

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>				
Charles Edward Ayers, Jr.	Richmond	Public Reprimand w/Terms	November 20, 2001	37
Charles Ivey Billman	Arlington	6 Month Suspension w/Terms	November 6, 2001	42
Charles D. Chambliss, Jr.	Richmond	Public Reprimand w/Terms	October 6, 2001	44
William J. Dougherty, Jr.	Newport News	Show Cause Suspension	November 16, 2001	
Arthur Charles Ermlich, Jr.	Virginia Beach	30 Day Suspension	September 28, 2001	49
Richard Howard Laibstain	Ashland	Revocation	November 16, 2001	
Bridgette Miriam Harris	Silver Springs, MD	Show Cause Suspension	November 15, 2001	
Charles Jefferson McCall	Midlothian	Additional 30 Day Suspension	October 26, 2001	56
John Lydon McGann	Fairfax	Public Reprimand w/Terms	September 18, 2001	56
Stephen Gary Merrill	Norfolk	90 Day Suspension	November 1, 2001	
Henry Thompson Tucker, Jr.	Baltimore, MD	Show Cause Suspension	November 29, 2001	
<u>District Committee</u>				
Joseph Rocco Caprio	West Point	Public Reprimand w/Terms	November 28, 2001	62
Kenneth Harrison Fails	Washington, DC	Public Reprimand	December 3, 2001	63
Stephen Paul Hanna	Richmond	Public Reprimand	October 12, 2001	65
William Madison McClenney, Jr.	Louisa	Public Reprimand w/Terms	December 7, 2001	67
John Joseph Vavala	Virginia Beach	Public Reprimand w/Terms	September 25, 2001	68
Alan Gordon Warner	Honolulu, HI	Public Reprimand w/Terms	November 15, 2001	69

Surrenders with Disciplinary Charges Pending

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

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date
Michael Edwin Ford	Reston	Disciplinary Board	October 26, 2001
James W. Fourquarean	Fairfax	Disciplinary Board	November 30, 2001
Robert Stanley Powell	Arlington	Disciplinary Board	September 28, 2001
Joel Steinberg	Alexandria	Disciplinary Board	November 30, 2001

Disability Suspension

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date	Page
Michael Wills Cullinan Harris	Richmond	Disciplinary Board	November 15, 2001	51

Disciplinary Board

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
CHARLES EDWARD AYERS, JR.
VSB DOCKET NO. 94-032-0554

ORDER

THIS MATTER CAME ON TO BE HEARD on October 24, 2001 before an initial panel of the Virginia State Bar Disciplinary Board consisting of Donna A. DeCorleto, Lay Member; William C. Boyce, Jr., Esq.; Karen A. Gould, Esq.; H. Taylor Williams, IV, Esq.; and William M. Moffet, Esq., chair, presiding.

Lewis T. Booker, Special Assistant Bar Counsel, and Harry M. Hirsch, Deputy Bar Counsel, appeared on behalf of the Virginia State Bar. William D. Bayliss, counsel for the Respondent, appeared on the Respondent's behalf.

The parties informed the initial panel that an agreement in principal between the parties had been reached but that time was needed in order to finalize an agreed disposition. Upon inquiry from the chair, Mr. Bayliss, on behalf of the Respondent, waived the procedural requirement for a separate panel of the Disciplinary Board to conduct a hearing to accept or reject a proposed agreed disposition. Mr. Hirsch, on behalf of the bar, did not waive the requirement except to the extent another panel of the Disciplinary Board could not reasonably be convened.

The chair then instructed the parties that they had until noon to work on an agreed disposition, the clerk was directed to convene another panel of the Disciplinary Board at noon to consider an agreed disposition, and the chair directed that these proceedings would reconvene at 1:00 p.m. as necessary.

WHEREUPON, THIS MATTER CAME ON TO BE HEARD by telephone conference call at noon on October 24, 2001 before a second panel of the Virginia State Bar Disciplinary Board consisting of Werner H. Quasebarth, Lay Member; Bruce

T. Clark, Esq.; Peter A. Dingman, Esq.; Joseph R. Lassiter, Jr., Esq. and Richard J. Colten, Esq., chair pro tempore presiding.

Lewis T. Booker, Special Assistant Bar Counsel, and Harry M. Hirsch, Deputy Bar Counsel, appeared on behalf of the Virginia State Bar. The Respondent appeared with his counsel, William D. Bayliss.

The bar and the Respondent, by counsel, informed the second panel that they had reached an Agreed Disposition on the certified charges of misconduct and the parties presented the Agreed Disposition to the second panel at that time for its approval. Said Agreed Disposition is attached to this Order and incorporated herein by reference.

By this Order and effective upon entry, the Virginia State Bar Disciplinary Board hereby ratifies, adopts and approves the Agreed Disposition entered into by the parties and imposes the sanction of a PUBLIC REPRIMAND WITH TERMS; and IT IS FURTHER ORDERED that the Respondent shall comply with all of the terms set forth in the Agreed Disposition; or after proper notice, hearing and determination, the Respondent shall be subject to the imposition of the alternate sanction of REVOCATION specified therein.

As stated in the Agreed Disposition, the terms therein have no termination date and constitute continuing terms during the remainder of the Respondent's legal career.

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System shall assess costs pursuant to Rules of Court, Part 6, §IV, ¶13(K)(10); and

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System shall send a copy of this Order and the attached Agreed Disposition to the Respondent, Charles Edward Ayers, Jr. at his address of record with the Virginia State Bar; to his counsel, William D. Bayliss, Esq., at Williams, Mullen, Clark & Dobbins, 1021 East Cary Street, P.O. Box 1320, Richmond, VA 23218-1320; to Lewis T. Booker, Esq., Special Assistant Bar Counsel, at Hunton & Williams, 951 East Byrd Street, Richmond, VA 23219-4074; and deliver the same, by hand, to Harry M. Hirsch, Esq., Deputy Bar Counsel, at the Virginia State Bar, Suite 1500, Eighth and Main Building, 707 East Main Street, Richmond, VA 23219; and

IT IS FURTHER ORDERED that this matter shall be closed and taken off the docket of the Disciplinary Board as stated in the Agreed Disposition.

ENTERED THIS 20TH DAY OF NOVEMBER, 2001.
Richard J. Colten, chair pro tempore



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
CHARLES EDWARD AYERS, JR.
VSB DOCKET NO. 94-032-0554

AGREED DISPOSITION

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(C)(6)(c) and Disciplinary Board Rule

of Procedure IV(C), the Virginia State Bar, by Special Assistant Bar Counsel Lewis T. Booker and Deputy Bar Counsel Harry M. Hirsch, and the Respondent Charles Edward Ayers, Jr., by William D. Bayliss, his attorney, hereby enter into the following Agreed Disposition arising out of the above-referenced matter.

I. STIPULATIONS OF FACT

1. At all times relevant hereto the Respondent Charles Edward Ayers, Jr., Ayers, has been an attorney licensed to practice law in the Commonwealth of Virginia.
 - A Marshall Street Associates, Limited Partnership
2. Marshall Street Associates, a Virginia general partnership (the General Partnership), was formed by Agreement dated November 24, 1980, between Charles E. Clough (Dr. Clough) and Investment Associates, a general partnership consisting of B. Roland Freasier, Jr. (Freasier) and Charles E. Ayers, Jr. (Ayers). A Certificate of Partnership of Marshall Street Associates was recorded January 5, 1981, in the Clerk's Office of the Circuit Court of the City of Richmond, Division 1, Partnership Book 30, page 867.
3. By deed dated November 26, 1980, recorded December 16, 1980, at Deed Book 776, page 612 in the Clerk's Office of the Circuit Court of the City of Richmond, MacTavish Associates, a Virginia general partnership, conveyed to the General Partnership real property and improvements at 1302 MacTavish Avenue in the City of Richmond (1302 MacTavish). As of September 25, 2001, record title to that property still resides in the General Partnership.
4. Marshall Street Associates Limited Partnership (the Limited Partnership) is a Virginia limited partnership. Limited partnerships in Virginia are strictly a creation of statute. According to the statutorily required Certificate of Limited Partnership, the Limited Partnership was formed March 17, 1987, for a term to commence March 17, 1987, and continue through March 17, 2007. A Certificate of Agreement of Limited Partnership was filed with the State Corporation Commission on January 27, 1989, and with the Clerk's Office of the Circuit Court of the City of Richmond on February 14, 1989, in Limited Partnership Book 10, page 1973. Ayers and Freasier were the general partners of Marshall Street Associates, Limited Partnership. Dr. Clough and Ayers were limited partners. There were no other general or limited partners in the Limited Partnership.
5. Ayers and Freasier were business partners and for approximately two years in the 1980's were law partners in the firm of Harris, Tuck & Freasier. Freasier had established a profit-sharing plan for one of his clients, Blackstone Family Practice Center (Blackstone). From time to time Freasier recommended investments to Blackstone. In 1982 Blackstone made a loan to Ayers secured by a Deed of Trust on Ayers' residence in Richmond. The initial amount of the loan to Ayers was \$75,000.00.
6. An original note was dated September 19, 1980. It was not paid, so the renewal note in the same amount was executed by Ayers on September 19, 1982.
7. The 1982 note was also not paid. With accrued interest and other charges the note aggregated \$141,038.56 by 1988. On March 21, 1988, Ayers executed a new replacement note payable to Blackstone, this note in the amount of

- \$141,038.56. By written instrument of that same date Freasier unconditionally guaranteed Ayers' payment of the note.
8. On March 21, 1988, Ayers, to collateralize his obligation under the new replacement note, and Freasier, to collateralize his obligation under his guaranty of that note, pledged their partnership interests in the Limited Partnership to Blackstone. Dr. Clough, the other partner in the Limited Partnership, did not pledge his interest to satisfy Ayers' obligation.
 9. Meanwhile, on or about January 1, 1986 (15 months before the Limited Partnership came into legal existence), the Limited Partnership executed a Demand Promissory Note in the amount of \$225,000.00 payable to Freasier, or order (the Demand Note). The Demand Note was executed on behalf of the Limited Partnership by Ayers as general partner.
 10. On or about April 27, 1989, by Deed of Trust prepared and executed by Ayers, the general partner, the Limited Partnership purportedly conveyed to Ayers and Scott D. Stolte, trustees, a lien against 1302 McTavish to secure payment of the \$225,000.00 promissory note payable to B. Roland Freasier. Stolte was a member of the law firm of Ayers & Ayers. The Deed of Trust states that 1302 McTavish was conveyed to the Limited Partnership by deed dated November 26, 1980. However, the deed referred to is the deed to the General Partnership. The Limited Partnership did not come into existence until well after 1980.
 11. On November 4, 1991, Blackstone instituted suit against Ayers, Freasier, Dr. Clough and the Limited Partnership. The suit sought money judgments against Ayers and Freasier on the Ayers note and the Freasier guaranty, respectively. It sought specific performance of the pledge by Ayers and Freasier of their partnership interest in the limited partnership, dissolution of the limited partnership and sale of the limited partnership's assets. No money judgment was sought against the limited partnership, and no specific relief was sought against Dr. Clough. However, the suit did request, if needed to satisfy the note, that the property of the Limited Partnership be liquidated to satisfy the note.
 12. In October, 1992, acting for himself and as counsel for the Limited Partnership, Ayers endorsed an order that entered a money judgment against himself and the Limited Partnership. The Judgment Order was entered, but not docketed, on November 12, 1992. The money judgment was for the amount alleged to be due and owing by Ayers on his note to Blackstone - \$216,315.68.
 13. On February 4, 1993, Ayers wrote Dr. Clough, telling him that Blackstone was threatening to foreclose on the loan that was Ayers' initial obligation. Without notice to Dr. Clough Ayers had endorsed the judgment against the Limited Partnership, including Dr. Clough's interest in the Limited Partnership, even though Dr. Clough had received no benefit from the original loan from Blackstone to Ayers. Ayers asked Dr. Clough for financial help to satisfy the judgment under threat that 1302 McTavish, the principal asset of the Limited Partnership, would be sold at foreclosure.
 14. A Certificate of Judgment Satisfaction in favor of Ayers and the Limited Partnership was filed in the Circuit Court of the City of Richmond on February 12, 1993.
 15. On or about February 19, 1993, at the request of John Woodfin, a long-time client of Ayers, Ayers formed MacTavish Investment Company, t/a McTavish Investment Company, a Virginia stock corporation (McTavish Investment). On March 5, 1993, McTavish Investment purchased the consent judgments Blackstone had obtained against Ayers, Freasier and the Limited Partnership and paid Blackstone \$212,000.00. Blackstone in turn conveyed and assigned all its right, title and interest in the judgments (including the right to foreclose on 1302 McTavish) to McTavish Investments.
 16. In July, 1993, McTavish Investment initiated foreclosure proceedings against the property purportedly owned by the Limited Partnership and subject to the judgment against Ayers and the Limited Partnership. In fact the record owner of the property was not the Limited Partnership. Rather the record owner was and is Marshall Street Associates, the general partnership created on November 24, 1980.
 17. William S. Burton, as Vice President of McTavish Investment, sent a formal notice to Ayers, Freasier and Dr. Clough, as partners in the Limited Partnership, demanding payment of approximately \$394,000.00 alleged to be due on the Demand Note, stating that a foreclosure sale of 1302 McTavish would be conducted on July 27, 1993, to satisfy the Demand Note. This notice, although on the stationery of McTavish Investment, was sent by telecopy from Ayers' office.
 18. Burton, the Vice President of McTavish, was the substitute trustee under the Deed of Trust of April 27, 1989, by and between the Limited Partnership as grantor and Charles E. Ayers, Jr. and Scott D. Stolte as trustee, a Deed of Trust executed by Ayers for the Limited Partnership.
 19. Neither McTavish Investment, Blackstone nor Ayers ever notified or advised Dr. Clough of the substitution of trustee.
 20. Dr. Clough and Freasier learned for the first time during the week of June 28, 1993, that Burton had scheduled a foreclosure sale of 1302 McTavish for July 6, 1993. However, at the time noticed for the foreclosure sale Burton was unable to produce a validly executed or recordable substitution of trustee and continued the sale.
 21. Meanwhile, Dr. Clough had obtained separate counsel who on behalf of both the General Partnership and the Limited Partnership brought a Petition for Temporary and Permanent Injunction to enjoin the foreclosure sale. The suit contended, among other things, that the Limited Partnership was not in existence when the note was executed and was never the owner of record of the property sought to be sold at foreclosure, precluded the foreclosure. The suit also alleged that Ayers had breached his fiduciary duty to the partners in the General Partnership and the Limited Partnership by placing himself in an irreconcilable position to discharge his duties. His actions included his endorsement of a judgment order against the Limited Partnership in an action to collect the Ayers note, his role in setting up and representing McTavish Investment for the purpose of acquiring the obligations associated with the Ayers note and his willingness to sacrifice his partnership interest of the Limited Partnership to satisfy the Ayers note.

22. As a result of that suit, the matter was settled. The judgment in the amount of \$216,350.68 entered October 12, 1992, against the Limited Partnership was set aside and vacated by the Circuit Court of the City of Richmond on November 22, 1995.

B. A & H Development Company

23. On January 2, 1988, Ayers obtained judgment on behalf of Samuel P. and Irma B. Warren (the Warrens) against William Mulderig (Mulderig), a New York resident, and others, in the amount of \$2,000,000.00 in Civil Action 87-390, Warren, et al. v. Mulderig, et al., United States District Court for the District of Columbia. The judgment was subsequently docketed in the United States District Court for the Southern District of New York on February 16, 1998, and in the Clerk's Office of Orange County, New York, on or about June 2, 1988.

24. On May 7, 1988, Mulderig executed an affidavit of Confessed Judgment in the matter of B. Roland Freasier, Jr., and Alvin Q. Jarrett v. William M. Mulderig, Docket No. 87-6327, in the United States District Court for the Southern District of New York in the amount of \$4,000,000.00. Ayers had agreed to represent Dr. Jarrett in collecting the judgment Dr. Jarrett had against Mulderig.

25. On February 15, 1989, Mulderig executed an acknowledgment of that indebtedness to Ayers as trustee for Irma and Samuel Warren and Ayers & Ayers that he (Mulderig) was indebted to the Warrens in the sum of \$2,234,836.92. Ayers proceeded to collect \$290,000.00 from Mulderig for the benefit of the Warrens. He forwarded that amount to the Warrens without any deduction for attorneys' fees. The acknowledgment was secured by a mortgage on a certain tract of land known as Harness Estates located in the town of Goshen, Orange County, New York. The acknowledgment and mortgage were duly recorded in the Clerk's Office of Orange County, New York, on February 15, 1989.

