

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>				
George Albert Bates	Keswick	90 Day Suspension	December 15, 2001	25
Irvin William Cubine, II	Virginia Beach	Cost Suspension	February 4, 2002	
Bridgette Miriam Harris	Washington, DC	Revocation	December 14, 2001	26
Richard Howard Laibstain	Ashland	Revocation	November 16, 2001	27
William Elliott Moorman, III	Gloucester	18 Month Suspension w/Terms	December 20, 2001	31
Martin G. Mullen	Alexandria	Show Cause Suspension	January 25, 2002	
Oscar DeLeon Noblejas	Burke	Public Reprimand w/Terms	January 5, 2002	32
Robert Brown Patterson	Middleburg	Show Cause Suspension	January 25, 2002	
Robert Brown Patterson	Middleburg	Public Reprimand	December 24, 2001	34
Henry Thompson Tucker, Jr.	Richmond	Revocation	December 14, 2001	39
Jean Veness	Virginia Beach	Show Cause Suspension	January 25, 2002	
Malcolm B. Wittenberg	Oakland, CA	Show Cause Suspension	January 25, 2002	

District Subcommittees

Franklin Peter Slavin, Jr.	Wytheville	Public Reprimand	December 18, 2001	40
Robert Henry Smallenberg	Richmond	Public Reprimand	January 14, 2002	41

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
Scott Meadows Reed	Virginia Beach	Disciplinary Board	January 17, 2002
Dianne E. Wilcox	Moneta	Disciplinary Board	January 17, 2002

Disability Suspension

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date
Joseph Brian Sheridan	Norfolk	Disciplinary Board	January 17, 2002

Disciplinary Board

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
GEORGE ALBERT BATES
VSB Docket No. 98-070-2706

ORDER

This matter came on December 13, 2001, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Fifth District Committee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of J. Rudy Austin, Esquire, Robert L. Freed, Esquire, Joseph R. Lassiter, Jr., Esquire, Werner H. Quasebarth, Lay Member, and William M. Moffet, Esquire, presiding.

Claude V. Worrell, II, Esquire, representing the Bar, and the Respondent, George Albert Bates, appearing *pro se*, presented an endorsed Agreed Disposition, dated December 13, 2001, reflecting the terms of the Agreed Disposition.

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

- At all times relevant hereto, George Albert Bates, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
- Since October of 1996, the Respondent has been administratively suspended for failure to pay Virginia State Bar dues.
- In 1998, the Respondent was representing Alice E. Lewis in her claim before the Equal Employment Opportunity Commission against the National Ground Intelligence Center. Mrs. Lewis' case was still at the administrative level. Mr. Bates informed Mrs. Lewis that he was not in good standing with the Virginia State Bar and did not state or imply to her that he was a licensed Attorney.
- On May 19, 1998, the Respondent wrote a letter to the Complainant, who was opposing counsel in

Ms. Lewis' case, on letterhead which stated "Dr. George A. Bates, Attorney at Law." The letter included a post-script which stated "Please do not carbon copy Mrs. Lewis on your future correspondence to the court for such a routine violates the attorney-client relationship!"

- 5. The Respondent agrees that he sent the May 19, 1998 letter to Mr. Bathen.
- 6. The Respondent would also testify that he sent the letter in error on the wrong letterhead after he dictated the letter and had it typed by another person.
- 7. Mitigating factors recognized by the ABA include the following:
 - a) cooperative attitude toward proceedings
 - b) delay in disciplinary proceedings
- 8. Aggravating factors recognized by the ABA include the following:
 - a.) Prior disciplinary offenses

The Board finds by clear and convincing evidence that such conduct on the part of Mr. Bates constitutes a violation of the following Rule(s) 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.

DR 2-102. Professional Notices, Letterheads, Offices, and Law Lists.

- (A) A lawyer or law firm may use or participate in the use of a professional card, professional announcement card, office sign, letterheads, telephone directory listing, law list, legal directory listing, or a similar professional notice or device unless it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

Upon consideration whereof, it is ORDERED that the Respondent shall receive effective upon entry of this order a ninety (90) day suspension of his law license.

It is ORDERED pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of his 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.

The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney 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. The Attorney 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 arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that George Albert Bates shall furnish true copies of all of the notice letters sent to all persons notified of the suspension, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before February 15, 2002.

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 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 mailed to Claude V. Worrell, III, Assistant Bar Counsel, Virginia State Bar.

Enter this Order this 15th Day of December, 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: William M. Moffet, Chairman



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
BRIDGETTE MIRIAM HARRIS
VSB DOCKET NO. 02-000-1316

ORDER

This matter came to be heard under a Rule to Showcase on December 14, 2001, before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Richard J. Colten, Acting Chairman, Karen A. Gould, Esquire, Thaddeus T. Crump, lay member, William C. Boyce, Jr., Esquire, and Bruce T. Clark, Esquire. The chair directed the Clerk to call the case three times. The Respondent, Bridgette Miriam Harris, did not appear and was not represented by counsel. Claude V. Worrell, II, Assistant Bar Counsel, appeared for the Virginia State Bar. The proceedings were transcribed by Donna Chandler of Chandler and Halasz, Post Office 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 then introduced evidence showing that the Respondent has been permanently barred from the practice of

law by the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, and that such order barring her from practice has become final.

The Respondent, Bridgette Miriam Harris a/k/a Bridgette Miriam Harris-Smith, has failed to file a written response and has failed to appear before the duly called panel of the Virginia State Bar Disciplinary Board to show cause why her license should not be revoked.

It is accordingly, ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia was revoked on December 14, 2001, as provided for under Part Six, Section IV, Paragraph 13 (G) of the RULES OF COURT.

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

It is further ORDERED that Bridgette Miriam Harris shall furnish true copies of all of the notice letters sent to all persons notified of the revocation, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before February 11, 2002.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested and true copy of this Order to Bridgette Miriam Harris by certified mail, return receipt requested, at her current address of record at the Virginia State Bar, and to Seth M. Guggenheim, Assistant Bar Counsel, Virginia State Bar.

The Clerk of the Disciplinary System shall assess costs pursuant to Part VI, Section IV, Paragraph 13 (k) (10) of the aforesaid Rules.

ENTERED this Order this 18th day of January, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
BY Richard J. Colten, Acting Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF VSB
RICHARD HOWARD LAIBSTAIN
Docket # 01-061-0890

OPINION AND ORDER OF REVOCATION

This matter came to be heard on November 16, 2001 in the matter of Richard Howard Laibstain, VSB Docket No. 01-061-0890 before a panel of the Virginia State Bar Disciplinary Board convened in the United States Court of Appeals for the Fourth Circuit, Green Courtroom, Tenth and Main Streets, Second Floor, Richmond, Virginia and composed of Randy Ira Bellows, Chair, presiding, Bruce T. Clark, Werner H. Quasebarth, Anthony J. Trenga and H. Taylor Williams, IV. The Virginia State Bar appeared through Assistant Bar Counsel, Charlotte P. Hodges. The Respondent, Richard Howard Laibstain, appeared *pro se*. The matter was presented to the Disciplinary Board by way of a Certification of the Sixth District — Section One Subcommittee.

In response to the allegations of fact and rule violations certified to the Board by the Sixth District, the Respondent, Richard Howard Laibstain stipulated to the following facts and rule violations.

At all times relevant hereto, the Respondent, Richard Howard Laibstain (hereinafter "Laibstain" or "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

Laibstain was a partner in the two-member law firm of Ganey & Laibstain. He was one of three people who had access to an escrow account which was used for non-real estate transactions. Only one signature was required on checks written from the account.

Laibstain's partner, Bruce Ganey (hereinafter "Ganey"), rarely used the account. It was primarily used by Laibstain for clients and uses for which he was responsible.

On October 13, 2000, Ganey received information from his banking representative that "another check had cleared the above account which resulted in insufficient funds."

Neither Ganey nor the other authorized signature on the account knew why there was an overdraft. They both believed there should have been in excess of \$33,000 in the account.

Ganey was informed by the bank that they had spoken with Laibstain the previous day about another check which created an overdraft.

The bank representative sent a "snapshot" of the activity in the account. Upon review of it, Ganey discovered checks and deposits for which he had no knowledge.

Ganey attempted to review the bank statements for the account to determine what the problem was. However, he was unable to locate any bank statements except one.

Ganey had office personnel go through the client files and confirm that there should have been in excess of \$33,000 in the account. Almost all of the monies in the account were matters handled by Laibstain.

After some investigation, Ganey discovered an unexplained check made payable to Laibstain in the amount of \$5,250.00.

