

DISCIPLINARY BOARD

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
LUTHER CORNELIUS EDMONDS
VSB DOCKET NO. 00-000-1271

ORDER OF REVOCATION

On June 27, 2003, this matter came on for hearing on a Rule to Show Cause. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board ("Board") consisting of John A. Dezio, Chair, presiding, and James L. Banks, Jr., Ann M. Kathan, Thaddeus T. Crump, Lay Member, and Henry P. Custis, Jr.

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

The Respondent, Luther Cornelius Edmonds ("Respondent" or "Mr. Edmonds") appeared in person represented by Michael L. Rigsby, Esquire.

Richard E. Slaney, Esquire, Assistant Bar Counsel, appeared for the Virginia State Bar.

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

The Virginia State Bar filed nine exhibits that were received and accepted into the record in addition to Respondent's prior disciplinary record.

The Respondent filed eleven exhibits that were received and accepted into the record. Respondent presented other evidence by witnesses testifying *ore tenus*.

Findings of Fact

1. At all times relevant to the charge in this matter Luther Cornelius Edmonds, Esquire has been an attorney licensed to practice law in the Commonwealth of Virginia, although not at all times in good standing.
2. Respondent was convicted of Unlawful Wounding and Unlawful Wearing of a Mask on November 24, 1999, in the matter of Commonwealth of Virginia v. Luther C. Edmonds, No. CF982338, Circuit Court of the City of Alexandria.
3. The offenses for which Respondent was convicted are Class 6 felonies in the Commonwealth of Virginia. Said felonies are crimes as defined by the Rules of Court, Part 6, Section IV, Paragraph 13(A).
4. Respondent was subsequently sentenced to twelve months in jail for Unlawful Wounding and six months in jail for Unlawful Wearing of a Mask and ordered to pay a fine of \$2,500.00 for each conviction plus court costs. Respondent was released from jail on February 26, 2001 and has made substantial progress in the payment of both the fines and court costs.

Nature of Misconduct

The Board unanimously finds, by clear and convincing evidence that Respondent's felony convictions for violations of the law of the Commonwealth of Virginia constitute a violation of Rule of Professional Conduct 8.4(b) and that Respondent has failed to show cause why his license to practice law in the Commonwealth of Virginia should not be further suspended or revoked.

IMPOSITION OF SANCTIONS

The Bar presented documentary evidence along with Respondent's previous disciplinary record and made further argument for sanctions. Respondent presented documentary evidence, evidence *ore tenus*, and made argument for purposes of the Board's consideration of sanctions. After reviewing all of the above, the Board finds that Respondent has failed to show cause why his license should not be further suspended or revoked. The Board concludes that revocation of Respondent's license to practice law is the appropriate sanction under all the circumstances.

Accordingly, it is **ORDERED** that the license to practice law in the Courts of this Commonwealth heretofore issued to **LUTHER CORNELIUS EDMONDS**, Esquire, be and the same is hereby REVOKED, effective June 27, 2003.

ENTER THIS ORDER THIS 14th DAY OF JULY, 2003
VIRGINIA STATE BAR DISCIPLINARY BOARD
By John A. Dezio



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
ROGER CORY HINDE
VSB DOCKET: 02-032-1044, 02-031-3428,
03-031-0336, 03-031-0525

ORDER OF SUSPENSION

This matter came on to be heard Friday, April 25, 2003, at 9:00 a.m., before a Panel of the Virginia State Bar Disciplinary Board convened at the United States Fourth Circuit Court of Appeals building, 10th and Main Street, 4th Floor, Richmond, Virginia 23219. The Board was comprised of John A. Dezio, Chair, James L. Banks, Jr., Richard J. Colten, Ann N. Kathan, and Joseph R. Lassiter, Jr. Proceedings in this matter were transcribed by Comiller T. Boyd, Court Reporter, 105 St. Claire Lane, Richmond, Virginia 23223, telephone number (804) 644-2581. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether any member had any personal or financial interest which would interfere with or influence that member's unbiased determination of this matter. Each member, including the Chair, answered in the negative; the matter proceeded.

The Respondent, Roger Cory Hinde, was represented by his counsel, Gary R. Hershner, Esquire, and was present in person. The Virginia State Bar appeared by its counsel, Barbara Ann Williams, Esquire.

The matter was presented to the Disciplinary Board by way of a Certification (Subcommittee Determination) of the Third District Committee after the Respondent had been given notice of said Certification on the 10th day of March 2003. As a preliminary matter, the Respondent renewed his motions, all of which had previously been denied, that the matter be referred to a three-judge panel, the four pending complaints be severed and heard separately, and that the hearing be continued to another date. Argument was heard, and all three motions were again denied. It was additionally ordered that Respondent was barred from presenting exhibits or witnesses in support of his case, to which he noted an objection. The Board ruled that, inasmuch as the Respondent failed to timely respond to any of the four complaints and failed to designate, in accordance with the Rules, any witnesses or exhibits, he would be precluded from calling witnesses or offering documentary evidence at the hearing of these matters.

The Bar moved into evidence all of its exhibits, which were accepted without objection and are made a part of the record herein. The Bar's first witness, Cam Moffatt, an investigator for the Virginia State Bar, was called to testify regarding all four complaints. Ms. Moffatt testified that Roger Cory Hinde did not respond to any of the four pending complaints, did not present files and trust account documents as requested, and did not comply with duly issued and served subpoenas. It should be noted that some, but not all, records and trust account documents were eventually produced by the Respondent after his failure to comply resulted in an administrative suspension. The witness further testified that all trust account documents were incomplete, no bank statements or subsidiary records were produced, and the Respondent refused to be interviewed. In summary, the evidence was clear that the Respondent hindered the investigation, which was a fact basically acknowledged by the Respondent and characterized by his counsel as his "sins." Ms. Moffatt's evidence was elicited and referenced to all four pending complaints, without objection.

Regarding VSB Docket No. 02-031-1044, the Board found, by clear and convincing evidence, that the Respondent, Roger Cory Hinde, violated the following Rules of Professional Conduct: Rule 1.15 (e)(1)(i), (ii), (iii), (iv) and (v), relative to Safekeeping Property (trust account records and documents); Rule 8.1(c) and (d) (Bar Admission and Disciplinary Matters), pertaining to responding to and cooperation with an investigation of a disciplinary authority. The Bar withdrew the allegation of a violation of Rule 3.4(d) (Fairness to Opposing Party and Counsel).