26. On October 13, 1989, a settlement agreement between Mulderig, Jarrett and the Warrens and Charles E. Ayers, individually and as trustee, was executed. The agreement provided that Jarrett and the Warrens would execute and deliver satisfaction of judgments in proper form for filing in all jurisdictions except Westchester County, New York. In turn Mulderig would obtain the transfer, with insurable title, of that portion of Harness Estates in the name of his wife Joan Mulderig. The property was to be transferred to Ayers as trustee to satisfy the judgments of Jarrett and the Warrens. The agreement of October 13, 1989, was signed by Ayers as attorney for the Warrens and Dr. Jarrett and by Ayers individually and as trustee for the Warrens. On October 31, 1989, Dr. Jarrett sent a letter to whom it may concern that Ayers had no authority to agree to a satisfaction of judgment on his behalf.

27. Pursuant to the October 13, 1989, agreement, on February 6, 1990, Ayers, as counsel for the Warrens, released the judgment in the United States District Court for the Southern District of New York and subsequently filed a satisfaction of judgment in that court on December 7, 1990.

28. The property received from Joan Mulderig was transferred to partnerships, LM Associates and JGM Associates. A&H

was general partner of both partnerships. During August, 1989, both partnerships transferred their property to A&H Development Company. Ayers was the incorporator of A&H Development Company and was its president and a principal of A&H. In August, 1989, Ayers sought financing and ultimately obtained an advance of \$115,000.00 on a loan in the aggregate amount of \$650,000.00 from PSI Capital Corporation. From these monies Ayers received five checks from his escrow account to reimburse himself for fees and costs associated with the collection of the Warrens' claim against Mulderig.

29. On February 6, 1990, PSI Capital Corporation completed its loan to A&H Development Company to \$650,000.00. The loan was secured by a deed of trust on the property. From the sums received, Ayers issued a check dated February 14, 1990, No. 16494, to Ayers & Ayers in the amount of \$47,000.00 labeled as an advance toward attorneys' fees to Ayers & Ayers.

30. On February 12, 1990, Samuel Warren received a letter from the Clerk's Office of Orange County, New York, saying that the judgment had been released but that it needed to be released against all defendants. This was the first knowledge that Samuel Warren had that the judgment had been released. At some point in February, 1990, Ayers told Mrs. Warren that he had removed the judgment to a mortgage.

31. Ayers failed to see to the satisfaction of the indebtedness of A&H Development Company to PSI Capital Corporation. Accordingly, PSI Capital Corporation foreclosed upon the property. There was no surplus once the foreclosure was completed, and the Warrens received nothing from their judgment against Mulderig except \$290,000.00 that Ayers had obtained when he was first retained by the Warrens.

II. DISCIPLINARY RULES

Special Assistant Bar Counsel Booker, Deputy Bar Counsel Hirsch, William D. Bayliss as Respondent's Counsel and the Respondent agree that the above factual stipulations include conduct which constitutes violations of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

A. Marshall Street Associates, Limited Partnership

DR 5-101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.

DR 5-104. Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full and adequate disclosure under the circumstances and provided that the transaction was not unconscionable, unfair or inequitable when made.

DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

B. A & H Development Company

DR 5-101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

(A) A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.

DR 5-104. Limiting Business Relations with a Client.

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full and adequate disclosure under the circumstances and provided that the transaction was not unconscionable, unfair or inequitable when made.

DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

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

(A) All funds of clients paid a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) Funds reasonably sufficient to pay bank charges may be deposited therein.
- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

- (1) Promptly notify a client of the receipt of his funds, securities, or other properties.
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
- (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

III. PROPOSED DISPOSITION

Accordingly, Special Assistant Bar Counsel Booker, Deputy Bar Counsel Hirsch and the Respondent by his counsel, William D. Bayliss, tender to a panel of the Virginia State Bar Disciplinary Board for its approval the agreed disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by another panel of the Disciplinary Board. The terms with which the Respondent must comply are as follows:

1. R shall not participate in business transactions with clients directly or indirectly in any manner, with or without consent of the client.
2. Lawyers in R's law firm shall not represent clients in business transactions in which R is a participant either directly or indirectly.
3. If R is currently involved in any way, directly or indirectly, in business transactions with his clients or the clients of other lawyers in his law firm, he shall take steps to immediately withdraw from the transactions or the representations.
4. Paragraphs 2 and 3 above shall not preclude members of Ayers' firm from handling real estate closings for entities in which Ayers has an interest so long as the fees for those transactions do not in any way inure to the benefit of Ayers individually or as a partner of the Ayers law firm.
5. It shall be the sole responsibility of R to insure that these terms are fulfilled. It shall be the sole responsibility of R to inform and keep informed the lawyers and staff in his law firm of the identity of his clients and the nature of his business dealings such that these terms are not breached.
6. If, at any time in the future, an attorney disciplinary authority or court determines that R participated in business transactions with clients, directly or indirectly in any manner, with or without consent, or that any lawyer in R's law firm, at any time in the future, represented client(s) in business transactions in which R is or was a participant, directly or indirectly, a show cause proceeding before the Disciplinary Board shall be initiated by the bar.

7. The sole issue for determination in the show cause proceeding shall be whether or not these terms have been violated in any way. Upon a finding by the Disciplinary Board that the terms herein have been violated in any way, R agrees that his license to practice law in the Commonwealth of Virginia shall be revoked forthwith.
8. The Respondent and the bar agree that there is no termination date for these terms and that they constitute continuing terms during the remainder of the Respondent's legal career.

The Respondent and the bar agree that upon the entry of the final order in this proceeding resulting from the approval of this agreed disposition, this case shall be closed and taken off the docket of the Disciplinary Board and shall not be reinstated on the docket of the Disciplinary Board unless and until a show cause proceeding is initiated upon the alleged failure to fulfill the terms stated herein. Upon a determination that the terms herein have been breached in any way, the Respondent agrees that the Disciplinary Board shall impose a revocation of the Respondent's license to practice law in the Commonwealth of Virginia.

The Respondent agrees that his prior record will be furnished to the panel of the Disciplinary Board considering this Agreed Disposition.

THE VIRGINIA STATE BAR

By
Lewis T. Booker
Special Assistant Bar Counsel

By
Harry M. Hirsch
Deputy Bar Counsel

By
William D. Bayliss
Respondent's Counsel

By
Charles Edward Ayers, Jr.
Respondent



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
CHARLES IVEY BILLMAN, ESQUIRE
VSB Docket Number 00-041-0035

ORDER

This matter came on November 2, 2001, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fourth District-Section I Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Donna A. DeCorleto, lay member, Peter Allan Dingman, Esquire, Roscoe Bolar Stephenson, III,

Esquire, Herbert Taylor Williams, IV, Esquire, and William Morris Moffet, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Charles Ivey Billman, Esquire, appearing by his counsel, Jeffrey S. Shapiro, Esquire, presented an endorsed Agreed Disposition, dated October 31, 2001, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Donna Chandler, P. O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

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

1. At all times relevant hereto, Charles Ivey Billman, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or around August of 1998, Bobby Lee Malady, a prisoner incarcerated in a federal facility in Illinois, contacted Respondent requesting legal representation. Respondent agreed to represent Mr. Malady for a "flat fee" of \$5,000.00, by writing and filing a motion under 28 U.S.C. §2255 to correct the sentence imposed by the federal court which sentenced Mr. Malady to the term he was then serving. A check in the sum of \$5,000.00 was sent to Respondent on or about August 18, 1998, by Mr. Malady's mother, Louise Flieger Malady (hereafter "Complainant").
3. Unbeknownst to Mr. Malady at the time Respondent was engaged to handle Mr. Malady's legal matter, Respondent had agreed to pay one Robert Weigers, another federal prisoner incarcerated in the same facility as Mr. Malady, a "referral fee" of twenty percent (20%) of the fee charged Mr. Malady. Beyond serving as compensation for Mr. Weigers's having referred Mr. Malady to Respondent, the "referral fee" was also to cover the cost of Mr. Weigers's performance of legal research and the drafting of the motion required in Mr. Malady's case.
4. From the proceeds of the \$5,000.00 received from Complainant, Respondent sent the referral fee in the sum of \$1,000.00 to Mr. Weigers, in care of his wife. Mr. Weigers did not thereafter perform the services for which Respondent had paid him. While Respondent waited in vain for receipt of a draft of the motion from Mr. Weigers, Respondent was not forthright with Mr. Malady as to why Respondent had provided no work product to Mr. Malady for a period of months following Respondent's retention by Mr. Malady.
5. Months following his retention by Mr. Malady, Respondent concluded that Mr. Weigers, the prisoner he had engaged and paid to perform legal services on behalf of Mr. Malady, would not, in fact, be performing those services. Respondent thereupon, for the first time, explained to Mr. Malady his arrangement with Mr. Weigers, and began work associated with Mr. Malady's "§2255" motion. Respondent thereafter learned that Mr. Malady had already filed an unsuccessful "§2255" motion and that the documents Mr. Malady had produced, and which were to be the basis on which the "§2255" motion was to be filed, were allegedly forged. Respondent then concluded that filing such a motion, a second time, would not be well taken.

6. On or about June 27, 1999, Complainant, by telephone, demanded a return of the money that she had paid to Respondent on behalf of her son. The Respondent refused at that time to return all or any portion of the Complainant's money, claiming that the time he devoted to researching Mr. Malady's legal matter and drafting the "\$2255" brief had "exhausted" the fee he had charged for handling the matter.
7. On or about June 28, 1999, some ten months after having been engaged by Mr. Malady for the sum of \$5,000.00, Respondent sent Mr. Malady a letter enclosing documents which Mr. Malady was to complete and file on a pro se basis: a cover letter to the clerk of court; a partially completed seven-page pre-printed form petition under 28 U.S.C. §2241, with certain blanks filled in by hand; a one and one-quarter page typewritten attachment to the form petition, styled "Grounds for Relief;" photocopies of Mr. Malady's criminal records from the State of Missouri; and a money order to cover the filing fee. The "\$2241 petition" was prepared by Respondent following the closure of his Arlington, Virginia, law office, and while he was on a leave of absence and traveling in Alaska. He used the resources of a public library in Alaska in preparing the petition.
8. Notwithstanding his claim that the fee paid to him had been exhausted, the Respondent made no record of the time that he claims to have devoted to Mr. Malady's case, maintaining that he did not do so because he handled the matter on a "flat rate fee" basis.
9. Mitigating factors recognized by the ABA include the following:
 - a. absence of a prior disciplinary record;
 - b. inexperience in the practice of law; and
 - c. cooperative attitude toward disciplinary proceedings.

The Board finds by clear and convincing evidence that such conduct on the part of Charles Ivey Billman, Esquire, constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

DR 1-102. Misconduct.

- (A) A lawyer shall not:
- (1) Violate a Disciplinary Rule or knowingly aid another to do so.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

DR 2-103. Recommendation or Solicitation of Professional Employment.

- (D) A lawyer shall not compensate or give anything of value to a person or organization to recommend or secure his employment by a client, or as a reward for having made a recommendation resulting in his employment by a client, except that he may pay for public communications permit-

ted by DR 2-101 and the usual and reasonable fees or dues charged by a lawyer referral service and any qualified legal services plan or contract of legal services insurance as authorized by law, provided that such communication of the service or plan are in accordance with the standards of DR 2-101 or DR 2-103, as appropriate.

DR 2-105. Fees.

- (B) The basis or rate of a lawyer's fee shall be furnished on request of the lawyer's client.

DR 3-102. Dividing Legal Fees with a nonlawyer.

- (A) A lawyer or law firm shall not share legal fees with a non-lawyer ***[.]

DR 3-104. Nonlawyer Personnel.

- (C) A lawyer or law firm that employs nonlawyer personnel shall exercise a high standard of care to assure compliance by the nonlawyer personnel with the applicable provisions of the Code of Professional Responsibility. The initial and the continuing relationship with the client must be the responsibility of the employing attorney.

DR 6-101. Competence and Promptness.

- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

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

- (B) A lawyer shall:
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.
 - (4) Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

Upon consideration whereof, it is ORDERED that:

1. Subject to the provisions of Paragraph 3 set forth below, the Respondent's license to practice law, be, and the same hereby is, suspended for a period of six (6) months, effective upon entry of this Order;
2. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Louise Fliieger Malady, the sum of \$2,500.00. The payment that is due hereunder shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, no later than January 31, 2002; and that
3. If the Respondent fails to comply with the terms set forth in the immediately preceding Paragraph 2, then, and in

such event, this Board shall, as an alternative disposition to the six (6) month license suspension ordered pursuant to Paragraph 1, extend the period of license suspension by twelve (12) months, for a total period of license suspension of eighteen (18) months; and it is further

ORDERED that:

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

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his last address of record with the Virginia State Bar, and by first class, regular mail, to Seth M. Guggenheim, Assistant Bar Counsel and to Jeffrey S. Shapiro, counsel for Respondent.

ENTERED this 6th day of November, 2001.
WILLIAM MORRIS MOFFET
Chairman
Virginia State Bar Disciplinary Board



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTERS OF
CHARLES D. CHAMBLISS, JR.

VSB Docket Nos. 99-033-1982,
99-033-2199,
00-033-1650
and 00-033-2036

ORDER

These matters came before the Virginia State Bar Disciplinary Board on October 2, 2001, to be heard on an Agreed Disposition between the Virginia State Bar and the respondent Charles D. Chambliss, Jr. and his counsel Craig S. Cooley.

The Agreed Disposition was considered by a duly convened panel of the Disciplinary Board consisting of Thaddeus T. Crump, Peter A. Dingman, Karen A. Gould, Theophlise L. Twitty and William M. Moffet, presiding. The respondent did not appear but was represented by his counsel Craig S. Cooley. The Virginia State Bar was represented by Bar Counsel Barbara Ann Williams.

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

I. Finding of Fact Applicable to All Matters

At all relevant times, the respondent, Charles D. Chambliss, has been an attorney licensed to practice law in the Commonwealth of Virginia.

II. VSB Docket No. 99-033-1982
Complainant: Terry D. Wright, M.D.

A. **Findings of Fact**

1. On or about June 2, 1995, Terry D. Wright, M.D. sustained injuries to her back and neck when her automobile was rear-ended by Kim M. Godin; Dr. Wright's minor son, Justin, who was a passenger in her automobile, was also injured.
2. On or about June 5, 1995, Dr. Wright engaged Mr. Chambliss to pursue claims arising from the accident on behalf of her son and herself against Ms. Godin, who was insured by Erie Insurance Group.
3. Dr. Wright incurred \$2,005.60 in medical bills and \$5,935.58 in lost wages as a result of the accident.
4. On or about March 27, 1996, Mr. Chambliss sent a letter to Erie Insurance Group demanding \$37,625 to settle Dr. Wright's personal injury claims.
5. The demand letter states that Ms. Godin was intoxicated at the time of the accident and was arrested for drunk driving.
6. By letter to Erie dated July 30, 1996, Mr. Chambliss demanded \$37,625 to settle Dr. Wright's compensatory damage claims and \$45,000 in punitive damages.
7. By letter to Mr. Chambliss dated January 20, 1997, Erie indicated that the company wanted to make a fair offer to settle Dr. Wright's claims based upon information that Mr. Chambliss submitted on July 30, 1996, and requested Mr. Chambliss to contact the claims representative to "discuss an amicable settlement of your client's accident-related injuries."
8. By letter to Erie dated January 29, 1997, Mr. Chambliss advised that Dr. Wright was still receiving medical treatment, indicated that he would follow up with Erie in March when Dr. Wright's doctor determined whether her symptoms had resolved, and made a demand of \$2,500 to settle Justin Wright's claims.
9. By letter to Mr. Chambliss dated February 14, 1997, Erie advised that it had no documentation in its file whatsoever regarding Justin Wright.
10. By letter to Erie dated May 12, 1997, Mr. Chambliss rejected Erie's offer of \$12,500 and extended a new demand or counter offer of \$35,000 to settle Dr. Wright's personal injury claims.
11. By letter to Erie dated May 22, 1997, Mr. Chambliss rejected Erie's offer of \$15,000 to settle Dr. Wright's personal injury claims, extended a new demand or counter-offer of \$34,000 and stated "To date you have not responded to the Justin Wright demand. Let's discuss these claims" (emphasis in the original).
12. In a facsimile message to Mr. Chambliss dated May 23, 1997, the Erie claims representative stated: "I am in the office all day. I look forward to your returning of my phone call."