When confronted, Laibstain admitted that he had stolen approximately \$50,000 over a year and a half period from the account. Laibstain also admitted to removing the records of the account from the office and destroying them.

On October 16, 2000, Laibstain borrowed \$60,000 and deposited it into the escrow account.

The investigation into this matter revealed that Laibstain had actually taken money from this account for a period of three years. He advised he used the money for personal living expenses.

Laibstain indicated he borrowed the funds with the intent to pay them back, and that no client was ever denied funds they were entitled to as a result of his theft.

Laibstain indicated that if he needed to disburse funds from the account and there were not sufficient funds available, he would borrow enough from a friend to cover the request.

Laibstain admitted to knowing the Rules of Professional Conduct with regard to using escrow funds for personal business and co-mingling his personal and borrowed funds with client funds.

Laibstain borrowed the money to repay the account from a friend who is also a client.

The above facts, if proven, would show a violation of the following Disciplinary Rules of the revised 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.
 - (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.

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 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 reim-

bursement 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.
- (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.

DR 9-103 Record Keeping Requirements

- (A) Required Books and Records: As a minimum requirement, every attorney engaged in the private practice of law in Virginia, hereinafter called "attorney," shall maintain or cause to be maintained, on a current basis, books and records which establish his compliance with Disciplinary Rule 9-102. These records including all the reconciliations and supporting records required under Section (B) hereof shall be preserved for at least five years following completion of the fiduciary obligation and accounting period. For this purpose, the following books and records, or their equivalent, are required.
 - (2) A cash disbursements journal listing and identifying all disbursements from the fiduciary account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for fiduciary and nonfiduciary disbursements then the consolidated disbursements journal shall contain separate columns for fiduciary and nonfiduciary disbursements.
 - (3) Subsidiary ledger: A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained. The ledger account shall by separate columns or otherwise clearly identify fiduciary funds disbursed, and fiduciary funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts.

The above facts, if proven, would show a violation of the following Rules of Professional Conduct:

RULE 1.8 Conflict of Interest: Prohibited Transactions

- (a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
 - (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
 - (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
 - (3) the client consents in writing thereto.

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.
- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:
 - (1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:
 - (i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;
 - (ii) funds of \$5,000.00 or less with respect to each trust or other fiduciary relationship;
 - (iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or

- (iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55-58 through 55-67 are applicable;
- (2) funds, securities, or other properties may be maintained in a common account:
 - (i) where a common account is authorized by a will or trust instrument;
 - (ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or
 - (iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or charge to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account.

For purposes of this Rule, the term “fiduciary” includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called “lawyer,” shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
 - (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;
 - (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and found, may constitute a journal for

this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

- (iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
 - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
 - (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

Following the presentation of evidence and stipulations concerning the above factual allegations and rule violations, the Board deliberated and determined that the Bar had proven by clear and convincing evidence that Respondent had violated

DR1-102, DR5 104, DR9-102, DR9-103, Rule 1.8, Rule 1.15, and Rule 8.4. The Board then entertained argument and presentation of evidence as to an appropriate sanction, following which the Board adjourned again and after deliberations, re-convened to announce its decision that Respondent's license to practice law be revoked effective immediately.

In evaluating an appropriate sanction, the Board is of the opinion that under the circumstances of this case it has no latitude but to impose a sanction of revocation. The amount of misappropriations is significant. Respondent engaged in a pattern of conduct on a consistent basis over a period of years. It is reasonable to infer that he would have continued to misappropriate funds from his trust account had his conduct not come to light. He engaged in deliberate and systematic conduct intended to conceal his activities, which were successful for an extended period of time. He candidly admitted that he knew what he was doing was wrong, although with the intent to pay back those amounts that he had embezzled. In mitigation, Respondent pointed out that no client had been harmed or would have been harmed since he borrowed or would have borrowed or made other arrangements to cover any amount owed to any particular client. Even accepting as true Respondent's contention, the Board views that factor as clearly insufficient to justify any penalty less than revocation.

The Board does recognize that once his conduct came to light the Respondent engaged in candid and forthright admissions of his conduct and took immediate steps to provide full and complete restitution to his trust account in the amount of \$60,000, an amount reasonably thought by Respondent to be sufficient for that purpose. The Board confirmed on the record that the Respondent at all times has been very cooperative with the Bar and has facilitated the Bar's investigation. While Respondent's actions after the discovery of his conduct, including his providing immediately restitution, do not mitigate sufficiently to justify a sanction less than revocation, the Board does view these facts as appropriate for consideration in connection with any application for reinstatement that the Respondent may make at some future point.

The status of respondent's trust account is unclear from the record. The evidence established that the Respondent has had no control over the account since discovery of his embezzlements in October, 2000, following which control passed exclusively to Respondent's former partner. However, there is no evidence concerning who controls that account at the present time, the current status of that account, the use of the funds in that account since October, 2000, or whether any former or current clients of the Respondent are due funds. Nor is there evidence as to the precise amount that was needed to effect respondent's full and complete restitution, with the record showing total defalcations ranging variously anywhere from between \$33,000 and \$74,000. For these reasons, the Board recommends that the Bar appoint a receiver for the purposes of determining the location and status of respondent's former trust account, auditing Respondent's former trust account and establishing whether any additional restitution is necessary or whether the Respondent has deposited amounts in excess of what was required to effect complete restitution.

Whereupon it is:

ORDERED that pursuant to Part 6, § IV, ¶13C.(3) of the Rules of the Virginia Supreme Court that the license of

Respondent, Richard Howard Laibstain, to practice law in Virginia be, and the same hereby is, revoked effective November 16, 2001 as set forth in the Board's Order dated and entered November 16, 2001, attached hereto; it is

FURTHER ORDERED pursuant to provisions of Part 6, § IV, ¶ 13(K)(1) of the Rules of the Supreme Court of Virginia, that Respondent shall forthwith give notice by certified mail, return receipt requested, of his revocation 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. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation order, and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation order. Respondent shall furnish proof to the Bar within sixty (60) days of the effective date of the revocation order that such notices have been timely given and such arrangement for the disposition of matters made; all issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Board; it is

FURTHER ORDERED that Respondent, Richard Howard Laibstain, shall furnish true copies of all of the notice letters sent to all persons notified of the revocation, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before January 16, 2002; it is

FURTHER ORDERED that the Clerk of the Disciplinary System send an attested and true copy of this Opinion and Order to Respondent, Richard Howard Laibstain, by Certified Mail, Return Receipt Requested at his address of record with the Virginia State Bar, and to Charlotte P. Hodges, Assistant Bar Counsel, Virginia State Bar.

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

ENTER THIS ORDER THIS 24TH DAY OF DECEMBER, 2001
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Randy Ira Bellows, Second Vice Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
WILLIAM ELLIOTT MOORMAN, III
VSB Docket Nos.: 01-061-0641

ORDER

This matter came on December 20, 2001 to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Sixth District, Section One Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Joseph R. Lassiter, Jr., Thaddeus T. Crump, Robert L. Freed, Peter A. Dingman, and John A. Dezio, presiding.

Charlotte P. Hodges, representing the Bar and Joseph R. Caprio representing the Respondent, presented an endorsed Agreed Disposition reflecting the terms of the Agreed Disposition. The Board incorporated two minor changes which were ratified by Assistant Bar Counsel and Counsel for Respondent.

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

1. At all times relevant hereto, the Respondent, William Elliott Moorman, (hereinafter Moorman or Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On November 17, 1999, Mr. Moorman appeared before Judge R. Bruce Long to represent a client charged with driving on a suspended license.
3. It was obvious to Judge Long from Mr. Moorman's demeanor and impaired handling of the case that Mr. Moorman was intoxicated.
4. When questioned by Judge Long, Mr. Moorman admitted he had been drinking prior to court that morning.
5. Judge Long reported to the Virginia State Bar that on a date subsequent to the November 17, 1999 date, he issued a preliminary protective order against Mr. Moorman who was drunk and involved in a domestic dispute at his home.
6. At the time the complaint was filed by the Judges of the Ninth Judicial Circuit, Mr. Moorman had a pending DUI charge in Judge Long's courtroom.
7. Prior to the filing of the complaint with the Virginia State Bar, Judges William H. Shaw, III and R. Bruce Long had an informal meeting with Mr. Moorman because of their concern for him. They advised him to contact them if he had any problems in the future.
8. According to Judges Atlee, Shaw and Long, it is their opinion that Mr. Moorman's substance abuse problems have rendered him unfit to practice law at this time.

The Disciplinary Board finds by clear and convincing evidence that such conduct on the part of William Elliott Moorman, III constitutes a violation of the following 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.

DR 2-108. Terminating Representation.

