

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>SUPREME COURT</u> | | | | |
| Charles Daugherty Fugate II | Bristol | Revocation | January 7, 2003 | 23 |
| Mary Meade | McLean | 13 Month Suspension | February 28, 2003 | 26 |
| <u>CIRCUIT COURT</u> | | | | |
| Samuel B. Davis, Jr. | Newport News | Revocation | February 20, 2003 | n/a |
| <u>DISCIPLINARY BOARD</u> | | | | |
| John Kelly Dixon III | Richmond | 5 Year Suspension w/Terms | March 28, 2003 | 27 |
| Edward Joseph Hodkinson | Fall River | Revocation | February 28, 2003 | 32 |
| Margaret Ellen Hyland | Fredericksburg | Interim Suspension | March 28, 2003 | 32 |
| Harvey L. Lasky | Brooksville, FL | 6 Month Suspension | February 28, 2003 | 33 |
| Victor Alan Motley | Richmond | Revocation | March 28, 2003 | n/a |
| John Henry Partridge | Herndon | 30 Month Suspension w/Terms | May 1, 2003 | 34 |
| Jeffrey Bourke Rice | Fairfax | 1 Year Suspension | March 28, 2003 | n/a |
| Robert Michael Short | Vienna | Revocation | March 28, 2003 | n/a |
| Bernice Marie Stafford Turner | Halifax | Public Reprimand | March 6, 2003 | 40 |
| <u>DISTRICT COMMITTEES</u> | | | | |
| James F. Pascal | Richmond | Public Reprimand | February 20, 2003 | 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 | |
|------------------------|---------------------------------|--------------------|-------------------|-----|
| Kelly Kathleen Latimer | Manassas | Disciplinary Board | March 11, 2003 | n/a |
| Clifford John Quinn | Crofton | Disciplinary Board | March 28, 2003 | n/a |
| Rickey Gene Young | Martinsville | Disciplinary Board | February 26, 2003 | n/a |

SUPREME COURT

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of February, 2003.

CHARLES DAUGHERTY FUGATE II

APPELLANT
 AGAINST RECORD NO. 022259
 VSB DOCKET NO. 00-000-1475
 VIRGINIA STATE BAR, APPELLEE.

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board on the 16th day of July, 2002.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that, except for the failure to consider Fugate's motion to set the effective date of the sanction, there is no error in the order appealed from.

On November 23, 1999 in the United States District Court for the Western District of Virginia, Fugate pled guilty to two counts of mail fraud in violation of 18 U.S.C. § 1341. In the plea agreement, Fugate agreed that "there is a sufficient factual basis to support each and every material factual allegation" concerning the charges to which he pled.

Fugate had served as the chairman and member of the board of directors of the Lee County Community Hospital

("Hospital") which was a non-stock, non-profit corporation with its primary facility located in Lee County, Virginia. Fugate and others formed three limited liability companies for the purpose of purchasing equipment and leasing it to the Hospital. Among the facts admitted by Fugate are:

- 1) He advised and intended to devise a scheme and artifice to defraud [the Hospital] and the United States.
- 2) He did not disclose his ownership interest in Apex Leasing, LLC and Commonwealth Capital, LLC to the Board of Directors of the Hospital in violation of state law, federal law and hospital policy.
- 3) He used the tax exempt status of the hospital to purchase equipment for Apex Leasing, LLC and Commonwealth Capital, LLC and then leased the equipment to the Hospital.
- 4) One such lease involved a return (referred to as a "rate of interest") to the lessor of 300%.

Part 6, § IV, Para. 13E¹ of the Rules of Court permits the Board to summarily suspend the license of an attorney convicted of a "crime" and requires the attorney to show cause why his license to practice should not be revoked. "Crime" is a defined term under Part 6, § IV, Para. 13A and includes: "any offense declared to be a felony by federal or state law." Upon notification of Fugate's conviction, the Board suspended his

license on January 7, 200. At Fugate's request, the show cause hearing concerning revocation was postponed until after Fugate's completion of incarceration pursuant to his sentence. Following a hearing on May 17, 2002, the Board revoked Fugate's license. In this appeal Fugate assigns error to the order of the Board as follows:

1. The decision of the Virginia State Bar Disciplinary Board (the "Board") to revoke the license of Charles Daugherty Fugate II is arbitrary, capricious and contrary to the evidence, in that
 - a. the Board failed to meaningfully consider the *de bene esse* testimony of Lyndon B. Livesay, CPA;
 - b. the Board failed to meaningfully consider the letter statements from members of the public, the legal profession, the police community and others attesting to Mr. Fugate's integrity, honesty, good character and fitness to practice law;
 - c. the Board failed to meaningfully consider the character testimony of witnesses who attested to Mr. Fugate's integrity, honesty, good character and fitness to practice law;
 - d. the Board failed to meaningfully consider the evidence relating to Mr. Fugate's criminal culpability; and
 - e. the Board failed to meaningfully consider Mr. Fugate's cooperation with law enforcement investigators and prosecutors.
2. The decision of the Virginia State Bar Disciplinary Board to revoke the license of Charles Daugherty Fugate II, is arbitrary, capricious and contrary to the law, in that
 - a. revocation is excessive and disproportionate to the offense committed and to discipline imposed for similar offenses; and
 - b. revocation is inconsistent with the Board's duty to protect the public.
3. The Virginia State Bar Disciplinary Board erred by revoking Mr. Fugate's license to practice law based upon Mr. Fugate's criminal conviction.
4. The Virginia State Bar Disciplinary Board erred by revoking Mr. Fugate's license to practice law based upon Mr. Fugate's probation.
5. The Virginia State Bar Disciplinary Board erred by revoking Mr. Fugate's license to practice law based upon Mr. Fugate's court ordered restitution obligation.
6. The Virginia State Bar Disciplinary Board erred by not entering its Order of Revocation *nunc pro tunc* to the date of its Rule to Show Cause and Order of Suspension and Hearing, entered January 7, 2000.

At the evidentiary hearing before the Board on May 17, 2002, the State Bar and Fugate introduced exhibits, and testimony was heard *ore tenus* and by deposition. The Order of

Revocation recites that the Board considered all the exhibits and testimony presented. Fugate complains that the Board "failed to meaningfully consider" the testimony of various witnesses, the letters in support of Fugate, the evidence relating to his "criminal culpability," and his cooperation with law enforcement investigators and prosecutors. Simply stated, a review of the record does not support any of these allegations.

Additionally, Fugate complains that his revocation is excessive, disproportionate to the offense, and not necessary for the protection of the public. Further, Fugate asserts that the Board focused upon the fact of his conviction, his probation status, and his restitution obligations to the exclusion of other evidence. The record does not support Fugate's allegations and we do not find that the Board's remedy of revocation was imposed arbitrarily or capriciously.

As we have previously stated:

"In arriving at the punishment to be imposed, precedents are of little aid and each case must be largely governed by its particular facts, and the matter rests in the sound discretion of the [Board]. The question is not what punishment may the offense warrant, but what does it require as a penalty to the offender, as a deterrent to others, and as an indication to laymen that the courts will maintain the ethics of the profession."

Maddy v. Virginia State Bar, 205 Va. 652, 658, 139 S.E.2d 56, 60 (1964) (citation omitted).

We are satisfied that the Board considered all the evidence, did not consider improper evidence, and properly exercised its sound discretion in finding by clear and convincing evidence that revocation if appropriate in this case. We note that the Board was concerned, as are we, that Fugate now argues that his conduct "did not involve fraud, deceit, dishonesty and misrepresentation." Such a position is contrary to his admissions before the United States District Court.

Finally, Fugate maintains that the Board erred by failing to enter the Order of Revocation *nunc pro tunc* to the date of his suspension. Part 6, § IV, Para. 13 E(3)² provides in part that "[t]he procedure applicable to hearings relating to [m]isconduct shall apply to hearings relating to a [c]rime . . ." In Part 6, § IV, Para. 13 C(7)³, the Rules provide in part,

Upon a finding of [m]isconduct, the Board shall enter and serve upon the Respondent its memorandum order, setting forth:

(c) the sanction imposed, which shall be:

(v) revocation of the Respondent's license;

(d) [and,] the effective date of the sanction imposed[.]

We think it clear under the Rules that the Board has the discretion to set the date of revocation. At the hearing before the Board, Fugate requested that the Board enter its order *nunc pro tunc* to the date of suspension. We interpret this motion as a request to set "the effective date of the sanction imposed" which the Board has the discretion to determine. In

response to the notion, the Chairman stated, "I don't think we have any power on that" and denied the motion. The Board erred in holding that it had no power to decide "the effective date of the sanction imposed." Accordingly, the order of the Disciplinary Board of July 16, 2002 is affirmed in all respects except that the matter is remanded to the Board for consideration of Fugate's request to set the effective date of the revocation.

Justice Kinser took no part in the consideration or decision of this case.

This order shall be certified to the Virginia State Bar Disciplinary Board with instruction to consider Fugate's request and enter an order fixing the effective date of the revocation.

A Copy,
 Teste:
 David B. Beach
 Clerk

ENDNOTES _____

- 1 By Amendment, effective September 18, 2002, Part 6, § IV, Para. 13 E was repromulgated as Part 6, § IV, Para. 13 I (4) (a) (1). The repromulgation made no change of significance to this appeal. Because Fugate's hearing before the Board was held May 17, 2002, prior to the effective date of the Amendments, this order will use the Rules of Court in effect on May 17, 2002. However, by footnote, this order will make reference to the current Rules of Court where applicable.
- 2 By Amendment, effective September 18, 2002, Part 6, § IV, Para. 13 E(3) was repromulgated as Part 6, § IV, Para. 13 I(4) (d).
- 3 By Amendment, effective September 18, 2002, Part 6, § IV, Para. 13 C(7) was repromulgated as Part 6, § IV, Para. 13 I(2) (f) (2).