13. Although Mr. Chambliss contends he had many telephone conversations with the Erie claims representative, he did not call her between May 23 and June 1, 1997.
14. On Friday May 30, 1997, Mr. Chambliss mailed a cover letter referencing a Motion for Judgment seeking damages on Dr. Wright's behalf along with a filing fee to the Circuit Court of Chesterfield County, Virginia.
15. The court's date stamp indicates that the court filed the Motion for Judgment on Tuesday, June 3, 1997.
16. On or about June 6, 1997, counsel for Erie filed a Special Plea of Statute of Limitations.
17. At Mr. Chambliss's request, the hearing on the special plea was continued until October 20, 1997, at which time Mr. Chambliss submitted a Voluntary Non-Suit Order.
18. Dr. Wright and Mr. Chambliss do not agree when or how she first learned her case had been dismissed
19. Dr. Wright has never recovered anything on her personal injury claims against Ms. Godin.
20. On or about February 23, 1999, the Virginia State Bar received Dr. Wright's bar complaint against Mr. Chambliss.

B. Findings of Misconduct

It is agreed that the following Disciplinary Rules apply to the agreed misconduct:

DR 6-101. Competence and Promptness.

- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.
- (D) A lawyer shall inform his client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

III. VSJ Docket No. 99-033-2199
Complainant: Nancy C. Jones

A. Findings of Fact

1. On or about October 27, 1993, Nancy C. Jones retained Mr. Chambliss to initiate divorce proceedings on her behalf.
2. Ms. Jones and Mr. Chambliss signed a Retainer Agreement, and Ms. Jones paid Mr. Chambliss a "start up fee" of \$500.
3. By letter dated February 10, 1994, Mr. Chambliss sent a Bill of Complaint and filing fee to the Charles City Circuit Court.
4. Mr. Chambliss and Ms. Jones had a series of meetings. Ms. Jones had fears for her safety from her husband.

The bill of complaint was not served until Ms. Jones was emotionally prepared to face her husband in a hearing.

5. Mr. Jones was not served with the Bill of Complaint until August 1994; he was not represented by counsel and did not file a response.
6. A pendente lite hearing was held on September 12, 1994, and the judge awarded exclusive possession of the marital residence to Ms. Jones and ordered Mr. Jones to continue making all mortgage payments and monthly child support payments.
7. Mr. Jones had been taking Ms. Jones' mail for quite some time. Ms. Jones learned through a call from an FHA representative that the mortgage on the marital residence was delinquent.
8. In May 1996, Ms. Jones contacted Mr. Chambliss's office, indicating that she needed to make an appointment to confer with him because her husband was \$10,000 behind on the mortgage and other bills.
9. On or about July 10, 1996, Ms. Jones advised Mr. Chambliss that her husband was going to stop making mortgage payments on the marital residence. Later, foreclosure proceedings were initiated, and Mr. Jones filed for bankruptcy.
10. By facsimile dated August 7, 1996, Mr. Chambliss provided David Karp, who Mr. Jones had retained as counsel in the divorce proceeding, a copy of the Bill of Complaint and orders entered in the proceeding.
11. By an agreement dated October 7, 1996, which Mr. Chambliss did not prepare and of which he was unaware until after its execution, Mr. Jones conveyed his interest in the house via a Deed of Gift in return for Ms. Jones agreeing to relinquish her interests in his profit sharing plan and a color television set.
12. On or about October 29, 1996, Ms. Jones provided Mr. Chambliss a written list of concerns and issues concerning her divorce, including funds that she believed her husband had received from a personal injury settlement. Mr. Chambliss contacted the law firm that handled the settlement and was advised the funds had long before been disbursed.
13. Ms. Jones paid Mr. Chambliss an additional \$300, which she claims she believed would be used to locate the settlement funds her husband had allegedly received. Jones had refused to pay additional fees, beyond \$500, or costs in the matter. Depositions were scheduled after she paid the \$300.
14. Mr. Chambliss claims the \$300 was for a court reporter's fee; he never billed Ms. Jones for the \$300 or provided a written explanation of how it was spent.
15. By facsimile dated December 6, 1996, Ms. Jones provided Mr. Chambliss information related to the house closing. Mr. Chambliss was never asked nor employed to handle the real estate closing.
16. On or about April 10, 1997, Mr. Chambliss sent Mr. Karp a deposition notice. Discussions about settlement

and support issues between Mr. Chambliss and Mr. Karp proceeded the filing of the deposition notice.

17. On or about May 7, 1997, Ms. Jones wrote Mr. Chambliss, gave him information related to the property settlement and thanked him "for getting busy." Mr. Chambliss received the letter, but Mr. Jones did not agree to settlement on Ms. Jones's terms.
18. Ms. Jones and a witness were deposed on July 8, 1997, at Mr. Chambliss's offices.
19. On or about August 8, 1997, Mr. Chambliss wrote Mr. Karp inquiring whether there was any interest in discussing property related issues.
20. By letter dated November 21, 1997, Mr. Chambliss advised Mr. Karp that "we would like to conclude the Jones divorce this year."
21. On or about December 11, 1997, Mr. Chambliss faxed a draft final decree to Mr. Karp for his review.
22. Mr. Chambliss made multiple attempts to secure Mr. Karp's and his client's agreement to reserve equitable distribution and eventually an agreement was reached as to that.
23. By letter dated January 12, 1998, Mr. Karp advised Mr. Chambliss that the final decree was unacceptable because Mr. Jones wanted the child support reduced to \$205 per month effective August 1997. The letter was silent as to Ms. Jones settlement terms.
24. Mr. Chambliss did not amend the final decree.
25. By letter dated September 18, 1998, Mr. Chambliss advised Ms. Jones that the court would not enter a decree of divorce without resolving equitable distribution issues unless the parties agreed to reserve the equitable distribution related issues.
26. On or about October 19, 1998, Ms. Jones wrote Mr. Chambliss and advised him that it was her understanding that the hold up on the final decree was because her husband wanted the child support reduced from \$350 to \$205 per month; Ms. Jones advised Mr. Chambliss that she had no objection to the amendment and requested him to send an amended final decree to Mr. Karp.
27. Despite Ms. Jones' instruction, Mr. Jones was unwilling to settle. There were issues other than support. Ms. Jones was unwilling to pay commissioner's fee and costs relating to the equitable distribution.
28. The Virginia State Bar received two complaints from Ms. Jones against Mr. Chambliss: one dated February 2, 1999, and the other dated February 12, 1999.
29. Prior to receiving any notice of these complaints from the Virginia State Bar, Mr. Chambliss wrote Ms. Jones on March 12, 1999, indicating that he would withdraw from the case based upon her refusal "to pay fees as billed," although no bills for additional fees have been produced.
30. The parties to the divorce were deposed a second time on April 12, 1999.

31. On or about April 30, 1999, Mr. Chambliss sent Mr. Karp notice of the filing of the final decree and a draft final decree showing child payments in the amount of \$410.
32. The court received the final decree on or about June 11, 1999.
33. By letter dated June 17, 1999, the court notified both counsel that the final decree had not been entered because it contained ten errors.
34. By letter dated October 26, 1999, Ms. Jones advised the bar that Mr. Chambliss had not made any of the corrections required by the court.
35. On or about November 18, 1999, Mr. Chambliss represented to the VSB investigator that he had failed to provide a copy of his most recent submission to the court but would do so.
36. As of December 6, 1999, the court indicated that it had not received anything from Mr. Chambliss since his submission on April 13, 1999.
37. Mr. Chambliss advised the court by letter dated December 22, 1999, that he had forwarded a corrected final decree to Mr. Karp. Sometime later, Mr. Chambliss called the court and was advised the decree had not been received. Mr. Chambliss telephoned Mr. Karp who discovered the decree was still in his file.

B. Agreed Findings of Misconduct

It is agreed that the following Disciplinary Rules apply to the agreed misconduct:

DR 2-105. Fees.

(A) A lawyer's fees shall be reasonable and adequately explained to the client.

DR 6-101. Competence and Promptness.

(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.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

IV. VSB Docket No. 00-033-1650
Complainants: Steve and Frani Branch

A. Agreed Findings of Fact

1. Mr. Chambliss has represented Steve K. Branch for over ten years and presently serves as registered agent for Armani's Restaurant & Lounge, a business operated by a corporation whose shareholders include Frani Branch, Michael Brim and Jesse Pryor.
2. In July 1996, Mr. Chambliss referred Mr. Branch to Ms. Olivia C. Torres, after Mr. Branch indicated he had some money he wanted to lend.

3. In July 1996, Mr. Branch called Mr. Chambliss and advised that Ms. Torres could pick up a \$10,000 check. Ms. Torres requested Mr. Chambliss to pick up the funds for her because she had a meeting. He agreed.
4. Upon arriving, Mr. Chambliss discovered Mr. Branch had cash, rather than a check. After telephoning Ms. Torres to see if she would accept cash, Mr. Chambliss received the cash.
5. Mr. Branch tendered \$10,000 to Mr. Chambliss and requested a receipt to be made out to his wife Frani Branch. Mr. Chambliss gave Mr. Branch a handwritten, undated receipt stating, "Received from Frani Branch for O. Torres \$10,000, to be paid plus agreed interest by O. Torres on or before Tuesday, September 29, 1998," signed Charles D. Chambliss, Jr. for O. Torres. The parties are in dispute as to whether Mr. Branch met with Ms. Torres and toured Club Moravia before agreeing to loan Ms. Torres the money.
6. The next day a second receipt allegedly signed by Ms. Torres was dropped off at Mr. Branch's place of business; the receipt states: Club Moravia, Inc. through its president Olivia C. Torres, acknowledges receipt of an investment of \$10,000, from or on behalf of Frani Branch, in exchange for a guaranteed return of investment of \$2500, from August 29, 1998 proceeds and \$2500, from September 1998 proceeds to be paid no later than the 29th of the respective month, "signed Moravia, Inc. by President Olivia Torres.
7. About thirty days later, Mr. Chambliss and Mr. Branch had a conversation about Mr. Branch loaning Ms. Torres an additional \$10,000 on the same terms and conditions as the first loan.
8. Mr. Branch agreed to loan Ms. Torres an additional \$10,000.
9. On August 12, 1998, Mr. Chambliss picked up the cash at Mr. Branch's office and executed a receipt for it dated September 12, 1998 [sic].
10. The next day, Ms. Torres dropped off a signed receipt dated August 12, 1998, for the \$10,000 that Mr. Branch had tendered to Mr. Chambliss.
11. On September 29, 1998, the date all the loans were to be repaid, Mr. Branch met Mr. Chambliss at Consolidated Bank in downtown Richmond where Ms. Torres was to make the repayment; she did not show up.
12. Approximately one month after the repayment was due, Harry Sewell, Sr., who owed Ms. Torres money, tendered certain stock to her. Ms. Torres requested Mr. Chambliss to advise Mr. Branch that she had received this stock. He did so.
13. Mr. Chambliss then contacted a stock broker and was advised the stock was worthless. Mr. Chambliss so notified Mr. Branch and Ms. Torres.
14. In November 1998, at Mr. Branch's request, Mr. Chambliss faxed Mr. Branch a promissory note dated June 29, 1998, but supposedly signed by Ms. Torres on November 16, 1998. While conceding that the document was a form faxed from his office, Mr. Chambliss denies signing the document.
15. Mr. Chambliss told Mr. Branch that Ms. Torres would be able to repay the loans from the sale of art work, but the value of the art work was insufficient to satisfy the loan.
16. After Ms. Torres failed to make any payments on the loans, Mr. Chambliss prepared two warrants in debt against her, had Mr. Branch sign the warrants and secured a hearing date on February 17, 1999, in the General District Court for the City of Richmond. Mr. Chambliss believed that Ms. Torres had decided not to contest the matter.
17. On the day of the hearing, Mr. Chambliss met Mr. Branch outside the courtroom where he was to meet the parties. Ms. Torres was not there, and Mr. Chambliss waited outside the courtroom.
18. Ms. Torres did not appear for the hearing but submitted a handwritten note to the court stating: "Please be informed that I am contesting the hearing date and the amounts because Counsel was representing both parties. I am requesting a continuance to retain another attorney. I will contact the court to find out the disposition. Thanks you for your attention to this matter."
19. The general district court dismissed the warrants in debt because Mr. Branch did not have an original promissory note; all he had was the promissory note that Mr. Chambliss's office had faxed to him.
20. Mr. Branch subsequently retained Robert Walker to represent him, and Mr. Walker eventually secured judgment against Ms. Torres. It was not contested by Ms. Torres.
21. On or about January 3, 2000, Mr. and Mrs. Branch filed a bar complaint against Mr. Chambliss after Mr. Branch demanded that Mr. Chambliss pay the loan for Ms. Torres and Mr. Chambliss refused.

B. Agreed Findings of Misconduct

It is agreed that the following Disciplinary Rules apply to the agreed misconduct:

DR 5-101. Refusing Employment When the Interests of the Lawyer May Impair His Independent Professional Judgment.

- (A) A lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances.

DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer.

- (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in

behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR 5-105(C).

V. VSB Docket No. 00-033-2036
Complainant: Pamela L. Brown

A. Agreed Findings of Fact

1. On or about March 6, 1998, Pamela L. Brown, *pro se*, filed a warrant in debt in Henrico General District Court to collect approximately \$2,500 that Kevin Foster owed her.
2. On March 30, 1998, Mrs. Brown consulted Mr. Chambliss about the collection action, which was set for hearing on April 10, 1998. Mr. Chambliss declined to accept the case. Mrs. Brown paid an \$85 consultation fee.
3. On April 10, 1998, Mrs. Brown arrived late for the hearing; by the time she appeared, her case had been dismissed.
4. After learning that her case had been dismissed, Mrs. Brown went to the Clerk's Office, filed another warrant in debt and was given a new hearing date of May 22, 1998.
5. Counsel for Mr. Foster filed a motion for sanctions against Mrs. Brown and a motion to dismiss. She was served with these on April 10, 1998.
6. Mrs. Brown called Mr. Chambliss and made an appointment to meet with him on April 21, 1998.
7. Mr. Chambliss agreed to respond to the motion for sanctions and obtain a judgment against Mr. Brown for a flat fee of \$650. The parties are in dispute as to whether Mr. Chambliss agreed to pursue any judgment to collection.
8. There was no written fee agreement, but Ms. Brown paid Mr. Chambliss \$300 on April 21, 1998, and the remaining \$350 on May 8, 1998.
9. On April 24, 1998, Mr. Chambliss filed an answer to the motion for sanctions.
10. The collection matter was continued three times by agreement of the parties before it was finally heard on January 8, 1999; Ms. Brown gathered all the information Mr. Chambliss indicated was necessary for her case.
11. The court entered a judgment for Ms. Brown in the amount of \$2,000 plus \$30 for costs. The motions for sanctions and to dismiss were successfully defended, and the court denied them.
12. The parties dispute whether Mr. Chambliss ever agreed to pursue a garnishment of Mr. Foster.
13. Mrs. Brown claims she telephoned Mr. Chambliss on August 6, 17, 23 and 26, 1999, and left messages asking him the status of the garnishments. Mr. Chambliss has no record or recollection of those calls.
14. On August 30, 1999, Mrs. Brown went to the Henrico County General District Court and learned from the court clerk that a garnishment had not been filed.

15. On August 30, Mrs. Brown went to Mr. Chambliss's office, arriving without notice or appointment, and, after waiting almost two hours while Mr. Chambliss met with scheduled appointments, met with him.
16. Mrs. Brown believes Mr. Chambliss agreed to file a garnishment. Mr. Chambliss denies that commitment was ever made.
17. Mrs. Brown contends she called Mr. Chambliss on October 13, 1999, but he was not available to speak with her, so she left a message for him to call her. Mr. Chambliss states that he was out of the office most of October 13th and 14th.
18. Ms. Brown indicated that after she did not hear from him, she called Mr. Chambliss's office four more times and after failing to reach him, left messages for him to call her. Mr. Chambliss's office has no record of the messages.
19. After not hearing from Mr. Chambliss, Mrs. Brown filed a complaint against him with the Virginia State Bar on or about January 6, 2000.

B. Agreed Findings of Misconduct

It is agreed that the following Disciplinary Rules apply to the agreed misconduct:

DR 2-105. Fees.

- (A) A lawyer's fees shall be reasonable and adequately explained to the client.

DR 6-101. Competence and Promptness.

- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

VI. Disposition

The Disciplinary Board, respondent, his counsel and Bar Counsel agree that a public reprimand with the following terms is an appropriate disposition of these matters because such a sanction will serve the interests of the complainants and the public.

1. The respondent will pay to Terry M. Wright, M.D. the sum of \$18,000.00, representing the sum she would have recovered had her claims settled for \$27,000.00 less attorney's fees, no later than October 24, 2001.
2. The respondent will refund Nancy C. Jones the \$800.00 she paid respondent for attorney's fees and costs no later than October 24, 2001.
3. The respondent will pay Frani Branch \$2,000.00, two years of accrued interest on the \$20,000.00 that Frani Branch loaned Olivia Torres at a 5% interest rate, no later than October 24, 2001.

4. The respondent will refund Pamela L. Brown \$650.00 that she paid the respondent for attorney's fees, no later than October 24, 2001.
5. If the respondent elects to continue in the general practice of law and to maintain a law office after January 1, 2002, the respondent shall contract with one of the Virginia State Bar's Risk Managers to conduct an audit of his law office and practice in order to suggest ways in which the respondent can improve communications with clients, record keeping practices, supervision of nonlawyer personnel and the timeliness of work performed for clients. The respondent shall bear the expenses of the law office audit and the Risk Manager who conducts the audit shall report to Bar Counsel in writing that an audit has been conducted. The respondent is responsible for ensuring that the Risk Manager reports to Bar Counsel within six months of January 1, 2002.

The alternate disposition of these matters, should respondent fail to comply with the agreed terms, will be a one year suspension. If an issue arises about the respondent's compliance with the terms of the Agreed Disposition, the Disciplinary Board will conduct a hearing as to whether the respondent has fulfilled the terms of the Agreed Disposition. The respondent shall have the burden of proof at any such hearing.

The court reporter for this hearing on the Agreed Disposition was Tracy Stroh of Chandler and Halasz Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

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

It is **ORDERED** that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the respondent, at his last address of record with the Virginia State Bar, 21st Center, Suite 207, 2025 East Main Street, Richmond, Virginia 23223, and sent by regular mail to Respondent's Counsel, Craig S. Cooley, Esquire, P.O. Box 7268, Richmond, Virginia 23221, and hand delivered to Bar Counsel Barbara Ann Williams.

Enter this Order this 6th day of October, 2001.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By William M. Moffet, Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTERS OF
CHARLES D. CHAMBLISS, JR.
 VSB Docket Nos. 99033-1982,
 99-033-2199,
 00-033-150
 and 00-033-2036

ORDER

The issue of whether it is possible for the respondent, Charles D. Chambliss, Jr., to comply with certain terms associ-

ated with the agreed disposition imposed in the above-styled matters came before the Virginia State Bar Disciplinary Board for hearing on December 3, 2001. The hearing panel consisted of William C. Boyce, Jr., Bruce T. Clark, Karen A. Gould, Joseph R. Lassiter, Jr. and John A. Dezio, presiding. Craig S. Cooley represented the respondent, who was not present. Barbara Ann Williams represented the Virginia State Bar. The court reporter for the hearing was Tracy Stroh of Chandler and Halasz Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

It was stipulated that the respondent has complied with the terms requiring him to make monetary refunds, except for refunding \$650.00 to Pamela L. Brown. Mr. Cooley represented that repeated efforts to refund that money have been unsuccessful because Ms. Brown's current address is unknown to the respondent and the bar.

Having heard the evidence and considered the issue, the Disciplinary Board determined that the respondent had made a good faith effort to refund the \$650.00 and ordered Mr. Cooley to hold the money in trust and continue to try to locate Ms. Brown and refund the money for one year. If by December 2, 2002, Ms. Brown has not been located and the money refunded to her, the respondent shall donate the \$650.00 to the Central Virginia Legal Aid Society and notify Bar Counsel in writing that he has done so. If any issue arises about the respondent's compliance with this term, the Disciplinary Board will conduct a hearing to determine whether the respondent has full complied with the term and, if not, whether the alternate sanction of a one year suspension should be imposed. The respondent shall bear the burden of proof at any such hearing.

It is **ORDERED** that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the respondent, at his last address of record with the Virginia State Bar, Suite 207, 2025 East Main Street, Richmond, Virginia 23223, and sent by regular mail to respondent's counsel, Craig S. Cooley, Esq., and hand delivered to Bar Counsel, Barbara Ann Williams.

Enter this Order this 10th day of December, 2001
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By John A. Dezio, 1st Vice Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
ARTHUR CHARLES ERLMICH, JR.
 VSB DOCKET: 00-021-0190

ORDER

This matter was certified to the Disciplinary Board by the Second District Committee, Section One and was heard on September 28, 2001, by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of John A. Dezio, First Vice-Chair, William C. Boyce, Jr., Donna A. DeCorleto, Joseph R. Lassiter, Jr., and Roscoe B. Stephenson, III. The Respondent, Arthur Charles Ermlich, Jr., appeared without counsel, and Paul D. Georgiadis, 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.

The Chair polled the panel to determine whether any member would be prevented from hearing the matter because of a conflict, actual or perceived. Each member, including the Chair, responded in the negative.

The Bar introduced eight exhibits: Exhibit #1, Board Certification dated March 14, 2001, notifying the Respondent of the District Committee Determination (Certification) and amended Board Certification dated March 15, 2001; Exhibit #2, Respondent's Answer dated March 28, 2001; Exhibit #3, Circuit Court Order dated April 21, 1998 appointing Respondent to handle complainant's appeal; Exhibit #4, Notice of Appeal dated April 23, 1998; Exhibit #5, Court of Appeals Order dated August 19, 1998 dismissing the appeal for failure to file a petition; Exhibit #6, Complainant's letter dated February 26, 1999, to the Norfolk Circuit Court Clerk requesting information regarding his appeal; Exhibit #7, Norfolk Circuit Court Clerk's letter dated March 19, 1999 notifying the complainant of the dismissal of his appeal; Exhibit #8, Deposition transcript of complainant dated December 12, 2000. The preceding exhibits were tendered to the Board prior to the testimonial portion of the hearing and the Respondent offered no objection to their admission. They were admitted.

The Respondent admitted all allegations.

After deliberation, the Board unanimously found the following as fact:

1. At all times material to these allegations, the Respondent, Arthur Charles Ermlich, Jr., has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On April 21, 1998, Respondent was appointed to represent the Complainant, James G. Heverley, in his appeal of his criminal conviction from Circuit Court to the Virginia Court of Appeals.
3. On April 27, 1998, Respondent filed a Notice of Appeal of Heverley's case.
4. Thereafter, Respondent failed to perfect the appeal by failing to file a Petition of Appeal.
5. On August 19, 1998, the Court of Appeals entered an order dismissing the appeal due to the petition not having been filed.
6. Respondent failed to inform Heverley of the dismissal of his appeal.
7. Heverley learned of the dismissal of his appeal in March of 1999 when the Norfolk Circuit Court clerk's office responded to Heverley's written inquiry.

From these findings the Board concludes by clear and convincing evidence that the following disciplinary rules have been violated:

DR6-101 Competence and Promptness:

- (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;
- (C) a lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

Having found misconduct, the Board then heard evidence and argument relating to sanctions. The State Bar introduced the Respondent's disciplinary record consisting of the following:

A complaint filed in 1997 which arose from Respondent's failure to note an appeal, which resulted in a Dismissal with Terms;

Three complaints filed in 1999, concerning conduct which occurred in 1997 or 1998, all of which involve failure to perfect appeals and/or failure to communicate with clients. The first such case resulted in a Dismissal with Terms, which ultimately became a Public Reprimand when Respondent failed to comply with the terms. The second case from 1999 resulted in a Public Reprimand. Respondent failed to appear before the District Committee for either of these hearings, and suffered an administrative suspension of his license for three days in May of 2001 when he failed to pay District Committee hearing costs which had been assessed against him in the two cases. The case before this panel is the third complaint filed in 1999.

In mitigation, the Respondent offered an exhibit which was admitted, consisting of a Virginia MCLE Board end-of-year report which revealed that Respondent attended a Continuing Legal Education course entitled "Reasonable Doubt" on September 23, 1999 for which he was given six credits. Respondent argued that this was his attempt to comply with earlier imposed terms and that he simply failed to notify the Bar of his compliance. The Bar argued that in no case would the course be considered compliance due to the fact that he received credit for the course.

Respondent also pointed out that his firm had hired a lawyer to handle criminal appeals and that he no longer intended to handle such matters.

Following argument, the Board deliberated.

From the evidence and argument the Board unanimously determined, and hereby ORDERS, that pursuant to Part 6, Section IV, paragraph 13(C)(7)(iv) of the Rules of the Supreme Court of Virginia that the license of the Respondent, Arthur Charles Ermlich, Jr., be suspended for a period of thirty (30) days, effective the 28th day of September, 2001.

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System send an attested and true copy of this Opinion and Order to the Respondent, Arthur Charles Ermlich, Jr., by certified mail, return receipt requested, at his current address of record with the Virginia State Bar, at Berry, Ermlich, Lomax & Meixel, 2397 Court Plaza Drive, Suite 103, Virginia Beach, Virginia 23456.

The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV, paragraph 13(K)(10) of the aforesaid rules.

ENTERED this 31st day of October, 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: John A. Dezio, First Vice-Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTERS OF
MICHAEL WILLS CULLINAN HARRIS
VSB DOCKET NOS. 01-032-0041 [LYNCH]
01-032-0042 [SCOTT]
01-032-0605 [JEFFERSON]
01-032-1084 [GARDNER]

ORDER OF DISABILITY SUSPENSION

THESE MATTERS CAME ON TO BE HEARD, on November 15, 2001, before a duly convened panel of this Board consisting of Chester J. Cahoon, Jr., Lay Member; Henry P. Custis Esq.; Peter A. Dingman, Esq.; Robert L. Freed, Esq. and John A. Dezio, Esq., Vice Chair, presiding. The panel met by telephone conference call.

Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar. Michael L. Rigsby appeared on behalf of the Respondent, Michael Wills Cullinan Harris, who was not present.

The chair asked each member of the panel to indicate whether there was any personal or financial reason which would prevent any member from being able to act fairly and impartially as a member of the panel in deciding these cases. Each member of the panel responded negatively. Mr. Freed also disclosed certain facts which did not prevent him from being able to act fairly and impartially as a member of the panel in deciding these cases.

Upon consideration of the Subcommittee Determination (Certification) of the Third District Subcommittee, Section Two, and the Agreed Disposition presented by the parties, the Board approves the Agreed Disposition.

I. FINDINGS OF FACTS:

Accordingly, the Board makes the following findings of fact by clear and convincing evidence:

- 1. At all times relevant hereto the Respondent, Michael Wills Cullinan Harris [Harris], was an attorney licensed and authorized to practice law in the Commonwealth of Virginia. As of February 12, 2001, Harris' membership status with the Virginia State Bar is "associate" member; an associate member of the bar is not authorized to practice law in the Commonwealth of Virginia. The respondent would state if called to testify that he voluntarily changed his membership status upon the advice of his healthcare professionals.

VSB Docket No. 01-032-0041 [Lynch]:

- 2. On or about March 9, 2000, Complainant Sean Lynch [Lynch] and his wife met with Harris and asked him to

prepare a last will and testament for each of them. Harris agreed to do so for a total fee of \$400.00, payable in an immediate payment of \$200.00 with the remaining \$200.00 payable upon completion of the representation. Lynch and his wife paid Harris \$200.00 that day and gave Harris information necessary in order to draft the wills.

- 3. Harris deposited the \$200.00 into his operating account at Wachovia Bank on March 10, 2000.
- 4. After Lynch received drafts of the two wills by mail, he reviewed the drafts and called and spoke to Harris on or about April 17, 2000. In the telephone call, Lynch informed Harris of the existence of errors and that he was sending the drafts back to Harris with notations of the needed changes so corrected wills could be produced.
- 5. In his response to the bar, Harris indicated that he had had a telephone conversation with Lynch's wife on or about April 17, 2000, in which Ms. Lynch told Harris that there were errors in the wills. If called to testify, Lynch would deny that Harris talked with his wife at any time other than during the initial appointment.
- 6. Harris told the bar that he had mailed corrected wills to Lynch and his wife on May 14, 2000. If called to testify, Lynch and his wife would deny this.
- 7. Harris indicated to the bar that he had had a telephone conversation with Lynch on or about June 16, 2000, and Lynch had asked for a \$150.00 refund. According to Harris, he told Lynch that he felt he had earned more than \$50.00. If called to testify, Lynch would deny asking only for a \$150.00 refund; instead, Lynch would state that he asked Harris why they had not received corrected wills and since Harris responded vaguely, Lynch asked for the return of the money paid; and in response, Harris stated that was not possible.
- 8. Neither Lynch nor his wife received any refund of funds paid to Harris. If called to testify, Lynch would state that neither he nor his wife received corrected wills from Harris.

VSB Docket No. 01-032-0042 [Scott]:

- 9. On or about March 8, 2000, Complainant Hylton B. Scott [Scott] and his wife met with Harris to obtain his services to prepare a last will and testament for each of them. Harris agreed to do so for an agreed upon fee of \$400.00. Scott paid Harris \$200.00 on March 8, 2000. If called to testify, Scott and/or his wife would state that Harris agreed that the balance of \$200.00 was to be paid upon completion; and Harris told the Scotts that he would get draft documents to them within a week.
- 10. The Scotts received draft documents on or about April 17, 2000, from Harris. If called to testify, Scott would state that he had tried to reach Harris by telephone and unsuccessfully left approximately four telephone messages for Harris.
- 11. If called to testify, the Scotts would state that when they reviewed the drafts they became very concerned that the documents did not appear to be consistent with what they had told Harris on March 8, 2000, and the drafts contained

the names of individuals who were unknown to the Scotts. If called to testify, Harris would deny the facts stated in this paragraph.

12. Scott called Harris and told him of the mistakes and that Scott would be sending the drafts back to Harris with notations of the errors so that Harris could correct the errors.
13. If called to testify, Scott would state that after a few weeks had passed since he had forwarded the drafts with noted errors back to Harris for revision, and having received no information from Harris, Scott again began calling Harris about twice a week; that Harris did not return the calls; that on the few occasions in which Scott was able to get through to Harris, Harris would indicate that he was with a client, or he was working on the revisions and he would mail them out the next day. If called to testify, Harris would deny the facts in this paragraph.
14. If called to testify, Scott would state that on or about June 19, 2000, Scott spoke with Harris who told him he had mailed the corrected wills to him that morning; that Harris never mentioned having mailed revised wills to him in May as indicated by Harris in his written response to the bar complaint; that in the conversation Scott asked for a refund of funds paid; and that Harris indicated to Scott that he would do so but did not know how much the refund would be and asked Scott to call back later.
15. On or about June 23, 2000, Scott called Harris again because he had not received the corrected wills. On this date, Scott again asked Harris for a refund and Harris indicated that would not be possible. Scott asked Harris what he was going to do to rectify the matter and Harris replied that he did not know and hung up the phone. According to Harris, he "told [Scott] that [he] was not able to talk with him anymore about it and [he] hung up the telephone."
16. Harris admits that he deposited the \$200.00 into his operating account at Wachovia Bank on March 10, 2000.
17. If called to testify, Scott and/or his wife would state that they retained another attorney to write two wills for them, paying the new attorney a fee of \$450.00.
18. Harris never returned any part of the funds paid to him by the Scotts. If called to testify, Scott and/or his wife would state that they never received revised wills from Harris.

VSJ Docket No. 01-032-0605 [Jefferson]:

19. On or about March 31, 1999, Complainant Aubrey Jefferson [Jefferson], was sentenced for convictions of murder, conspiracy to commit murder, use of a firearm in the commission of a felony and conspiracy to use a firearm in the commission of a felony. Harris was court-appointed to represent Jefferson as trial counsel and as appellate counsel.
20. In an October 29, 2001, deposition in the instant bar case, Jefferson testified that after talking with Harris about the appeal on the date of his sentencing, Jefferson had no further communication with Harris and received no documents from Harris. Harris appealed the convictions to the

Virginia Court of Appeals. If called to testify, Harris would state that he made copies of the notice of appeal that he was filing, which he provided at the sentencing hearing, both to his client, Mr. Jefferson, and to the Commonwealth's Attorney.