- (A) Except as stated in paragraph (C), 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; or
- (2) The lawyer's physical or mental condition materially impairs the lawyer from adequately representing the client.

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

1. Respondent shall be suspended from the practice of law for a period of eighteen (18) months commencing on December 20, 2001. Respondent shall forward a letter immediately to the Clerks of the Courts in which he practices, requesting that he be removed from their appointed lists.
2. Respondent agrees that on or before the effective date of suspension, or as soon thereafter as it can be accomplished, he will sign a contract with Lawyer's Helping Lawyers. He agrees to cooperate fully with Lawyer's Helping Lawyers and fulfill any requirements outlined in the contract both during the 18 months of his suspension and for three years following his suspension, or until Lawyer's Helping Lawyers indicates they no longer feel he is in need of monitoring.
3. Respondent agrees that he must not be convicted of any subsequent drunk driving offenses **during the eighteen (18) months of his suspension and for three years following his suspension.**
4. Respondent must write a letter of apology within thirty days to Judge R. Bruce Long, for the disrespect he showed in appearing before him while intoxicated.
5. Within one year following the end of his suspension, Respondent must obtain twelve (12) Ethics credits which would not count towards his mandatory CLE requirements.
6. Respondent agrees that he will not practice as a solo practitioner for a period of at least three years following the end of his suspension. **During this period, Respondent must file a quarterly certification with the Virginia State Bar affirming that he is not practicing as a solo practitioner. This certification should be sent directly to Charlotte P. Hodges, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.**
7. Respondent agrees that within sixty (60) days, he will provide the Virginia State Bar with a comprehensive medical release, which includes the release of records from the facilities and institutions which have treated him for his alcohol problem since the time of the filing of this complaint in September 2000, and for any facilities or institutions which treat him during the period this disposition is in effect.

If Respondent fails to fulfill any of the terms outlined in the Agreed Disposition, he will agree to enter into an agreed disposition for a Disability Suspension.

This hearing was tape recorded by the Department of Information and Technology.

It is ORDERED pursuant to the provisions of Part Six, Section IV, Paragraph 13(K)(1) of the Rules of the Supreme Court of Virginia, that the Respondent shall forthwith give notice by certified mail, return receipt requested, of his 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. The Attorney shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. The Attorney 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. The Attorney 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 arrangement for the disposition of matters made. Issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with the requirements of this subparagraph.

It is further ORDERED that William Elliott Moorman, III, shall furnish true copies of all of the notice letters sent to all persons notified of the suspension with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before February 18, 2002.

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

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 address of record with the Virginia State Bar, and to Joseph Rocco Caprio, Respondent's Counsel, and hand delivered to Charlotte P. Hodges, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Enter this Order this 25th day of January, 2002.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: John A. Dezio, First Vice Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
OSCAR DE LEON NOBLEJAS
 VSB DOCKET NO. 01-052-0781

ORDER

This matter was certified to the Disciplinary Board by the Fifth District Section II Committee and was heard on November 16, 2001, by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Richard J. Colten, Esquire, presiding, Bruce T. Clark, Esquire, Werner H. Quasebarth, lay member, Anthony J. Trenga, Esquire, and H. Taylor Williams, IV, Esquire. The chairman directed the Clerk to call the case three times. The respondent, Oscar de Leon Noblejas, did not

appear and he was not represented by counsel. Noel D. Sengel, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

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, affidavit executed by Diana L. Balch, Director of Membership, dated September 17, 2001, stating the respondent, Oscar de Leon Noblejas, is an associate member of the Virginia State Bar not in good standing, that his license to practice law in Virginia was suspended on October 14, 1999, for failure to pay dues, and that his official address of record with the Virginia State Bar on June 13, 2001, was Noblejas and Associates, P.C., Post Office Box 10856, Burke, Virginia, 22009-0856; Exhibit #2, board certification dated June 13, 2001, notifying the respondent of the District Committee determination (certification), mailed by certified mail to respondent at his official address of record with the Virginia State Bar on June 13, 2001; Exhibit #3, three separate forms from Neurology Consultants, Inc., Leonard N. Green, M.D., J.D., entitled "Assignment and Authorization and Credit Agreement" dated May 9, 1996, executed May 28, 1996, by respondent's respective clients and executed June 3, 1996, by respondent; Exhibit #4, letter from respondent to Neurology Consultants dated April 15, 1997, confirming arrangement to give discounts for two of three clients; Exhibit #5, letter dated March 11, 1998, from respondent to Allstate Insurance Company enclosing executed release of all claims on behalf of Abel Encarguez and letter dated April 13, 1998, to Allstate Insurance Company enclosing executed release of all claims forms for Nina Encarguez and Alan Encarguez; Exhibit #6, letter dated April 4, 2000, from Neurology Consultants, Inc., Leonard N. Green, M.D., J.D., to respondent requesting payment on the accounts for the clients of respondent with statements attached; Exhibit #7, indictment from the United States District Court, Eastern District of Virginia, criminal number 99-00165-A, alleging various criminal complaints against four defendants, including respondent; and Exhibit #8, affidavit dated November 6, 2001, from Pilar Cuesta, an employee of Allstate Insurance Company, stating that Allstate paid claims to Abel Encarguez, Alan Encarguez, and Nina Encarguez by checks dated October 21, 1997, to respondent on behalf of his clients, which checks were endorsed and deposited into respondent's account. The preceding exhibits were tendered to the Board prior to the testimonial portion of the hearing.

The Board heard testimony from Dean Edward Wanderer, Esquire, counsel for Neurology Consultants, Inc., Leonard N. Green, M.D., J.D. Mr. Wanderer testified that Dr. Green treated Nina Encarguez, Alan Encarguez and Abel Encarguez for injuries incurred in an automobile accident on or about May 9, 1996, and that all three patients were represented by respondent for personal injuries received in the automobile accident. Mr. Wanderer testified that each client represented by respondent executed the respective assignments and authorizations and credit agreements contained in Exhibit #3 and that the assignments were also executed by respondent. Mr. Wanderer testified that Dr. Green agreed to a discount for two of the three clients of respondent. Mr. Wanderer testified that the amount owed by each patient was set forth in Exhibit #6 and that Dr. Green never received payment on any of the three

accounts and there was never a dispute as to the amount owed. The Board also heard testimony from James W. Henderson, investigator for the Virginia State Bar. Mr. Henderson testified that he had spoken to the Assistant U. S. Attorney charged with prosecuting the respondent on the indictment submitted as Exhibit #7. Mr. Henderson testified that the respondent is a fugitive from justice, who has not been caught or returned to the United States. Mr. Henderson testified that he had spoken to the FBI agent in charge of the investigation, Special Agent Weeder. It was believed that the respondent left the United States in October or November, 1998, and went to the Philippines. His US passport has been revoked.

No evidence was submitted by respondent or submitted on behalf of respondent.

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

STATEMENT OF FACTS

1. At all times relevant hereto, respondent was an attorney licensed to practice law in the Commonwealth of Virginia. On October 15, 1999, the respondent was administratively suspended by the Bar for failure to pay his annual dues, and has remained administratively suspended to date.
2. In May of 1996, the Respondent was employed by three clients, Nina Encarguez, Alan Encarguez and Abel Encarguez, who had been in an automobile accident together on May 9, 1996, to represent them as plaintiffs regarding the accident. On May 26, 1996, the respondent and the Encarguezes co-executed Assignment and Authorization Agreements for the services provided the Encarguezes by Leonard N. Green, M.D. Dr. Green treated the Encarguezes for the injuries they suffered in the automobile accident of May 9, 1996. The defendant's insurance carrier was Allstate Insurance Company.
3. The respondent settled the three clients' claims with Allstate. On October 21, 1997, Allstate made the following payments to the Respondent: \$15,500.00 for Abel Encarguez; \$9,000.00 for Alan Encarguez; and \$7,000.00 for Nina Encarguez. On March 11 and April 13, 1998, the Respondent sent the "Release of all Claims" forms executed by his client to Ms. Irene Clarke at Allstate Insurance Co. The respondent did not pay his clients' bills for the medical services provided by Dr. Green, nor was Dr. Green paid for his services to the Encarguezes by anyone else.
4. On April 28, 1999, a federal grand jury indicted the respondent for conspiracy to commit mail fraud and wire fraud. The respondent has been classified a fugitive from justice since the indictment, and is believed to be living in the Philippines, his country of birth.
5. On April 4, 2000, the complainant, unaware of the indictment against the respondent and the fact that the respondent is a fugitive, sent the respondent a letter demanding that the bill for the medical services he provided the Encarguezes be paid. The total bill came to \$4,069.00, including interest. Dr. Green received no response from the respondent and filed a complaint with the Virginia State Bar on October 5, 2000.

