.

The Clerk shall mail a true and correct copy of this Order to Patricia Marie Wright, 106 Truxton Avenue, Portsmouth, Virginia 23701, and to Paul D. Georgiadis, Assistant Bar Counsel, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 30th day of May, 2002.  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: John A. Dezio, First Vice Chairman



**BEFORE THE SECOND DISTRICT  
COMMITTEE-SECTION I  
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF  
**PATRICIA MARIA WRIGHT**  
VSB Docket No. 99-021-1381

**DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND)**

On March 15, 2002, a hearing in this matter was convened at 9:30 A.M. before a duly convened panel from the Second District Committee-Section I, consisting of Afshin Farashahi, Esquire, LaRhonda Jean Carter, Attorney at Law, Ray Webb King, Esquire, Mr. Kurt M. Rosenbach, lay member, Croxton

Gordon, Esquire, Mr. Robert W. Carter, lay member, Paul Kevin Campsen, Esquire, Robert William McFarland, Esquire, and William Hanes Monroe, Jr., Esquire, Chair presiding. The bar appeared by its Assistant Bar Counsel Paul D. Georgiadis. The Respondent, Patricia Maria Wright, appeared *pro se*.

On March 15, 2002, at 9:00 a.m., the Committee heard the bar's Show Cause Motion wherein the Respondent was directed to show cause why this misconduct case should not be set for hearing in the absence of proof that Respondent fulfilled the terms set forth by order of Dismissal with Terms of a subcommittee of the Second District Committee-Section I dated October 19, 1999. The Respondent, having received due notice of the hearing and having actual notice of the hearing, did not appear. Finding that the Respondent did not comply with the terms of attending four (4) hours of CLE in appellate practice within six (6) months from the date of the order, the Committee directed the matter to be heard at the previously noticed day and time of March 15, 2002, at 9:30 A.M.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(7) and Council Rule of Disciplinary Procedure V, the Second District Committee, Section I, of the Virginia State Bar hereby serves upon the Respondent, Patricia Maria Wright, the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Patricia Maria Wright, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Following the criminal trial of juvenile Laquentie Smith in Virginia Beach Circuit Court on December 19, 1997, the Court entered an Order substituting Respondent as counsel of record. Respondent was retained through Smith's mother, Shirley H. Charlton.
3. Following Smith's sentencing on July 15, 1998, Respondent noted an appeal on or about August 14, 1998. However, she failed to file a filing fee at that time or thereafter in accordance with Rule 5A:6(C) of the Rules of Court.
4. Neither Charlton nor Smith authorized Respondent to abandon the appeal and at no time did Respondent move for or obtain leave of court to withdraw from the representation.
5. On November 18, 1998, the Virginia Court of Appeals entered an order of dismissal of this matter for failure to timely file the filing fee.
6. Throughout the representation, Respondent failed to return Charlton's telephone calls inquiring about the status of the appeal.
7. At no time did Respondent advise either Charlton or Smith of the dismissal of the appeal. Charlton learned of the November 18, 1998 order dismissing the appeal only through the VSB Investigator, who advised her on February 2, 1999. Smith thereafter learned of the dismissal of his appeal from Charlton.

II. NATURE OF MISCONDUCT

Such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

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

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand on Respondent, Patricia Maria Wright, and she is so reprimanded.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶ 13(K)(10), the Clerk of the Disciplinary System shall assess costs.

Second District Committee—Section I  
Of the Virginia State Bar  
By William Hanes Monroe, Jr  
Chair Presiding



BEFORE THE SECOND DISTRICT  
COMMITTEE-SECTION I  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**PATRICIA MARIA WRIGHT**  
VSB Docket No. 99-021-0223

DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND)

On March 15, 2002, a hearing in this matter was convened at 9:30 A.M. before a duly convened panel from the Second District Committee-Section I, consisting of Afshin Farashahi, Esquire, LaRonda Jean Carter, Attorney at Law, Ray Webb King, Esquire, Mr. Kurt M. Rosenbach, lay member, Croxton Gordon, Esquire, Mr. Robert W. Carter, lay member, Paul Kevin Campsen, Esquire, Robert William McFarland, Esquire, and William Hanes Monroe, Jr., Esquire, Chair presiding. The bar appeared by its Assistant Bar Counsel Paul D. Georgiadis. The Respondent, Patricia Maria Wright, appeared *pro se*.

On March 15, 2002, at 9:00 a.m., the Committee heard the bar's Show Cause Motion wherein the Respondent was directed to show cause why this misconduct case should not be set for hearing in the absence of proof that Respondent fulfilled the terms set forth by order of Dismissal with Terms of a subcommittee of the Second District Committee-Section I, dated October 26, 1999. The Respondent, having received due notice of the hearing and having actual notice of the hearing, did not appear. Finding that the Respondent did not comply with the terms of certifying to the bar within thirty (30) days of said order her establishment of an office policy to include the regular use of retainer agreements or letters or representation, the Committee imposed the alternate term of a full hearing on the alleged misconduct. Thereafter, the matter was directed to be heard at the previously noticed day and time of March 15, 2002, at 9:30 A.M.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(7) and Council Rule of

Disciplinary Procedure V, the Second District Committee, Section I, of the Virginia State Bar hereby serves upon the Respondent, Patricia Maria Wright, the following Public Reprimand.