As to VSB Docket No. 02-031-3428, the Board found by clear and convincing evidence that the Respondent violated the following Rules of Professional Conduct: Rule 1.5 (b), requiring that a fee shall be adequately explained to the client; Rule 3.1 (Meritorious Claims and Contentions); Rule 3.3(a) (Candor Toward the Tribunal); and Rule 8.1(c) and (d) (Bar Admission and Disciplinary Matters). The Board found that the Bar failed to prove by clear and convincing evidence a violation of Rule 1.5(a), pertaining to the reasonableness of fees.

As to VSB Docket No. 03-031-0336, the Board found by clear and convincing evidence that the Respondent violated the following Rule of Professional Conduct: Rule 8.1(c) and (d) (Bar Admission and Disciplinary Matters).

Regarding VSB Docket No. 03-031-0525, the Board found by clear and convincing evidence that the Respondent violated the following Rules of Professional Conduct: Rule 1.3(a) (Diligence); Rule 1.4(a) (Communication), requiring a lawyer to keep his client reasonably informed as to the status of a matter; Rule 1.15(e) (Safekeeping Property); and Rule 8.1 (c) and (d) (Bar Admission and Disciplinary Matters).

In response to an administrative suspension resulting from failure to comply with the investigation and resulting subpoena, the Respondent executed a Certification acknowledging:

I hereby certify that after I was personally served with subpoena duces tecum in the five (*sic*) above-captioned attorney disciplinary matters, I diligently searched all records within my possession, custody and control, and produced to Bar Counsel no later than December 12, 2002, all information responsive to the subpoena, including client files and trust account records, except for cash receipts journals, cash disbursements journals, bound checkbook entries, subsidiary ledgers, reconciliations and supporting records, which I do not have.

I further certify that in response to the subpoena duces tecum, I did not produce all bank records, cancelled checks, bank statements and deposit tickets for any and all trust accounts that I maintained between January 1, 2002, and the present.

...

The Board found that this acknowledgment by the Respondent, VSB Exhibit F, essentially verified and corroborated the testimony of the Bar investigator regarding all four complaints, notwithstanding the Respondent's claim that he signed such certification under pressure and in order to relieve himself of the administrative suspension.

The Respondent testified on his own behalf and related several personal problems, including the dissolution of his marriage, abuse by his then-spouse, illness of his daughter, excessive travel due to his active practice and being stalked by a female friend. The Respondent stated that he "emotionally shut down" during this period of time. Other than that explanation for his behavior, the Respondent offered no credible evidence in defense of the four complaints or to justify his behavior. The Board found that the Respondent demonstrated a significant lack of candor, failed to acknowledge in any way the seriousness or, in fact, even the existence, of inappropriate ethical behavior. Throughout the investigation, the Respondent failed to cooperate or make any attempt to follow the appropriate Rules of Procedure. It was apparent that the Respondent attempted to obstruct the disciplinary system and intentionally withheld records, some of which, he claimed, may have been helpful to his cause, from both the Bar during its investigation and the Disciplinary Board during the instant proceeding.

After finding, by clear and convincing evidence, violations of the above-referenced Rules, evidence was heard in aggravation or mitigation of sanction. By way of aggravating factors considered by the Board was the prior disciplinary record introduced into evidence by Bar Counsel. In May 1999, the

Respondent received a private reprimand. In February 2002, he was issued a private reprimand with terms, including two years of probation, which was later converted to a public reprimand as a result of his failure to comply with the 2002 private reprimand. There were administrative suspensions in September 2002 and December 2002. It was apparent that there was a pattern of misconduct by the Respondent in failing to communicate adequately with clients, diligently represent his clients, unreasonable or questionable fee arrangements, trust account record violations, and the inability to comply with Rules and Procedures regarding the investigation of ethical complaints. It should be noted that the Respondent continues to fail to comply with the Disciplinary Board's Pre-Hearing Order.

By way of mitigation, the Respondent reiterated that he has experienced personal problems in his marriage and the illness (and apparent recovery) of his daughter. An additional mitigating factor, as proffered by the Respondent, was that he encourages his DUI clients to receive counseling, which is viewed by the Board to be admirable. Following all of the evidence presented, argument of counsel, factors both in aggravation and mitigation, the Board further deliberated concerning an appropriate sanction. In consideration of all of which, it is hereby

ORDERED, pursuant to Part 6, Section IV, Paragraph 13(C)(3) of the Rules of the Supreme Court that the license of the Respondent, Roger Cory Hinde, to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED for four years, effective April 25, 2003.

ENTER THIS ORDER THIS 12th DAY OF MAY, 2003.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By John A. Dezio, Chair



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
RAYMOND WILLIAM KONAN, ESQUIRE
VSB DOCKET NOS.
00-052-3465 & 01-052-0361

This matter was certified to the Virginia State Bar Disciplinary Board by a Subcommittee of the Fifth District Committee, Section II, and was heard on June 27, 2003, by a duly convened panel of the Disciplinary Board consisting of Karen A. Gould, 2nd Vice Chair, Carl Eason, Frank B. Miller, III, W. Jefferson O'Flaherty, lay member, and Taylor Williams, IV. The Respondent, William Konan, appeared *pro se* Noel Sengel, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar (hereinafter "VSB"). The proceedings were transcribed by Donna T. Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

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

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her

ability to be impartial in this proceeding. Each member, including the Chair, responded in the negative.

VSB Exhibits 1 through 90 were admitted without objection during the liability phase of the hearing and additional Exhibits 91 and 92 were admitted during the sanctions phase. The Respondent had Exhibits 1 through 89 admitted without objection during the liability phase and Exhibit 90 admitted during the sanction phase.

The Bar called Thomas Koerner to testify in Docket Number 01-052-0361 and James P. Szymkowicz to testify in Docket Number 00-052-3465. Mr. Konan was the only witness to testify during his case in both matters. During the sanctions phase of the hearing, after it had been determined that the Bar had proven by clear and convincing evidence that there were violations of the disciplinary rules, the Bar called Alexandre Konanykhine to testify on the impact Mr. Konan's actions had on him.

Stipulations

The parties stipulated to the following facts:

1. At all times relevant hereto, Raymond William Konan, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia. Mr. Konan received proper notice of this hearing at his last address of record with the Virginia State Bar.