From these findings the Board concludes by clear and convincing evidence that the following disciplinary rules of the Revised Virginia Code of Professional Responsibility have been violated:

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.

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.

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

(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.

Having found misconduct, the Board then heard evidence and argument relating to sanctions. The State Bar introduced the respondent's disciplinary record consisting of three prior private reprimands, all given at one time in 1995.

Following argument, the Board deliberated.

From the evidence and arguments, the Board unanimously determined that respondent be given a public reprimand with terms. The terms are that respondent pay to Neurology Consultants, Inc., Leonard N. Green, M.D., J.D., on or before February 1, 2002, all monies owed for medical services rendered to Nina Encarguez, Alan Encarguez, and Abel Encarguez in the amount of \$4,069.00, together with compound interest at 1% monthly from January 1, 1998, until paid. It is further unanimously determined by the Board that should respondent fail to comply with this term, then the alternative sanctions will be that the license of the respondent, Oscar de Leon Noblejas, be revoked.

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, Oscar de Leon Noblejas, by certified mail, return receipt requested, at his current address of record at the Virginia State Bar, and to Noel D. Sengel, Senior Assistant Bar Counsel, Virginia State Bar.

The clerk of the Disciplinary System shall assess costs pursuant to Part VI, Section IV, ¶13(K)(10) of the aforesaid Rules.

Entered this 5th day of January, 2002.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By Richard J. Colten, Acting Chairman



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF

ROBERT BROWN PATTERSON

VSB DOCKET NO. 00-070-0532 (Adkins)

VSB DOCKET NO. 99-070-2906 (Pal eos)

VSB DOCKET NO. 00-070-2737 (Cubbage)

ORDER

THIS MATTER came to be heard on September 28, 2001, October 25, 2001, and October 26, 2001, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Randy Ira Bellows, Second Vice-Chair presiding, Janipher W. Robinson; Anthony J. Trenga; Bruce T. Clark; and Werner H. Quasebarth, Lay Member.

The respondent, Robert Brown Patterson, appeared *pro se* at the first day of hearings and was represented subsequently by Paul D. Scanlon. Claude V. Worrell, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

This matter came before the Board by certification of a subcommittee of the Seventh District dated February 22, 2001. The matter was considered by the subcommittee on June 21, 2000, as to VSB Docket Numbers 00-70-0532 and 99-070-2906. The matters set forth in VSB Docket Number 00-070-2737 were considered at a hearing conducted on February 9, 2001. The Seventh District certification consolidated all three VSB Docket Numbers.

The factual basis of the complaints considered by this panel span a period of time commencing in 1993 and continuing to the present. They primarily arise from the Respondent's relationship with a single client, Eugene N. Hooper, and a protracted series of litigations which surround Mr. Hooper and several of his creditors. In order to address the issues raised in the Seventh District's certification, each paragraph set out in the Statement of Facts and Nature of Misconduct, as reported by the subcommittee, will be set forth in the same sequence, followed immediately by the findings of this panel.

They are as follows:

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

The panel finds that the Respondent, at all times relevant to this matter; has been an attorney licensed to practice within the Commonwealth of Virginia.

2. Respondent defended Eugene N. Hooper in a note collection trial in Fairfax County Circuit Court filed by the Gemini Corporation and James B. Britt. On the morning of the trial, prior to the commencement of the trial, the Respondent forced Mr. Eugene Hooper to sign a consent order giving Respondent judgement for Respondent's legal fees against Mr. Hooper in the amount of \$682,328.29. Respondent threatened to walk away from the case if Mr. Hooper did not sign the order. As a result, Mr. Hooper signed the order.

The panel finds the allegations set forth in paragraph two of the certification are factually inaccurate. The testimony of the Respondent, that of his client, Mr. Eugene N. Hooper, and several depositions submitted during the hearing all place the signing of the consent order at or around January 13, 1996, a little less than two weeks prior to the commencement of the Gemini trial. Moreover, Mr. Hooper testified that he believed that he had time to replace the Respondent as his counsel for the trial and that he signed the consent judgement not because he was forced to do so, but because he wanted Respondent to continue representing him as he was a "smart lawyer." We, therefore, decline to find that the Respondent forced Mr. Hooper into signing the consent judgement order.

The panel considered if the Respondent's actions in seeking a judgement against his client violated DR 5-101(A), which reads:

DR 5-101(A) A lawyer shall not accept employment if the exercise of his professional judgement 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.

The panel finds that, at the time Respondent accepted employment to represent Mr. Hooper against Gemini, several months prior to January 13th date, the fee issue had not yet reached the point of conflict. At the time Respondent accepted the case, he was not involved in a suit against Mr. Hooper. Moreover, even if such conflict existed, or later arose, it is evident from the testimony that any such conflict was knowingly waived by the client.

We likewise find the Bar has failed to prove by clear and convincing evidence that Respondent's conduct violated DR 7-101(A)(3).

The panel next considered if Respondent's conduct violated DR 2 105, which reads as follows:

DR 2-105 Fees.

- (A) A lawyer's fees shall be reasonable and adequately explained to the client.
- (B) The basis or rate of a lawyer's fee shall be furnished on request of the lawyer's client.
- (C) A fee may be contingent on the outcome of the matter for which the service is rendered, except in criminal cases or other matters on which a contingent fee is prohibited by law. A contingent fee agreement shall state the method by which the fee is determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, expenses to be deducted from the recovery, and whether expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a closing statement showing the fee and the method of its determination.

The panel finds the Bar has failed to prove violation of DR 2-105 by clear and convincing evidence. It is apparent from the evidence presented by both Respondent and the Bar that the relationship between the Respondent and Mr. Hooper was unique. Mr. Hooper amassed a considerable fortune as a pro-

fessional real estate developer with over fifty years experience. It is obvious that he is a sophisticated and astute individual fully capable and willing to question his counsel on any issues which he might perceive affected his interests. He testified that during his career he had been involved in a large number of litigations and had employed a wide range of attorneys.

Beginning in 1993, the Respondent represented Mr. Hooper in a number of extremely complex issues involving large sums of money. No credible evidence was presented to lead the panel to believe Mr. Hooper was not provided with billing and fee information adequate to satisfy him.

Paragraphs 3, 4, 5 and 6 of the subcommittee findings reads as follows:

- 3. Following a three day trial held on January 24, 25 and 29, 1996, Gemini and Britt prevailed and the Court entered judgment against Mr. Hooper in the amount of approximately \$884,569. On February 2, 1996, the Respondent filed the consent order for legal fees that he had Mr. Hooper sign. The Final Judgment Order from the three day trial was entered on February 5, 1996. On May 1, 1996, the respondent filed the February 2, 1996, consent order in the Circuit Court of Jackson County, North Carolina. On May 17, 1996, a second Consent Order for Judgment against Hooper and in favor of the Respondent was entered in the Circuit Court for Fairfax County, Virginia. The second Consent Order for Judgment is not materially different from the Order entered on February 2, 1996, except for the fact that it awards the Respondent six percent (6%) interest from February 2, 1996.
- 4. Gemini and Britt domesticated their judgment in the Circuit Court of Montgomery County, Maryland. That Court issued a Changing Order allowing Gemini and Britt to garnish the proceeds of Hooper's interest in the Andrew Manor Shopping Center Limited Partnership, a Maryland Limited Partnership. The sole asset of the Andrews Manor Shopping Center Limited partnership (hereinafter, Shopping Center). Mr. Hooper was general partner in the Andrews Manor Shopping Center Limited Partnership.
- 5. On or about June 5, 1996, Respondent assigned his interest in the \$682,000 judgment awarded in the February 2, 1996 and May 17, 1996, Consent Orders to his wife, Maureen D. Patterson.
- 6. On or about July 23, 1997, Hooper assigned his interest in the Andrews Manor Shopping Center Limited Partnership in favor of Mr. Patterson. The Shopping Center was sold in 1998 and yielded proceeds of more than \$500,000. Following the sale of the Shopping Center, the Respondent made every effort to halt or minimize the distribution of the proceeds of the sale to Gemini and Britt.

As these paragraphs do not allege violations of the disciplinary rules, they require no comment from the panel.

Paragraph 7 of the subcommittee's charge reads as follows:

- 7. Respondent filed a complaint under RICO laws in the United States District Court for the Eastern District of Virginia against Gemini and Britt which was later dismissed. In that case, Judge Gerald Bruce Lee granted

summary judgment in favor of Gemini and Britt, et al., and found that Mr. Patterson failed to comply with the discovery order of Judge Jones and continuously violated the Local Rules of the United States District Court and the Federal Rules of Civil Procedure. Judge Lee sanctioned the Respondent \$14,236.64.