21. Harris did not send Jefferson a copy of the petition for appeal which he filed in the Virginia Court of Appeals. The Court of Appeals denied the petition by order entered August 19, 1999. Harris did not send Jefferson a copy of the Court of Appeals order or provide Jefferson any other notification of the denial of the petition for appeal. Harris did not appeal the case to the Virginia Supreme Court or take any other action in the Court of Appeals. If called to testify Harris would state that he did not send copies as he had already provided the notice of appeal to the defendant in person at the sentencing hearing; that both he and Mr. Jefferson were reluctant to pursue the appeal to the Supreme Court of Virginia; if the case were reversed and remanded, there was a possibility that Mr. Jefferson could be charged with capital murder.
22. According to Harris, on or about November 11, 1999, he received a telephone message from Juanita Jefferson, the mother of Jefferson, stating that they wished the case to be appealed. Harris returned the call by leaving a message indicating the case had been appealed. Harris admits that he did not include in that message the fact that the appeal had been denied.
23. According to Harris, on or about January 4, 2000, he received a telephone message from Tony Jefferson inquiring about the status of the appeal; Harris thought Tony Jefferson was perhaps a cousin of Jefferson. Harris returned the call by leaving a message with the information that the appeal had been denied on August 19, 1999.
24. In an October 29, 2001, deposition in the instant bar case, Jefferson testified that he found out about the denial of his appeal to the Virginia Court of Appeals after he wrote a letter to the Supreme Court of Virginia. The Supreme Court of Virginia received a letter from Jefferson on September 12, 2000. The Clerk sent Jefferson a reply letter dated September 13, 2000, informing him that his appeal had been refused by the Court of Appeals on August 19, 1999, that no notice of appeal had been filed in the Court of Appeals and that no timely petition for appeal had been filed with the Supreme Court of Virginia. In the reply letter the Clerk also referred Jefferson to Harris and sent Harris a copy of the letter.
25. Harris has informed bar Investigator Cam Moffatt that he does not know why he did not communicate with Jefferson about the denial of his appeal or why he did not appeal the case to the Supreme Court of Virginia.
26. If called to testify, Juanita Jefferson would state that she and her husband called Harris on several occasions to learn of the status of the appeal; that she was under the impression that Harris was pursuing the appeal and wanted to learn of its status; and that she learned of the denial of the appeal from Jefferson.
27. If called to testify, Juanita Jefferson would state that after the bar complaint was filed she obtained Jefferson's file from Harris.

28. An attorney who is court-appointed to appeal a criminal conviction has the duty to pursue the appeal through the Supreme Court of Virginia. Dodson v. Director, Dept. of Corrections, 233 Va. 303 91987), Kuzminski v. Commonwealth, 8 Va. App. 106 (1989), Virginia Legal Ethics Opinion 1005 (affirmed in Virginia Legal Ethics Opinion 1028).

VSB Docket No. 01-032-1084 [Gardner]:

29. On or about January 27, 2000, Complainant Nathan Gardner [Gardner] was sentenced on two convictions of operating a motor vehicle after having been declared a habitual offender, second or subsequent offense; the sentence was ten years in the Department of Corrections with eight years suspended. Harris was court appointed to represent Gardner at trial and on appeal.
30. Harris filed a notice of appeal on January 21, 2000. The date shown on the notice for the entry of the final judgment order of the circuit court was March 31, 1999, which was the sentencing date of Jefferson, not Gardner.
31. In or about May of 2000, Gardner was released on bond pending the outcome of his appeal. Gardner gave Harris an address and telephone number where he could be reached. Gardner called Harris twice to determine the status of his appeal and left Harris a telephone message in one of those calls. Harris did not call Gardner. If called to testify, Harris would state that Mr. Gardner advised Harris that the latter would be staying at the latter's prior residence upon making bond, for which both Harris and the court had been given a post office box mailing address; that no new telephone number was given at the time of the telephone conversation with Mr. Gardner while the latter was incarcerated.
32. The Court of Appeals denied the petition for appeal on July 12, 2000. Harris maintains that he sent a letter to Gardner dated July 17, 2000, which, inter alia, enclosed a copy of the Court of Appeals order.
33. On or about August 11, 2000, which was twenty-nine days after the denial of the appeal by the Court of Appeals and over six months after Gardner's sentencing, Harris filed a motion for a new trial in the Circuit Court of King and Queen County in which Harris stated that Gardner had been confused about his whereabouts on May 6, 1999, and that a new trial was requested on the basis that there are other witnesses who could testify as to Gardner's whereabouts on the offense date and that said witnesses can testify that Gardner was not operating a motor vehicle on that date. If called to testify, Harris would state that the motion for a new trial restates the facts admitted by Mr. Gardner in the latter's own letter to the King and Queen County Circuit Court; that he and Gardner spoke regarding the difficulty in the Supreme Court of Virginia granting an appeal where the defendant testified under oath and then recanted the testimony in a letter on file with the court where the defendant testified; that in the course of that conversation in May of 2000, Gardner wanted the testimony of his witnesses regarding his changed alibi to be heard by the Supreme Court of Virginia in considering his appeal, if his appeal to the Court of Appeals was denied; that Harris explained that this was not possible as such

testimony was not presented at trial, and further explained that there would be a cost to Gardner associated with the new appeal as with the old; that Gardner expressed reservations about incurring more costs, stated that he would provide names and addresses in a timely fashion regarding a motion for a new trial so that his amended alibi evidence would be part of the record in this case.

34. In an October 10, 2001, deposition in the instant bar case, Gardner testified that in or about September of 2000, while Gardner was at work he was detained by a bondsman who informed him that his appeal had been denied and he had to be taken to jail; that Gardner called Harris and told him he had been arrested and asked Harris to appear at the show cause proceeding on bond revocation; that Gardner did not know of the denial of his appeal by the Court of Appeals until he was informed of that fact by the bondsman. If called to testify, Harris would state that Gardner acknowledged that Gardner's brother had advised Gardner that Gardner's appeal had been denied, but that the latter wanted Harris to call him rather than Gardner call Harris long distance.
35. On or about October 10, 2000, a hearing was held in which bond was revoked and the motion for a new trial was denied.
36. Harris maintains that he did not get an answer to his July 17, 2000, letter from Gardner and asked Gardner's brother to have Gardner contact him; that he filed the motion for a new trial when he did not hear from Gardner; that he did not receive any telephone messages or correspondence from Gardner during the time period from Gardner's release on bond to the date of the bond revocation/motion for new trial hearing.
37. An attorney who is court-appointed to appeal a criminal conviction has the duty to pursue the appeal through the Supreme Court of Virginia. Dodson v. Director, Dept. of Corrections, 233 Va. 303 91987), Kuzminski v. Commonwealth, 8 Va. App. 106 (1989), Virginia Legal Ethics Opinion 1005 (affirmed in Virginia Legal Ethics Opinion 1028). Harris did not appeal Gardner's convictions to the Supreme Court of Virginia.

II. DISCIPLINARY RULE VIOLATIONS:

The Board finds by clear and convincing evidence that such conduct on the part of Michael Wills Cullinan Harris constitutes misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

VSB Docket No. 01-032-0041 [Lynch]:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (a) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (b) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

VSJ DOCKET NO. 01-032-0042 [SCOTT]:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (a) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (b) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

tution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (a) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
- (b) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

VSJ DOCKET NO. 01-032-0605 [JEFFERSON]:

DR 2-108. Terminating Representation.

- (A) Except as stated in paragraph (C), a lawyer shall withdraw from representing a client if:
 - (2) The lawyer's physical or mental condition materially impairs the lawyer from adequately representing the client; or
- (D) Upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by applicable law.

DR 6-101. Competence and Promptness.

- (A) A lawyer shall undertake representation only in matters in which:
 - (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and

thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

- (2) The lawyer has associated with another lawyer who is competent in those matters.
- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

DR 7-101. Representing a Client Zealously.

- (A) A lawyer shall not intentionally:
 - (1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- 1. A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- 2. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

VSB DOCKET NO. 01-032-1084 [GARDNER]:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

III. DISPOSITION:

Upon consideration of the Agreed Disposition and evidence presented of the existence of a disability, the Board finds by clear and convincing evidence that Michael Wills Cullinan Harris suffers from a disability as set forth in Paragraphs 13(A) and (F), Part Six, Section IV, of the Rules of the Supreme Court of Virginia.

Accordingly, IT IS ORDERED that, effective November 15, 2001, the license of Michael Wills Cullinan Harris to practice law in the Commonwealth of Virginia is indefinitely suspended based upon the existence of a disability in accordance with Paragraph 13(F).

IT IS FURTHER ORDERED that the instant cases are dismissed without prejudice to the bar to bring these matters before the Board for the imposition of discipline based upon the facts and disciplinary rule violations stated in this Order after a future determination by the Board that the Respondent no longer suffers from a disability.

IT IS FURTHER ORDERED, pursuant to Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that Michael Wills Cullinan Harris shall forthwith give notice by certified mail, return receipt requested of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. He shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of this clients. He shall give such notice within fourteen (14) days of the effective date of the suspension order and make such arrangements as are required herein within forty-five (45) days of the effective date of the suspension order. Michael Wills Cullinan Harris shall furnish proof to the bar within sixty (60) days of the effective date of the suspension order that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this paragraph.

IT IS FURTHER ORDERED, pursuant to Part Six, Section IV, Paragraph 13(K)(10) of the Rules of the Supreme Court of Virginia that the Clerk of the Disciplinary System shall not assess costs unless and until such time that the disability suspension is terminated and discipline is imposed.

IT IS FURTHER ORDERED that an attested copy of this Order shall be mailed by certified mail return receipt requested

to the Respondent at his last address of record with the Virginia State Bar, Suite 500 B, 3108 North Parham Road, Richmond, VA 23294; an attested copy of this order shall be mailed to Michael L. Rigsby, Esq., Counsel for the Respondent; and a copy shall be hand-delivered to Deputy Bar Counsel Harry M. Hirsch.

VIRGINIA STATE BAR DISCIPLINARY BOARD

BY
John A. Dezio



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
CHARLES JEFFERSON McCALL
VSB Docket Nos. 97-033-1757
97-033-1987
01-033-1115

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board on October 26, 2001, to be heard as a result of a Motion and Notice of Show Cause Proceeding to Revoke License to Practice Law for Failure to Comply with Term filed on behalf of the Virginia State Bar by its counsel, Barbara Ann Williams, Esquire. It was alleged in the motion that Mr. McCall failed to comply with terms imposed in connection with an Agreed Disposition that had previously been approved by the Board (August 27, 2001 Order). The duly convened panel of the Virginia State Bar Disciplinary Board consisted of Richard J. Colten, Thaddeus T. Crump, Peter A. Dingman, Joseph R. Lassiter, Jr., and William M. Moffet, presiding. Barbara Ann Williams appeared as counsel for the Virginia State Bar and the Respondent, Charles Jefferson McCall, appeared in person and was represented by counsel, James R. Wrenn Jr., Esquire. The proceedings were taken and transcribed by Donna Chandler of Chandler & Halasz, Inc., Post Office Box 9349, Richmond, Virginia 23227 (phone: (804) 730-1222).

It was alleged by Bar Counsel and stipulated to by the Respondent that Mr. McCall failed to comply with a term imposed upon the respondent by Order of the Board entered on August 27, 2001. That Order suspended Mr. McCall's license for a period of thirteen months and one day, with the alternate sanction of a hearing before the Disciplinary Board to determine the discipline to be imposed if the Respondent failed to comply with any of the terms contained in the August 27, 2001 Order. There were several terms imposed therein, and the Respondent acknowledges that he specifically failed to comply with the following term: *3. The Respondent shall immediately petition the appropriate court to receive the \$3,640.41 identified by Certified Public Accountant Sydney S. Wooding in his report dated May 15, 2000, and move the court to determine the appropriate disposition of those funds. Respondent shall diligently prosecute the petition. Respondent shall provide copies of the petition and proof of tendering the money to the Virginia State Bar within thirty days of the entry of this order.* While Mr. McCall filed a Petition with the Circuit Court of Chesterfield County in a timely fashion, he failed to appropriately provide copies of the Petition and proof of tendering the money to the

Virginia State Bar within the prescribed thirty days. At the hearing held on October 22, 2001, seven exhibits were introduced into evidence, without objection, and Mr. McCall was the only witness called. Argument was offered by counsel for the Virginia State Bar and counsel for the Respondent. The sole issue to be determined at this hearing was whether or not the Respondent violated any of the terms of the Agreed Disposition set out in the August 27, 2001 Order, and, if so, what additional sanction, if any, should be imposed.

Upon review of the exhibits and consideration of the testimony and argument, the Disciplinary Board found that Mr. McCall failed to give the required appropriate notice to the Virginia State Bar of the filing of the Petition and the tendering of the \$3,640.41 with the Circuit Court. The Board determined that further suspension was appropriate.

It is ORDERED that the license to practice law of Charles Jefferson McCall shall be suspended for an additional thirty days beyond the thirteen months and one day provided for in the August 27, 2001 Order. Inasmuch as Mr. McCall is currently under suspension and it would be inappropriate for him to currently have clients or matters pending in litigation, there is no need for any additional notification requirement under Part Six, § IV, Paragraph 13.K(1) to be imposed upon Mr. McCall by this Order. He is, of course, required to comply with all of the terms of the August 27, 2001 Order and shall be subject to further sanctions should he fail to comply with any of the other terms set out in the August 27, 2001 Order.

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

It is ORDERED that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, at his last address of record with the Virginia State Bar, sent by regular mail to Respondent's counsel, James R. Wrenn, Jr., and hand delivered to Bar Counsel Barbara Ann Williams, Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

Enter this Order this 2nd day of November, 2001.

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



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
JOHN LYDON McGANN
Virginia State Bar Docket Number 98-041-0972

ORDER

On August 24, 2001, this matter came before the Virginia State Bar Disciplinary Board on appeal from the Fourth District-Section I District Committee Determination imposing a Public Reprimand with Terms on the Respondent. A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Donna A. Decorleto, Janipher W. Robinson, Theophilise L. Twitty, H. Taylor Williams, IV, and Randy I. Bellows, Second Vice Chair, presiding, heard the matter.

The Respondent, John Lydon McGann, appeared in person and pro se. Seth M. Guggenheim, Assistant Bar Counsel, appeared as Counsel for the Virginia State Bar. The court reporter for the proceeding was Comiller T. Boyd, 105 St. Claire Lane, Richmond, Virginia 23223, telephone (804) 644-2581. The Chair opened the proceeding by polling the Board members to ascertain whether any member had a conflict of interest that would preclude him or her from serving. There were no conflicts and the matter proceeded as scheduled. The Board heard oral argument and, based on such argument and the Board's review of the record and the briefs filed by the parties, rendered its decision, as described below.

I. STANDARD OF REVIEW

Pursuant to Part 6, Section IV, Paragraph 13(D) of the Rules of the Supreme Court, the Board's review of a District Committee Determination is limited to two matters. First, the Board must determine whether the District Committee Determination is "contrary to the law or is not supported by substantial evidence," see Part 6, Section IV, Paragraph 13(D)(4)(a).¹ If the Board so finds, it shall dismiss the charges of misconduct; if it does not so find, it shall affirm the District Committee Determination. Second, if the Board affirms the District Committee Determination, it must then determine whether to "impose the same or lesser sanction as that imposed by the District Committee...." See Part 6, Section IV, Paragraph 13(D)(4)(b).

II. PROCEDURAL HISTORY

On July 12, 1997, five individuals—Omar Mendez-Rivas, Jorge Bonilla, Carlos Hernandez, Nilson Mosquera, and Wilfredo Rodriguez—were arrested in Arlington, Virginia, and charged with one count of receiving stolen property and two counts of credit card theft. The Respondent was retained to represent all five individuals. The Respondent succeeded in getting each defendant's bond reduced substantially. See Transcript of District Committee Hearing at pages 25-29.

On September 10, 1997, a preliminary hearing was held, during which the Respondent represented all five defendants. At the time of the preliminary hearing, the Assistant Commonwealth Attorney for the matter, Ms. Abigail Raphael, also made plea offers to each of the defendants, through the Respondent, in which she offered to reduce the three pending felony charges against each defendant to a single misdemeanor, which would have involved some incarceration for each defendant. The Respondent rejected the plea offer on behalf of all defendants. See Transcript of Disciplinary Committee Hearing at pages 29, 46; Brief of the Virginia State Bar at page 4. The case was subsequently indicted.