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**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

**IN THE MATTER OF
 CHARLES DAUGHERTY FUGATE II
 VSB DOCKET NO. 00-000-1475**

ORDER

On March 31, 2003, this matter came on for hearing, on the remand from the Supreme Court of Virginia, for this Board to assign an effective date to its decision to revoke Mr. Fugate's law license. Present by conference call were the members of the panel, James L. Banks, Jr., Esq., Werner H. Quasebarth, lay member, Anthony J. Trenga, Esq., H. Taylor Williams IV, Esq and Roscoe B. Stephenson III, Esq., chair presiding. Present for the respondent was Michael L. Rigsby, Esq., and for the bar was Richard E. Slaney, Assistant Bar Counsel, both of which presented argument on the matter remanded to the Board.

Upon due consideration and deliberation following the argument of counsel, the Board hereby **ORDERS** that the effective

Notice of Petition for Reinstatement

Pursuant to Va. Sup. Ct. R. Pt 6, §IV, ¶13(J) the following individual has petitioned the Virginia Supreme Court for reinstatement of his license to practice law. Panels of the Virginia State Bar Disciplinary Board will hear the petition on June 27, 2003. After hearing evidence and oral arguments, the board will make factual findings and recommend to the Virginia Supreme Court whether the petition should be accepted or denied. The board seeks information about the fitness of the individual to practice law. Written comments or requests to be heard at the hearings should be submitted to Barbara S. Lanier, Clerk of the Disciplinary System, 707 East Main Street, Suite 1500. Richmond, Virginia 23219, no later than June 18, 2003.

DOUGLAS DOWNES WILSON

Address: Suite 200, 45021 Starkey Road, Roanoke, VA 24014
 License Date: February 28, 1978
 Revocation Date: August 22, 1997

On December 12, 1995, a federal jury convicted Mr. Wilson of felony charges of obstructing the administration of federal tax laws, making false statements to the IRS and conspiracy. The charges arose from his representation of a client who owed several hundred thousand dollars in back taxes. The indictment alleged that he obstructed IRS's attempts to collect the unpaid taxes from a client, and that he aided and abetted the concealment of his client's assets. Contrary to the jury's verdicts, the trial court found that the evidence was insufficient to convict Mr. Wilson and ruled that he was not guilty. The Fourth Circuit Court of Appeals reversed the trial court's decision, reinstated the jury's verdicts and remanded the case for sentencing. He was subsequently sentenced to twenty-four months of incarceration and fined \$5,000.

Mr. Wilson surrendered his license to practice law on July 30, 1997.

Mr. Wilson's petition for reinstatement states that he has demonstrated sufficient remorse for his transgressions; undertaken and retained responsible employment; reestablished himself in the community and earned a positive reputation; continued his education in the law and fulfilled the reinstatement requirements.

Hearing Location: State Corporation Commission
 Tyler Building, Courtroom A, 2nd Floor
 1300 E. Main St.
 Richmond, VA 23219

the effective date for the revocation of Mr. Fugate's law license shall be January 7, 2000.

ENTER THIS ORDER THIS 1st DAY OF APRIL, 2003
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson III, 1st Vice-Chair

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SUPREME COURT

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 7th day of February, 2003.

MARY S. MEADE

APPELLANT

AGAINST

RECORD NO. 022051

VSB DOCKET NO. 00-051-1849

VIRGINIA STATE BAR

APPELLEE

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board on the 21st day of June, 2002.

Upon consideration of the record, briefs and argument of counsel, the Court is of the opinion that there is no error in the order of the Virginia State Bar Disciplinary Board suspending appellant's license to practice law in this Commonwealth for 13 months.

The issues raised by appellant with respect to her assignments of error 1, 2, 4, 5, and 12 were not the subject of objections stated with reasonable certainty during the proceeding before the Disciplinary Board and, therefore, are procedurally barred. Rule 5:25; *see also Tucker v. Virginia State Bar*, 233 Va. 526, 528, 357 S.E.2d 525, 532 (1987). We will address appellant's remaining assignments of error seriatim.

In reviewing the Disciplinary Board's decision, we conduct an independent examination of the entire record. *El-Amin v. Virginia State Bar*, 257 Va. 608, 612, 514 S.E.2d 163, 165 (1999); *Myers v. Virginia State Bar*, 226 Va. 608, 612, 514, S.E.2d 286, 287 (1984). We consider the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the Bar, the prevailing party in the Disciplinary Board proceeding. *El-Amin*, 257 Va. at 612, 514, S.E.2d at 165; *Gunter v. Virginia State Bar*, 238 Va. 617, 619, 385 S.E.2d 597, 598 (1989). We give the Disciplinary Board's factual findings substantial weight and view them as *prima facie* correct. *El-Amin*, 257 Va. at 612, 514 S.E.2d at 165; *Myers*, 226 Va. at 632, 312 S.E.2d at 287.

With regard to assignment of error 3, appellant contends that she was denied her due process rights under the United States and Virginia constitutions because she received inadequate notice of the appellee's requests for certain documents and of the disciplinary proceedings against her. Appellant contends that appellee had actual or constructive notice that her correct address was not the same as her mailing address of record on file with the appellee and, thus, should have directed its requests to her correct address.

An attorney may maintain his or her professional practice at more than one location. The mere fact that such attorney has met with a representative of the Bar at a particular location is not sufficient to give the Bar notice that official correspondence should be directed to that location. To the contrary, the Rules for the Integration of the State Bar expressly require an attorney actively engaged in the practice of law, such as appellant, to advise the Bar of any change of the attorney's "membership mailing

address," which may be either the attorney's business address or residence address. *See* Rules, Part 6, § IV, ¶3(a). The record is clear that appellant did not notify the Bar of her change of address in a timely fashion and the Bar mailed the notices in question to the membership mailing address. Appellant may not now be heard to complain that this lack of diligence on her part resulted in prejudice to her. Moreover, the record is equally clear that appellant had actual notice of the requests made upon her by the Bar, and, despite extensive efforts by the Bar, failed to respond adequately to those requests.

With regard to assignment of error 6, appellant contends that the Disciplinary Board erred in receiving a transcript of the testimony of Caroline Costle previously given before the District Committee because this testimony was both collateral and prejudicial. Appellant did not object to the introduction of the transcript of the entire District Committee proceeding, but later moved to strike Costle's testimony from the record. The Disciplinary Board denied this motion on the ground that it was untimely. However, it does not appear that the Disciplinary Board placed any reliance on Costle's prior testimony contained in the transcript because it specifically ruled that Costle's anticipated testimony before it would not be relevant and, thus, sustained appellant's objection to any testimony from this witness. Accordingly, the error, if any, in permitting Costle's prior testimony to remain a part of the record was harmless.

With regard to assignment of error 7, appellant contends that the Disciplinary Board erred in failing to admit a letter purporting to authenticate a document proffered as an exhibit which appellee contended was a forgery. The Disciplinary Board refused to receive this letter on the ground that it was hearsay. In a pre-hearing order, the Disciplinary Board made it clear that it would entertain evidence by letter only on collateral issues and expressly cautioned the parties that evidence relevant to the central issues of the hearing would require live testimony. The Disciplinary Board was within its discretion to determine that authentication of the exhibit was relevant to a central issue in the case and that the letter purporting to make that authentication could not be admitted without testimony from the out-of-court declarant.

In the same assignment of error, appellant further contends that the Disciplinary Board erred in limiting her cross-examination of a witness. The record discloses that appellant was given an adequate opportunity to cross-examine the witness, and that the Disciplinary Board limited her cross-examination only when it became repetitive and argumentative. Thus, the decision to limit cross-examination at that point was a proper exercise of the Disciplinary Board's discretion.

With regard to assignments of error 8, 9 and 10, appellant contends that the Disciplinary Board erred in finding that she violated DR 1-102, Rule 8.1, and Rule 8.4 respectively. We "must treat the factual findings of the Disciplinary Board as *prima facie* correct and should sustain those findings unless it appears that they are not justified by a reasonable view of the evidence or contrary to law." *Blue v. Seventh District Committee*, 220 Va. 1056, 1061-62, 265 S.E.2d 753, 757 (1980). In addition, when "there are conflicts in the evidence, those conflicts are resolved in accordance with the Board's findings." *Rutledge v. Tenth District Committee*, 214 Va. 312, 313, 200 S.E.2d 573, 574 (1973).

The Disciplinary Board found that appellant violated DR 1-102(A) and Rule 8.4, which prohibit an attorney from engaging in dishonest conduct, by falsely stating in a letter to the Bar investigator that she had attempted three times to pay a court reporter's fee. Appellant was subsequently unable to produce credible evidence that these attempts had been made and further forged documents in an effort to support her claim. There is ample evidence in the record to support the Disciplinary Board's factual findings and the application of the disciplinary rules to those facts, and, accordingly, we affirm the finding that appellant violated DR 102(A) and Rule 8.4.

Rule 8.1 requires a lawyer to cooperate with the Bar in disciplinary proceedings by responding to all lawful requests for information and not to obstruct such proceedings. The Disciplinary Board determined that appellant's repeated failure to communicate with the Bar's representatives or to supply requested information and records relevant to the investigation constituted a willful violation of Rule 8.1. The record amply supports the Disciplinary Board's determination, and, accordingly, we affirm the finding that appellant violated Rule 8.1.

With regard to assignment of error 11, appellant contends that the Disciplinary Board's imposition of a 13-month suspension of her license to practice law was unduly severe. In *Tucker*, we held "that the penalty imposed by the Board in a disciplinary proceeding will be viewed on appeal as prima facie correct and will not be disturbed unless . . . it appears unjustified by a reasonable view of the evidence or contrary to law." 233 Va. at 530, 357 S.E.2d 525 at 534. Applying this standard, we find that the evidence supports the sanction imposed. Dishonest conduct of an attorney compels a severe sanction because such conduct erodes public confidence in the legal profession.