The panel finds by clear and convincing evidence that in reference to his handling of the RICO claim filed in the Federal District Court for the Eastern District of Virginia, the Respondent violated the following disciplinary rules:

DR7-101. 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 commitment, 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).

DR 7-105 Trial Conduct.

- (A) A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule, or ruling.

Following the filing of the RICO suit, the Respondent testified that he learned his client had retained other counsel to assist him in moving assets into newly created legal entities. Respondent believed this was being done in part to prevent collection of his consent judgment. Perceiving he had reached a point of irreconcilable conflict with his client, Respondent sought leave of Court to withdraw from the RICO case. Permission to withdraw was denied. Nevertheless, Respondent testified that he terminated work on the case. For this reason, the panel finds this conduct violated the disciplinary rules cited above.

Paragraph 8 of the subcommittee's findings reads as follows:

8. In July 1998, Mrs. Patterson filed a motion in Fairfax County Circuit Court to enforce her interest in the assigned \$682,000 judgment awarded in the February 2, 1996 and May 17, 1996 court orders. The order should have been filed in Montgomery County, Maryland as that Court had in rem jurisdiction. On September 28, 1998, the Fairfax County Circuit Court decided that Mrs. Patterson must

seek relief in the Circuit Court of Montgomery County, Maryland. Ultimately, Mrs. Patterson withdrew her attempts to intervene and the Charging Order was affirmed.

As this paragraph does not allege violations of disciplinary rules, it requires no comment from this panel.

Paragraph 9 of the subcommittee's findings reads as follows:

9. On September 28, 1998, the same day the Fairfax Circuit Court ruled against Mrs. Patterson, Mr. Hooper filed a *pro se* petition for voluntary bankruptcy under Chapter 11. Based upon his own filing for Bankruptcy, Hooper moved to remove the case concerning the enforcement of the Charging Order to the Maryland Bankruptcy Court. The case was removed to Maryland Bankruptcy Court on October 8, 1998. The case was dismissed on October 26, 1998, Hooper, by and through the Respondent or with Respondent's help, again removed the case concerning the enforcement of the Charging Order to United States District Court in Maryland based upon diversity jurisdiction and federal question jurisdiction. On December 2, 1998, Judge Deborah Chasnow of the United States District Court in Maryland ordered that the case be sent back to the Circuit Court of Montgomery County, Maryland. Judge Chasnow found there to be no federal question as the bankruptcy has been dismissed and found no diversity jurisdiction because Mr. Hooper lives, in Virginia. The Verified Complaint for Injunctive Relief which was filed in US District Court avers that Hooper is a Virginia resident and Hooper's affidavit confirmed that "I reside in Falls Church, [Virginia]." This is an accurate statement of residence. Judge Chasnow noted that Respondent contacted Mr. Hooper at his Falls Church address and that the bankruptcy had been dismissed at the time the second removal was filed. Judge Chasnow reserved the issue of sanctions for later review. On June 21, 1999, United States District Court Judge Deborah Chasnow found that the case was removed in bad faith at the behest of the Respondent, or in close cooperation with the Respondent, for the sole purpose of delaying the collection of a valid and enforceable judgment. Judge Chasnow fined Hooper, Mrs. Patterson and the Respondent, jointly and severally, in the amount of \$11,585.00. Mrs. Patterson removed the Maryland Bankruptcy Court remanded the case and found that Mr. Patterson had, "filed the case for an improper purpose and to cause unnecessary delay." Judge Kier sanctioned Mrs. Patterson and her attorney/brother Thomas Mitchell, \$3,714.90.

It is the Bar's contention that the facts alleged in the above paragraph violate DR 7-102 A (1) and (2) which reads as follows:

DR 7-102 A (1) and (2) Representing a Client Within the Bounds of the Law.

- A. In his representation of a client, a lawyer shall not:
 1. File a suite, initiate, criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

2. Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

The Board finds that the Bar has failed to prove these allegations by clear and convincing evidence. The Bar appears to have relied upon the findings by Judge Chasnow and the issuance of sanctions as conclusive evidence of actionable misconduct by the Respondent in the bankruptcy matter and its surrounding dealings. The findings of a judge must be given great weight in determining whether a violation of the disciplinary rules has occurred, particularly where those findings involve the imposition of sanctions. However, the imposition of sanctions, by itself, cannot be taken as conclusive proof that the Disciplinary Rules have been violated. This is for two reasons: First, while a sanctions order is obviously relevant to the Board's evaluation of the alleged misconduct giving rise to the sanctions, it is no substitute for the evidence which proves the misconduct itself. Second, since sanctions can be imposed even when a party has not acted in bad faith, the imposition of sanctions cannot be taken to mean that the court has implicitly determined that the sanctioned party acted with a level of intent that would warrant disciplinary action.

Judge Chasnow's findings were that Mr. Eugene Hooper, acting *pro se*, had acted in bad faith in removing his case to Judge Chasnow's court. In addition, she found the Respondent to be "partially responsible for the delays caused by the improper removal . . ." but Judge Chasnow's ruling falls short of finding that the Respondent acted in bad faith.

In order to find a violation of DR 7-102 it must be shown that the Respondent knew, or it must be obvious, that suit has been filed "merely to harass or maliciously injure another." The panel finds the Bar failed to provide evidence to support such a finding by clear and convincing evidence.

Paragraphs 10, 11, 12 and 13 read as follows:

10. Once the cases were remanded, Mrs. Patterson tried another end run around the Circuit Court from Montgomery County, Maryland by filing a lawsuit in the Circuit Court for Fauquier County, Virginia. This case was dismissed for the same reasons given by Judge McWeeny in his Order of November 1998, dismissing the lawsuit that was filed in the Circuit Court of Fairfax County, Virginia.
11. In July, 1998, the Respondent moved to intervene in the Fairfax case of Mrs. Patterson. The Respondent claimed that he had priority over Mrs. Patterson based upon Hooper's earlier assignment of legal fees. He asked that the Court find the Maryland Charging Order was a nullity.
12. In March, 1999, the Respondent filed a third-party complaint in the Circuit Court of Fauquier County, Virginia. The suit named as defendants counsel for Gemini Corporation and Richard Hayden. The suit sought to obtain the proceeds of the 1998 sale of Mr. Hooper's interest in the Andrews Manor Shopping Center property. This money had been paid into the registry of the Circuit Court of Montgomery County, Maryland.
13. On May 17, 1999, Judge Clements of the Circuit Court of Fauquier County, Virginia dismissed Respondent's lawsuit

as well as Mrs. Patterson's lawsuit. Judge Clements sanctioned Respondent in the amount of \$6,108.00, for "filing a complaint without basis in law or fact."

We find, in connection with this matter, that the Bar has failed to carry its burden of proof. As discussed above, the Board may accept a sanctions order as relevant to the issue of misconduct but the underlying misconduct must still be proved. Here it was not.

Paragraph 14 reads as follows:

14. Hooper, Respondent and Mrs. Patterson have filed five appeals to the Fourth Circuit. Respondent filed an appeal from Judge Chanow's ruling remanding the case. Respondent, Hooper and Mrs. Patterson appealed Judge Chanow's sanction order. In addition, the Respondent appealed the dismissal of the RICO suit and sanctions.

As this paragraph does not allege violations of disciplinary rules, it requires no comment from the panel.

Paragraph 15 and 16 read as follows:

15. The appeal of the dismissal of the RICO case was without merit. As an indication of that fact, Respondent did not provide a written response to Gemini's Motion Dismiss for Willful Failure to Comply with a Court Order. The Respondent did not provide a written response to Gemini's motion for Summary Judgment. The Respondent failed to appear at the January 15, 1998, argument of the motions indicated above.
16. Similarly, Respondent failed to provide a written response to the Motions for Summary Judgment filed by John C. Decker, II, Kyle Doniff, Merritt Lee Murray, J. Michael Slocum and Slocum, Boddie and Murray, PC. Furthermore, Respondent failed to appear at the hearings on those matters.

See the section of this opinion concerning paragraph 7. As stated therein, the Board find by clear and convincing evidence that in connection with his handling of the RICO case, Respondent violated DR 7-101 (A) (1)(2) and (3) and DR 7-105 (A).

Paragraph 17 reads as follows:

17. The United States Bankruptcy Court for the Eastern District of Virginia found that Respondent obtained \$250,000.00 from Riggs National Bank, by means of actual fraud or false representations. As a result, the debt was deemed to be nondischargeable pursuant to 11 U.S.C. Section 523 (a)(6) (1988). The Fourth Circuit Court of Appeals has affirmed a finding that the Respondent willfully and maliciously converted funds from a closed equity credit line with Riggs bank.