I. FINDINGS OF FACT

- 1. At all times material to these allegations, the Respondent, Patricia Maria Wright, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about March 11, 1998, Carolyn S. Cuffee retained Respondent to draft a petition to terminate a guardianship. Cuffee had been referred to Respondent by a pre-paid legal services plan administrator. At that time, Respondent agreed to accept \$100.00 towards her fee. Accordingly, Cuffee paid Respondent \$100 to commence representation in the matter.
3. In the ensuing two months, Cuffee attempted to contact Respondent by telephone and left messages of inquiry as to the status of the petition drafting. At the initial meeting of Respondent and Cuffee, Respondent had invited Cuffee to call one week after Cuffee paid her the initial \$100 payment. Neither Respondent nor Respondent's office responded to Cuffee by giving her any information about the status of the matter.
4. Over the two months of representation, Respondent in fact had not performed any work on the guardianship petition, although Cuffee had paid Respondent to begin said work.

II. NATURE OF MISCONDUCT

Such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

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

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the committee to impose a Public Reprimand on Respondent, Patricia Maria Wright, and she is so reprimanded.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV ¶ 13(K)(10), the Clerk of the Disciplinary System shall assess costs.

Second District Committee-Section I of The Virginia State Bar By William Hanes Monroe, Jr. Chair Presiding



District Committees

BEFORE THE THIRD DISTRICT, SECTION III SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF LEARNED DAVIS BARRY VSB Docket No. 02-033-3307

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

On June 19, 2002, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Barbara Ann Williams, Bar Counsel for the Virginia State Bar, Craig S. Cooley, Respondent's counsel, Thomas O. Bondurant, Jr., Esquire, Andrew J. Gibb, and Cynthia A. S. Cecil, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5)(c)(ii)(d) of the Rules of the Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby served upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

- 1. The respondent Learned Davis Barry was admitted to the practice of law in the Commonwealth of Virginia on May 21, 1974.
2. At all relevant times to this proceeding, Mr. Barry was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.
3. On April 10, 2002, in Henrico County, Virginia, Mr. Barry entered Tower Books at the Willow Lawn Shopping Center.
4. While Mr. Barry was in the bookstore, he intentionally took a book valued at \$12.95 and left the store without paying for it.
5. Mr. Barry pled guilty to a charge of petit larceny.
6. Upon tender of the plea, the General District Court of the County of Henrico made no finding and continued the case for one year, conditioned upon Mr. Barry's uniform good behavior and Mr. Barry's immediate, final and irrevocable resignation of his position as a judge of the Circuit Court of the City of Richmond.
7. If at the conclusion of the one year period, Mr. Barry has complied with the conditions set out above, the Commonwealth will move the court to nol pros the warrant.

II. NATURE OF MISCONDUCT

Bar Counsel, the respondent, and respondent's counsel agree that the above findings of fact gave rise to a finding of violation of the following Rule of Professional Conduct:

RULE 8.4 Misconduct (b) \*\*\*

III. PUBLIC REPRIMAND WITH TERMS

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

- 1. Mr. Barry shall comply fully with the terms of the Plea Agreement that he entered into on June 19, 2002, in Commonwealth v. Learned D. Barry, Case No. GC 02022057 (Henrico Gen. Dist. Ct).

2. Mr. Barry shall comply fully with the terms of a Rehabilitation/Monitoring Agreement that he entered into with Lawyers Helping Lawyers on June 17, 2002.
3. Mr. Barry will execute whatever releases are necessary for Lawyers Helping Lawyers to communicate with the Virginia State Bar on a quarterly basis through June 19, 2003, and for any therapists, counselors or medical providers with whom he consults or by whom he is treated to, upon request, produce his records and communicate with the Virginia State Bar.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. As part of the necessary proof, Mr. Barry shall present to the Virginia State Bar evidence in writing that the petit larceny charge has been nolle prossed. Mr. Barry's failure to comply with any one or more of the agreed terms and conditions will result in the imposition of the alternative sanction of a two year suspension. The imposition of the alternative sanction shall not require any hearing on the underlying charges of Misconduct, if the Virginia State Bar discovers that Mr. Barry has failed to comply with any of the agreed terms or conditions. In that event, the Virginia State Bar shall issue and serve upon Mr. Barry a Notice of Hearing to Show Cause why the alternative sanction should not be imposed. The sole factual issue will be whether Mr. Barry has violated one or more of the terms of the Public Reprimand without legal justification or excuse. The imposition of the alternative sanction shall be in addition to any other sanction imposed for misconduct during the probationary period.

THIRD DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By Cynthia A. S. Cecil  
Subcommittee Chair



BEFORE THE FIFTH DISTRICT COMMITTEE  
SECTION III  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**WILLIAM AUGUST BOGE, ESQ.**  
VSB Docket # 00-053-3052

DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND)