For these reasons, the order of the Disciplinary Board is affirmed. The appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the Virginia State Bar Disciplinary Board with instruction to enter an order fixing the effective date of the suspension and the date appellant shall comply with the provisions of Part 6, § IV, Paragraph 13M of the Disciplinary Rules

A Copy,
Teste:
David B. Beach
Clerk

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
MARY MEADE
VSB DOCKET NO. 00-051-1849

ORDER OF SUSPENSION

It appearing that the license of Mary Meade to practice law in the Commonwealth of Virginia was suspended for thirteen months effective May 17, 2002, by Order of the Virginia State Bar Disciplinary Board; and

It further appearing that upon appealing the suspension to the Virginia Supreme Court, the Respondent filed a motion to stay the suspension, which motion was granted by the Virginia Supreme Court, but not until sixty days after the suspension had begun; and

It further appearing that the Virginia Supreme Court entered an Order dated February 7, 2003, affirming the decision of the Disciplinary Board to suspend Mary Meade's license to practice law in the Commonwealth for eleven months, and instructing the Disciplinary Board to enter an Order fixing the effective date of the suspension and the date Mary Meade shall comply with the provisions of Part Six, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia; and

It further appearing appropriate to do so;

It is ORDERED that Mary Meade's license to practice law in the Commonwealth of Virginia is suspended for a period of eleven months effective February 28, 2003; and

ENTERED THIS ORDER THIS 28TH DAY OF FEBRUARY, 2003
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Second Vice Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTERS OF
JOHN KELLY DIXON III
VSB DOCKET Nos. 02-031-1698, 02-031-1872
02-031-2476, 03-031-0553,
03-031-0751, 03-031-1575,
03-031-2195 AND 03-033-2575

ORDER

These matters came before the Virginia State Bar Disciplinary Board on March 20, 2003, to be heard on an Agreed Disposition between the Virginia State Bar and the respondent John Kelly Dixon, III.

The Agreed Disposition was considered by a duly convened panel of the Disciplinary Board consisting of Chester J. Calhoun, Jr., lay member, Robert L. Freed, David R. Schultz, Herbert Taylor Williams, IV, and John A. Dezio, Chair, presiding. The respondent appeared *pro se*. The Virginia State Bar was represented by Bar Counsel Barbara Ann Williams.

Having considered the Agreed Disposition and the representations of the parties, the Disciplinary Board accepts the Agreed Disposition, with minor changes to which the respondent and Bar Counsel agreed, and finds by clear and convincing evidence as follows:

I. General Findings of Fact

- 1. Mr. Dixon was admitted to the practice of law in the Commonwealth of Virginia on April 23, 1985.

2. At all times relevant to these proceedings, Mr. Dixon was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia, as well as in California.
3. At all times relevant to these proceedings, Mr. Dixon had a full time job with the United States Post Office, working at least 50 hours per week.
4. Mr. Dixon has no prior disciplinary record.

II. VSB Docket No. 02-031-1698
Complainant: Shelia R. Carroll-Simms

A. Findings of Fact

1. On or about April 26, 2001, Shelia R. Carroll-Simms retained Mr. Dixon to file a Chapter 7 bankruptcy petition for her.
2. Ms. Carroll-Simms paid Mr. Dixon \$600: \$400 for his fee and \$200 for the bankruptcy filing fee.
3. Mr. Dixon did not deposit his fee in his attorney trust account.
4. After filing the Chapter 7 bankruptcy petition on June 12, 2001, Mr. Dixon failed to file certain lists, schedules and statements with the bankruptcy court by July 2, 2001, even after he obtained an extension of time to do so.
5. As a result of Mr. Dixon's failure to timely file the information, the bankruptcy court dismissed Ms. Carroll-Simms' Chapter 7 bankruptcy petition.
6. By order entered on September 18, 2001, the bankruptcy court granted Mr. Dixon's motion to vacate the dismissal order.
7. The bankruptcy court discharged Ms. Carroll-Simms by order entered on September 29, 2001.
8. During the course of the representation, Mr. Dixon failed to respond to Ms. Carroll-Simms' repeated inquiries about the status of the bankruptcy matter and was not in his office when Ms. Carroll-Simms attempted to see him in October 2001.
9. On or about November 30, 2001, Ms. Carroll-Simms filed a bar complaint against Mr. Dixon.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a) * * *

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

III. VSB Docket No. 02-031-1872
Complainant: Melissa Browning

A. Findings of Fact

1. Melissa Browning retained Mr. Dixon to represent her in an uncontested divorce proceeding and, by September 2000, had paid him fees totaling at least \$225 plus \$88 for filing and service fees.
2. Mr. Dixon did not deposit his fee in his attorney trust account.
3. Based upon what Mr. Dixon told them, Ms. Browning and her mother believed that it would take Mr. Dixon about six months to finalize the divorce.
4. On October 17, 2000, Mr. Dixon filed a Bill of Complaint and Separation Agreement with the Richmond Circuit Court.
5. Mr. Dixon did not respond to Ms. Browning's repeated inquiries about the status of the divorce proceeding.
6. To the best of Ms. Browning's information and belief, Mr. Dixon did not have an office, and his voice mail mailbox was often full, making it impossible for her to leave voice mail messages for him.
7. Ms. Browning filed a bar complaint against Mr. Dixon on or about November 7, 2001.
8. The Circuit Court of the City of Richmond granted a final decree of divorce to Ms. Browning on July 1, 2002.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence
(a) * * *

RULE 1.4 Communication
(a) * * *

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

IV. VSB Docket No. 02-031-2476
Complainant: Calvin D. Edwards

A. Findings of Fact

1. In October 2001, Calvin D. Edwards retained Mr. Dixon to file a Chapter 13 bankruptcy petition on behalf of Mr. Edwards and his wife.
2. Mr. Edwards paid Mr. Dixon \$200, not including filing fees.

3. Mr. Dixon did not deposit his fee in his attorney trust account.
4. Mr. Dixon filed a joint petition on December 20, 2001.
5. The bankruptcy petition was dismissed in January 2002, and court costs were assessed after Mr. Dixon failed to file an assets and liabilities schedule with the court even though he had obtained an extension of time to do so.
6. Mr. Dixon led Mr. Edwards to believe that the case had been voluntarily dismissed because Mr. Edwards' wife could not attend a creditors' hearing.
7. Over the course of the representation, Mr. Dixon did not respond to Mr. Edwards' repeated inquiries about the status of the bankruptcy matter.
8. On more than one occasion during the course of the representation, Mr. Edwards was unable to leave Mr. Dixon a voice mail message because Mr. Dixon's voice mail mailbox was full.
9. On or about February 7, 2002, Mr. Edwards filed a bar complaint against Mr. Dixon.
10. Sometime after June 13, 2002, Mr. Dixon filed an individual Chapter 13 petition on Mr. Edwards' behalf, and the matter is now before the bankruptcy trustee.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) * * *

RULE 1.4 Communication

(a) (b) * * *

RULE 1.15 Safekeeping Property

(a) (1) and (2) * * *

V. VSB Docket No. 03-031-0553
Complainant: Deborah S. Ratcliffe

A. Findings of Fact

1. In or about January 2002, Ms. Ratcliffe retained Mr. Dixon to represent her in an uncontested divorce proceeding.
2. In or about February 2002, Ms. Ratcliffe paid Mr. Dixon a fee of at least \$350, not including \$64 in court costs.
3. Mr. Dixon did not deposit his fee in his attorney trust account.
4. Mr. Dixon advised Ms. Ratcliffe that her husband, who is incarcerated would need a guardian ad litem, and per Mr. Dixon's advice, Ms. Ratcliffe paid Richard Bing \$250 to represent her husband.

5. Mr. Dixon told Ms. Ratcliffe that he expected to finalize the divorce in three or four months.
6. Ms. Ratcliffe received a copy of a Bill of Complaint filed in the Circuit Court of the City of Richmond on February 14, 2002, but nothing else.
7. Having heard nothing from Mr. Dixon, in May 2002, Ms. Ratcliffe attempted to reach him by telephone.
8. During the course of the representation, Ms. Ratcliffe left Mr. Dixon approximately 20 voice mail messages; he did not return her calls.
9. Sometimes Ms. Ratcliffe was unable to leave Mr. Dixon voice mail messages because his voice mail box was full.
10. Ms. Ratcliffe filed a bar complaint against Mr. Dixon on or about June 26, 2002.
11. In September 2002, Mr. Dixon assured Ms. Ratcliffe that he would have the divorce finalized in a couple of weeks.
12. As of January 31, 2003, Mr. Dixon had not finalized the divorce.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) and (b) * * *

RULE 1.4 Communication

(a) and (b) * * *

RULE 1.15 Safekeeping Property

(a) (1) and (2) * * *

VI. VSB Docket No. 03-033-0751
Complainant: Tonya D. Winston-Clark

A. Findings of Fact

1. Tonya D. Winston-Clark retained Mr. Dixon to represent her in an uncontested divorce proceeding.
2. Mr. Dixon assured Ms. Winston-Clark that it would take him about 90 days to finalize the divorce.
3. Ms. Winston-Clark paid Mr. Dixon at least \$230, plus a filing fee.
4. Mr. Dixon did not deposit the fee in his attorney trust account.
5. Mr. Dixon failed to respond to his client's repeated inquiries about the status of the divorce proceeding, and in August 2001, she filed a bar complaint against him.
6. Bar counsel attempted to deal with the complaint proactively.