At the hearing, the Bar's own witness testified to facts that established that the first sentence of paragraph 17 was inaccurate, in that the U.S. Bankruptcy Court did not make the finding that is alleged in paragraph 17. Moreover, the Bar's remaining evidence on the issue failed to establish the misconduct that was alleged. Thus, upon Respondent's motion to strike, made pursuant to Rules of the Supreme Court, Part Six, Section IV, Paragraph 13 (C)(6), the Board struck paragraph 17.

Paragraph 18 reads as follows:

18. On August 5, 1998, Respondent was sanctioned in the amount of \$500. by the United States Bankruptcy Court for the Eastern District of Virginia, Judge Martin Bostetter, for filing pleadings that were without basis in fact or law and his failure to appear in Court for argument of his motion. Judge Bostetter found that Respondent acted knowingly and willfully with the intent to thwart the bankruptcy system and to harass Roy B. Zimmerman. Respondent failed to comply with the Court's August 5, 1998, order to pay sanctions and a rule to show cause was issued. Respondent was again sanctioned by the September 22, 1998, order of the United States Bankruptcy Court for the Eastern District of Virginia.

The panel finds the Bar failed to prove by clear and convincing evidence that the Respondent, under the allegations set forth in paragraph 18 violated DR 7-102 (A)(1) and (2). We recognize that the Bar was handicapped in meeting its burden of proof due to the death of Mr. Zimmerman. Nevertheless, the Board must base its decisions on the evidence before it and here the evidence was lacking. However, the Board does find that the Respondent failed to comply in a timely manner with the Court's order of August 5, 1998 directing him to pay sanctions. Therefore, the panel does find the Respondent to be in violation of DR 7-105 (A), which rule has been previously set out in this Order.

Paragraph 19 reads as follows:

19. During a November 1999 hearing, Respondent lied in Fairfax County Circuit Court. Respondent told the Court that he did not know where his wife lived. He said that she lived somewhere in Atlanta. The Respondent provided a Stockbridge, Georgia address but no personal service was ever made at that address. Mrs. Patterson's employer, Air Tran Airlines, lists only Virginia contact information and Air Tran paid Virginia employment taxes on behalf of Mrs. Patterson. After further inquiry Judge MacKay asked if Respondent and his wife had any children. Respondent admitted that they have a child. When asked if the child was grown up, Respondent told the court that his child was in college. Respondent's child was 13 years of age when the Respondent was asked if his children were grown. The Respondent also provided false and/or misleading answers in response to an Order Compelling Discovery. On April 12, 2000, the Respondent listed his home address as 4216 Mosby Street, The Plains, Virginia 20198. This was not true. Ms. Susan L. Fraser, a member of the Virginia State Bar, rented and moved into the home located at 4216 Mosby Street, The Plains, Virginia 20198 on March 27, 2000.

As to the allegation that the Respondent violated DR 7-101, DR7 102 and DR 7-105, each of these provisions apply to an attorney acting in his capacity as an attorney representing a litigant. Here, the Respondent was himself the litigant in this matter and his statements were made as a litigant, not as counsel for the litigant. Thus, these provisions simply do not apply to the alleged misconduct.

However, if it were proved that the Respondent, even in his capacity as a litigant, lied to the Court, it would certainly constitute a most serious violation of DR 1-102(A)(3) and (4).

An attorney — whether acting as counsel for a party or as the party himself — owes the Court a strict fidelity to the truth. Here, however, the Bar failed to carry its burden of proof as to any of the three allegations of deceit.

First, as to whether he knew his wife's address, Bar counsel accepted a stipulation as to what the Respondent's wife would have testified to if she had testified at the hearing. That stipulation, which was unchallenged, supported much of what Respondent had to say and undermined the Bar's claim that the Respondent lied to the Court on this issue.

Second, as to Respondent's statement that his child was in college, we note at the outset that the Certification before this Board was inaccurate. The Certification clearly suggests that Respondent had just one child, and that the child was just 13. In that context, a statement by the Respondent to the Court that his child is in college would appear to be a blatant lie. The evidence establishes, however, that the Respondent has several children, including at least one child who was, in fact, in college at the time of Respondent's statement. Respondent's statement to the Court may still be faulted for not being more comprehensive but that is a far cry from concluding that he intentionally lied to the Court.

Third, as to Respondent's representation in an interrogatory that he lived at 4216 Mosby Street on the day he signed the interrogatory, that answer was in fact inaccurate. The issue before the Board, however, is whether it was intentionally inaccurate. Respondent's uncontradicted testimony was that at the time he filled out the interrogatories he did in fact live at the Mosby Street address but that, by the time he actually executed the interrogatories, he had moved. He testified that he failed to review his interrogatory answers before executing the affidavit. There is no evidence in the record that Respondent was trying to avoid service of process or gain a tactical advantage by providing the opposing party false address information. Rather, it appears that Respondent was negligent in executing the interrogatories without doing a final review of its contents. The Court and the Bar certainly have a right to expect more conscientious conduct from a member of the bar, but the allegation before this Board is that the Respondent either committed "a crime or other deliberately wrongful act that reflects adversely on the lawyers fitness to practice law" (DR 1-102(A)(3)) or engaged "in conduct involving dishonesty, fraud, deceit, or misrepresentation which reflects adversely on a lawyers fitness to practice law" (DR 1-102(A)(4)). As to these allegations of misconduct, the Bar simply has not carried its burden of proof.

Paragraph 20 reads as follows:

20. On April 28, 2000, the Respondent lied and/or otherwise mislead Judge McWeeny of the Circuit Court of Fairfax County, Virginia. The Respondent was asked if he was represented by Peter Paul, Esquire in a related judgment collection case in Jackson County, North Carolina. Mr. Patterson denied that he was represented by Mr. Paul and insisted that Mr. Paul represented his wife, Maureen Patterson. The Respondent was then placed under oath. The Respondent stated that "Mr. Peter Paul is in fact Maureen Patterson, Trustee's, attorney." Following this hearing, Judge McWeeny enjoined the Respondent from enforcing the February 2, 1996 and/or the May 17, 1996, Consent Orders. One week later, the Respondent appeared in the Circuit Court of Jackson County, North Carolina with

Peter Paul as his attorney. On May 8, 2000, Mr. Paul asked to have Thomas J. Mitchell admitted *pro hac vice* to represent Maureen Patterson in the North Carolina proceedings. Following the *pro hac vice* motion, the Court asked Mr. Paul as Mr. Patterson's "attorney of record" to address the issue of Judge McWeeny's April 28, 2000 preliminary injunction.

Bar counsel withdrew this allegation. The stipulated evidence presented to the panel at this hearing shows that the Respondent's statements concerning the representation of Mr. Peter Paul, which was made on April 28, 2000, were accurate.

Paragraph 21 reads as follows:

21. A Bench trial was held on November 7, 8, 30, and December 27, 2000, to determine if the February 2, 1996, and May 17, 1996, judgments entered in favor of the Respondent should be voided as fraudulent conveyances. On January 18, 2001, the Honorable Dennis J. Smith, Judge of the Fairfax County Circuit Court, ruled that the judgment entered by consent order on February 2, 1996 (see paragraphs 2 and 3 above Re: Law No. 141848), and again by consent judgment on May 17, 1996, was *inter alia*, a fraudulent conveyance, as was the transfer of the judgment to Maureen Patterson and to Maureen Patterson as trustee of the Patterson Family Trust, who in turn transferred the judgment to herself as trustee of the Children's Trust.

The panel finds the evidence presented in reference to the allegations set forth in paragraph 21 fail to prove by clear and convincing evidence a violation of disciplinary rules.

Again it should be emphasized that, while we give great weight to a Judge's findings, the Bar must still prove the underlying misconduct to the Board's satisfaction.

In summary, the panel finds that the Respondent, in failing to seek the lawful objectives of his client, did violate DR 7-101 (A) (1) and (2). We further find that the Respondent, on two occasions, disregarded the ruling of a tribunal, thereby violating DR 7-105(A). Upon consideration of these matters, the panel hereby issues a PUBLIC REPRIMAND effective upon entry of this ORDER.

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

It is ORDERED that the Clerk of the Disciplinary System shall send an attested true copy of this order to the Respondent, Robert Brown Patterson, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, and to Paul Dennis Scanlon, Respondent's Counsel, and to Claude V. Worrell, Assistant Bar Counsel, Virginia State Bar.