Virginia State Bar Docket Number 00-052-3465

2. In December of 1997, J.P. Szymkowicz, Esquire filed two actions for his client, Alexandre Konanykhine, *Konanykhine v. Izvestia Newspapers, et al.* At Law Number 97-1139, and *Konanykhine v. Kommersant Publishing House, et al.* At Law Number 97-1206, in the Arlington County Circuit Court, alleging defamation. *Izvestia Newspapers* (*Izvestia*) was not represented by counsel. *Kommersant Publishing* (*Kommersant*) was represented by Mays & Valentine, LLP of McLean, VA, and Chadbourne & Parke, LLP, and Chadbourne & Parke of Moscow, Russia.
3. In June of 1998, the Respondent entered his appearance in the *Izvestiacase* as counsel for one of the defendants, Vladimir Nadeine, whose article in the *Izvestia* newspapers allegedly defamed Mr. Konanykhine. The Respondent filed an answer to Mr. Konanykhine's motion for judgment and requests for admissions.
4. In November of 1999, Mr. Szymkowicz served requests for discovery on Mr. Nadeine. Mr. Nadeine's deposition was scheduled for November 17, 1999, but did not occur. Mr. Szymkowicz filed a motion to compel Mr. Nadeine's response to the discovery requests and on December 3, 1999, the Court granted the motion. On December 9, 1999, only four days before the trial, the Respondent filed Mr. Nadeine's answers to the discovery request. On December 10, 1999, by agreement between Mr. Szymkowicz and the Respondent, Mr. Nadeine was dismissed without prejudice as a defendant in the *Izvestiacase*. On December 21, 1999, despite this dismissal and the fact that the December motion to compel had been issued against Mr. Nadeine, the

- Respondent's own client, the Respondent filed two motions for sanctions against Mr. Konanykhine. These motions were dismissed.
5. On December 13, 1999, the jury found in favor of the Plaintiff, Mr. Konanykhine, in the *Izvestia* case and awarded him a judgment of \$33,500,000.00. Judge William T. Newman entered the final order in the case on December 16, 1999. On December 13, 1999, during the trial in the *Izvestia* case (during which no counsel appeared on behalf of *Izvestia*), the Respondent made an oral motion for *amicus curiae* involvement, in full view and hearing of the jury, on behalf of Mr. Nadeine, even though Mr. Nadeine had been dismissed from the case.
 6. Also on December 13, 1999, the Respondent filed a motion for judgment against Mr. Konanykhine on behalf of Mr. Nadeine, alleging that Mr. Konanykhine had induced Mr. Nadeine to publish his article about Mr. Konanykhine, for which Mr. Konanykhine had always intended to file the defamation suit against Mr. Nadeine. The motion included claims for fraud, intentional infliction of emotional distress, tortious interference with a contractual relationship and malicious prosecution.
 7. On December 18, 1999, Mr. Szymkowicz wrote to the Respondent, requesting that he dismiss Mr. Nadeine's suit against Mr. Konanykhine because, as presented, the case did not state facts upon which relief could be granted. On December 21, 1999, and again on December 26, 1999, the Respondent wrote to Mr. Szymkowicz to offer terms of settlement and mutual releases of all claims.
 8. On December 28, 1999, Mr. Szymkowicz, on behalf of Mr. Konanykhine, filed a demurrer, plea in bar, motion for bill of particulars, counterclaim and motion for sanctions in Mr. Nadeine's case against Mr. Konanykhine.
 9. On December 23, 1999, even though his client Mr. Nadeine had been dismissed from the case, and even though the Respondent had been present for at least a portion of the trial, the Respondent filed a motion to disclose the identity of the court reporter who had recorded the *Izvestia* trial on December 13, 1999. On December 30, 1999, and January 3, 2000, the Respondent wrote to Mr. Szymkowicz demanding clarification of "questionable statements" that Mr. Konanykhine made during the *Izvestia* trial. On January 4, 2000, Mr. Szymkowicz wrote to the Respondent that his client would not comment on the Respondent's allegations.
 10. On January 5, 2000, the Respondent filed a motion for reconsideration of the *Izvestia* judgment, supposedly on behalf of Mr. Nadeine, even though Mr. Nadeine had been dismissed as a defendant in the suit by the Court. The Respondent also wrote to Mr. Szymkowicz informing him that if Mr. Konanykhine paid Mr. Nadeine \$475,000.00, he and Mr. Nadeine would release both Mr. Konanykhine and Mr. Szymkowicz from liability, even though Mr. Szymkowicz was not a party to the suit. The Respondent also stated that he was ninety-five to ninety-nine percent sure that the Court would grant his motion to revoke the judgment in favor of Mr. Konanykhine, and possibly would dismiss the suit with prejudice. On or about January 10, 2000, Mr. Nadeine terminated the Respondent's legal services. On January 13, 2000, after the Clerk's Office had closed, the Respondent attempted to remove his motions from the Court's January 14, 2000 docket, but without success. He also filed a motion to withdraw as counsel for Mr. Nadeine in Mr. Nadeine's suit against Mr. Konanykhine. On January 14, 2000, Mr. Szymkowicz appeared to argue the motions. The Respondent did not appear. The court sanctioned the Respondent and his client \$1,000.00 for filing the motions. However, these sanctions were later rescinded.
 11. Also on January 14, 2000, the Respondent filed a notice of appeal on behalf of *Izvestia* after receiving a telephone message from *Izvestia*. On that same day, Mark MacDougall, Esquire, of the firm Akin, Gump, Strauss, Hauer & Field, LLP, called Mr. Szymkowicz and informed him that his firm represented *Izvestia* in its appeal of the verdict. At a later time, Mr. MacDougall did state the Respondent had been briefly retained by *Izvestia* and then replaced his firm.
 12. Also on January 14, 2000, Mr. Nadeine faxed a letter to Mr. Szymkowicz, informing him that as of January 10, 2000, he had released the Respondent as his counsel in his suit against Mr. Konanykhine, and that he would be representing himself until he found new counsel. Mr. Nadeine stated he would also seek reconsideration of several motions which the Respondent had filed in the suit against Mr. Konanykhine. On January 20, 2000, the Court entered the order allowing the Respondent's withdrawal as counsel for Mr. Nadeine. By a formal agreement dated January 26, 2000, Mr. Nadeine rehired the Respondent. Prior to that date, on January 14, 2000, Mr. Nadeine contacted the Respondent to apologize for terminating his services and began the process of rehiring him.
 13. On January 19, 2000, the Akin Gump firm filed a notice of appeal of the *Izvestia* verdict, without mentioning the notice of appeal previously filed by the Respondent. Akin Gump filed the notice of appeal one day too late. Subsequently, the Akin Gump firm relied upon the notice of appeal filed by the Respondent in pursuing the appeal.
 14. The trial in Mr. Konanykhine's suit against Kommersant Publishing began on January 19, 2000. That morning, the Respondent entered his appearance as counsel for Kommersant, having been retained by the company just that morning. At the trial, the jury found in favor of Mr. Konanykhine and awarded him \$3,000,000.00, less than the \$200,000,000.00 requested.
 15. By second facsimile letter, Mr. Nadeine informed Mr. Szymkowicz that the Respondent's representation of him had ended in the *Izvestia* case when Mr. Nadeine was dismissed from the *Izvestia* case, noting that the dismissal was without his knowledge or consent. Mr. Nadeine also requested copies of the motions that the Respondent had supposedly filed on Mr. Nadeine's behalf in the *Izvestia* case, without Mr. Nadeine's consent. Later, Mr. Nadeine contradicted these assertions.
 16. On January 28, 2000, Mr. Szymkowicz filed a motion to strike the notice of appeal of the *Izvestia* verdict and the pleadings in the suit against Mr. Konanykhine filed by the Respondent, but the court denied his motion. On February