7. By letter dated April 9, 2002, Mr. Dixon advised bar counsel that he would be able to finalize Ms. Winston-Clark's divorce "very soon."
8. At Mr. Dixon's request, Ms. Winston-Clark obtained her husband's social security number, but she had to call him many times before she could leave him the information because his voice mail box was full.
9. On or about August 9, 2002, Ms. Winston-Clark wrote the bar, complaining that Mr. Dixon had advised her two months earlier that he would send her the paperwork needed to finalize the divorce and that she had not heard from him since.
10. By letter dated September 9, 2002, Mr. Dixon advised bar counsel that he would contact Ms. Winston-Clark, schedule a meeting with her at his office and secure the documents and information necessary to finalize the divorce.
11. In or about October 2002, Mr. Dixon deposed Ms. Winston-Clark and a witness in his office.
12. At that time, Mr. Dixon promised to file the paperwork necessary to conclude the divorce within thirty days.
13. As of January 9, 2003, Mr. Dixon still had not finalized Ms. Winston-Clark's divorce.
14. The Richmond Circuit Court file indicates that Mr. Dixon has not filed anything in the divorce action since April 2001.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) and (b) * * *.

RULE 1.4 Communication

(a) * * *

RULE 1.15 Safekeeping Property

(a) (1) and (2) * * *

VII. VSB Docket No. 03-031-1575

Complainant: Judith B. Shaw

A. Findings of Fact

1. Judith B. Shaw retained Mr. Dixon in February 2002 to represent her in an uncontested divorce proceeding.
2. Ms. Shaw paid Mr. Dixon \$200 plus a filing fee.
3. Mr. Dixon did not deposit his fee in his attorney trust account.
4. In May 2002, Ms. Shaw began trying to contact Mr. Dixon to advise him that she did not want any property settlement in connection with her divorce.

5. Mr. Dixon's voice mail box was frequently full, so Ms. Shaw could not leave him a voice mail message.
6. In early June 2002, Ms. Shaw was finally able to leave Mr. Dixon a voice mail message directing him to dispensing with the property settlement.
7. Mr. Dixon did not return Ms. Shaw's call, and she did not speak to him until June 3, 2002, when she called him.
8. Mr. Dixon told Ms. Shaw that he would proceed with the divorce action and to call him back in two weeks if she had not heard from him before then.
9. When Ms. Shaw called Mr. Dixon three weeks later, after not hearing anything from him, his voice mail box was full.
10. Ms. Shaw went to Mr. Dixon's "office," only to be told by the receptionist that Mr. Dixon really did not have an office there, he simply met with clients in the conference room and was rarely around.
11. The receptionist gave Ms. Shaw Mr. Dixon's home telephone number.
12. Ms. Shaw reached Mr. Dixon at home, and he advised her that he thought his work was done but that her file was in his "office" and he would call her the next day after reviewing her file.
13. A week later Ms. Shaw had not heard anything from Mr. Dixon, so she called him at home again and left several messages with his wife; Mr. Dixon did not return her calls.
14. On November 12, 2002, Ms. Shaw spoke to her husband's attorney who told Ms. Shaw that she had sent Mr. Dixon the return of service and notice of waiver on August 12, 2002, but had not heard from him since then.
15. Ms. Shaw filed a bar complaint against Mr. Dixon on or about November 15, 2002.
16. A final decree was issued in Ms. Shaw's divorce in March 2003.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence

(a) and (b) * * *

RULE 1.4 Communication

(a) * * *

RULE 1.15 Safekeeping Property

(a) (1) and (2) * * *

VIII. VSB Docket No. 03-031-2195
Complainant: Tamiko N. Tunstall

A. Findings of Fact

1. In April or May 2001, Tamiko N. Tunstall retained Mr. Dixon to handle an uncontested divorce for her and paid him at least \$250.
2. Mr. Dixon did not deposit the fee in his attorney trust account.
3. Mr. Dixon told Ms. Tunstall that it would not take very long for the divorce to be finalized because it was a simple matter.
4. When Ms. Tunstall did not hear anything from Mr. Dixon, she attempted to contact him, but he did not return her telephone calls.
5. On March 23, 2001, Ms. Tunstall accompanied a friend she had referred to Mr. Dixon to Mr. Dixon's office for depositions to be taken in her friend's divorce case.
6. At that time, Mr. Dixon admitted he had never filed Ms. Tunstall's divorce; he refunded her \$125 and indicated that he would file her divorce and set up an appointment for April 20, 2001, to refund the balance of his fee.
7. Mr. Dixon failed to keep his appointment with Ms. Tunstall, failed to file the divorce action and failed to return any of Ms. Tunstall's telephone calls.
8. Ms. Tunstall filed a bar complaint against Mr. Dixon on January 20, 2003.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

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

RULE 1.4 Communication
 (a) ***

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

4. As a result of Mr. Dixon's failure to redeem her car, the finance company advised Ms. Smith that it intended to repossess the car.
5. Ms. Smith attempted to contact Mr. Dixon by telephone several times but was unable to leave him a voice mail message because his voice mail box was full.
6. Ms. Smith subsequently learned that Mr. Dixon had relocated his office and failed to advise her of his new business address.
7. Ms. Smith has been unable to obtain a copy of her file from Mr. Dixon.
8. Ms. Smith filed a bar complaint against Mr. Dixon on or about February 21, 2003.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Rules of Professional Conduct:

RULE 1.3 Diligence
 (a) ***

RULE 1.4 Communication
 (a) ***

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

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

X. Disposition

Accordingly, the Disciplinary Board, John K. Dixon III, and Bar Counsel agree that a Five Year Suspension with the following terms is an appropriate disposition of these matters:

- 1) Mr. Dixon shall not accept any new clients between March 20 and March 28, 2003.
- 2) Mr. Dixon shall maintain a current address of record with the Virginia State Bar while he is suspended from the practice of law;
- 3) Mr. Dixon shall notify all his remaining clients of his suspension in the manner required by the Rules of Court and return these clients' files upon request; and
- 4) Mr. Dixon shall promptly return former clients' files to the clients upon request.

Mr. Dixon's failure to comply with any one or more of the agreed terms will result in the imposition of the alternative sanction of **Revocation**. The imposition of the alternative sanction shall not require any hearing on the underlying charges of misconduct. If the Virginia State Bar discovers that Mr. Dixon has failed to comply with any of the agreed terms, the bar shall issue and serve upon Mr. Dixon a Notice of Hearing to Show Cause why the alternative sanction of revocation should not be imposed. At the hearing, the sole factual issue will be whether

IX. VSB Docket No. 03-033-2575
Complainant: Gloria Smith

A. Findings of Fact

1. In October 2002, Gloria Smith paid Mr. Dixon approximately \$250 to file a Chapter 7 bankruptcy petition for her.
2. Mr. Dixon did not deposit the fee in his attorney trust account.
3. After the bankruptcy court granted Ms. Smith a discharge in January 2003, she discovered that Mr. Dixon failed to effect a redemption on her car.

the Mr. Dixon has violated one or more terms of the five year suspension without legal justification or excuse.

It is **ORDERED** that the five year suspension with terms shall take effect on March 28, 2003, and that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the respondent.

Enter this Order this 24th day of March, 2003.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: John A. Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
EDWARD JOSEPH HODKINSON
RESPONDENT
VSB DOCKET NO. 03-000-2224

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board for hearing on February 28, 2003, before a duly convened panel of the Board consisting of Thaddeus T. Crump, Lay Member, Janipher W. Robinson, David R. Schultz, Robert L. Freed, and Karen A. Gould, 1st Vice Chair (The "Chair"), presiding, pursuant to an Order dated January 30, 2003, requiring Edward Joseph Hodkinson (the "Respondent") to appear before this Board to show by clear and convincing evidence that his license to practice law in the Commonwealth of Virginia should not be revoked.

Assistant Bar Counsel, Paul D. Georgiadis, ("Bar Counsel") appeared as Counsel for the Virginia State Bar (the "VSB"). Respondent failed to appear after the clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. The court reporter for the proceeding, Donna T. Chandler, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by the Chair. All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. The Chair polled the Board members and determined that no member had a conflict of interest.

Upon the exhibits presented by Bar Counsel on behalf of the VSB and admitted into evidence as Exhibit 1 and upon argument by Bar Counsel, this Board finds clear and convincing evidence that: the Respondent was licensed to practice law in the Commonwealth of Virginia on April 28, 1988; and the Respondent has been suspended indefinitely from the practice of law in the Commonwealth of Massachusetts effective December 20, 2002, by an Order of Indefinite Suspension entered by the Supreme Judicial Court for Suffolk County, Commonwealth of Massachusetts on November 20, 2002; and, that a suspension for an indefinite period in the Commonwealth of Massachusetts is the functional equivalent of a "Revocation" as such term is defined by Part Six, Section IV, Paragraph 13.A. of the Rules of the Supreme Court of Virginia, and revocation is the same discipline imposed by the Commonwealth of Massachusetts.

It is hereby ORDERED that, pursuant to Part Six, Section IV, Paragraph 13.I.6 of the Rules of the Supreme Court of Virginia, the license of Respondent to practice law in the Commonwealth of Virginia shall be, and is hereby, revoked effective February 28, 2003.

SO ORDERED, this 7th day of March, 2003
By: Karen A. Gould, 1st Vice Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
MARGARET ELLEN HYLAND
VSB DOCKET NOS. 01-060-2781, 01-060-2847
01-060-2851, 03-060-0701
03-060-1148, 03-060-1631
03-060-1657

ORDER OF INTERIM SUSPENSION

This matter came before the Virginia State Bar Disciplinary Board on March 28, 2003, pursuant to a Notice of Noncompliance and Request for Interim Suspension issued in accordance with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13.B.5.b(3). The hearing was held before a duly convened panel of the Board consisting of David R. Schultz, William C. Boyce, Jr., Frank B. Miller, III, Thaddeus T. Crump, Lay Member, and Theophlise L. Twitty, Acting Chair.

All required notices were sent by the Clerk of the Disciplinary System. The Virginia State Bar was represented by Harry M. Hirsch, Deputy Bar Counsel. The Respondent, Margaret Ellen Hyland, appeared *pro se*. Donna T. Chandler, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, having been duly sworn, reported the hearing. The panel was polled as to whether any member had any conflict of interest or other reason why any member should not participate in the hearing. Each member, including the chair, answered in the negative.