ENTERED this Order this 24th day of December, 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
BY Randy Ira Bellows, Second Vice Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
HENRY THOMPSON TUCKER, JR.
VSB Docket: 02-00-0608

ORDER OF REVOCATION

This cause came to be heard the 14th day of December 2001, on a Rule to Show Cause and Order of Suspension entered by the Virginia State Bar Disciplinary Board on November 29, 2001. The November 29, 2001, Order required the Respondent to appear before the Board on December 14, 2001, "to show cause why his license to practice law in the Commonwealth should not be suspended or revoked."

On December 14, 2001, this cause was heard by a duly convened panel of the Virginia State Bar Disciplinary Board composed of Richard J. Colten, Acting Chair, William C. Boyce, Jr., Bruce T. Clark, Thaddeus T. Crump and Karen A. Gould. Harry M. Hirsch, Deputy Bar Counsel, appeared as Counsel for the Virginia State Bar ("VSB"). Henry Thompson Tucker, Jr. ("Respondent") failed to appear.

The Chair opened the hearing 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 hearing proceeded as scheduled.

The Virginia State Bar Exhibits 1 and 2 were admitted into evidence, without objection. Respondent did not submit any exhibits.

All procedural requirements have been complied with in terms of notification of the opportunity to be heard. Subsection (E)(1) of Part 6, § IV, ¶ 13. (3) of the Rules of the Virginia Supreme Court governing *Proceedings upon Adjudication of a Crime*, provides in relevant part that: "[T]he Board shall forthwith enter an order summarily suspending the license of the Attorney and shall forthwith serve upon the Attorney (a) a copy of the written notification from the court, (b) a copy of the Board's order, and (c) a notice fixing the time and place of a hearing to determine whether the license of the Attorney should be revoked or further suspended." Respondent received a certified letter dated November 30, 2001, together with attachments from the Clerk of the Disciplinary System, which satisfied the requirements of subsection (E). See VSB Exhibit No. 1. Respondent was further notified by certified letter dated December 6, 2001, that the location of the hearing had been changed to the Fourth Circuit Court of Appeals, Green Courtroom, although the date and time of the hearing remained the same. See VSB Exhibit No.1.

The burden of proof was on Respondent in this show cause proceeding. The burden was on Respondent to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked. Respondent failed to put on any proof or argument that his license should not be suspended or revoked.

The evidence adduced at the hearing was that Respondent had been convicted of several crimes by the United States District Court, Eastern District of Virginia, Richmond Division, and sentenced. Respondent had been charged with violations of federal law, namely 18 USC Section 1343 and 18 USC Section 2 (Wire Fraud; Aiding and Abetting) and 18 USC Section 1957(a) and 18 USC Section 2 (Money Laundering; Aiding and Abetting), to which he pled guilty on November 9, 2001. See VSB Exhibit 1. The respondent's prior disciplinary record was a private reprimand with terms in 1997.

Pursuant to Rule 13 (E)(2), if a finding is made by the Board that the Respondent has been found guilty of a Crime by the verdict of a judge or jury, then the Respondent's license shall be suspended or revoked.

Upon consideration of the matters before this panel of the Disciplinary Board, it is hereby found that Respondent was found guilty of a Crime by a judge, pursuant to a plea agreement and, therefore, it is

ORDERED that, pursuant to Part 6, § IV, ¶ 13 (E) (2) of the Rules of the Virginia Supreme Court, the license of Respondent, Henry Thompson Tucker, Jr., to practice law in the Commonwealth of Virginia be, and the same hereby is, revoked; and it is

FURTHER ORDERED that pursuant to the provisions of Part 6, § IV, ¶ 13 (K)(1) of the *Rules of the Supreme Court of Virginia*, as applicable, Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia to any and all clients for whom he is currently handling matters and to all opposing counsel and presiding judges in any pending litigation in which he is involved. Respondent shall make appropriate arrangements, as applicable, for the disposition of matters then in his care conforming to the wishes of his clients.

Respondent shall give notice within fourteen days of the effective date of the revocation order, and shall make such arrangements, as are required herein within forty-five days of the effective date of the revocation order that such notices have been timely given and such arrangements for the disposition of matters made; all issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Board; and it is

FURTHER ORDERED that Respondent, Henry Thompson Tucker, Jr., shall, as appropriate, furnish true copies of all letters noticing the revocation of his license to practice law, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before July 24, 2001; and it is

FURTHER ORDERED that the Clerk of the Disciplinary System send an attested and true copy of this Opinion and Order to Respondent, Henry Thompson Tucker, Jr., by certified mail, return receipt requested, at his address of record with the Virginia State Bar, and to Barbara Williams, Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

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

ENTER THIS ORDER THIS 14TH DAY OF DECEMBER, 2001
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Richard J. Colten, Acting Chair



District Subcommittees
BEFORE THE TENTH, SECTION I
DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
FRANKLIN PETER SLAVIN, JR.
VSB Docket No. 01-101-1358

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On December 10, 2001, a meeting in this matter was held before a duly convened Tenth, Section I District Subcommittee consisting of Charles H. Richards, Jr., Harriet D. Dorsey and Charles R. Beller, III, Chair presiding.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(5) and Council Rule of Disciplinary Procedure IV(B), the Tenth, Section I District Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Franklin Peter Slavin, Jr., the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Franklin Peter Slavin, Jr. (Slavin), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In January of 2000, the Complainant, Donna C. Wilson (Wilson), hired Slavin to prepare two deeds for her. One of the deeds transferred land belonging to Wilson's former husband, James Heldreth, and stated in part "This being an interest in the same land conveyed to the parties by deed dated August 7, 1978 from Donald Heldreth, et ux. and recorded in the Clerk's Office of the Circuit Court of Wythe County Virginia in deed book 271 at page 183, together with additional land formerly owned by Donald M. Heldreth and now claimed by the parties." Donald Heldreth (Heldreth) is a neighbor and former father-in-law to Wilson.
3. In June of 2000, Wilson met with Slavin and related she and her current husband had been threatened by Heldreth over the property lines to their home. Wilson and Slavin discussed the property, and Slavin told Wilson of several different options she had to respond to Heldreth, including a possible claim of adverse possession. Wilson hired Slavin to represent her in the potential land dispute and paid him \$200 on June 5, 2000.
4. In August of 2000, Heldreth hired Slavin to represent him in two matters related to a boundary dispute with another neighbor, Morris Patton (Patton). Slavin represented Heldreth in a trespassing charge brought by Patton, and filed a suit against Patton on behalf of Heldreth. Slavin did not inform Heldreth he represented Wilson in a potential claim against Heldreth.

5. Wilson, not having heard from Slavin and anxious to resolve the boundary dispute with Heldreth so she could sell her home, began calling Slavin in late September of 2000. Slavin told her he had put her case on the "back burner", but he would actively work on the matter and told her to call him each Friday for an update on the status of the case. During one of the latter calls Slavin told Wilson he was representing Heldreth in a court case, but did not think representing Heldreth after having been hired by her for a claim against Heldreth was a conflict of interest.
6. Wilson received a November 22, 2000, letter from Slavin, enclosing an October 30, 2000, letter Slavin sent to Heldreth raising the boundary dispute between the two.
7. Wilson then spoke to another attorney, who indicated it was a conflict of interest for Slavin to represent Heldreth while representing her against Heldreth. Wilson went to Slavin and demanded her file and a refund of the \$200 paid. She eventually received the file and a refund of \$150.

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:

RULE 1.7 Conflict of Interest: General Rule

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another existing client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
 - (2) each client consents after consultation.
- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
 - (1) the lawyer reasonably believes the representation will not be adversely affected; and
 - (2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, Franklin Peter Slavin, Jr., and he is so reprimanded.

Tenth, Section I District Subcommittee
of the Virginia State Bar
By Charles R. Beller, III
Chair Presiding

CERTIFICATE OF SERVICE

I certify I have this the 18th day of December, 2001, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and complete copy of the Subcommittee Determination (Public Reprimand) to Franklin P. Slavin, Jr., Esq., at 525 West Main Street, Wytheville, Virginia 24382-2208, his last address of record with the Virginia State Bar.

Richard E. Slaney
Assistant Bar Counsel



**BEFORE THE THIRD DISTRICT,
SECTION TWO, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

IN THE MATTER OF
ROBERT HENRY SMALLENBERG
VSB DOCKET NO. 00-032-1370

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)**

On January 10, 2002, a meeting in this matter was held before a duly convened Third District, Section Two, Subcommittee consisting of Dr. James H. Slatton, Lay Member; John Tracy Walker, IV, Esq.; and Cary A. Ralston, Esq., Secretary and Acting Chair.