On May 28, 2002, a hearing in this matter was held before a duly convened Fifth District Committee, Section III, panel consisting of Claiborne T. Richardson II, Esq., Joyce Ann N. Massey, Esq., Gregory Allen Porter, Esq., Elizabeth M. von Keller, Esq., H. Jan Roltsch-Anoll, Esq., E. Allen Newcomb, Esq., Charles M. Hunter, James G. Moran, Dr. Theodore Smith, and John D. Primeau, Esq., presiding. The Respondent, William August Boge, Esq., did not appear. Seth M. Guggenheim, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Previously, on March 16, 2001, a subcommittee imposed a Private Reprimand with Terms in accordance with an agreed disposition reached between the Respondent and Bar Counsel. Pursuant to Council Rule of Disciplinary Procedure IV (C), this

hearing was held to require the Respondent to show cause why the alternative disposition should not be imposed for his failure to comply with the terms imposed by the aforesaid subcommittee determination. Upon evidence and argument presented, the Fifth District Committee, Section III, finds that the Respondent was duly noticed of this hearing by a certified mailing, return receipt requested, to his address of record with the Virginia State Bar, and that he failed to comply with the terms of the subcommittee determination. Accordingly, the Committee hereby issues the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, the Respondent, William August Boge, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Commencing in 1998, Respondent acted as co-counsel for Eduardo Gutierrez (hereafter "Complainant") in the defense of criminal charges pending before the Circuit Court for Prince William County, Virginia.
3. On or about November 19, 1998, Complainant was sentenced upon conviction of two criminal charges to ten years of incarceration, with five years suspended, respectively, on each charge, to run consecutively, for a total term of imprisonment of ten years.
4. Respondent promised Complainant that he would file a Motion for Reconsideration of Complainant's sentence with the court. On or about December 4, 1998, Respondent filed such a motion, but the Complainant did not receive a copy at that time, nor did Respondent inform Complainant that such motion was denied by the court. Complainant first learned, in or around August of 2000, and from a source other than Respondent, that such motion had been denied.
5. Despite numerous requests made directly to Respondent by Complainant, Complainant's other counsel, and the Virginia State Bar's Intake Office, commencing as early as January 26, 2000, the Respondent failed to return Complainant's file to him until September 5, 2000. Such requests were made by telephone, facsimile transmission, and mail on numerous occasions.
6. Respondent failed to respond to the Virginia State Bar's lawful demands for information concerning Complainant's case made in writing on April 21, 2000, May 11, 2000, and June 6, 2000, and he failed to accept and return a Virginia State Bar investigator's telephone calls concerning Complainant's case placed to him on a daily basis on business days for a period of approximately one month.

II. NATURE OF MISCONDUCT

Such conduct by the Respondent, as set forth above, constitutes Misconduct in violation of the following Disciplinary Rules of the Revised Virginia Code of Professional Responsibility:

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

**RULE 1.4 Communication**  
(a) \*\*\*

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

**RULE 8.1 Bar Admission And Disciplinary Matters**  
(c) and (d) \*\*\*

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand and the Respondent is hereby so reprimanded.

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

FIFTH DISTRICT COMMITTEE SECTION III  
OF THE VIRGINIA STATE BAR  
By: John D. Primeau, Chair Designate



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

IN THE MATTERS OF  
**ALEXANDRA DIVINE BOWEN**  
VSB Docket Nos. 01-033-0480 and 01-033-2297

DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On April 9, 2002, a hearing in the above-styled matters was held before a duly convened panel of the Third District Committee, Section III, consisting of Daniel A. Carrell, Esquire; Cynthia A. S. Cecil, Esquire; John Tracy Walker, Esquire; George C. Hutter, lay member; and Edwin A. Bischoff, Esquire, presiding.

The respondent Alexandra Divine Bowen, Esquire, appeared in person, with her counsel, Andrew W. Wood, Esquire. Barbara Ann Williams, Bar Counsel, appeared as counsel for the Virginia State Bar. The court reporter was Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227; (804) 730-1222.

Pursuant to Part Six, Section IV, Paragraph 13 of the Rules of Court, the Third District Committee, Section III, hereby serves upon the respondent the following Public Reprimand with Terms:

**I. GENERAL FINDINGS OF FACT**

1. The respondent, Alexandra Divine Bowen, was admitted to the practice of law in the Commonwealth of Virginia on May 2, 1980.
2. At all times relevant to these proceedings, Ms. Bowen was an attorney in good standing to practice law in the Commonwealth of Virginia.

**II. VSB DOCKET NO. 01-033-0480  
Complainant: Diane G. Hahn**

**A. Findings of Fact**

1. In February 2000, Diane G. Hahn retained Alexandra Divine Bowen to handle Ms. Hahn's divorce from her husband Gary D. Hahn.
2. On or about February 15, 2000, Ms. Hahn gave Ms. Bowen a check for \$1000.00 made payable to Bowen, Bryant, Champlin & Carr as a retainer.
3. Initially, Ms. Bowen accepted and returned Ms. Hahn's telephone calls, but as time passed, Ms. Bowen became increasingly unresponsive to her client's inquiries, failing to return phone calls, to respond to voice messages and fax messages, and to schedule follow-up in-person conferences.
4. Not only did Ms. Bowen fail to respond to Ms. Hahn's messages, she failed to respond to letters from Mr. Hahn's counsel seeking an amicable settlement.
5. Ms. Hahn understood that a hearing on alimony and support issues would be scheduled, but no hearing was set, even after Ms. Hahn advised Ms. Bowen of her financial concerns, which were in part health related. Ms. Bowen never provided Ms. Hahn with any explanation for her failure to schedule a hearing.
6. As a result of lack of attorney client contact and communication, Ms. Hahn was unaware of the progress of her case, how the case was to be handled procedurally, and unaware of requests for exchange of information by opposing counsel which related to possible settlement of the case.
7. On or about August 4, 2000, Mr. Hahn's counsel wrote Ms. Bowen entreating her to provide financial information he had previously requested and offering to provide her any information she needed to assess what would be a fair resolution of the case. Ms. Bowen did not respond to the letter.
8. Ms. Bowen failed to properly supervise and be responsible for the conduct of non-lawyer assistants under her employment who communicated with, or should have communicated with, Ms. Hahn, or who received communications from Ms. Hahn which were not properly forwarded to Ms. Bowen.
9. Ms. Hahn, frustrated by the lack of communication with Ms. Bowen, discharged Ms. Bowen by letter dated September 1, 2000.
10. Mr. Hahn's counsel filed divorce papers on or about September 4, 2000, after hearing nothing from Ms. Bowen.
11. Ms. Hahn submitted a bar complaint against Ms. Bowen to the Virginia State Bar on or about September 6, 2000.
12. Murray J. Janus assumed Ms. Hahn's representation, and by letter of September 8, 2000, requested Ms. Bowen in writing to provide him pertinent portions of Ms. Hahn's file.
13. Ms. Bowen did not respond to Mr. Janus' letter dated September 8, or to a follow-up letter from Mr. Janus dated October 2, 2000.