- 10, 2000, the Respondent filed a motion to withdraw as counsel for *Izvestia*, with the Akin Gump firm entering its appearance as substitute counsel.
17. On January 31, 2000, the Respondent filed a demurrer in Mr. Nadeine's case against Mr. Konanykhine. In this demurrer, he attempted to use the fact that the statute of limitations had run as a defense to Mr. Konanykhine's claims. Under § 8.01-235 of the *Code of Virginia*, this defense cannot be established by a demurrer. On February 9, 2000, the Respondent filed a Response to Mr. Konanykhine's motion to strike his pleadings, including an affidavit from Mr. Nadeine confirming and ratifying the pleadings filed by the Respondent.
 18. On March 2, 2000, on behalf of Mr. Konanykhine, Mr. Szymkowicz served a first consolidated discovery request on Mr. Nadeine, through the Respondent, in the suit against Mr. Konanykhine. On March 23, 2000, the Respondent served his client's response to the request. In the response, Mr. Nadeine refused to respond to all eighteen interrogatories propounded. On March 24, 2000, Mr. Szymkowicz filed a motion to compel Mr. Nadeine's responses to discovery. On March 31, 2000, the Court granted the motion and gave Mr. Nadeine seventeen days to file a proper response. On April 17, 2000, the Respondent filed a second response to interrogatories for Mr. Nadeine without Mr. Nadeine's signature under oath as required by Rule 4:8 of the *Rules of Virginia Supreme Court*. On May 17, 2000, Mr. Szymkowicz filed a second motion to compel, which was set for hearing on May 26, 2000. The Respondent failed to appear at that hearing and the Court sanctioned him \$1,050.00.
 19. The Respondent filed a notice of appeal of the Kommersant verdict. Mr. Szymkowicz filed a motion for a protective order to prevent the filing of the Kommersant trial transcript. The motion was scheduled for hearing on March 31, 2000, but the Court did not hear arguments that day. The transcript was filed on March 31, 2000. The Respondent did not file a petition for appeal of the Kommersant verdict by the May 12, 2000, deadline. The Respondent states that he did not do so because the *Izvestia* judgment was vacated on March 10, 2000.
 20. On June 13, 2000, the Court dismissed with prejudice Mr. Nadeine's claims of fraud, intentional infliction of emotional distress, and tortious interference with a contract against Mr. Konanykhine, and the malicious prosecution claim without prejudice. The Court sanctioned the Respondent and Mr. Nadeine \$5,000.00 for filing the claims.
 21. In a deposition on June 23, 2000, Mr. Nadeine said that he had no knowledge that his claims against Mr. Konanykhine had been dismissed on June 13, 2000. Also on June 23, 2000, the Respondent filed a motion for sanctions in Mr. Nadeine's suit against Mr. Konanykhine. The Respondent also filed an amended motion for judgement in the case which contained only the claim of malicious prosecution. On July 28, 2000, the Court granted Mr. Konanykhine's demurrer, dismissed the case, and awarded \$22,680.61 in sanctions against the Respondent. The Respondent filed a motion for reconsideration which was denied on August 11, 2000. The Court again sanctioned the Respondent, in the amount of \$2,000.00. On August 31, 2000, the Court found the Respondent in contempt of court for his failure to pay any of these sanctions. The Respondent states that the order requiring him to pay sanctions had no date by which the payments were due.
 22. The Respondent filed a notice of appeal of the dismissal of the case against Mr. Konanykhine. He filed his statement of facts for appeal on September 25, 2000, after the statutory due date had passed. By order entered October 13, 2000, the Court ruled that the Respondent's statement of facts for appeal, in addition to being untimely filed, was incomplete, and struck it from the record.
 23. By order entered November 9, 2000, Judge Newman found the Respondent in contempt of court.
 24. On November 27, 2000, the Respondent filed a motion to vacate the November 9, 2000 order of contempt. By opinion dated September 25, 2001, the Virginia Court of Appeals affirmed the contempt order of November 9, 2000. The Respondent then attempted to appeal the Virginia Court of Appeals ruling to the Virginia Supreme Court. His petition for appeal was denied *certiorari*. The Respondent then filed a petition for rehearing which was denied by order entered June 7, 2002.
- Virginia State Bar Docket Number 01-052-0361**
25. In 1996, the Complainant, Thomas F. Koerner, Jr., Esq., filed a libel action on behalf of his client, Zahid Hameedi, against a publication, the *Urdu Times* in the Circuit Court of Arlington County, *Hameedi v. Urdu Times, Inc., et al*, At Law 96-765. On or about June 18, 1999, the Respondent, counsel for the defendants, filed a motion to have the case dismissed, with the consent of Mr. Hameedi. The agreed consent order reserved the issue of attorney's fees for later consideration.
 26. On June 25, 1999, Judge William T. Newman, Jr. heard arguments by counsel on the Respondent's motion for attorney's fees and then denied the motion. However, the judge did not direct either counsel to prepare an order, and did not enter an order of his own.
 27. On August 12, 1999, Judge Benjamin Kendrick entered the consent order, signed by both parties, dismissing the case, and reserving the the issue of attorneys fees for later consideration. On August 17, 1999, Judge Kendrick entered another order, prepared by the Respondent and filed by the Respondent with the original motion, which order dismissed the case but granted the Respondent's motion for attorney's fee for his client in the amount of \$1,870.00. The Complainant had not signed that order. On September 30, 1999, the Respondent faxed the Complainant a letter regarding the attorney's fees ordered by Judge Kendrick. After nearly a year had passed without any action by opposing counsel, on August 10, 2000, the Respondent faxed the Complainant another letter demanding payment of the attorney's fees. On September 22, 2000, the Complainant filed a motion to vacate Judge Kendrick's order of August 17, 1999, and enter Judge Newman's original ruling of June 25, 1999, on the basis of a clerical error.