This matter arises out of a Notice of Noncompliance and Request for Interim Suspension, in which the Bar alleges as follows:

1. The Sixth District Committee of the Virginia State Bar [the committee or district committee] issued a Subpoena *Duces Tecum* [first subpoena] on December 11, 2002, summoning Margaret Ellen Hyland [Hyland] to produce to the Virginia State Bar on January 3, 2003, that which is indicated in the subpoena. The first subpoena was personally served upon Hyland on December 18, 2002. The first subpoena was issued as part of the investigation of pending bar complaints referenced in the first subpoena.
2. The Sixth District Committee of the Virginia State Bar [the committee or district committee] issued a Subpoena *Duces Tecum* [second subpoena] on December 12, 2002, summoning Margaret Ellen Hyland [Hyland] to produce to the Virginia State Bar on January 3, 2003, that which is indicated in the subpoena. The second subpoena was personally served upon Hyland on December 18, 2002. The second

subpoena was issued as part of the investigation of the pending bar complaints referenced in the second subpoena.

3. Both subpoenas were identical except as to the addresses for service.
4. The subpoenas arise from bar complaints filed with the Virginia State Bar which make various allegations all of which appear to be related to the circumstance that Hyland ended her private practice of law and joined the office of the public defender in Fredericksburg, Virginia; that Hyland failed to complete a number of pieces of representation or otherwise make arrangements for the continued protection of the interests of her pending clients upon the closure of her private practice.
5. During the investigation of the complaints, Investigator Oren M. Powell attempted to contact Hyland about the subpoenas by leaving her voice mail messages on January 15, 2003 and January 22, 2003. Hyland made no response to those efforts.
6. In order to obtain compliance with the subpoenas, Bar counsel sent Hyland a letter dated January 24, 2003, seeking compliance by Hyland to the subpoenas by 9:00 a.m. on February 7, 2003.
7. Hyland made no response to the subpoenas or to Investigator Powell.

FINDINGS

The Board, after hearing oral argument and reviewing the exhibits entered as evidence in this matter, as well as the testimony of Investigator Powell, finds that the Bar has furnished uncontroverted evidence to substantiate the allegations set forth in its Request for Interim Suspension and the Board further finds that Respondent has failed to present any justifiable evidence or reason the Board should not honor the Bar's request.

ORDER

Accordingly, and pursuant to Paragraph 13.B.5.b(3) of the Rules of the Supreme Court of Virginia, the license of Margaret Ellen Hyland is hereby suspended, effective March 28, 2003. Such suspension shall continue without interruption, until such time as Respondent has fully and completely complied with the first and second subpoenas previously issued by the Bar. The Board will enter an order removing the interim suspension when the Board has been notified by the Bar that the respondent has fully and completely complied with this order.

It is further ORDERED that the Clerk of the Disciplinary System forward a copy of this order to the Respondent, by certified mail, return receipt requested, to her address of record and to the address given to the Board and Bar Counsel at the March 28, 2003 hearing, which address was stated by the Respondent to be her current mailing address, but which was not on file with the Bar, as required by the Rules of the Supreme Court.

ENTERED THIS 4TH DAY OF APRIL, 2003
VIRGINIA STATE BAR DISCIPLINARY BOARD
Theophlise L. Twitty, Acting Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTERS OF

MARGARET ELLEN HYLAND

VSB DOCKET NOS. 01-060-2781, 01-060-2847,
01-060-2851, 03-060-0701,
03-060-1148, 03-060-1631,
03-060-1657

ORDER

Upon the entry of a summary order on March 28, 2003 suspending the license of Margaret Ellen Hyland to practice law in the Commonwealth of Virginia effective March 28, 2003 for noncompliance with certain subpoenas duces tecum; and

Upon the entry of a memorandum order of interim suspension on April 4, 2003, suspending the license of Margaret Ellen Hyland to practice law in the Commonwealth of Virginia effective March 28, 2003, for noncompliance with respect to the two subpoenas duces tecum; and

It appearing that Margaret Ellen Hyland has now fully and completely complied with the two subpoenas duces tecum and it is appropriate so to do.

IT IS ORDERED that the suspension of the license to practice law in the Commonwealth of Virginia of Margaret Ellen Hyland for noncompliance with the two subpoenas duces tecum is terminated effective upon entry of this order.

ENTERED THIS 7TH DAY OF APRIL, 2003
FOR THE VIRGINIA STATE BAR DISCIPLINARY BOARD
Barbara Sayers Lanier
Clerk of the Disciplinary System



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF

HARVEY L. LASKY

RESPONDENT

VSB DOCKET NO. 03-000-2355

ORDER OF SUSPENSION

This matter came before the Virginia State Bar Disciplinary Board for hearing on February 28, 2003, before a duly convened panel of the Board consisting of Thaddeus T. Crump, Lay Member, Janipher W. Robinson, David R. Schultz, Robert L. Freed, and Karen A. Gould, 1st Vice Chair (The "Chair"), presiding, pursuant to the Order dated February 5, 2003, requiring Harvey L. Lasky (the "Respondent") to appear before this Board to show by clear and convincing evidence that his license to practice law in the Commonwealth of Virginia should not be suspended for six months.

Assistant Bar Counsel, Richard E. Slaney, ("Bar Counsel") appeared as Counsel for the Virginia State Bar (the "VSB"). The Respondent failed to appear after the clerk called his name three times in the hallway outside the courtroom, nor did any

counsel appear on his behalf. The court reporter for the proceeding, Donna T. Chandler, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by the Chair. All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. The Chair polled the Board members and determined that no member had a conflict of interest.

Upon the exhibits presented by Bar Counsel on behalf of the VSB and admitted into evidence as Exhibits 1 and upon argument by Bar Counsel, this Board finds by clear and convincing evidence that the Respondent was licensed to practice law in the Commonwealth of Virginia on September, 12, 1968; and the Respondent has been suspended from the practice of law in New Jersey for a period of six months effective November 25, 2002, by an order entered by the Supreme Court of New Jersey.

It is hereby ORDERED that, pursuant to Part Six, Section IV, Paragraph 13.1.6.a. of the Rules of the Supreme Court of Virginia, the license of Respondent to practice law in the Commonwealth of Virginia shall be, and is hereby, suspended for six months effective February 28, 2003.

SO ORDERED, this 7th day of March, 2003
By: Karen A. Gould, 1st Vice Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
JOHN HENRY PARTRIDGE, ESQUIRE
VSB DOCKET NOS. 01-053-1455, 01-053-2875,
01-053-3162, 02-053-0692,
02-053-0855, 02-053-2985,
02-053-3258, 02-053-3582,
02-053-3616, 03-053-0019

ORDER

This matter came on March 20, 2003, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District-Section III Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of W. Jefferson O'Flaherty, lay member, Bruce T. Clark, Esquire, Richard J. Colten, Esquire, Peter A. Dingman, Esquire, and John A. Dezio, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, John Henry Partridge, Esquire, represented by Pamela J. Bethel, Esquire, presented an endorsed Agreed Disposition, dated March 18, 2003, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Donna T. Chandler, Chandler & Halasz, Inc., RPR, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222. Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, John Henry Partridge, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 01-053-1455:

2. On or about January 31, 1999, Merry J. Adams (hereafter "Complainant") retained the Respondent by way of a written "Agreement for Legal Services" to represent her in what the Agreement referred to as "her claims for discrimination in the Commonwealth of Virginia."
3. Pursuant to the "retainer fee" due under the Agreement, on or about February 2, 1999, the Complainant tendered a check to the Respondent in the sum of \$5,000.00. The Respondent failed to deposit the check in an attorney or other trust account to the credit of the Complainant. Instead, he deposited the check in a non-trust account, thus applying the full proceeds thereof to his own or his law firm's credit. He did not thereafter account to the Complainant as to the manner in which all or any portion of her "retainer fee" had been earned.
4. On or about February 18, 1999, the Respondent filed a "Complaint" in the United States District Court for the Eastern District of Virginia. Excluding the signature page, the "Complaint" consisted of a single page, and that portion of the "Complaint" devoted to a statement of Complainant's claim consisted of a single sentence, which read as follows: "Plaintiff was discriminated against by Defendant on the basis of her sex and race."
5. Although the "Complaint" was drafted and filed by the Respondent at a time when he was Complainant's attorney, he did not sign it and enter his appearance in the case as her attorney of record. Instead, the Respondent presented the "Complaint" to the Court in the manner of a *pro se* filing. The Respondent subsequently claimed that he signed the Complainant's name to the pleading (and appended his initials next to her name) because he was "not confident in having any facts" in support of the filing.
6. At the time that he filed the aforesaid "Complaint," the Respondent did not request that service thereof be made upon the defendant in the action. The Respondent subsequently entered his appearance and on June 28, 1999, filed a document entitled "Plaintiff's Motion for Extension of Time to Serve Her Complaint." That document, signed by the Respondent, contained as the sole averment supporting the request for an extension of time to serve the Complaint, the following sentence: "There is good cause to grant such an order as Plaintiff Adams is now represented by counsel and can serve her complaint, and any amendments thereto, in a timely and efficient manner."
7. At the time he made the foregoing averment to the federal District Court, the Respondent knew it to be false, in that "Plaintiff Adams" had at all times been represented by counsel and that Respondent had himself drafted and filed the "Complaint" and had himself made the decision that it not have been earlier served upon the defendant in the action.
8. Subsequently, the Respondent was informed by the Court that the defendant in the action was in default, and that

the matter was being docketed for October 15, 1999, for presentation of Complainant's damages on an ex parte basis. Due to a scheduling conflict, the Respondent successfully moved to have the damages hearing continued to October 22, 1999.