On September 18, 1997, the Respondent entered an appearance on behalf of all five defendants in the Arlington County Circuit Court and the matter was scheduled for trial on November 10, 1997. See VSB Exhibit 4 before the District Committee.²

On October 17, 1997, the Respondent filed a motion before the Arlington County Circuit Court seeking to withdraw from representing four of the five defendants on the basis of "a conflict of interest." See VSB Exhibit 3 before the District Committee.³ The Respondent did not seek to withdraw from his representation of Omar Mendez-Rivas. Alternatively, the Respondent sought a severance of each defendant from the trial of his codefendants. *Id.*

Shortly thereafter, the Commonwealth Attorney's Office filed a motion seeking to disqualify the Respondent from representation of the fifth defendant, Mr. Mendez-Rivas, on the grounds of a conflict of interest. See VSB Exhibit 4 before the District Committee.

On November 5, 1997, both the Commonwealth's and the Respondent's motions were heard before the Honorable Paul F. Sheridan, Arlington County Circuit Court Judge. Judge Sheridan granted both motions, resulting in Respondent's removal from the entire case. See VSB Exhibit 5 before the District Committee.⁴

Subsequently, each of the five defendants retained or was appointed separate counsel. Four defendants pled guilty to misdemeanors and received jail sentences of approximately six months and one defendant's case was dismissed entirely. See Brief of Virginia State Bar at pages 5-6.

On or about September 15, 2000, the Respondent was served with a Notice of Hearing before the Fourth District Section I, alleging violations of various provisions of the Code of Professional Responsibility, to wit, DR 2-108 (A)(1) ("Terminating Representation"), DR 5-105(A), (B) and (C) ("Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer"), DR 6 101(B)(C)(D) ("Competence and Promptness"), and DR 7-101(A)(3) ("Representing a Client Zealously").

On November 8, 2000, a hearing was held before the Fourth District Committee—Section I.⁵ At the conclusion of the hearing, the Committee found that the Respondent had violated the following provisions of the code, specifically:

DR 2-108. Terminating Representation.

- (A) . . . [A] lawyer shall withdraw from representing a client if:
 - (1) Continuing the representation will result in a course of conduct by the lawyer that is illegal or inconsistent with the Disciplinary rules. . . .

DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Judgment of the Lawyer.

- (B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR5-105(C).
- (C) In the situations covered by DR5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each, and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

DR6-101. Competence and Promptness.

- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

The District Committee found that the Bar had failed to carry its burden of proof with respect to the alleged violations of DR 5-105(A), DR 6-101(D) and 7-101(A)(3). The Committee then proceeded to consider the appropriate sanction. Among other matters, it was provided information concerning the Respondent's prior disciplinary record, which consisted of a dismissal with terms in 1994, a dismissal with terms in 1996, and a public reprimand in 1994 (which was the alternative disposition for the Respondent's failure to comply with the terms of a private reprimand with terms.) See Brief of the Virginia State Bar at page 15; see also Transcript of Disciplinary Committee Hearing at pages 176-178. The Committee imposed a public reprimand with terms, such terms being the Respondent's successful completion within one year of eight hours of approved continuing legal education (six hours in criminal defense and two hours in legal ethics), which could not be applied to the Respondent's Mandatory Continuing Legal Education obligations. See Committee Determination [of] Public Reprimand, with Terms (November 20, 2000) at pages 4-5. As required, the District Committee also set forth an alternative disposition, to wit, certification to the Disciplinary Board, in the event of the Respondent's noncompliance with the terms of the Public Reprimand.

The District Committee's determination was issued on November 20, 2000 and the Respondent filed a timely Notice of Appeal, as provided for in Part 6, Section IV, Paragraph 13(B)(10)(a) of the Rules of the Supreme Court. The filing of the appeal stayed the imposition of the Public Reprimand with Terms, see Part 6, Section IV, Paragraph 13(B)(10)(b) of the Rules of the Supreme Court; see also Letter from Barbara Sayers Lanier to John Lydon McGann, dated December 18, 2000.

Following the completion of the record, both the Respondent and the Bar filed briefs as required by Part 6, Section IV, Paragraph 13(D) and, on April 9, 2001, the matter was set down for oral argument before this Board to be heard on August 24, 2001.

On August 24, 2001, the matter was argued and decided.

II. DISCUSSION

The record upon which the District Committee based its Determination was substantial. Inter alia, the Committee had before it: (1) the pleadings in the criminal case that related to the alleged conflict of interest; (2) the transcript of proceedings before Judge Sheridan; (3) the testimony of the Assistant Commonwealth Attorney Raphael; and (4) the testimony of the Respondent, who was called by both Bar Counsel and Respondent's counsel.⁶

A discussion of the facts before the Disciplinary Committee make it absolutely clear that the Committee had substantial—indeed overwhelming—evidence from which to conclude that Respondent's conduct was in violation of the Disciplinary Rules.

We start from the unremarkable premise that it was not a per se violation of the Disciplinary Rules for the Respondent to represent multiple defendants in a criminal case. The District Committee recognized and acknowledged this⁷ and based its Determination on the specific facts of the representation in question. Those facts, briefly stated, are as follows:

Following the arrest of the five defendants, the Respondent was summoned by one of the defendants, Mr. Mendez-

Rivas, to a holding cell, where he and his co-defendants were being detained. The Respondent was asked by Mr. Mendez-Rivas to represent all five defendants and he agreed to do so. (Transcript of Disciplinary Committee Hearing at page 56.)⁸ Respondent states that he offered all five defendants "a package deal." (Disqualification Hearing at page 8.) The Respondent communicated, however, only with Mr. Mendez-Rivas and had no conversation with any of the other four defendants whose representation he agreed to undertake.⁹

Between July 12, 1997, and the date of the preliminary hearing, September 10, 1997, the Respondent again had no communications with any of the defendants except Mr. Mendez-Rivas.¹⁰ He told Judge Sheridan the following: "I didn't see them after July 15th until the preliminary hearing, which was the middle of September. I had no meetings telephonically. I didn't see them in person. I wouldn't recognize them if I saw them, your Honor." (Disqualification Hearing at page 9.)¹¹

The testimony presented at the Preliminary Hearing should have made it clear beyond question to the Respondent that he needed to withdraw from representing all five of the defendants. The content of the Preliminary Hearing was described by Ms. Raphael in both her testimony at the District Committee hearing, see Transcript of District Committee Hearing at pages 30-34, and in the Commonwealth's Motion to Disqualify Defense Counsel, from which these excerpts are taken:

During the preliminary hearing, an Arlington County police officer testified that on July 12, 1997, at approximately 2:00 a.m., he saw a white Geo Tracker automobile with five occupants. He saw the person in the middle of the back seat, later identified as Mosquera, throw items from the car as it was moving. The officer recovered these items, which were identifications belonging to John Abell, the owner of a car that was broken into in Washington, D.C. earlier in the evening.

The officer further testified that he then saw two people get out of the car and throw items into a dumpster. These items were recovered and included purses and other personal items that had been in Mr. Abell's car before it was broken into.

Testimony at the preliminary hearing also included the statements that three of the defendants made to the police, after having been advised of their Miranda warnings. Bonilla stated that two to three of the other defendants, including Mosquera, threw the purses in the trash. Mosquera stated that he observed his friends take purses from a car in Washington, D.C. and bring them into the Geo Tracker. Rodriguez, the driver of the car, stated that some of the other defendants ran to the car with things in their hands and someone said, "Let's get out of here." Rodriguez further stated that he told others to throw things away because they were stolen and that someone from the back seat of the car handed him one of the stolen credit cards to use at the gas station.

VS B Exhibit 4 before the District Committee at pages 1-2. Ms. Raphael testified that she presented more testimony at the Preliminary Hearing than she would in a usual case and that she did so specifically for the purpose of helping the Respondent to recognize that he had a conflict of interest. See the testimony of Ms. Raphael at pages 29-30:

- Q. Now, Mr. McGann represented all five defendants at the preliminary hearing.
- A. That's correct.
- Q. That's undisputed. You heard in my opening statement a representation I made that you had advised Mr. McGann that in your opinion he had a conflict of interest?
- A. That's right.
- Q. Did you state that to him categorically?
- A. Yes. I mean it was absolutely clear to me that there was no way one lawyer could represent five co-defendants in this case, and I tried to persuade him about that before the preliminary hearing took place.
- Q. Now, you conducted—you are the prosecutor who indeed conducted the preliminary hearing; is that correct?
- A. That's right.
- Q. And what is your best recollection of what transpired at the preliminary hearing?
- A. Well, as I mentioned before—and for those of you who we've tried some cases together, you may know—I usually try to put on a very lean preliminary hearing and not have it be a discovery hearing. I just put on the evidence necessary to make probable cause in the case. But, because it was clear to me that Mr. McGann didn't understand the conflict of interest in the case, I chose to put on a lot of evidence, so that it would become crystal clear to him that there was a conflict.

So, I called the police officers who got the statements in these cases to testify to each statement that each defendant made, which is something I normally would not have done, because I wanted him to understand there was no way he could be the lawyer in those cases.

The Preliminary Hearing established beyond question two matters critical to the conflict of interest analysis: First, the strength of the Commonwealth's evidence differed among the defendants, thereby presenting a potential avenue of defense to a defendant who could claim to be less culpable than his co-defendants. Second, it was now obvious that a key part of the Commonwealth's proof at trial would be the alleged statements made by three of the defendants against various co-defendants. It was virtually certain, therefore, that effective representation of one defendant might require impeaching certain statements allegedly made by another defendant. It is a point almost too obvious to note that a single attorney could not both conduct such an impeachment and defend against it at the same time. Equally certain was that it might be in one or more defendant's legal interest to explore with the Commonwealth Attorney the possibility of providing testimony against another defendant.¹² Under these circumstances, it should have been obvious to the Respondent that no one lawyer could represent more than one defendant in this case. And it should also have been obvious to the Respondent that, if one lawyer was already representing all defendants, he had to withdraw from representing all defendants. Having formally been retained to represent each of the five defendants, Respondent could not simply drop four and retain one.

Nevertheless, for almost five weeks after the Preliminary Hearing, the Respondent took no steps to remedy the situation and, in fact, compounded the problem by entering his appearance in Arlington County Circuit Court on behalf of all five defendants. Then, with trial imminent, Respondent finally moved to withdraw based on a conflict of interest, a conflict he should have recognized and acted upon at a much earlier point in time. Unfortunately, Respondent sought to withdraw from the representation of only four of the defendants and to retain the defendant he referred to as his "spokesman," Mr. Mendez-Rivas. (Disqualification Hearing at page 12.) As stated above, the Commonwealth then moved to disqualify him from representation of Mr. Mendez-Rivas. The resulting hearing before Judge Sheridan needs to be quoted at some length to fully appreciate the Respondent's complete lack of appreciation of the nature of the conflict:

THE COURT: * * * How can you represent anybody in this case? * * * You tell me how a lawyer can represent one of five after representing all five.

MR. MCGANN: Because there is nothing—let's assume that I represent Mr. Omar Mendez-Rivas. There's nothing—there is nothing I could use or they could use against anybody else that I could—that could be prejudicial. There is nothing that has come to me in confidence from the other four defendants.

THE COURT: How can I know that?

MR. MCGANN: Well, you could ask them. We never had a meeting. I don't know the telephone numbers. I don't speak Spanish. They don't speak English. I have no addresses for them. They've never contacted me. * * * Nothing has been said not only in confidence, but in any regard that I could use against one of them, if the Commonwealth cut a deal and one of them rolled over. There's nothing I could use in confidence and say, Mr. Rodriguez, Mr. Hernandez, you told me that. I can't say that because I never met with them. * * *

THE COURT: What if everybody goes to trial and the Commonwealth calls any one of the defendants who happens to want to testify? Can you cross-examine them?

MR. MCGANN: I can, because I successfully, and I can impeach with anything else, that they cut a deal, and they agree not to prosecute in exchange for their testimony. Any lawyer could use that, that fact.

THE COURT: Against a former client in the same case? * * * And you would cross-examine him, it's your client in the same case that you would then impeach.

MR. MCGANN: Well, I cannot impeach him. The only way I could impeach him would be to say, now, you're testifying and you have immunity from the prosecution. That's all. That is not something that I learned through my representation. That is something that any lawyer could do. What I'm telling your Honor is—

THE COURT: How could you impeach your client on any subject matter in the same case in which you had represented him?

MR. MCGANN: I'm trying to draw a distinction.

THE COURT: I know what your distinction is: that unless you gained special knowledge from the attorney-client relationship in some privileged or other matter, that you're free to act as a lawyer. And you're not. In the same case in which you represent somebody, you can turn around, and your obligation to one client may require you to go after your other client's? You can't do that.

MR. McGANN: If your Honor please. These are paper clients, I call them, for lack of another word. I agreed—

THE COURT: Mr. McGann, are you telling me that your ethical obligations depend upon the degree of actual talking to the client?

MR. McGANN: If your Honor please, I am attorney of record. There is no question of that. But I think we've got to look underneath what that really means in this case. For I agreed as a courtesy merely, or as an accommodation to these gentlemen, five of them, to get them through the bond reduction. * * * I learned nothing about the merits of the case from any of them or from him [Mendez-Rivas]. I know nothing about the case anymore than your Honor does. I really don't. In fact, we're supposed to go to trial on the 10th, and none of them ever contacted me. And I have no way of reaching them. Next Tuesday is set for trial. I've had no contact with them. But that's not why I'm trying to get out. I know nothing. I can't hurt any of these gentlemen because I don't know anything to hurt them with. I represented them. I was the attorney of record. And then I signed on. They needed somebody. And I got them out of jail. I think I performed a marvelous service inasmuch as they had a \$20,000 bond. But I never did anything to prepare for trial with them. I did nothing to learn about the merits of the case.

THE COURT: Mr. McGann, basically what you're saying is that the inadequacy of representation justifies the withdrawal. The failure to be prepared for trial justifies withdrawal. That's incomprehensible to me as an argument. * * *

MR. McGANN: If your Honor please, I tried to explain to Mr. Mendez-Rivas that if the five of them were tried together, and that's a separate motion to sever, they would probably all be found guilty. But I know you and you speak English and I can better prepare you for trial. But the others, I cannot.

THE COURT: Well, you knew that from the start.

MR. McGANN: I knew that from the start, your Honor, but still, I filed this motion maybe three weeks ago. I had no contact with clients, none. They just seemed irresponsible and careless. And I'm caring about their own future here.

THE COURT: Well, the very statements you're making now as their counsel show why you can't continue as anybody's counsel. You necessarily have to attack your own client.

MR. McGANN: But, your Honor, they're my clients for purposes of what, bond reduction, a mechanical act; two, for pre-lim? I learned nothing in the pre-lim about the case that can hurt them. They didn't testify, your Honor, and I didn't talk to them afterwards. I know nothing. You could have substituted anybody for me in this case. Anybody. I was a robot. * * *

MS. RAPHAEL: * * * I've discussed it with him up until today, and he still doesn't understand the conflict, which I find shocking. The law—

THE COURT: Well, I'm shocked, too. And, Mr. McGann, your argument, everything you say laminates the reason you can't represent these—you really don't understand the problem. * * * You have not expressed one iota of understanding of what it appears when you represent five people who have a potential for adversary deals with the Commonwealth, adversary testimonial benefits, different standing as to sentencing. You have not yet expressed the slightest sensitivity to what it appears if you represent one of the five, how the other four feel, that you were their lawyer, and now you are not, and there is this likelihood of at least negotiations, let alone trial tactics, causing you to become their opponent or adversary. I think it's overwhelming you can't represent anybody in this case.

Disqualification Hearing at pages 6-19.

The Rules of the Supreme Court only require that the District Committee's Determination be supported by "substantial evidence." Here, the evidence establishing violations of DR 2-108, DR 5-105 and DR6-101 is far more than "substantial." The evidence before the Committee clearly established that the Respondent's continuing representation of even one of the defendants was "inconsistent with the Disciplinary rules . . .," *see* DR 2-108, and that he violated the provisions of DR 5-105(B) and (C) by continuing to represent multiple defendants despite the clear potential adversity of his clients' interests and the other circumstances indicating that "the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client. . . .," *see* DR5-105(B). While DR 5-105(C) provides that, under certain circumstances, an attorney may continue to represent multiple clients even when the terms of DR 5-105(B) applies, those circumstances were certainly not present in the instant case. In particular, it was not "obvious that he can adequately represent the interest of each [client]," *see* DR 5-105(C), and there was no consent from each defendant to multiple representation after "full disclosure of the possible effect of such representation. . . ." *See* DR 5- 105(C).