28. On October 6, 2000, the Complainant's motion was heard. Judge Kendrick vacated and set aside his order of August 17, 1999.
29. The Respondent appealed the order of October 6, 2000 to the Virginia Supreme Court, claiming that Judge Kendrick lacked jurisdiction to set aside the order he entered on August 17, 1999, granting attorney's fees. During oral argument, a Supreme Court justice asked the Respondent if he had had an obligation to be honest and candid with Judge Kendrick. The Supreme Court determined that Judge Kendrick did have jurisdiction to set aside the order granting attorney's fees because of a clerical error. The Court affirmed Judge Kendrick's vacation of his August 17, 1999, order on the basis of a clerical error only. The Court noted that it was troubled by the position the Respondent took before Judge Kendrick.

Charges Certified to the Disciplinary Board

The Subcommittee Certification charged the Respondent with the following ethical violations from the Disciplinary Rules and analogous Rules of Professional Conduct for the conduct that occurred in 2000 and thereafter:

DR 1-102. Misconduct.

- (A) A lawyer shall not:
(3) and (4) * * *

DR 6-101. Competence and Promptness.

- (A) A lawyer shall undertake representation only in matters in which:
(1), (2) (B), (C) and (D) * * *

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

- (A) In his representation of a client, a lawyer shall not:
(1), (2), (3) and (5) * * *

RULE 1.1 Competence

* * *

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 3.1 Meritorious Claims And Contentions

* * *

RULE 3.4 Fairness To Opposing Party And Counsel

- A lawyer shall not:
(i) * * *

RULE 8.4 Misconduct

- It is professional misconduct for a lawyer to:
(b) and (c) * * *

Disciplinary Rule Findings

After hearing the testimony present, the arguments of the Bar and the Respondent, and having considered the stipulations entered into by the parties and the documentary evidence presented, as well as the Rules of Court, statutes and calendars

of which the Board took judicial notice, the Board makes the following findings:

VSB Docket No. 01-052-0361 (aka "the Koerner matter")

In VSB Docket No. 01-052-0361 (aka "the Koerner matter"), the Board finds that the Bar failed to prove by clear and convincing evidence that Mr. Konan had violated DR 7-102(A)(1) and Rule 3.4. The Board further finds, however, that the Bar proved by clear and convincing evidence that Mr. Konan violated DR 1-102(A)(3) and (4) prior to 1999 and analogous Rule 8.4 for the period when the Rules of Professional Conduct were effective in 2000.

While basing its decision upon all the evidence adduced in this matter at the hearing, as well as the documentary evidence, the Board was particularly influenced in the Koerner matter by the fact that the Respondent pursued collection of the attorneys' fees supposedly awarded by Judge Newman when he knew or should have known that the Order awarding the attorneys' fees had been entered in error. His client's motion for attorneys' fees had previously been denied by one judge. (Stipulation ¶26.) The case had already been dismissed, yet the order granting the attorneys' fees referred again to dismissal of the action. (VSB Exhibits 81 and 82.) In addition, Mr. Konan had done nothing to bring on for hearing the issue of the attorneys' fees such as a motion for reconsideration. There were no endorsement of the sketch order by plaintiff's counsel, nor was there a recitation in the order that the court was dispensing with endorsement as was required by the Rules of the Supreme Court of Virginia. (VSB Exhibit 82.)

Mr. Konan tried to excuse his actions in pursuing collection of the \$1870 by saying that his initial fax to the plaintiff's counsel simply asked him how he or his client plans to "handle this." (VSB Exhibit 83). This disingenuous explanation is belied, however, by the testimony of Mr. Koerner in which he described their subsequent telephone conversation as involving a demand by Mr. Konan to pay the attorneys' fees. It is also belied by the subsequent written communication from Mr. Konan in which he stated that "I wrote to you about this needed payment last year, but we still have not received any payment or payment plan . . ." (VSB Exhibit 84.)

After plaintiff's counsel filed a motion to vacate the order awarding attorneys' fees, Mr. Konan further engaged in unethical conduct by failing to disclose in his response the salient fact that one judge had already denied the request for attorneys' fees. (VSB Exhibit 87.) After the order was vacated (VSB Exhibit 85), Mr. Konan pursued the matter by appealing the decision to the Virginia Supreme Court. When asked by one of the justices of the Supreme Court whether he owed a duty of candor to the circuit court judge regarding the denial of the request of attorneys' fees (having failed to mention it in his argument), Mr. Konan responded that his duty was to his client. This evidence was presented through the testimony of Mr. Koerner and was un rebutted by Mr. Konan. The Supreme Court commented in its order that it was "troubled by the position taken by counsel before that court." (VSB Exhibit 90.)

The Board felt that the conduct proven by the Bar in connection with the Koerner matter was egregious and was a violation of DR 6-102(A)(3) and (4) in that it was a deliberately

wrongful act that reflects adversely on the lawyer's fitness to practice law, as well as being deceitful.

VSB Docket No. 00-052-3465 (aka “the Szymkowicz matter” or “Russian newspaper cases”)

In VSB Docket No. 00-052-3465 (aka “the Szymkowicz matter” or “Russian newspaper cases”), the Board finds that the Bar failed to prove violations of DR 7-102(A)(1) and Rule 3.4, but finds that the Bar proved violations of the following rules by clear and convincing evidence: DR 1-102(A)(3) and (4) and analogous Rule 8.4 covering the conduct occurring subsequent to adoption of the Rules of Professional Conduct; DR 6-101 and analogous Rules 1.1, 1.3 and 1.4; and DR 7-102(A)(2), (3), and (5), and analogous Rule 3.1.