Pursuant to Part 6, Section IV, Paragraph 13(B) (5) (c) (ii) (d) (ii) of the Rules of the Supreme Court, the Third District, Section Two, Subcommittee 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, Robert Henry Smallenberg [Smallenberg], has been an attorney licensed to practice law in the Commonwealth of Virginia. At all times relevant hereto, Smallenberg was an attorney employed by Ayres & Stolte, P.C. [the firm].
2. At some point in time Smallenberg was assigned to file a law suit against John F. Deal, Esq. [Deal], et als., for legal malpractice. Before or during his preparation for pursuit of the law suit, Smallenberg became aware of the following circumstances:
 - a. That Charles E. Ayers, Jr. [Ayers], one of the principals in the firm, had been the attorney for Alvin Jarrett and that Deal had replaced Ayers as attorney for Alvin Jarrett at some point in time.
 - b. That Ayers had, through Scott Stolte, Esq., one of the principals in the firm, filed a malicious prosecution action against Deal in Henrico County based upon Deal's cooperation with the Commonwealth's Attorney of Henrico County in the prosecution of Ayers for alleged criminal activity in his representation of Alvin Jarrett and that the action was nonsuited, refiled and

dismissed with the imposition of sanctions on Ayers and Stolte in the amount of \$4,958.04 which was later paid to Deal.

- c. That subsequently a Second Settlement and Release Agreement [the second agreement] was entered into by the executors of the estate of Alvin Jarrett and Ayers by which claims the estate may have had against Deal and others were assigned to Ayers and two corporations in which Ayers was a principal and that the second agreement contained a provision in its paragraph 14 which did not allow any assignment of the rights of any party under the second agreement without the written consent of the other party.
- d. That there was much anger and ill will on the part of Ayers against Deal.

If called to testify, Smallenberg would state that he learned of the ill will between Ayers and Deal sometime after the law suit had been filed in Virginia Beach Circuit Court but before the law suit was served.

- 3. By his letter dated March 13, 1997, Smallenberg contacted counsel for the executors of the estate, Stephen Test, seeking the removal of paragraph 14 from the second agreement. By his letter dated April 16, 1997, to Smallenberg, Test refused to remove the paragraph and informed Smallenberg that the executors would object to any further assignment of the second agreement or any rights conveyed under the second agreement.

If called to testify, Smallenberg would state that he wrote to Test on March 13, 1997, because he was concerned about the terms of the settlement and release agreement. Having not heard from Test prior to the date he believed the law suit needed to be filed and having been informed by Ayers that because the settlement and release agreement allowed property to be assigned and that a chose in action was intangible personal property, he signed off on the law suit as drafted.

- 4. Despite the warning from Test, the claim of legal malpractice against Deal and others was purportedly then assigned to Cardinal Holding Company, a corporate entity which was owned by Ayers.

If called to testify, Smallenberg would state that the warning from Test came after he had been told that a chose in action, as a property right, was assignable under the agreement and also after the law suit had been filed.

- 5. Smallenberg filed the law suit on or about March 21, 1997, in the Circuit Court for the City of Virginia Beach. The law suit was styled "T. Roy Jarrett and Harry W. Jarrett, Co-Executors of the Estate of Alvin Q. Jarrett, and Estate of Alvin Q. Jarrett, and Alvin Q. Jarrett, Deceased, and Cardinal Holding Company, assignee, plaintiffs v. John F. Deal Esquire, and Rhonda Cobler-Wells, Esquire, and John F. Deal & Associates, a Virginia partnership, et als." [law suit]. The law suit sought in excess of 24 million dollars from the defendants for legal malpractice.
- 6. Smallenberg included the executors of the estate of Alvin Q. Jarrett, the estate of Alvin Q. Jarrett, and Alvin Q. Jarrett, deceased, as plaintiffs in the law suit without any

authority to do so. Smallenberg signed the motion for judgment as counsel for, inter alia, the executors of the estate of Alvin Q. Jarrett, the estate of Alvin Q. Jarrett and Alvin Q. Jarrett, deceased. However, neither Smallenberg nor the firm for which he worked had any authority to act as counsel for said persons and entities.

If called to testify, Smallenberg would state that his research as of the filing of the law suit indicated that an assignee had absolute right to bring suit in the name of its assignor.

- 7. By his letters dated May 1, 1998; May 11, 1998; and May 12, 1998, Test informed Smallenberg that independently he had obtained a copy of the law suit, that his clients, i.e., the executors of the estate of Alvin Q. Jarrett, the estate of Alvin Q. Jarrett and Alvin Q. Jarrett, deceased, were upset that suit had been filed in their names without any notice to them, that the style and caption of the suit should immediately be changed and that his clients had not consented in writing to the assignment of claims to Cardinal Holding Company as required by Paragraph 14 of the second agreement.
- 8. Smallenberg did not have the law suit served until March 20, 1998, because he knew of the history of ill will between Ayers and Deal.
- 9. The defendants responded to the law suit by filing on April 10, 1998 a grounds of defense, a demurrer and special plea in bar, a counterclaim against Cardinal Holding Company for malicious prosecution and a motion for sanctions. Paragraph 3 of the counterclaim included the following language:

[Cardinal Holding Company] filed the Suit with notice, actual or constructive, that legal malpractice claims are non-assignable in the Commonwealth of Virginia. [Cardinal Holding Company], as purported assignee, has no basis in law to bring the Suit.

If called to testify, Smallenberg would state that at the time suit was filed, MNC v. Sickles had not been decided.

- 10. On June 4, 1998, Smallenberg filed a grounds of defense as counsel on behalf of Cardinal Holding Company in response to the counterclaim, inter alia, denying paragraph 3 of the counterclaim.
- 11. The circuit court subsequently entered an order of nonsuit on the motion of Cardinal Holding Company. The court reserved argument for a later date on the defendants' motion for sanctions.
- 12. On September 4, 1998, the circuit court awarded sanctions in accordance with Va. Code Section 8.01-271.1 in favor of the defendants against the firm and Smallenberg in the amount of \$22,181.17 plus the sum of \$10,000.00 to punish the firm and Smallenberg.
- 13. Smallenberg appealed the imposition of sanctions. On appeal Smallenberg argued, inter alia, that although legal malpractice actions were not assignable at common law in Virginia, it was reasonable for lawyers to believe that the common law in Virginia had been modified in 1977 by the

enactment of the following provisions in Va. Code Section 8.01-26:

Only those causes of action for damage to real or personal property, whether such damage be direct or indirect, and causes of action ex contractu are assignable.

14. On November 5, 1999, the Supreme Court of Virginia affirmed the sanctions award in favor of the defendants and against the firm and Smallenberg. The Court stated that such a belief could not have been held after its decision in MNC Credit Corp. v. Sickels, 255 Va. 314 (1998), which was issued and made public on February 27, 1998, a month before Smallenberg had the law suit served. In MNC Credit, the Court held that Va. Code Section 8.01-26 "does not abrogate the common law rule which prohibits the assignment of legal malpractice claims in this Commonwealth because the General Assembly did not plainly manifest an intent to do so". 255 Va. at 318.
15. Furthermore, the Court noted that Smallenberg acknowledged to the circuit court that he had actual knowledge on April 13, 1998, of MNC Credit when served with the defendant's responsive pleadings which referred to MNC Credit.
16. However, almost two months later on or about June 4, 1998, Smallenberg filed the grounds of defense on behalf of Cardinal Holding Company to the counterclaim stating that it had a right to maintain the law suit based upon the purported assignment.
17. Smallenberg failed to make the reasonable inquiry required by Va. Code Section 8.01-271.1 prior to having the law suit served. Had he done so he would have known that the law suit on behalf of Cardinal Holding Company was not warranted by existing law.
18. Smallenberg knew or it was obvious that the law suit was brought by Ayers and/or the firm for the purpose of harassing or maliciously injuring Deal and the other defendants. Smallenberg knew or should have known that the law suit was brought after the applicable statute of limitations had run.

If called to testify, Smallenberg would state that he knew of no ill will between Ayers and Deal until after the law suit had been filed.

II. NATURE OF MISCONDUCT:

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

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.

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

- (A) In his representation of a client, a lawyer shall not:
- (1) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another.
 - (2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

III. PUBLIC REPRIMAND:

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

Third District, Section Two, Subcommittee
Of The Virginia State Bar
By Cary A. Ralston
Secretary and Acting Chair

CERTIFICATE OF SERVICE

I certify that I have this day of January, 2002, mailed by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a true and correct copy of the Subcommittee Determination (Public Reprimand) to Robert Henry Smallenberg, Respondent, at his last address of record with the Virginia State Bar.

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