In addition, there was more than substantial evidence in the record for the District Committee's Determination that the Respondent violated DR 6-101 (B) and (C) through his failure to "attend promptly to matters undertaken for a client" and through his failure to keep his clients "reasonably informed about matters in which the lawyer's services are being rendered." *See* DR 6-101(B) and (C). By his own admission, the Respondent did virtually nothing on the case from the time he was retained until the time he was removed, other than getting the defendants' bond reduced.¹³ And he obviously did not keep his clients "reasonably informed" about matters related to his representation. Indeed, the Respondent repeatedly emphasized to Judge Sheridan that he had virtually no contact with four of his clients at all.¹⁴

Finally, as to each of the findings of misconduct, we also find that they were not "contrary to the law" and, therefore, we affirm each finding of misconduct.

III. IMPOSITION OF SANCTIONS

Having affirmed the findings of misconduct, we now turn to the question of sanctions. In considering the appropriate

sanction, the Board may impose either the same sanction imposed by the District Committee or a lesser sanction. It may not impose a greater sanction. See Part 6, Section IV, Paragraph 13(D)(4)(b).

In light of the Respondent's disciplinary record, as described above, which includes a prior public reprimand, and in light of the seriousness of the instant misconduct, we conclude that a Public Reprimand with Terms is warranted. The terms are as follows: By May 8, 2002, Respondent shall enroll in and attend six (6) credit hours of Virginia State Bar approved Continuing Legal Education in criminal defense and two (2) credit hours of Virginia State Bar approved Continuing Legal Education in legal ethics.¹⁵ Respondent's Continuing Legal Education attendance obligation set forth in this paragraph, aggregating eight (8) credit hours, shall not be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdiction in which he may be licensed to practice law. Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22324, promptly following his attendance of such CLE courses. Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a PUBLIC REPRIMAND, WITH TERMS shall then be imposed, and this matter shall be closed.

IV. SPECIAL NOTE

Before concluding this matter, the Board would take note of the Respondent's multiple personal attacks on individuals participating in the proceedings below, which appear in his Opening Brief. For example, one witness is accused of "dodg[ing] the truth like a cheap politician." The proceedings below are described as "the product of a runaway prosecution/Bar counsel." The District Committee is described as "woefully feckless" and its chairman described as someone who "has not been involved in a criminal case in the memory of anyone." The lay members are singled out because they "had to be tutored by bar counsel as to what a preliminary hearing was." Two members of the Disciplinary Committee are characterized, by name, as "court-appointed hacks" who "enjoy a reputation of pleading their clients guilty after maximizing the fee limit of their appointments." We find the Respondent's statements to be repugnant and inappropriate. Such personal attacks on participants in the Disciplinary System—particularly those who have given selflessly of their time to improve our legal profession and this Bar—have no place in these proceedings.

IV. COSTS

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

It is further **ORDERED** that the Clerk of the Disciplinary System shall send an attested true copy of this Order by certified mail, return receipt requested, to Respondent, John Lydon McGann, and to Seth M. Guggenheim, Assistant Bar Counsel.

ENTERED THIS 18th day of September, 2001
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By Randy I. Bellows, Second Vice Chair

ENDNOTES

- 1 Part 6, Section IV, Paragraph 13(D)(2) states that the "standard for review by the Board shall be the same as is provided in Section 9-6, 14:17 of the *Code of Virginia* for review of administrative agency decisions." That code provision states in part that "[w]hen the decision on review is so to be made on such agency record, the duty of the court with respect to issues of fact is limited to ascertaining whether there was substantial evidence in the agency record upon which the agency as the trier of the facts could reasonably find them to be as it did."
- 2 Commonwealth's Motion to Disqualify Defense Counsel.
- 3 Notice and Motion in Commonwealth of Virginia vs. Jorge Bonilla, Carlos Hernandez, Nilson Mosquera, and Wilfredo Rodriguez.
- 4 Transcript of Proceedings before Judge Sheridan on November 5, 1997 (hereafter "Disqualification Hearing").
- 5 It appears from the record that disciplinary proceedings were initiated based on a complaint filed by the Ms. Raphael, the Assistant Commonwealth's Attorney handling the criminal proceeding. See Transcript of District Committee Hearing at page 25.
- 6 Respondent's counsel also called as witnesses before the Disciplinary Committee two of the attorneys who subsequently represented defendants in the criminal matter. Both indicated that the Respondent's conduct did not prejudice their clients. (Transcript of Disciplinary Committee Hearing at pages 130, 136.)
- 7 In announcing the Committee's findings of misconduct, the Chairman of the District Committee stated: "[A]t the outset, I would state that we do not consider multiple representation of multiple defendants in a criminal case to be, per se, a violation of the Disciplinary Rules." (Transcript of Disciplinary Committee Hearing at page 174.)
- 8 Respondent told the District Committee that he told Mr. Mendez-Rivas: ". . . I don't know how far I can take this, but we'll start off with a bond reduction hearing." (Transcript of District Committee Hearing at page 56.)
- 9 Mr. Mendez-Rivas was the only defendant who spoke English (Transcript of Disciplinary Committee Hearing at page 57.) The Respondent did not speak Spanish. (Disqualification Hearing at page 8.)
- 10 Respondent was asked at the District Committee Hearing what he did to prepare his case. His response indicates that he was willing to permit Mr. Mendez-Rivas to serve as spokesman for all the defendants, even as to matters at the core of his representational responsibilities: "You asked me what I did to prepare. I talked to Mendez-Rivas, my former client. He was the only one who spoke English, and he spoke fluent English, the way we're doing today. And he convinced me that none of them wanted to plead guilty, that they all were going to stand together, there would be no finger-pointing, and they thought it would be difficult for the Commonwealth Attorney to make the case." (Transcript of Disciplinary Committee Hearing at page 57.)
- 11 At the Disciplinary Committee Hearing, Respondent admitted that he never interviewed each of his clients individually. (Transcript of Disciplinary Committee Hearing at page 64.) He does say he conveyed the plea offer which Ms. Raphael made at the Preliminary Hearing to the defendants through the interpreter. (Transcript of Disciplinary Hearing at page 65.)
- 12 That Mr. Mendez-Rivas assured Respondent that none of his co-defendants were interested in "finger-pointing," see Transcript of Disciplinary Committee Hearing at page 57, is hardly a satisfactory answer. It is patently obvious that an attorney cannot rely upon the representation of one co-defendant as to whether another co-defendant is interested in cooperating with the Government.
- 13 See, e.g., the following excerpt from the Transcript of the District Committee Hearing at pages 58–59:

Q: Well, what did you do between July when they were arrested and you visited them, and November 5th or whatever day it was when you were in front of Judge Sheridan? What did you do to prepare the cases of each of these individual defendants?

A: I did nothing, I knew the case. I knew the case inside and out. It was simple. The Commonwealth had to prove its case. The five defendants did not have to prove they were innocent.
- 14 Respondent argues that no prejudice resulted from his conduct. Putting aside the fact that a finding of prejudice is not a required element of any of the Disciplinary Rule violations found by the District Committee, we disagree with the Respondent's claim of no prejudice. As Bar Counsel stated in its brief to this Board: "Resolution of the clients' respective cases was delayed; two sets of attorneys were required before the cases could be dis-

posed of; plea offers which evidently should have been accepted by four of the defendants, when first and much earlier offered, were rejected; and the prosecutor's determination that one of the five clients was not criminally culpable had to await the time that such client was placed in the care of his own, separate counsel." Brief of the Virginia State Bar at page 13.

- 15 The District Committee imposed a November 8, 2001 deadline for the completion of this additional educational requirement. In light of the fact that the District Committee's imposition of discipline was stayed pending this appeal, we deem it appropriate to provide the Respondent an additional six months to complete this requirement.



District Committee

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JOSEPH ROCCO CAPRIO, ESQUIRE
VSB Docket No. 01-062-0289

SUBCOMMITTEE DETERMINATION PUBLIC REPRIMAND WITH TERMS

On the 7th day of November, 2001, a meeting in this matter was held before a duly convened Sixth District subcommittee consisting of William Ethan Glover, Esq., Mark A. Butterwork, and William Latane Lewis, Esq., presiding.

Pursuant to Part 6, §IV, ¶ 13(B)(5) of the rules of the Supreme Court, the Sixth District 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, Joseph Rocco Caprio, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On March 6, 1995, at his job at JESCO, Inc., the Complainant, Harold G. Hadad, suffered a work related injury to his hand and knees. He filed a worker's compensation claim on May 8, 1995, and began receiving benefits.
3. The Complainant received a Memorandum of Agreement from Travelers Indemnity Co., his employer's insurance carrier, which contained an incorrect statement about the sustained injuries and how the Complainant sustained them. He did not sign it and requested that the Memorandum be corrected. A hearing before the Virginia Worker's Compensation Commission was set for February 7, 1996. The Complainant hired the Respondent to represent him at the hearing.
4. Prior to the hearing, the Respondent withdrew the Complainant's claim for benefits because the Complainant was still receiving medical treatment for his injuries and the hearing was canceled. The Respondent told the Complainant that they would refile the claim when his treatment was complete. On March 11, 1996, the Complainant was released from treatment and allowed to return to work.
5. On April 1, 1996, Warren Britt, Esquire, the attorney for Travelers, sent the Respondent a Memorandum of Agree-

ment and Statement of Fact for the Complainant to sign. The Respondent never gave the Complainant the Memorandum for him to sign.

6. In March of 1997, the Complainant reinjured his knee while on the job. He was told by his doctor that he had no insurance because his worker's compensation had run out. His benefits had stopped because the Respondent had withdrawn his claim and had not refiled it before the statute of limitations had run out.
7. A hearing was set in the case for August 5, 1997. The Complainant fired the Respondent and went to the hearing *pro se*. The case was dismissed due to the Respondent's failure to refile the Complainant's claim within two years of his injury.

II. NATURE OF MISCONDUCT

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

DR 6-101. Competence and Promptness.

- (A) A lawyer shall undertake representation only in matters in which:
 - (1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or
 - (2) The lawyer has associated with another lawyer who is competent in those matters.
- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.
- (D) A lawyer shall inform his client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

DR 7-101. Representing a Client Zealously.

- (A) A lawyer shall not intentionally:
 - (1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
 - (2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-108, DR 5-102, and DR 5-105.
 - (3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 4-101(D).
- (B) In his representation of a client, a lawyer may:

- (1) With the express or implied authority of his client, exercise his professional judgment to limit or vary his client's objectives and waive or fail to assert a right or position of his client.
- (2) Refuse to aid or participate in conduct or pursue an objective which he believes to be unlawful or which is repugnant or imprudent and, if the client insists, withdraw pursuant to the provisions of DR 2-108.

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 February 15, 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 February 15, 2002 are:

1. The Respondent shall institute and maintain a docket control system which shall ensure that he reviews the status of all pending matters periodically, and remind him in advance of key deadlines and other obligations. The Respondent shall institute and maintain a written office policy relating to regular and informative client communication. This policy shall include provisions for providing the client with written copies of all documentation relating to the representation, engaging in regular meetings either in person or by telephone to discuss the progress of the case and to answer client inquiries. Both the docket control system and the communication policy shall be implemented immediately. The Respondent shall provide the Assistant Bar Counsel handling this matter with a detailed written description of both the docket control system and communication policy, and shall certify in writing under oath that he is using such systems in his office.
2. The Respondent shall establish a mentor relationship with an active member of the Virginia State Bar. Such mentor shall be experienced in the area(s) of worker's compensation and shall be approved by the Assistant Bar Counsel handling this case prior to the establishment of the mentor relationship. The mentor shall meet with the Respondent at least bimonthly for a period of twelve (12) months after establishment of the relationship, and monitor whether the Respondent's practice complies with the rules and opinions of the Virginia State Bar and provide support and advice to the Respondent in the area of civil litigation and law office management. The Respondent shall provide satisfactory evidence of this mentorship and the name of his proposed mentor to the Assistant Bar Counsel handling these case by within sixty (60) days of the date of acceptance of the Agreed Disposition and Determination by this subcommittee. The mentor shall report to the Assistant Bar Counsel handling this case on a bi-monthly basis whether the Respondent has cooperated fully with the mentor in ensuring the Respondent's compliance with rules and opinions of the Virginia State Bar.
3. The Respondent shall complete six (6) hours of continuing legal education in the area of worker's compensation in addition to the mandatory continuing legal education hours required to maintain his license to practice law in the Commonwealth of Virginia. Upon completion of such term, the Respondent shall so certify in writing to the Assistant Bar Counsel assigned to this case.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall be imposed, and this matter shall be closed. If, however, the terms and conditions have not been met by February 15, 2002, this matter will be certified to the Disciplinary Board of the Virginia State Bar for further proceedings.

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By William L. Lewis
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 28th day of November, 2001, mailed a true and correct copy of the Subcommittee Determination (Private Reprimand with Terms) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Joseph Rocco Caprio, Esq., at his last address of record with the Virginia State Bar, and a copy thereof by first class mail, postage prepaid, to the Respondent's counsel, Barry R. Taylor, Esq., and a copy thereof by first class mail, postage prepaid, to Claude V. Worrell, II, Esq., Assistant Bar Counsel.

Claude V. Worrell, III
Assistant Bar Counsel



**BEFORE THE FOURTH DISTRICT—
SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF
KENNETH HARRISON FAILS, II, ESQ.
VSB Docket # 01-042-1310

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND**

On November 29, 2001, a meeting in this matter was held before a duly convened Fourth District—Section II Subcommittee consisting of Todd A. Pilot, Esquire, Charles A. Bish, and John Casey Forrester, Esquire, presiding.

Pursuant to Part 6, §IV, ¶ 13(B)(5) of the Rules of the Supreme Court of Virginia, the Fourth District—Section II 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, Kenneth Harrison Fails, II, Esq. (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about October 21, 1998, Mrs. Ann C. Tornese (hereafter "Complainant") and her husband, Mr. Lin Tornese, engaged Respondent to handle certain litigation involving Mr. Tornese stemming from a dispute with a home improvement contractor.
3. The Respondent succeeded both in defending the claim asserted against Mr. Tornese in the Fairfax County General District Court and in obtaining a judgment against the home improvement contractor on the counterclaim that he had filed in that Court on Mr. Tornese's behalf.

4. The home improvement contractor appealed the judgment to the Fairfax County Circuit Court, and perfected his appeal by posting a cash bond with that Court in the sum of \$2,902.
5. Before the case went to trial in the Circuit Court, the matter was settled. On or about the 20th day of April, 2000, the home improvement contractor's attorney memorialized the terms of settlement in a letter that was hand-delivered to the Respondent. Among other things, the settlement called for the home improvement contractor's payment to Mr. Lin Tornese in the sum of \$4,500.00 on or before July 31, 2000. By agreement of the parties to the suit, an order dismissing the case was entered by the Circuit Court on April 21, 2000.
6. At the time that the Torneses orally approved settlement of the case, the Respondent informed them that the due date for payment was June 30, 2000. The Respondent did not timely transmit to his clients a copy of the April 20, 2000, letter embodying the terms of settlement. When June 30, 2000, arrived and the Torneses had received no payment, they contacted Respondent, who advised them that he had "misread" the settlement letter, and that the due date for payment was July 31, 2000.
7. When the settlement amount had not been paid by July 31, 2000, the Complainant and her husband left telephone messages for the Respondent several times and wrote to him on August 14, 2000. Despite such attempts to reach the Respondent, he failed and refused to communicate with the Torneses through the date the Complainant prepared her Complaint to the Virginia State Bar on August 23, 2000. In addition, Respondent failed to provide the Torneses with a copy of the April 20, 2000, letter regarding settlement, despite their requests therefor, until approximately September 27, 2000, well beyond the time a Complaint against Respondent had been filed in this matter with the Virginia State Bar.
8. At the time he settled Mr. Tornese's case and at the time of breach of the settlement terms, the Respondent did not know that the bond posted with the Circuit Court was for the protection of his client, and that upon settlement of the matter the proceeds were thus available for immediate release on behalf of his client upon entry of a court order so directing.
9. Respondent did not know that upon breach of the settlement terms a suit should have been initiated to enforce Mr. Tornese's rights under the settlement. Rather, the Respondent believed that to enforce his client's rights, upon breach of the settlement terms, it was necessary to "vacate" the order of dismissal, which order had since become final, and to proceed on the original, underlying claim.
10. Due to Respondent's failure to attend to Mr. Tornese's legal matter and to possess the legal knowledge required to handle the matter properly, the Torneses discharged Respondent on or about October 23, 2000. The Torneses then engaged new counsel, who promptly secured the release and distribution of the appeal bond proceeds and recovered the balance due Mr. Tornese under the settlement terms by filing a warrant in debt against the home improvement contractor.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, Kenneth Harrison Fails, II, Esquire, and he is so reprimanded.