14. Mr. Janus wrote Ms. Bowen again on October 16, 2000, reminding her of her ethical duty to release Ms. Hahn's file.
15. By letter dated October 19, 2000, Ms. Bowen sent Mr. Janus Ms. Hahn's file and a refund of all of Ms. Hahn's deposit, less actual costs.

**B. Findings of Misconduct**

The Third District Committee finds that there is clear and convincing evidence in VSB Docket No. 01-033-0480 that the respondent violated the following rules of Professional Responsibility:

**RULE 1.4 Communication**

(a) (b) and (c) \*\*\*

**RULE 5.3 Responsibilities Regarding Nonlawyer Assistants**

(c)(2) \*\*\*

**III. VSB DOCKET NO. 01-033-2297  
Complainant: Reginald A. Freeman**

**A. Findings of Fact**

1. At all times relevant to this proceeding, Mr. Freeman was a sergeant in the United States Air Force stationed in at the Incirlik Air Base, Turkey.
2. Sgt. Freeman's ex-wife appealed from a general district court decision granting him custody of their daughter.
3. In the summer of 2000, Ms. Bowen undertook to represent Sgt. Freeman on the appeal after Elizabeth Muncy, his former counsel, accepted a position with the Chesterfield County Commonwealth Attorney's office.
4. A hearing was held in Henrico Circuit Court on August 4, 2000, at which time the judge awarded custody of the child to Sgt. Freeman's ex-wife but ruled that Sgt. Freeman was to submit a visitation schedule, once he ascertained his leave availability, which would be incorporated in the court order, which counsel for the parties understood they were to submit to the Court.
5. Sgt. Freeman, commencing immediately after the August 4, 2000, hearing, and continuing through February 16, 2001, repeatedly requested, by fax and e-mail, from Ms. Bowen information concerning the delivery of a transcript of the August 4, 2000, proceedings he had requested and the entry of the order, which had been repeatedly requested by his personnel office.
6. Despite Sgt. Freeman's numerous inquiries and demands that she prepare the visitation schedule so an order could be entered, and deliver a copy of the transcript, Ms. Bowen failed to prepare the visitation schedule and deliver the transcript until February 16, 2001.
7. Sgt. Freeman approved on February 16, 2001, the sketch order prepared by Ms. Bowen.

8. Sgt. Freeman submitted a bar complaint against Ms. Bowen to the Virginia State Bar on or about March 15, 2001.
9. Ms. Bowen and opposing counsel prepared a new sketch order in April 2001.
10. The Court entered the sketch order on April 23, 2001, but because Ms. Bowen had failed to correct a misspelling of Sgt. Freeman's ex-wife's middle name, an error which Sgt. Freeman brought to Ms. Bowen's attention before the sketch order was submitted to the court, an amended order had to be filed.
11. A corrected order was not entered until July 23, 2001.
12. Ms. Bowen's failures to communicate with Sgt. Freeman were not the result of staffing problems, but the lack of proper diligence and promptness by Ms. Bowen.

**B. Findings of Misconduct**

The Third District Committee finds that there is clear and convincing evidence in VSB Docket No. 01-033-2297 that the respondent violated the following rules of Professional Responsibility:

**RULE 1.3 Diligence**

(a) \*\*\*

**RULE 1.4 Communication**

(a) \*\*\*

**IV. IMPOSITION OF PUBLIC REPRIMAND WITH TERMS**

Accordingly, based upon the clear and convincing evidence of ethical misconduct presented in VSB Docket Nos. 01-033-0480 and 01-033-2297, and respondent's prior disciplinary record, it is the Third District Committee's decision to impose a Public Reprimand with Terms in these matters, compliance with which by October 22, 2002, shall be a predicate for the disposition of these matters by imposition of a Public Reprimand. The terms and conditions that shall be met by October 22, 2002, are as follows:

1. Respondent shall complete a mentoring program of 20 hours duration with a mentor who has at least 25 years of law practice experience and who shall be approved by Bar Counsel. The mentoring program shall focus on client communications and personnel management. Respondent, respondent's counsel and Bar Counsel shall coordinate selection of a mentor. Respondent shall submit to Bar Counsel in writing, no later than October 22, 2002, a certification signed by her mentor and by respondent that she has completed a 20 hour mentoring program.
2. The respondent shall complete 80 hours of supervised pro bono service through the Domestic Violence Program, subject to the approval of the program coordinator, and if such approval is not given, through another pro bono program approved by Bar Counsel. Respondent shall submit to Bar Counsel in writing, no later than October 22, 2002, a certification signed by the coordinator of the pro bono program that she has completed 80 hours of supervised pro bono service.