9. In the evening before the scheduled hearing on damages, the Respondent called the Complainant and during the course of the conversation advised her that her case would have to be dismissed because she had not provided him with sufficient information on which to proceed. He stated that following dismissal of her suit, he would promptly re-file it on her behalf.
10. The Respondent thereafter presented the Court with a proposed Order, which the Court entered on October 25, 1999, dismissing Complainant's federal case, "without prejudice."
11. Notwithstanding Respondent's advice to the Complainant that her suit could be re-filed, and his representation to her that he would himself re-file it, the Respondent never re-filed the suit. Moreover, upon dismissal, the Complainant's claim was time-barred and could not, in any event, have been re-instituted and successfully prosecuted.
12. Subsequent to the dismissal of the case the Respondent told the Complainant, at first, that he had re-filed it. Following her request that she be provided with the paperwork associated with the re-filed case, the Respondent told her that he had not re-filed it, but that he had re-filed for the right to sue in the matter. Thereafter, and continuing into the year 2000, the Complainant made repeated attempts via telephone calls, faxes, and e-mails to determine the status of her case, and to request documents related to it, but the Respondent did not respond to those inquiries.

As to VSB Docket No. 01-053-2875:

13. On or about February 3, 2001, the Respondent entered into an "Agreement for Legal Services" with Jong H. Ree (hereafter "Complainant"). The Respondent's legal representation of the Complainant was with respect to Complainant's "potential fraud and Virginia Consumer Protection Act Claim arising out of the December 2000 refinance of his property with Option One."
14. At the time Respondent was retained, the Complainant paid Respondent the sum of \$2,000.00, which entire sum was deposited by the Respondent in the Respondent's law firm operating account, and not in an attorney trust account.
15. After the representation had commenced, the Complainant decided that he wished not to pursue the matter for which he had retained the Respondent. He asked the Respondent to make a partial refund of the \$2,000.00 that had been paid, and the Respondent told the Complainant on or about February 20, 2001, that Respondent would be called and told when he could pick up his refund check from the Respondent's office.
16. After hearing nothing further from the Respondent for a period of approximately three weeks, the Complainant called the Respondent and was told by the Respondent that he would receive no refund and that he, the Complainant, owed the Respondent additional sums.

17. The Respondent thereafter sent a bill to the Complainant, seeking payment of an *additional* \$2,020.00 for 10.1 hours of work allegedly performed on the matter. No portion of the \$2,000.00 earlier paid to the Respondent was credited to the fees for services claimed to have been performed. The Respondent claimed in a letter which accompanied the bill that the \$2,000.00 paid upon his retention "was for the sole purpose of retaining my availability to prosecute your case and was nonrefundable."
18. The aforesaid "Agreement for Legal Services" referred to the "retainer fee" of \$2,000.00 as nonrefundable. The \$2,000.00 "retainer fee" called for by the agreement, and paid by the Complainant, was, in reality, an advanced legal fee, which should have been placed and maintained in an attorney trust account and drawn against by the Respondent only after having been earned by him and/or to defray the Complainant's legal costs and expenses.

As to VSB Docket No. 01-053-3162:

19. On or about February 18, 1998, Joel B. Alperstein, M.D., (hereafter "Complainant") engaged the Respondent to pursue certain tort claims on his behalf. The Complainant and Respondent entered into an "Agreement for Legal Services" presented to the Complainant by the Respondent. The Agreement, *inter alia*, provided that Respondent be paid on an hourly rate basis, and also provided that Complainant "provide [Respondent] with a retainer fee of \$3,500.00 to secure [Respondent's] availability to represent client and as a true nonrefundable retainer."
20. At the time Respondent was retained, the Complainant paid Respondent the aforesaid sum of \$3,500.00 via a credit card transaction, which entire sum was deposited by the Respondent in the Respondent's law firm operating account, and not in an attorney trust account.
21. The \$3,500.00 "retainer fee" called for by the agreement, and paid by the Complainant, was, in reality, an advanced legal fee, which should have been placed and maintained in an attorney trust account and drawn against by the Respondent only after having been earned by him and/or to defray the Complainant's legal costs and expenses. The Respondent did not account to the Complainant for the time devoted to Complainant's matters, and as to how sums paid by Complainant were earned as fees.

As to VSB Docket No. 02-053-0692:

22. On or about August 20, 2001, the Respondent entered into an "Agreement for Legal Services" with Sung Gyun Hong (hereafter "Complainant"). The Respondent's legal representation of the Complainant was with respect to the potential suspension of the Complainant's Virginia driver's license.
23. The aforesaid "Agreement for Legal Services" provided that Respondent "and his investigative staff" be paid at the rate of \$200.00 per hour, and it also contained the following provision:

Upon execution of this Agreement Client shall pay a fee of \$1,000 to secure Attorney's availability to represent CLIENT. Client understands and agrees that the

attorney's fee in regard to preliminary consultations with me, investigating the fact of my case and advising me with respect to filing a lawsuit in this matter is \$1,000, and understands that this amount is separate and apart from any other fees charged by the attorney and expenses incurred in my case, and that his fee has been and shall be considered fully earned by the attorney upon the execution of this Agreement. [All errors in original.]

24. At the time Respondent was retained, the Complainant paid Respondent the sum of \$1,000.00, which entire sum was deposited by the Respondent in the Respondent's law firm operating account, and not in an attorney trust account. The \$1,000.00 fee called for by the agreement, and paid by the Complainant, was, in reality, an advanced legal fee, which should have been placed and maintained in an attorney trust account and drawn against by the Respondent only after having been earned by him and/or to defray the Complainant's legal costs and expenses.
25. Beyond the initial consultation with the Complainant, the Respondent devoted only two-tenths of an hour to the Complainant's legal matter. Further consultation and handling of the Complainant's matter, which exclusively involved Virginia law, was conducted at Respondent's direction by A. Stephen Conte, an associate attorney in Respondent's office.
26. The Complainant subsequently terminated the Respondent's services, requested an accounting of time devoted to his matter, and a refund. The Respondent advised the Virginia State Bar that at the time Complainant requested an accounting of time devoted to his matter on September 12, 2001, the Respondent and his associate "were knee deep in the final preparation of a murder trial." Following the Complaint made to the Virginia State Bar, the Respondent ultimately furnished records purporting to be the time devoted Complainant's legal matter, but no refund in any sum has been given to the Complainant.

As to VSB Docket No. 02-053-0855:

27. On or about February 5, 2001, Mr. Kwang Ku (hereafter "Complainant"), a siding contractor, met with the Respondent and retained him to collect \$10,400.00 from a firm which had engaged Complainant's company to install siding on two houses.
28. On the aforesaid date, the Respondent informed the Complainant that the collection matter would take approximately two months to resolve, and would cost \$1,000.00.
29. The Complainant paid Respondent the sum of \$1,000.00, which entire sum was deposited by the Respondent in the Respondent's law firm operating account, and not in an attorney trust account. The \$1,000.00 fee should have been placed and maintained in an attorney trust account and drawn against by the Respondent only after having been earned by him and/or to defray the Complainant's legal costs and expenses.
30. As of September 25, 2001, when the instant Complaint was filed with the Virginia State Bar, the Complainant had

heard nothing at all from the Respondent since their February, 2001, meeting concerning his legal matter.

31. On October 4, 2001, Bar Counsel directed a letter of that date to Respondent, enclosing the instant Complaint, and stating, inter alia, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter, with the exception of a letter dated February 12, 2002, from Respondent's attorney setting forth how the legal fee was handled by the Respondent.

As to VSB Docket No. 02-053-2985:

32. On or about November 27, 2000, Larry J. Bramlett (hereafter Complainant) retained Respondent to form a corporation, and have it classified for federal income tax purposes as a "Subchapter S" corporation. The Complainant was charged, and he paid to the Respondent, the sum of \$725.00. Of that sum, \$650.00 was designated by Respondent as a legal fee, and \$75.00 was identified as a State Corporation Commission filing fee.
33. On or about January 4, 2001, the Complainant received a notification from the Internal Revenue Service regarding the corporation that Respondent had formed. According to the Complainant's accountant, the notification reflected that Complainant's corporation was not established as a Subchapter S corporation. The Complainant promptly telephoned the Respondent, who informed the Complainant that he, the Respondent, would take care of the matter.
34. Having heard nothing further from the Respondent, the Complainant telephoned him on January 22, 2002, which call was not returned. The Complainant confirmed the problem in writing via a letter to the Respondent dated January 22, 2001, to which there was no response by the Respondent.
35. On October 2, 2001, the Complainant sent a letter to the Respondent concerning the tax classification issue, and left at least two telephone messages for the Respondent at approximately that time. The Respondent did not respond to the letter or telephone calls.
36. On or about November 9, 2001, the Complainant visited Respondent's office and was assured by the Respondent that Respondent would correct the tax classification problem, and would fax the information directly to the Complainant's accountant.
37. The Respondent did not attend to the problem, as promised, and the Complainant scheduled an appointment to meet with the Respondent on December 12, 2001, at 11:00 a.m., which appointment the Complainant confirmed, in writing.
38. When the Complainant arrived in Respondent's office for the scheduled appointment, he was advised that the Respondent was unavailable due to a pressing matter asso-

ciated with a murder case that Respondent was handling. The Complainant was informed that Respondent would call the Complainant as soon as possible, but no such call was ever made.

39. The Complainant did receive a "Memorandum" from the Respondent, dated December 12, 2001, wherein, *inter alia*, the Complainant was advised that Respondent had "a capital murder case set to begin on January 7th and can only provide [the Complainant with] 'lip service' at this time."
40. The Complainant retained the services of a different attorney, and determined that Respondent's legal services were inadequate in matters beyond the tax classification issue. On or about January 22, 2002, the Complainant wrote to the Respondent, recounting the problems discovered by Complainant's new counsel and requesting a refund.
41. The Respondent did not respond to Complainant's letter, nor to a follow up letter sent by to him by the Complainant.