FOURTH DISTRICT—SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By J. Casey Forrester
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 3rd day of December, 2001, mailed a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, Kenneth Harrison Fails, II, Esq., Suite 920, 1850 M Street, N.W., Washington, D.C. 20035, his last address of record with the Virginia State Bar, and a copy delivered to Seth M. Guggenheim, Esq., Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

Seth M. Guggenheim
Assistant Bar Counsel



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

IN THE MATTER OF
STEVEN PAUL HANNA
VSB DOCKET NO. 01-032-1083

DISTRICT COMMITTEE DETERMINATION
(Public Reprimand)

On September 14, 2001, a hearing in this matter was held before a duly convened Third District Committee, Section Two, panel consisting of Rev. W. Ray Inscoe, Lay Member; William S. Francis, Esq.; Richard K. Newman, Esq.; Edward E. Scher, Esq.; Cary A. Ralston, Esq.; William J. Viverette, Esq.; and Virginia S. Duvall, Esq., Chair, presiding.

Steven Paul Hanna, Esq. appeared in person, *pro se*. Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

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

I. FINDINGS OF FACT

1. At all times relevant hereto, the Respondent Stephen Paul Hanna [Hanna], has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about March of 1997, Complainant Charles C. Williams, Jr. [Williams] retained Hanna to obtain the expungement of criminal records in an action in the City of Richmond. Williams' record to be expunged consisted of two 1976 state convictions of uttering and forging and 1976 federal convictions for bank fraud and embezzlement. The retainer agreement recited a fee of \$750.00, of which \$375.00 was due immediately and \$375.00 was due within thirty days. In or about the end of March 1997, Williams paid Hanna a retainer fee.
3. Having heard nothing from Hanna by the summer of 1999, and having assumed that Hanna had completed the representation, Williams realized that he needed to get confirmation from Hanna that his criminal record had been expunged. Williams attempted to contact Hanna by telephone. After many unanswered calls, Hanna returned one of Williams' calls. In the telephone call Hanna told Williams he would have to retrieve his file for Williams in order to be able to tell Williams what the result was of the representation. Because Williams was about to take a trip, Hanna agreed to send Williams the results of the representation by electronic mail.
4. Upon returning from his trip in November 1999, and not having received any communication from Hanna about the representation, Williams attempted to reach Hanna by telephone and electronic mail.
5. Hanna sent Williams a piece of electronic mail in January 2000 indicating that because of bad weather he had not

retrieved Williams' file.

6. Williams contacted the Federal Bureau of Investigation [FBI] to determine whether Hanna had expunged his criminal record. The information which Williams received from the FBI led Williams to believe that Hanna had not accomplished the expungement of Williams' criminal record. After repeated unanswered telephone calls to Hanna, Williams was finally able to contact Hanna and inform him of the information which had been obtained from the FBI. Hanna then scheduled an appointment with Williams in July 2000.
7. At the July meeting Williams explained what he was trying to accomplish and showed Hanna a copy of the FBI material. Hanna indicated that he still had not found his file in the representation and asked Williams to leave his FBI reports with Hanna. Williams explained to Hanna that because the reports had been difficult to obtain, he did not want to lose them. Because Hanna stated that he would be able to work quicker on the matter if he had the reports, Williams left the FBI reports with Hanna.
8. During the following weeks, Williams received two telephone calls and one piece of electronic mail from Hanna reporting on the representation. Thereafter, Williams was unable to contact Hanna despite repeated efforts to do so by telephone or electronic mail. In his telephone messages to Hanna, Williams indicated that if Hanna was unable to handle the representation, Williams simply wanted Hanna to return the FBI reports.
9. Williams filed his bar complaint in November 2000.
10. By letter dated February 16, 2001, the Secretary of the Commonwealth answered Hanna's request for information concerning procedures to obtain a simple pardon. In the letter it was pointed out that a simple pardon amounts to official forgiveness for the crime committed; it does not erase a conviction from a criminal record. It appears that a copy of this letter was not sent to Williams.
11. By letter dated February 17, 2001, Hanna wrote to Governor James S. Gilmore asking that the letter be considered a petition for a simple pardon. It appears that this letter was not copied to Williams.
12. On or about February 17, 2001, Hanna wrote Williams enclosing a copy of the letter to Governor Gilmore. Hanna also noted that he would file a petition for a writ of mandamus.
13. By letter dated February 21, 2001, the Secretary of the Commonwealth wrote Hanna indicating that the governor had no authority to grant a pardon with respect to a federal criminal conviction. The letter ends with the following two sentences:

I regret that my response cannot be more favorable, but hope this information will be helpful to you. If this office can be of further assistance, please do not hesitate to contact us.

It appears that a copy of this letter was not sent to Williams.
14. Hanna responded to the Secretary of the Commonwealth by his letter dated February 26, 2001 in which he pointed

out the fact that Williams had two state convictions as well as the federal conviction. It appears that this letter was not copied to Williams.

15. By his letter dated March 8, 2001, Hanna wrote Williams enclosing a partial refund of "the standard fee previously paid" and indicating that a portion was being kept for future costs and the remaining balance would be refunded." The refund was paid by a check dated March 8, 2001 in the amount of \$600.00 on an account denoted as "Steven P. Hanna Attorney at Law" at Central Virginia Bank. Hanna also stated in the letter that "I have held off filing anything because there may be a glitch with the Governor's office."
16. Hanna drafted a petition for a writ of mandamus in which he asked that the court order that Williams' criminal record be changed to reflect the two state convictions were misdemeanors and not felonies.
17. Williams has not received from Hanna the FBI reports which he asked Hanna to return to him. On information and belief, Williams' criminal record has not been expunged.

II. NATURE OF MISCONDUCT

Such conduct by Steven Paul Hanna constitutes misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility and the Virginia Rules of Professional Conduct.

DR 2-108. Terminating Representation.

- (D) Upon termination of representation, a lawyer shall take reasonable steps for the continued protection of a client's interests, including giving reasonable notice to the client, allowing time for employment of other counsel, delivering all papers and property to which the client is entitled, and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by applicable law.

DR 6-101. Competence and Promptness.

- (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.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

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

- (A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein.

- (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after they are due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (b) A lawyer shall:
 - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and shall be returned to the client upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Upon request, the client must also be provided copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); pleadings and discovery responses; working and final drafts of legal

instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the district committee to impose a public reprimand and the Respondent is so reprimanded.

The district committee also expresses its concern that Mr. Hanna needs to have the benefit of a mentor in his law practice and strongly urges him to find a lawyer who is willing to serve as his mentor in order to improve the manner and methods by which Mr. Hanna practices law.

Third District Committee, Section Two,
of the Virginia State Bar
Virginia S. Duvall
Chair

CERTIFICATE OF SERVICE

I certify that I have this 12th day of October 2001, mailed by Certified Mail, Return Receipt Requested, a true copy of the foregoing District Committee Determination (Public Reprimand) to the Respondent, Steven Paul Hanna, at his last address of record with the Virginia State Bar.

Virginia S. Duvall



BEFORE THE SEVENTH DISTRICT
SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

In the matter of
WILLIAM MADISON McCLENNY, JR., ESQ.
VSB Docket No. 01-070-0403

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On the 5th day of December 2001, a meeting in this matter was held before a duly convened Seventh District subcommittee consisting of Steven H. Gordon, Grant A. Richardson, Esquire, and Anne K. Crenshaw, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5) of the rules of the Supreme Court, the Seventh District 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, William Madison McClenny, Jr., Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
- 2. In November of 1999, the circuit Court of the City of Lynchburg appointed the Respondent to represent Eric Lamont Coles on various criminal charges including attempted capital murder. On February 29, 2001, Mr. Coles was convicted and on April 21, 2000, he was sentenced to prison.
- 3. On May 19, 2000, the Respondent noted an appeal on Mr. Coles' behalf to the Court of Appeals of Virginia, and ordered the transcript of the Mr. Coles' trial. The Complainant, William G. Petty, Esq., Commonwealth's Attorney for the City of Lynchburg, received a copy of the trial transcript on June 16, 2000. The transcript was filed late. The Respondent indicated that the transcript was filed one day late.
- 4. On July 26, 2000, the Court of Appeals ordered the Respondent to show cause on August 10, 2000, why Mr. Coles' appeal should not be dismissed for failure to file the trial transcript as part of the record. The Respondent did not reply to the Court's order and the appeal was dismissed by order dated August 17, 2000. The Respondent admitted that he did not reply to the Court's order to show cause.
- 5. Respondent took no further steps to protect the interests of his client. The Respondent has admitted that he failed to file the trial transcript.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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 May 31, 2002, shall be a predicate for the disposition of this complaint by imposi-

tion of a Public Reprimand with Terms. The terms and conditions which shall be met by May 31, 2002 are:

1. The Respondent shall institute and maintain a docket control system which shall ensure that he reviews the status of all pending matters periodically, and remind him in advance of key deadlines and other obligations. The Respondent shall institute and maintain a written office policy relating to regular and informative client communication. This policy shall include provisions for providing the client with written copies of all documentation relating to the representation, engaging in regular meetings either in person or by telephone to discuss the progress of the case and to answer client inquiries. Both the docket control system and the communication policy shall be implemented immediately. The Respondent shall provide the assistant bar counsel handling this matter with a detailed written description of both the docket control system and communication policy, and shall certify in writing under oath that he is using such systems in his office.
2. The Respondent shall complete six (6) hours of continuing legal education in the areas of ethics in addition to the mandatory continuing legal education hours required to maintain his license to practice law in the Commonwealth of Virginia. Upon completion of such term, the Respondent shall so certify in writing to the Assistant Bar Counsel assigned to this case.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed, and this matter shall be closed. If, however, the terms and conditions have not been met by May 31, 2002, the case will be certified to the Virginia State Bar Disciplinary Board.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Ann K. Crenshaw
Chair/Chair Designate

CERTIFICATE OF SERVICE

I certify that I have this 7th day of December, 2001, mailed a true and correct copy of the Subcommittee Determination (PUBLIC REPRIMAND WITH TERMS) by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, to the Respondent, William Madison McClenny, Jr., Esq., at P.O. Box 1660, Louisa, VA 23093, his last address of record with the Virginia State Bar, and a copy thereof by first class mail, postage prepaid, to Claude V. Worrell, II, Esq., Assistant Bar Counsel.

Claude V. Worrell, II
Assistant Bar Counsel



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

IN THE MATTER OF
JOHN JOSEPH VAVALA
VSB Docket No. 00-021-1191

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On September 13, 2001, a hearing in this matter was held before a duly convened panel of the Second District Committee—Section I, consisting of Lisa Ann Largey Broccoletti, Attorney at Law, LaRhonda Jean Carter, Attorney at Law, Mr. Robert W. Carter, lay member, Croxton Gordon, esquire, Ray Webb King, Esquire, Robert William McFarland, Esquire, Mr. Kurt M. Rosenbach, lay member, and William Hanes Monroe, Jr., Esquire, Chair, presiding. The bar appeared by its Assistant Bar Counsel Paul D. Georgiadis.

Despite being given due notice, the Respondent failed to appear. Pursuant to the Rules of Court, Part 6, §IV, ¶13(B)(6)(a), Respondent was sent the Notice of Hearing to his last reported address of record on or about July 3, 2001. Subsequently, the bar re-issued the Notice of Hearing on July 10, 2001 to Respondent's subsequent address that was not an official address of record with the bar. Finally, the bar gave notice by subsequent contacts that included direct telephone contact by employees of the bar on September 11 and 12, 2001.

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, John Joseph Vavala, the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, John Joseph Vavala, hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Following the closing on September 8, 1998 on the purchase of Tabet Manufacturing Company, Inc. ("Tabet"), Tabet retained Respondent to serve as its counsel and registered agent.
3. On October 15, 1998, a Notice of Suspension for failure to pay annual bar dues and provide financial responsibility certification was issued to Respondent. Respondent received the Notice, signing for it on October 20, 1998.
4. Notwithstanding said suspension, Respondent continued to practice law, continued to maintain a law practice, and generally continued to hold himself out as an attorney licensed to practice law, including but not limited to, writing correspondence and issuing invoices under his legal letterhead, representing Tabet in post-closing negotiations with the seller's counsel, and representing Tabet with one or more of Tabet's creditors.
5. Notwithstanding said suspension, Respondent continued to serve as registered agent for Tabet, although he was neither an officer or director of Tabet and therefore no longer eligible to serve as Registered Agent. Respondent's status as Registered Agent exposed Tabet's officers and directors to personal liability when the sellers attempted to pierce the corporate veil on the basis of the failure to Tabet to maintain an eligible Registered Agent.

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 1-102. Misconduct.

- (A) A lawyer shall not:
- (3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.
 - (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand on Respondent, John Joseph Vavala, and he 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

CERTIFICATE OF SERVICE

I certify that I have this 25th day of September, 2001, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the District Committee Determination (Public Reprimand) to John Joseph Vavala, LMV, 575 Lynnhaven Parkway, Suite 350, Virginia Beach, VA 23452, his last address of record with the Virginia State Bar.

Paul D. Georgiadis
Assistant Bar Counsel



**BEFORE THE THIRD DISTRICT
SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF
ALAN GORDON WARNER
VSB Docket No. 02-033-0093

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On November 7, 2001, a duly convened subcommittee of the Third District Committee, Section III, consisting of Cynthia S. Cecil, Andrew J. Gibb and Edwin A. Bischoff, presiding, met to consider a proposed agreed disposition in the above-styled matter.

After due consideration and deliberation, pursuant to Part 6, Section IV, Paragraph 13(B)(5)(c)(ii)(b) of the Rules of the Supreme Court, the subcommittee accepts the agreed disposition and hereby serves upon Alan Gordon Warner the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. The respondent, Alan Gordon Warner, was admitted to the practice of law in the Commonwealth of Virginia on April 30, 1986. He became an associate member of the Virginia State Bar on September 1, 1993.
2. At all times relevant to this proceeding, Mr. Warner was an attorney in good standing.
3. Mr. Warner currently resides in Hawaii, where he is licensed to practice law. He is also licensed to practice law in Kansas.
4. On October 27, 2000, the Supreme Court of Kansas censured Mr. Warner for violating Kansas Rule of Professional Conduct 8.4(c) by representing that he would reimburse a witness's travel expenses and then refusing to do so, and ordered him to reimburse Jeannette C. Gleason for travel expenses in the amount of \$728.41.
5. On May 29, 2001, the Supreme Court of Hawaii took reciprocal action based upon the Kansas Supreme Court's findings, publicly censured Mr. Warner and ordered him to reimburse Jeanette C. Gleason for travel expenses in the amount of \$728.41.

II. DISCIPLINARY RULE VIOLATION

The subcommittee finds that the above findings of fact give rise to a violation of the following disciplinary rule:

DR 1-102. Misconduct.

- (A) A lawyer shall not:
- * * *
- (4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyer's fitness to practice law.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is subcommittee's decision to accept the agreed disposition and to impose upon Alan Gordon Warner a Public Reprimand with Terms as representing an appropriate sanction if this matter were heard through an evidentiary hearing by a panel of the Third District Committee, Section III. The terms and conditions, compliance with which is a predicate for this agreed disposition, shall be met by December 31, 2001: Mr. Warner shall certify to Bar Counsel in writing no later than December 31, 2001, that he has reimbursed Jeanette C. Gleason for travel expenses in the amount of \$728.41.

Upon satisfactory proof that all terms and conditions have been met, this matter shall be closed. Respondent's failure to comply with any one or more of the foregoing agreed terms or conditions will result in the imposition of the alternative sanction of a six month 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 respondent has failed to comply with any of the agreed terms or conditions. Instead, the Virginia State Bar shall issue and serve upon the respondent a Notice of Hearing to Show Cause why the alternative sanction should not be imposed. The sole factual issue will be whether the respondent has violated any

one or more of the terms or conditions of this agreed disposition without legal justification or excuse.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Edwin A. Bischoff, Chair

Certificate of Service

I certify that I have this 15th day of November 2001,
mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a

true, correct and executed copy of the Subcommittee Determination (Public Reprimand with Terms) to Alan Gordon Warner, 2175 Hauhikoa Road, Haiku, Hawaii 96708-5871, his last address of record with the Virginia State Bar.

Barbara Ann Williams
Bar Counsel