While basing its decision upon all the evidence adduced in this matter at the hearing, as well as the documentary evidence, the Board was persuaded that Mr. Konan had engaged in violations of these disciplinary rules by his pattern and practice of forging ahead with positions that were not well based in law or fact. For instance, after his client, Mr. Nadeine had been dismissed from a lawsuit brought by Alexandre Konanykhine against *Izvestia* Newspapers and Mr. Nadeine (hereinafter the “*Izvestia* lawsuit”), Mr. Konan appeared in court during the trial and asked the court to permit him to participate as an *amicus curiae*. His brief filed in support of that motion (VSB Exhibit 14) referred to Rule 5:30 of the Rules of the Supreme Court as the predicate for this action. Even at the time of the Disciplinary Board hearing, Mr. Konan testified that Supreme Court Rule 5:30 was the basis for filing an *amicus curiae* brief in circuit court. When it was pointed out to him that Rule 5:30 dealt with procedure for *amicus curiae* in the Supreme Court, Mr. Konan then resorted to arguing that there was no authority that established he could not request the trial court's permission to appear as an *amicus curiae*.

Another example of Mr. Konan's ill-founded and vexatious actions was his filing a motion for sanctions in the *Izvestia* lawsuit, again after his client had been dismissed, seeking an award of attorneys' fees and expenses incurred in defense of that matter amounting to \$6,315. (VSB Exhibit 18.) One of the bases of the motion for sanctions was that Mr. Konanykhine was in contempt of court for refusing to sit for deposition as ordered by the court. (*Id.*) There was no order requiring Mr. Konanykhine to sit for deposition. There was no order finding that Mr. Konanykhine was in contempt of court. There was an order that required Mr. Konan's client, Mr. Nadeine, to sit for depositions, “when both Plaintiff and Defendant Nadeine can be present, no later than Friday, December 10, 1999.” (VSB Exhibit 12.)

Mr. Konan also filed a motion to disclose the identity of the court reporter who transcribed the *Izvestia* trial (VSB Exhibit 19) after his client had been dismissed from the case. The motion for sanctions and the motion to disclose the identity of the court reporter, as well as two other motions filed by Mr. Konan seeking to overturn the *Izvestia* judgment (VSB Exhibit 25), although he was not representing any party in the litigation at that time, were denied by the court. (VSB Exhibit 30.)

Mr. Konan's services were terminated by his client, Mr. Nadeine in January of 1999. (VSB Exhibit 14.) Mr. Szymkowicz,

Mr. Konanykhine's attorney, received a fax from Mr. Nadeine on January 14, 2000, notifying him of this fact. (VSB Exhibit 28.) In this fax, Mr. Nadeine stated that he would seek reconsideration of several recent legal motions, “launched by my former attorney without my knowledge and approval.” Mr. Konan pointed to an affidavit attached to his answer to the Szymkowicz complaint as being proof that Mr. Nadeine was lying when he made the statement that he (Mr. Konan) had acted without authorization. Upon further questioning of Mr. Konan by the Board, it was clear that the affidavit in the Disciplinary Board's file attached to the answer was not executed by Mr. Nadeine, although Mr. Konan indicated that an executed copy of the affidavit was included in the materials as an exhibit. Later in the hearing, Mr. Nadeine pointed to VSB Exhibit 44 as being the same affidavit. However, that affidavit, while similar in content is dated February 8, 2000, as opposed to the affidavit attached to the answer, which is dated February 4, 2000. Mr. Konan frankly admitted that he drafted the affidavit, which the Board felt was a self-serving document. The Board is of the opinion that the earlier fax by Mr. Nadeine was a more reliable indicator of what had actually transpired at the time. This conclusion is bolstered by another memorandum from Mr. Nadeine, albeit undated, in which he states “his duty to represent me was terminated after he agreed to my dismissal from the hearing *KONANYKHINE v. IZVESTIA* without my knowledge and approval.” (VSB Exhibit 34.) Mr. Nadeine further stated, “As for this time, Mr. Konanykhine failed to provide me with documents pertaining to all the Motions made upon my name after December 15, 1999.” Mr. Szymkowicz testified that he believed Mr. Nadeine had mistakenly referred to Mr. Konanykhine in this sentence, when he meant to refer to Mr. Konan, because Mr. Konanykhine, Mr. Szymkowicz's client, had never provided Mr. Nadeine with any documents.

Mr. Konan also filed a motion for judgment against Mr. Konanykhine on behalf of Mr. Nadeine for “Fraud, Malicious Lawsuit, Interference with Contract Business and Intentional Infliction of Emotional Distress.” (VSB Exhibit 15.) Plaintiff's counsel, Mr. Szymkowicz, wrote to Mr. Konan and asked that the lawsuit be dismissed as not properly founded in law or fact. (VSB Exhibit 16.) Mr. Konan's response to this letter was to write and demand \$725,000 from Mr. Konanykhine (VSB Exhibit 17), which demand was later reduced to \$475,000. (VSB Exhibit 25.) Mr. Szymkowicz testified that he felt these letters were basically extortion attempts on the part of Mr. Konan, in that the lawsuit filed on Mr. Nadeine's behalf was not well based in fact or law and the letters referred to dismissal of Mr. Konan's claims against he and his client, when there were no such claims pending or asserted.

Another example of Mr. Konan engaging in wrongful conduct by playing fast and loose with the truth is demonstrated by an order entered by the Arlington County Circuit Court on March 13, 2000, granting Mr. Konanykhine's motion to strike statements which falsely claimed that he had violated a court order. (VSB Exhibit 47.) The statements were made by Mr. Konan in pleadings filed on behalf of Mr. Nadeine, the plaintiff in that lawsuit.

After filing the lawsuit against Mr. Konanykhine on behalf of Mr. Nadeine, Mr. Konan failed to follow through in answering discovery propounded by the defendant. Because of this, the defendant was forced to file a motion to compel. That

motion was granted on March 31, 2000. (VSB Exhibit 48.) Mr. Konan then failed to comply with the court's order of March 31, 2000, which resulted in the court entering a further order on May 26, 2000, granting a second motion to compel and sanctioning Mr. Konan and his client \$1,050. (VSB Exhibit 49.) No testimony or explanation was provided by Mr. Konan at the hearing before the Disciplinary Board explaining why the failure to comply with the first order granting the motion to compel was anything but the result of incompetence on his part.