As to VSB Docket No. 02-053-3258:

42. On or about March 14, 2002, Mr. Ira F. Marcus (hereafter "Complainant") met with and engaged the Respondent to prepare and send a letter to Complainant's former employer regarding the terms of Complainant's severance from employment. It was clear at the time of the meeting that time was of the essence.
43. The Complainant provided the Respondent with documents deemed essential to preparation of the letter in question on March 20, 2002.
44. On March 27, 2002, the Complainant telephoned the Respondent's office to determine the status of the letter that was to have been prepared on Complainant's behalf. The Respondent did respond to the Complainant's message by leaving his own message on Complainant's answering device, stating that the letter in question had been sent to Complainant's former employer's legal counsel.
45. On April 1, 2002, the Complainant contacted his former employer, and was told that no letter had been received from the Respondent on the Complainant's behalf.
46. On April 1, 2, and 3, 2002, the Complainant left messages for the Respondent, but none was returned. On April 4, 2002, the Complainant called the Respondent's office, and spoke to a paralegal who advised that he, the paralegal, did not have a copy of the letter in question, and that it must be on the Respondent's personal computer. The paralegal stated that he would have the Respondent call by the end of the day to resolve the matter. The Complainant requested that a copy of the letter and confirmation of delivery be sent to the Complainant as soon as possible. The Complainant did not hear from the Respondent by the end of the day on April 4, 2002, as had been promised.
47. On April 5, 2002, the Complainant again contacted the Respondent's office. He spoke again to the Respondent's

paralegal, who still had no information. The Complainant again requested a copy of the letter allegedly prepared by the Respondent, and set up an appointment to meet with the Respondent the following week, on April 9, 2002, at 10:00 a.m.

48. On April 9, 2002, the Complainant appeared in Respondent's office and met briefly with the Respondent. The Respondent claimed not to have the file with him, indicating that it was probably at Respondent's home, and that Respondent could provide the Complainant with the requested information later in the day.
49. At the April 9, 2002, meeting, the Respondent claimed to have remembered signing the letter in question, and indicated that the Respondent's assistant was looking for the postal service receipt. At this meeting, the Respondent claimed that he remembered asking the Complainant's former employer in the letter he had written for \$10,000.00 more than the Respondent had earlier discussed with the Complainant. Before leaving his appointment, the Complainant again requested that he be sent a copy of the letter purportedly written on his behalf.
50. On April 10, 2002, the Complainant left two telephone messages for the Respondent, to which there was no response. On April 11, 2002, the Complainant was contacted by his former employer, with the request that it be provided with the letter that Complainant had been trying to procure from the Respondent. The Complainant called the Respondent's office twice and left messages twice on that day.
51. On April 12, 2002, the Complainant left yet another message. He was called back by the Respondent's paralegal who wanted to set up a telephone conference between the Complainant and the Respondent to resolve the matter. On April 15, 2002, a telephone conference was set up whereby the Respondent would call the Complainant on April 16, 2002, at 3:00 p.m. The Respondent placed no call to the Complainant at the scheduled time.
52. On April 17, 2002, the Complainant called the Respondent and spoke to him briefly. The Respondent claimed that he was meeting with his paralegal and that he would call the Complainant back within the hour with information. The Complainant requested his file. The Complainant did not receive a call back from the Respondent that day.
53. On April 18, 2002, the Complainant spoke with Respondent's assistant, who indicated that Respondent was in court; the Respondent did not return the Complainant's call that day.
54. The Complainant terminated the Respondent's services on April 22, 2002, and filed a Complaint with the Virginia State Bar, which was received by the Bar on April 23, 2002.

As to VSB Docket No. 02-053-3582:

55. On April 29, 2002, the Virginia State Bar received a Complaint filed by Mr. Daniel R. Wickins (hereafter "Complainant"). The Complaint alleged, *inter alia*, that the Respondent had not transmitted to the Complainant a copy

of the Complainant's file, which the Complainant had theretofore requested in writing.

56. On May 3, 2002, Virginia State Bar intake counsel sent a letter to the Respondent requesting that he make specific responses to the Complaint, indicating that a resolution of the matter would avoid the necessity of the Bar's opening a formal ethics inquiry.
57. Having received no response from Respondent to the May 3, 2002, letter, intake counsel directed yet another letter to Respondent on May 14, 2002, asking for a response within five (5) days following that date, indicating that it would be "highly likely" that an active investigation file would be opened in the event Respondent did not respond to the Bar.
58. The Respondent did not respond to intake counsel's May 14, 2002, letter and an active investigation file was opened and assigned to Bar Counsel. On April 30, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing the complaint, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, within twenty-one (21) days, although the Bar did receive a letter in response to the Complaint from Respondent's counsel in mid-July, 2002.

As to VSB Docket No. 02-053-3616:

59. On or about September 1, 2001, the Respondent entered into an "Agreement for Legal Services" with Richard Krapf (hereafter "Complainant"). The Respondent's legal representation of the Complainant was with respect to the domestic relations matters.
60. The aforesaid "Agreement for Legal Services" provided that Respondent "and his investigative staff" be paid at the rate of \$200.00 per hour, and it also contained the following provision:

Upon execution of this Agreement Client will pay Attorney a retainer fee of \$4,000 dollars [sic] for the purpose of retaining Attorney's availability to prosecute his claims.
61. At the time Respondent was retained, the Complainant paid Respondent the sum of \$4,000.00, which entire sum was deposited by the Respondent in the Respondent's law firm operating account, and not in an attorney trust account. The \$4,000.00 "retainer fee" called for by the agreement, and paid by the Complainant, was, in reality, an advanced legal fee, which should have been placed and maintained in an attorney trust account and drawn against by the Respondent only after having been earned by him and/or to defray the Complainant's legal costs and expenses.
62. As of April 8, 2002, the need for Respondent's services came to an end because the Complainant and his wife had

reconciled, and the Respondent was so advised. Following the conclusion of legal services, the Complainant repeatedly requested that the Respondent provide him with an accounting of the time that had been devoted to his legal matter by the Respondent and an attorney employed by his office.

63. Having received no accounting for the time devoted to his case, the Complainant scheduled a meeting with the Respondent on May 31, 2002, at which meeting the Complainant twice requested provision of such accounting. The Respondent, at that meeting, promised that an accounting would be prepared and mailed to the Complainant on the following day. No such accounting was prepared and mailed. Indeed, at no time following the date of execution of the aforesaid "Agreement for Legal Services" did the Respondent render a statement of account or any form of accounting for the services that he and/or any member of his firm rendered on Complainant's behalf. The Respondent did not, at any time following the termination of legal services, tender a refund of unearned fees to the Complainant, despite Complainant's repeated requests therefor.

As to VSB Docket No. 03-053-0019:

64. On or about December 13, 2001, the Respondent entered into an "Agreement for Legal Services" with Deirdra M. Mann (hereafter "Complainant") and Kalithe R. Wyche (Complainant's brother) respecting Respondent's legal representation of Mr. Wyche in defense of criminal drug and firearm charges.
65. The aforesaid "Agreement for Legal Services" provided that Respondent, other attorneys in his firm, "and his investigative staff" be paid at the rate of \$250.00 per hour, and it also contained the following provision:

Upon execution of this Agreement Client shall pay a fee of \$30,000 to secure Attorney's availability to represent CLIENT. Client understands and agrees that the attorney's fee in regard to preliminary consultations with me, investigating the fact of my case and advising me with respect to filing a lawsuit in this matter is \$30,000, and understands that this amount is separate and apart from any other fees charged by the attorney and expenses incurred in my case, and that his fee has been and shall be considered fully earned by the attorney upon the execution of this Agreement. [All errors in original.]
66. On or about February 14, 2002, the Respondent entered into an "Agreement for Legal Services" with Complainant "to represent her in her potential felony conspiracy to distribute crack cocaine charge . . ."
67. The aforesaid "Agreement for Legal Services" provided that Respondent, other attorneys in his firm, "and his investigative staff" be paid at the rate of \$250.00 per hour, and it also contained the following provision:

Upon execution of this Agreement Client shall pay a fee of \$30,000 to secure Attorney's availability to represent CLIENT. Client understands and agrees that the

attorney's fee in regard to preliminary consultations with me, investigating the fact of my case and advising me with respect to filing a lawsuit in this matter is \$30,000, and understands that this amount is separate and apart from any other fees charged by the attorney and expenses incurred in my case, and that his fee has been and shall be considered fully earned by the attorney upon the execution of this Agreement. [All errors in original.]

68. Although the Respondent did not collect the \$30,000.00 fee called for by each of the two agreements referred to above, the "earned . . . upon execution of this Agreement" provisions were ethically impermissible. Such fees, had they been paid by the Complainant and/or her brother, would in reality have been advanced legal fees, to have been deposited and maintained in an attorney trust account and drawn against by the Respondent only after having been earned by him and/or to defray the Complainant's legal costs and expenses.
69. On July 16, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

The Board finds by clear and convincing evidence that such conduct on the part of John Henry Partridge, Esquire, constitutes a violation of the following Disciplinary Rules of the revised Virginia Code of Professional Responsibility and the Rules of Professional Conduct:

DR 1-102. Misconduct.

(A) (4) * * *

DR 2-105. Fees.

(A) and (B) * * *

DR 2-108. Terminating Representation.

(D) * * *

DR 6-101. Competence and Promptness.

(B) (C) and (D) * * *

DR 7-101. Representing a Client Zealously.

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

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

(A) (5) * * *

DR 7-105. Trial Conduct.