Upon satisfactory proof that these terms and conditions have been met, a Public Reprimand with Terms shall be imposed, and these matters shall be closed. If, however, the Third District Committee finds that these terms and conditions are not met by October 22, 2002, or such later date as the Committee may approve, in writing, for good cause, these matters shall be certified to the Virginia State Bar Disciplinary Board.

Pursuant to Part Six, Section IV, Paragraph 13.(K)(10) of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

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

Date: April 22, 2002

Edwin A. Bischoff, Esquire, Chair



**BEFORE THE FIFTH DISTRICT—SECTION III  
SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF  
**MARK THOMAS CROSSLAND, ESQ.**  
VSB Docket No. 99-053-1440

**SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND**

On May 10, 2002, a meeting in this matter was held before a duly convened Fifth District—Section III Subcommittee consisting of Gregory A. Porter, Esquire, Dr. Theodore Smith, and Joyce Ann N. Massey, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the Rules of the Supreme Court of Virginia, the Fifth District—Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand as set forth below:

**I. FINDINGS OF FACT**

1. At all times relevant hereto, Mark Thomas Crossland, Esq., (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Respondent conducted a residential real estate settlement on behalf of purchasers named Sellers in 1992.
3. Employing a different attorney as settlement agent, the Sellers refinanced their property in November of 1993.
4. At the time of the refinance transaction, the attorney noted that a deed of trust which should have been released, of record, as part of the settlement transaction conducted by Respondent, was not so released.
5. The Respondent's office was contacted concerning the unreleased deed of trust. The Respondent's secretary informed the office of the attorney performing the refinance settlement that a certificate of satisfaction for the unreleased deed of trust was in Respondent's file, and that it would be recorded promptly in the Spotsylvania County, Virginia, land records. In reliance upon that representation, the attorney conducted the refinance settlement.

6. After the passage of several weeks following the refinance settlement, the attorney determined that the certificate of satisfaction had not been recorded in the land records, as promised by Respondent's secretary. When this fact was brought to the attention of Respondent's office, the refinance settlement attorney's office was informed by Respondent's secretary that the certificate of satisfaction had been sent to the wrong courthouse, but that it would be retrieved and would thereafter be recorded in the Spotsylvania County land records.
7. Several more weeks passed, and the attorney determined that the certificate of satisfaction remained unrecorded among the Spotsylvania County land records. The attorney or a member of his staff thereafter consistently left messages for, and wrote to, Respondent.
8. In October of 1997, the attorney wrote to the Respondent concerning the situation mentioning this time the prospect of a complaint to the Virginia State Bar. A member of Respondent's staff contacted the attorney and informed him that Respondent would need a couple of weeks in which to take care of the matter. After the passage of several more weeks, the attorney left several messages for the Respondent, none of which was returned. Thereafter, the attorney assumed the responsibility for effecting release of the deed of trust in question.
9. Between the time the matter of the unreleased deed of trust first came to the refinance settlement attorney's attention in 1993, and continuing through December of 1997, a total of twenty-four (24) calls, letters, and/or faxes were made and/or sent to Respondent's office by the refinance settlement attorney's office, none of which was personally responded to or acted upon by the Respondent.
10. When interviewed by an investigator for the Virginia State Bar, the Respondent maintained that his secretary had concealed from him all of the contacts from the attorney who handled the refinance transaction, and that the first notice that he, the Respondent, received respecting the unreleased deed of trust was via his receipt of the Bar complaint.
11. The investigation conducted by the Virginia State Bar revealed that following Respondent's receipt of the Bar complaint, he caused a certificate of satisfaction to be recorded, despite the fact that one had been earlier recorded by the refinance settlement attorney.

**II. NATURE OF MISCONDUCT**

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

**DR 3-104. Nonlawyer Personnel.**

(C) and (D) \* \* \*

**DR 6-101. Competence and Promptness.**

(B) \* \* \*

**III. PUBLIC REPRIMAND**

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Mark Thomas Crossland, Esquire, and he is so reprimanded.

FIFTH DISTRICT—SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By Joyce Ann N. Massey  
Chair/Chair Designate



**BEFORE THE FIFTH DISTRICT—SECTION III  
SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF  
**MARK THOMAS CROSSLAND, ESQ.**  
VSB Docket No. 99-053-2646

**SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND**

On May 10, 2002, a meeting in this matter was held before a duly convened Fifth District—Section III Subcommittee consisting of Gregory A. Porter, Esquire, Dr. Theodore Smith, and Joyce Ann N. Massey, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the Rules of the Supreme Court of Virginia, the Fifth District—Section III Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand as set forth below:

**I. FINDINGS OF FACT**

1. At all times relevant hereto, Mark Thomas Crossland, Esq., (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Respondent was qualified as Administrator, c.t.a., of the Estate of Anna S. Dana, Deceased, by the Prince William County, Virginia, Circuit Court, on May 3, 1996.
3. On May 1, 1998, the Commissioner of Accounts for the said Court issued a Summons to the Respondent for his having failed to file the required annual accounting for the period extending between May 3, 1996, and May 3, 1997.
4. The Summons was personally served upon the Respondent on May 6, 1998. On September 4, 1998, the Respondent filed an accounting with the Commissioner of Accounts which was unapprovable.
5. In correspondence dated September 16, 1998, the Commissioner notified the Respondent of the corrections and additional information that were needed before the Commissioner could approve the accounting.
6. On January 25, 1999, the Commissioner's assistant met with a representative of Respondent's office and explained specifically how the accounting should be corrected. The Respondent's representative took the accounting with her and promised to have it filed within two weeks.
7. The accounting was not filed within the two weeks, as promised, and the Commissioner of Accounts directed correspondence to the Respondent on March 24, 1999, requesting that he file a proper accounting. As of April 30, 1999, when the Commissioner wrote to the Virginia State Bar concerning this matter, the Respondent had not

filed an accounting. The Commissioner at that time caused a Show Cause Order to be issued, returnable to June 4, 1999.

8. The investigation conducted by the Virginia State Bar revealed that a proper accounting was ultimately filed, not by the Respondent, but by an out-of-state resident who had qualified as Executrix. The investigation also revealed that no heir of the Estate suffered harm on account of Respondent's conduct, that the Respondent did not receive any commission from the Estate, and that the Respondent agreed to pay late filing fees of \$237.00.

**II. NATURE OF MISCONDUCT**

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

**DR 3-104. Nonlawyer Personnel.**

(C) and (D) \* \* \*

**DR 6-101. Competence and Promptness.**

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

(B) and (C) \* \* \*

**III. PUBLIC REPRIMAND**

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Mark Thomas Crossland, Esquire, and he is so reprimanded.

FIFTH DISTRICT—SECTION III SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By Joyce Ann N. Massey  
Chair/Chair Designate



**BEFORE THE THIRD DISTRICT—SECTION  
ONE SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF  
**ROGER CORY HINDE**  
VSB Docket NO. 02-031-3753

**DISTRICT COMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)**

On June 19, 2002, a Show Cause hearing in this matter was held before a duly convened Third District, Section One District Committee Panel consisting of Robert C. Clary, Jr. Esquire, Marcus D. Minton, Esquire, Melvin E. Rosen, Lay Member, Suzanne T. Savery, Lay Member and W. Richard Hairfield, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(7)(c) of the Rules of the Supreme Court, the Third District—Section One Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

**I. FINDINGS OF FACT**

1. At all times relevant hereto, the Respondent, Roger Cory Hinde (hereinafter Hinde or Respondent) has been an

attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about February 6, 2002, Respondent reviewed and accepted an Agreed Disposition in a matter involving a complaint by a former client, Tracy Crisp (Docket No: 00-031-3145).
3. According to the Agreed Disposition at paragraph three, Respondent agreed to provide the Virginia State Bar with a written office policy outlining his procedures for accepting incoming clients, for docketing and tracking filing deadlines in cases, and for handling incoming client calls and returning those calls. A copy of this policy was to be provided to Assistant Bar Counsel Charlotte P. Hodges on or before March 15, 2002.
4. In addition, Hinde agreed in paragraph four to return \$2,880 to Joseph Crisp within thirty days of the date of the agreement. A copy of the correspondence and the check made payable to Joseph Crisp was to be sent to Assistant Bar Counsel Charlotte P. Hodges. He understood and agreed that the \$2,880 was derived from the original \$2,000 he was given by Mr. Crisp in August 1996 with simple interest computed at .08% annually for five and a half years.
5. On April 2, 2002, Assistant Bar Counsel Hodges forwarded a letter to Respondent at his address of record with the Virginia State Bar, advising him that he had failed to comply timely with paragraphs three and four of the Agreed Disposition.
6. Respondent contacted ABC Hodges and advised that he intended to provide the information and check as agreed. He was given permission to provide the information and check after the due date.
7. On April 12, 2002, Respondent hand delivered a check made payable to T. Crisp in the amount of \$2,800 and an office phone policy.
8. On or about April 17, 2002, ABC Hodges forwarded a second letter to Respondent advising she had received the phone policy and the check. However, Respondent was advised that the check was payable to the wrong individual and the amount was incorrect. In addition, he was reminded that he failed to provide the remaining office policies outlined in the agreement. Respondent was requested to return this information to the Bar by April 22, 2002.
9. Respondent did not respond to ABC Hodges letter of April 17, 2002. Therefore, on May 15, 2002, ABC Hodges wrote Respondent and advised him that a Show Cause would be issued if he did not comply with terms three and four of the Agreed Disposition.
10. On May 22, 2002, without further response from Respondent, the Bar issued a Show Cause against Respondent for his failure to comply with terms three and four of the Agreed Disposition.
11. As of the date of the Show Cause hearing, Respondent still had not complied with terms three and four of the agreement.

**II. NATURE OF MISCONDUCT**

The Third District—Section One Subcommittee finds that the above facts show Respondent has failed to comply with the terms of the Agreed Disposition in the above referenced matter.