Meanwhile, Mr. Konanykhine had filed responsive pleadings to the Nadeine lawsuit, seeking to have it dismissed for failure to state a claim and other reasons. (VSB Exhibit 21.) The Nadeine lawsuit against Mr. Konanykhine was dismissed by the court on June 13, 2000, although Mr. Konan was permitted to amend the "Malicious Lawsuit" count if he could plead sufficient facts to state a claim. (VSB Exhibit 51. The court awarded \$5,000 to Mr. Konanykhine for attorneys' fees against Mr. Konan and his client for having to defend against a motion for judgment which had been filed without any basis in fact or law. (*Id.*) Mr. Konan did file an Amended Motion for Judgment, but it was also dismissed, and the court awarded \$22,680.61 against Mr. Konan alone for filing pleadings "which were not well grounded in fact or warranted by existing law or a good faith argument for the extension, modification or reversal of existing law in violation of Va. Code § 8.01-271.1." (VSB Exhibit 55.) After Mr. Konan filed a motion for reconsideration of the issue of the sanctions awarded (VSB Exhibit 56), the court denied the motion and awarded Mr. Konanykhine an additional \$2,000 in sanctions from Mr. Konan, finding that the motion for reconsideration was also in violation of Va. Code § 8.01-271.1.

Mr. Konan failed to pay the sanctions awarded against him to Mr. Konanykhine in a timely fashion. After a hearing in which it was found that he had failed to establish an inability to pay the sanctions, Mr. Konan was found to be in contempt of court. (VSB Exhibit 62.) After Mr. Konan promised to post bond to appeal the sanctions awards, but failed to do so, he was then found to have willfully attempted to mislead the court in a filing in connection with an appeal of the award of sanctions, and the contempt and sanctions awards were reinstated. (VSB Exhibit 68.) Appeals of the court's orders resulted in the orders being affirmed by the Virginia Supreme Court. (VSB Exhibits 70-76.)

Mr. Konan defended his actions in the *Nadeine v. Konanykhine* case, including the actions that resulted in the five orders assessing sanctions against him and being held in contempt of court, as justified and appropriate, on the basis that they were undertaken in defense of his clients. He expressed no remorse for his conduct during the liability phase of the hearing for his actions.

Another defamation lawsuit brought by Mr. Konanykhine against Kommersant Publishing was defended by Mr. Konan, who was hired at the last moment before trial. A 3 million dollar judgment resulted, which Mr. Konan was supposed to appeal. The appeal was dismissed because the transcript was not timely filed. Mr. Konan claimed that he did not file the transcript because his client had decided not to pursue the appeal, but this argument simply does not make sense because the transcript was filed, albeit late.

The facts discussed above are examples of the conduct engaged in by Mr. Konan. There was additional testimony and documentary evidence of similar behavior. It was the totality of the evidence, as established by the testimony and the documentary evidence, that persuaded the Board that Mr. Konan had engaged in a pattern and practice of ill founded and vexatious litigation, and that he did not consider himself bound by any duty of truthfulness. He played fast and loose with the truth in his factual representations to the court, as well as in his legal pleadings, irrespective of whether they were well based in law or fact.

After the Board made its finding that Mr. Konan had violated the disciplinary rules set forth above, it learned of his disciplinary record. Upon finding that Mr. Konan had been found guilty of similar behavior in another matter and received a public reprimand (in addition to a private reprimand in another matter) and after hearing Mr. Konanykhine testify of the impact Mr. Konan's actions had upon him, as well as Mr. Konan's testimony during the sanctions phase, the Board voted to revoke Mr. Konan's license to practice law, feeling that he was a danger to the integrity of the legal system in Virginia.

ACCORDINGLY IT IS ORDERED that the license of Raymond William Konan be, and the same is hereby REVOKED effective June 27, 2003. It is further ORDERED that, as directed in the Board's June 27, 2003, Summary Order in this matter, Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13.M, of the Rules of the Supreme Court of Virginia. All issues concerning the adequacy of the notice and arrangements required by the Summary Order shall be determined by the Board.

ENTERED this 10th day of July, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Karen A. Gould, 2nd Vice Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
KHALIL WALI LATIF
 VSB DOCKET NO. 02-031-3489

ORDER

These matters came before the Virginia State Bar Disciplinary Board on May 21, 2003, to be heard on an Agreed Disposition between the Virginia State Bar and the respondent Khalil Wali Latif.

The Agreed Disposition was considered via teleconference by a duly convened panel of the Disciplinary Board consisting of Thaddeus T. Crump, lay member, and attorneys James L. Banks, Jr., Bruce T. Clark, Richard J. Colten and Roscoe B. Stephenson, Vice Chair, presiding. Mr. Latif and his counsel Andrew W. Wood participated in the teleconference. Bar Counsel Barbara Ann Williams represented the Virginia State Bar.

Having considered the Agreed Disposition and the representations of the parties, the Disciplinary Board accepts the

Agreed Disposition and finds by clear and convincing evidence as follows:

I. Findings of Fact

1. Alan Eugene Barnett, Sr., now known as Khalil Wali Latif or Khalil Abdal Latif, was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.
2. At all times relevant to these proceedings, Mr. Latif was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.
3. In 1995, Mr. Latif was appointed to represent the complainant for possession of illegal drugs.
4. The complainant was convicted following a jury trial and sentenced to serve 2 1/2 years.
5. The complainant requested Mr. Latif to appeal the conviction.
6. Mr. Latif noted an appeal but did not perfect the appeal by filing a petition for appeal in a timely manner.
7. The appeal was dismissed by order entered on October 23, 1995.
8. Mr. Latif did not tell the complainant that the appeal had been dismissed.
9. Instead, on November 21, 1995, Mr. Latif wrote the complainant, indicating that in Mr. Latif's professional judgment there were no appealable issues but suggesting that the complainant might want to pursue a habeas petition for ineffective assistance of counsel or a sentence reduction motion.
10. The complainant wrote Mr. Latif on or about January 15, 1996, indicating that he wanted to explore obtaining a sentencing reduction.
11. The complainant wrote Mr. Latif on May 27, 1997, requesting a copy of his file.
12. Mr. Latif did not correspond further with the complainant or take any action on his behalf.
13. The complainant learned from the Court of Appeals by letters dated February 7, and April 24, 2002, that his appeal had been dismissed.
14. The complainant filed a bar complaint against Mr. Latif on or about May 9, 2002.

II. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct under the Code of Professional Responsibility:

DR 6-101. Competence and Promptness.