(B) (1) * * *

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

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

(B) (3) and (4) * * *

(B) A lawyer shall:
(3) and (4) * * *

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.5 Fees

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

RULE 1.15 Safekeeping Property

(a) (1) and (2), (b), (c) (3) and (4) * * *

RULE 1.16 Declining Or Terminating Representation

(d) * * *

RULE 4.1 Truthfulness In Statements To Others

(a) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

(c) * * *

RULE 8.4 Misconduct

(c) * * *

Upon consideration whereof, it is ORDERED that:

1. Subject to the provisions of Paragraph 7 set forth below, the Respondent shall receive a thirty (30) month suspension of his license to practice law in the Commonwealth of Virginia, to commence on May 1, 2003, as representing an appropriate sanction if this matter were to be heard. The Respondent shall accept no new clients between March 20, 2003, and the effective date of his suspension, inclusive.
2. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Sung G. Hong, the principal sum of \$720.00, with interest thereon at the rate of 9.0% per annum, from September 25, 2001, until paid. The payment that is due hereunder, inclusive of principal and all interest, shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than July 1, 2003.
3. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of SBS Siding Company, Inc., the principal sum of \$1,000.00, with interest thereon at the rate of 9.0% per annum, from February 5, 2001, until paid. The payment that is due hereunder, inclusive of principal and all interest, shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than July 1, 2003.
4. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Larry J. Bramlett, the principal sum of \$375.00, with interest thereon at the rate of 9.0% per annum, from February 1, 2002, until paid. The payment that is due hereunder, inclusive of principal and all interest, shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100

North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than July 1, 2003.

5. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Richard A. Krapf, the principal sum of \$3,500.00, with interest thereon at the rate of 9.0% per annum, from April 8, 2002, until paid. The payment that is due hereunder, inclusive of principal and all interest, shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than July 1, 2003.
6. Subject to the provisions appearing below, should the Respondent resume the private practice of law as a Virginia-licensed attorney following the term of his license suspension provided for herein, he shall thereupon promptly engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to review and make written recommendations concerning Respondent's law practice policies, methods, systems, and procedures. Respondent shall institute and thereafter follow with consistency any and all recommendations made to him by Ms. Johnston following her evaluation of the Respondent's practice. Respondent shall grant Ms. Johnston access to his law practice from time to time, at her request, for purposes of ensuring that Respondent has instituted and is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter) in a maximum aggregate amount of \$5,000.00. Respondent will have discharged his obligations respecting the terms contained in this Paragraph 6 if he has fulfilled and remained in compliance with all of the terms contained herein for a period of two (2) years following the date of his engagement of Ms. Johnston's services. The foregoing provisions of this Paragraph 6 shall apply if, and only if, the Respondent resumes the private practice of law as a Virginia-licensed attorney within three (3) years following the date of eligibility for reinstatement of his license at the conclusion of the suspension period provided for herein. Furthermore, the provisions of this Paragraph 6 shall *not* apply during any portion of the three (3) year period following the date of eligibility for reinstatement of his license while Respondent is engaged in the private practice of law as a *bona fide* attorney employee of a law firm or other business entity in which Respondent has no interest whatsoever as owner, shareholder, director, officer, partner, member, or manager
7. If the Respondent fails to comply with any of the terms set forth in the preceding Paragraphs 2 through 6, inclusive, in the manner and at the time compliance with any such term is required, then, and in such event, the Virginia State Bar Disciplinary Board shall, as an alternative disposition

to the license suspension otherwise provided for herein, REVOKE the Respondent's license to practice law in the Commonwealth of Virginia.

ENTERED this day of March, 2003.
John A. Dezio, Chair
Virginia State Bar Disciplinary Board



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
BERNICE MARIE STAFFORD TURNER
VSB DOCKET NO. 01-032-113

ORDER OF DISMISSAL

THIS MATTER came on for hearing on February 20, 2003, upon the bar's Motion to Dismiss Appeal Upon Failure to File Transcript. The matter was heard by John A. Dezio, Chair in a telephonic conference call.

The respondent, Bernice Marie Stafford Turner, appeared in person and with Andrea C. Long, her attorney.

Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

Upon the bar's motion and attached exhibits, and the representations and arguments of counsel, the Board finds by clear and convincing evidence that Bernice Marie Stafford Turner filed a notice of appeal on November 26, 2002 but subsequently failed, as of February 20, 2003, to file a transcript of the district committee trial with the Clerk of the Disciplinary System as required by Rules of Court, Part Six, Section IV, Paragraph 13.H.4.a.(3). The Board has jurisdiction to consider the failure of a respondent to make a complete transcript part of the record in accordance with the rules applicable to an appeal from a district committee determination. Rules of Court, Part Six, Section IV, Paragraph 13.B.5.a.

Accordingly, IT IS ORDERED that the bar's Motion to Dismiss Appeal Upon Failure to File Transcript is granted, this case is dismissed and it shall be taken off the Board's docket.

The objection of Bernice Marie Stafford Turner to the dismissal is duly noted.

The court reporter for this hearing was Tracy J. Stroh, RPR, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227.

VIRGINIA STATE BAR DISCIPLINARY BOARD
By John A. Dezio, Chair



**BEFORE THE THIRD DISTRICT COMMITTEE,
SECTION II, OF THE VIRGINIA STATE BAR**

IN THE MATTER OF
BERNICE MARIE STAFFORD TURNER
VSB DOCKET NO. 01-032-1113

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)**

On November 8, 2002, a hearing in this matter was held before a duly convened Third District Committee panel consisting of William S. Francis, Jr., Esquire, Richard K. Newman, Esquire, Virginia S. Duvall, Esquire, J. Tracy Walker, IV, Esquire, William J. Viverette, Esquire, John B. Daly, Lay Member, and Cary A. Ralston, Esquire, Chair, presiding.

The Respondent appeared in person and with her counsel, Thomas H. Roberts, Esquire. Edward L. Davis, Assistant Bar Counsel, appeared for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.n of the Rules of the Virginia Supreme Court, the Third District Committee 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, Bernice Marie Stafford Turner [Turner], has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Turner represented the wife in an ongoing divorce matter that was settled on March 17, 1997 at the Circuit Court of Henrico County. A significant part of the settlement was the husband's deed of gift to the wife of his interest in the marital home. The husband and wife signed the deed of gift at the courthouse before the hearing on March 17, 1997, and had their signatures notarized. After the deed had been executed, Turner advised counsel that she would immediately record the deed of gift. Likewise, when the Court called the case, at some time during the hearing, Turner held up the deed of gift and advised the Court that she would immediately record it.
3. Thereafter, Turner did not record the deed of gift. In 2000, because the deed had not been recorded, the husband received a delinquent tax notice relating to his share in the marital home. His attorney was able to resolve the matter. To date, however, the deed of gift remains unrecorded.

II. NATURE OF MISCONDUCT

The Committee finds by clear and convincing evidence that the Respondent violated the following Disciplinary Rule:

DR 1-102. Misconduct.

(A) A lawyer shall not:

(4) ***

The Committee finds that the evidence does not support violations of the following Rules, and they are dismissed

accordingly: DR 6-101(B), DR 7-101(A), Rule 1.3(a), Rule 1.3(b), Rule 8.1(c), and Rule 8.1(d).

III. PUBLIC REPRIMAND

Accordingly, having considered the findings of fact and the Respondent's prior Disciplinary Record, it is the unanimous

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

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c.(1) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT COMMITTEE, SECTION II
OF THE VIRGINIA STATE BAR
By Cary A. Ralston, Chair



DISTRICT COMMITTEES

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

IN THE MATTER OF
JAMES F. PASCAL
VSB DOCKET NO. 03-031-2021

**DISTRICT COMMITTEE MISCONDUCT DETERMINATION
(PUBLIC REPRIMAND)**

On February 12, 2003, a hearing in the above-captioned matter was held before a duly convened panel of the Third District Committee, Section I, consisting of Robert Clinton Clary, Esquire; W. Richard Hairfield, Esquire; Marcus D. Minton, Esquire; Patricia B. Clary, lay member, and Ray P. Lupold, III, Esquire, presiding. The Respondent, James F. Pascal, appeared pro se. Barbara Ann Williams, Bar Counsel, represented the Virginia State Bar.

On February 7, 2002, the district committee imposed a Private Reprimand with Terms upon the Respondent in VSB Docket No. 98-031-2009 for violating Disciplinary Rules 1-102(A)(1), 6-101(B) and (C), 7-101(A)(1) and (2), and 9-102(A) and (B). The terms required the Respondent to: (1) obtain an attorney trust account by January 1, 2002, and certify to bar counsel every six months that he was maintaining and using the trust account; 2) obtain six hours of Continuing Legal Education (CLE) credit in law office management, including instruction on the handling of an attorney trust account, not to apply the six hours of CLE credit to his annual Mandatory Continuing Legal Education (MCLE) requirement and certify to bar counsel on or before November 14, 2002, that he had complied with the term; and (3) without notice to submit to random audits by the Virginia State Bar of his trust account records no more than twice a year and for two years. The misconduct determination provided that a Public Reprimand would

be issued to the Respondent if he failed to comply with the Terms associated with the Private Reprimand.

At the hearing on February 12, 2003, the Respondent had the burden of showing by clear and convincing evidence that he had complied with each of the terms and therefore that the district committee should not impose the alternate sanction. After hearing the evidence presented and the argument of counsel, the district committee made the following findings of fact and misconduct determination.

I. Findings of Fact

1. The Respondent did not certify in a timely manner to bar counsel that he was allegedly using his attorney trust account.
2. The Respondent did not obtain six hours of CLE credit in law office management, applied the CLE credit he did obtain to his MCLE requirement and

did not certify in a timely manner to bar counsel that he had allegedly obtained the requisite credit.

3. The Respondent did not comply with the term requiring him to submit to a random audit of his trust account records.

II. Misconduct Determination

Based the district committee's finding the Respondent failed to present clear and convincing evidence that he complied with the terms imposed in the prior misconduct proceedings, it is the decision of the district committee to impose the alternate sanction of a public reprimand. The Respondent is hereby so reprimanded.

THIRD DISTRICT COMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR
By Ray P. Lupold, III, Chair