**III. PUBLIC REPRIMAND WITH TERMS**

Accordingly, it was the decision of the District Committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which would be a predicate for the disposition of a Public Reprimand with Terms of this Show Cause. The Respondent accepted the disposition and agreed to the terms on the record. The terms and conditions shall be met by the specified time periods:

1. You are to provide the Virginia State Bar with a written office policy outlining your procedures for accepting incoming clients, for docketing and tracking filing deadlines in cases. You are to provide a copy of this policy to Assistant Bar Counsel Charlotte P. Hodges on or before June 26, 2002.
2. You are to provide a check to Assistant Bar Counsel, Charlotte P. Hodges in the amount of \$2,880 made payable to Joseph Crisp on or before June 26, 2002. You understand and agree that the \$2,880 was derived from the original \$2,000 you were given by Mr. Crisp in August 1996 with simple interest computed at .08% annually for five and a half years.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the specified time period, this District Committee shall impose the alternate sanction and certify this matter to the Virginia State Bar Disciplinary Board.

THIRD DISTRICT - SECTION ONE  
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By W. Richard Hairfield  
Committee Chair



BEFORE THE THIRD DISTRICT,  
SECTION ONE SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**ISAAC SCOTT PICKUS**  
VSB Docket No.: 01-031-1265

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On June 17, 2002, a meeting in this matter was held before a duly convened Third District—Section One Subcommittee consisting of Marcus D. Minton, Esquire, Patricia B. Clary, Lay Member, and C. Gilbert Hudson, Esquire, presiding.

Pursuant to Part 6, IV, 13(B)(5)(c)(ii)(d) of the Rules of the Supreme Court, the Third District—Section One Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

**I. STIPULATIONS OF FACT**

1. At all times relevant hereto, the Respondent, Isaac Scott Pickus (hereinafter Pickus or Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In 1993, the Complainant, Vernon Allen (hereinafter Complainant or Allen) hired Respondent to file a petition for writ of habeas corpus.
3. Complainant's mother, Gloria Fielder (hereinafter Fielder) initially contacted Respondent and asked if he could help her son (Complainant) who was incarcerated at the Southampton Correctional Center.
4. Respondent advised Fielder to forward him a copy of the transcript along with an initial payment of \$750.
5. After Fielder provided the transcript and the \$750 dollars, Respondent advised Fielder that her son's only option was to file a habeas corpus petition based upon ineffective assistance of counsel.
6. Respondent sent Fielder a contract for services which she signed and returned to him. In March 1993, a check for \$3,750 was forwarded to Respondent.
7. The \$3,750 was placed in whole, or in part into an account that was not a trust account before some or all of the money had been earned.
8. In August 1994, Respondent wrote Fielder advising her that he needed the transcripts of Complainant's co-defendants, and he would need the money for the transcripts. Fielder paid the costs for these transcripts on October 17, 1993 by cashier's check.
9. After waiting a period of time to have the documents prepared and filed, Complainant and Fielder attempted to contact Respondent regarding the status of Complainant's habeas petition when they heard nothing from Respondent.
10. Fielder attempted to reach Respondent approximately 7 or 8 times a year between 1993 and 1998. In most instances she left a message with the secretary, as she was unable to reach him.
11. Between 1993 and 1998, Fielder and Complainant were under the impression Respondent was continuing to work on the habeas corpus petition. They were unaware of any deadline for filing the habeas petition.
13. In 1999, Fielder spoke with a friend, who wanted to give an attorney a copy of her son's transcript to see if the attorney could offer suggestions to Respondent.
14. At that time, Fielder contacted Pickus and requested a copy of the transcript in her son's case, so that another lawyer could look at it. Fielder did not indicate to Pickus at that time that she was terminating his representation, nor was she interested in terminating his representation.
15. Pickus eventually forwarded a copy of the transcript to Fielder, who, thereafter, was unable to reach him at all by phone or correspondence, despite many attempts to do so.

16. Despite the fact that Respondent was well aware that Fielder was attempting to contact him, he refused to communicate with her and failed to advise her that the statute of limitations had run on filing her son's habeas petition.
17. During the time Respondent represented Complainant, he did a minimal amount of research in the case, and never filed the habeas petition.
18. During the investigation of this matter, Respondent's file was reviewed, and it showed that in 7 years, Respondent had collected 7 research cases. The file did not contain a draft habeas petition or transcripts.
19. Despite not having done the work he was hired to do, Respondent did not return any portion of the \$3,750 to Complainant or Fielder.
20. Respondent was unfamiliar with habeas work when he agreed to represent Complainant.
21. On October 31, 2000, Respondent forwarded Complainant a letter which misrepresented the work he did for Complainant. He erroneously advised him that he had spoken to his mother on **several** occasions, that he conducted a **significant** amount of legal research in his case, and that his mother had terminated their representation and had retained new counsel for Complainant. Furthermore, Respondent did not advise Complainant in this letter that the statute of limitations had run on his time to file a habeas petition.

**II. DISCIPLINARY RULES**

Assistant Bar Counsel Hodges and the Respondent agree that the above factual stipulations could give rise to a finding of a violation of the following Disciplinary Rule(s):

**DR 2-105. Fees.**

(A) \*\*\*

**DR 2-108. Terminating Representation.**

(B)(1) \*\*\*

**DR 6-101. Competence and Promptness.**

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

(B), (C) and (D) \*\*\*

**DR 7-101. Representing a Client Zealously.**

(A)(1), (2) and (3) \*\*\*

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

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

**III. PUBLIC REPRIMAND WITH TERMS**

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions shall be met by the specified deadline(s):

1. You are to refund \$3,750.00 to the Complainant, Vernon Allen. The money should be made payable and forwarded to Respondent's mother, Gloria Fielder by December 15, 2002 at 12002 Leesville Road, Lynch Station, Virginia 24571. You are to provide Assistant Bar Counsel Charlotte P. Hodges with a copy of the letter and the check.
2. Respondent understands and accepts that he is responsible for the costs associated with the hearing originally scheduled for this matter.

THIRD DISTRICT—SECTION ONE SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By C. Gilbert Hudson  
Subcommittee Chair



BEFORE THE FIFTH DISTRICT SECTION I  
SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**DOMINICK ANTHONY PILLI, ESQUIRE**  
VSB Docket No. 01-051-1797

SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND WITH TERMS

On the 5th day of June, 2002, a meeting in this matter was held before a duly convened Fifth District subcommittee consisting of Susan R. Salen, Esquire, Stephen A. Wannall, and Sean P. Kelly, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the rules of the Supreme Court, the Fifth District Section I Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Dominick Anthony Pilli, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On May 16, 2000, Kevin A. Becker hired Mr. Pilli to represent him in a domestic relations matter. Mr. Becker and Mr. Pilli signed a written fee agreement. The fee agreement provided that Mr. Becker would pay Mr. Pilli \$1,000.00 as an initial advance payment of fees which Mr. Pilli would bill against at the rate of \$165.00 per hour. Mr. Pilli was to draft a property settlement agreement and move the divorce along as quickly as possible and be very mindful of keeping costs low. When Mr. Becker hired Mr. Pilli, there was a divorce action pending in his case, he and his wife had been separated for approximately six years, and there were few property issues to be resolved between them. Mr. Becker informed Mr. Pilli that he wished to be divorced by the end of the summer if at all possible. Mr. Becker also informed Mr. Pilli that there was a custody

and visitation dispute between him and his wife which Mr. Becker was handling himself.

3. At Mr. Pilli's insistence, Mr. Becker provided Mr. Pilli with a visitation schedule on September 20, 2000. Mr. Pilli forwarded a proposed property settlement agreement to counsel for Mr. Becker's wife on October 2, 2000. On October 27, 2000, the wife's counsel spoke with Mr. Pilli's office and stated that her client rejected the custody and visitation provisions of the agreement. However, opposing counsel also stated that she would be happy to review a revised agreement with her client which did not contain the custody and visitation provisions as they stood, which issues the parties were litigating themselves in another jurisdiction. It was always Mr. Pilli's intention to incorporate the visitation and custody issues into the Property Settlement Agreement. Mr. Becker wrote and called Mr. Pilli to determine the status of the property settlement agreement and divorce. Mr. Pilli failed to follow up with opposing counsel regarding the revised proposed property settlement agreement, and failed to communicate with Mr. Becker regarding the status of the case. Mr. Pilli took no further action to obtain a signed property settlement agreement or a final decree of divorce for Mr. Becker.
4. By letter dated December 16, 2000, Mr. Becker terminated Mr. Pilli as his attorney, and demanded that by January 8, 2001, Mr. Pilli return the \$1,000.00 in advance fees which Mr. Becker had paid him, as well as the documents Mr. Becker had provided to Mr. Pilli in the case. Mr. Pilli did not respond to Mr. Becker's letter, failed to provide Mr. Becker with the requested refund or, in the alternative, an accounting of the fees earned, and failed to return any of Mr. Becker's documents.
5. By letter dated January 23, 2001, the opposing counsel in the case asked Mr. Pilli if he intended to draft a revised property settlement agreement for her client's review, as opposing counsel had suggested in October of 2000. Mr. Pilli forwarded a copy of opposing counsel's January 23, 2001 letter to Mr. Becker. Shortly thereafter, Mr. Becker filed a complaint against Mr. Pilli with the Virginia State Bar.

II. NATURE OF MISCONDUCT

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

- RULE 1.3 Diligence  
(a) and (b) \*\*\*
- RULE 1.4 Communication  
(a), (b) and (c) \*\*\*
- RULE 1.5 Fees  
(a)(a), (2), (3), (4), (5), (6), (7) and (8)(b) \*\*\*
- RULE 1.15 Safekeeping Property  
(c)(3) and (4) \*\*\*
- RULE 1.16 Declining Or Terminating Representation  
(d) and (e) \*\*\*

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by July 31, 2002, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by July 31, 2002, are:

1. The Respondent shall refund \$500.00 of the advance payment of fees to Mr. Becker by certified check payable to Kevin A. Becker, and provide the Assistant Bar Counsel assigned to this case with a copy of the check.
2. The Respondent shall mail to Kevin A. Becker, by certified mail, return receipt requested, Mr. Becker's entire file in this case, including, but not limited to, all court documents provided to Mr. Pilli by Mr. Becker, and shall provide a copy of the transmittal letter sending the file to Mr. Becker

to the Assistant Bar Counsel assigned to this matter.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed. If, however, the terms and conditions have not been met by July 31, 2002, this matter shall be certified to the Virginia State Bar Disciplinary Board upon an agreed stipulation of facts as the facts are set forth herein for the sole purpose of imposition of a sanction deemed appropriate by the Virginia State Bar Disciplinary Board.

FIFTH DISTRICT SECTION I SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By Sean P. Kelly  
Chair/Chair Designate