III. Disposition

Accordingly, the Disciplinary Board, Khalil Wali Latif, his counsel, and Bar Counsel agree that a **Public Reprimand** effective upon entry of this order represents an appropriate sanction as if this matter were to be resolved via an evidentiary hearing before the Disciplinary Board, taking into consideration the Respondent's disciplinary record, which includes a dismissal with terms arising from Mr. Latif's failure to file another criminal appeal.

Enter this Order this 23rd day of May, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, Presiding Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTERS OF
KHALIL WALI LATIF
 VSB DOCKET NOS. 03-000-0376, 02-031-2876,
 02-031-3117, 02-031-3344, 02-031-3345, 03-
 031-0175, 03-031-0895 AND 03-031-0920

ORDER

These matters came before the Virginia State Bar Disciplinary Board on May 21, 2003, to be heard on an Agreed Disposition between the Virginia State Bar and the respondent Khalil Wali Latif.

The Agreed Disposition was considered via teleconference by a duly convened panel of the Disciplinary Board consisting of Thaddeus T. Crump, lay member, and attorneys James L. Banks, Jr., Bruce T. Clark, Richard J. Colten and Roscoe B. Stephenson, Chair, presiding. Mr. Latif and his counsel Andrew W. Wood participated in the teleconference. Bar Counsel Barbara Ann Williams represented the Virginia State Bar.

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

I. General Findings of Fact

1. Alan Eugene Barnett, Sr., now known as Khalil Wali Latif or Khalil Abdal Latif, was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.
2. Mr. Latif's license to practice law in the Commonwealth of Virginia was suspended between September 25, 2002, and October 2, 2002.
3. At all other times relevant to these proceedings, Mr. Latif was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.
4. At all times relevant to these proceedings, Mr. Latif was a sole practitioner, who handled mostly bankruptcy and criminal matters.

5. Between March 1998 and October 2002, except for four or five months in 1999, Latrice T. Maddox worked under Mr. Latif's direct supervision as his secretary.
6. In September 1994, after pleading guilty, Ms. Maddox was convicted of feloniously taking goods and property from Food Lion, received a 12 month suspended sentence, was fined and placed on supervised probation for one year.
7. Between October 2001 and late May 2002, Kanitra Jennings worked under Mr. Latif's direct supervision as his receptionist.
8. Ms. Maddox opened Mr. Latif's mail after picking it up from the post office, and Ms. Jennings logged the mail.
9. Between August 1, 2001, and September 30, 2002, Mr. Latif maintained attorney trust account number 0000 1077 6159 at Bank of America in Farmville, Virginia.
10. Between August 1, 2001, and September 30, 2002, Mr. Latif had sole signatory authority on his attorney trust account and custody of the trust account statements.
11. At all times relevant to these proceedings, the only trust account records that Mr. Latif had were deposit slips, checkbook stubs and bank statements.
12. At all times relevant to these proceedings, Mr. Latif did not keep time sheets or subsidiary ledgers.
13. At all times relevant to these proceedings, Mr. Latif did not reconcile his trust account records.
14. Between June 1, 2001 and September 30, 2002, Mr. Latif maintained law firm operating account number 0000 1077 6146 at Bank of America in Farmville.
4. A copy of the Order and Memorandum Opinion entered by Judge Norman K. Moon on August 5, 2002, is attached hereto and incorporated by reference.
5. In addition to ordering Mr. Latif to pay a fine of \$950 the bankruptcy court had previously imposed plus an additional fine of \$400, the federal district court barred Mr. Latif from practicing law in any federal district court, bankruptcy court or other federal court within the Western District of Virginia for a period of eight months.
6. The federal district court ordered that transcripts of the three evidentiary hearings and a certified copy of the contempt order be sent to the Virginia State Bar.
7. On August 8, 2002, the federal district court amended the order to reflect that Mr. Latif still had not paid the \$50 civil contempt fine imposed by the bankruptcy court on February 19, 2002, although Mr. Latif maintains that he instructed Ms. Maddox to send the check to the bankruptcy court.
8. On August 13, 2002, the federal district court stayed its previous orders of August 5 and 8, 2002, until September 27, 2002, but did not advise the Virginia State Bar of the stay.
9. Mr. Latif filed a motion for rehearing on August 14, 2002.
10. On September 25, 2002, based upon the suspension order entered on August 5, 2002, the Disciplinary Board suspended Mr. Latif's license to practice law in Virginia.
11. The federal district court heard Mr. Latif's motion to rehear on September 27, 2002, and took the matter under advisement.

II. VSB Docket No. 03-000-0376

Complainant: United States District Court for the Western District of Virginia, Lynchburg Division

A. Findings of Fact

1. On August 5, 2002, the United States District Court for the Western District of Virginia, Lynchburg Division, held Mr. Latif in civil and criminal contempt.
2. Before Mr. Latif was held in contempt, the federal district court and the United States Bankruptcy Court for the Western District of Virginia, Lynchburg Division, afforded him nine months and six different hearings to show why he should not be held in contempt.
3. The matters before the federal district court were Mr. Latif's alleged failure to take court ordered action, repeated failure to appear in court when ordered to do so, failure to pay court imposed fines and failure to file a written response to the contempt allegations after the federal district court ordered him to do so.
13. By failing to maintain the requisite trust account records and reconcile the records he did have, Mr. Latif violated the disciplinary rules governing safekeeping of client property.
14. In addition to violating the disciplinary rules governing safekeeping of client property, Mr. Latif failed to make reasonable efforts to ensure that the conduct of the nonlawyer assistants working under his direct supervision was compatible with his professional obligations as a lawyer.
15. After discovering gross irregularities in his attorney trust account and office procedures, Mr. Latif failed to take prompt remedial action and exercise sufficient supervisory authority to afford reasonable assurance that the conduct incompatible with his professional obligations as a lawyer would cease.

16. On or about October 30, 2001, a bankruptcy court employee advised Mr. Latif that he had to pay all bankruptcy court fees in cash, or by cashiers' checks or money orders, because two checks drawn on his attorney trust account had been returned for insufficient funds.
17. During the course of the same conversation with the bankruptcy court clerk on or about October 30, 2001, Mr. Latif also discovered that a cashier's check in the amount of \$305 had been made in his name and conveyed to the bankruptcy court along with a letter on his letterhead, purportedly signed by Ms. Maddox and dated October 2, 2001.
18. Mr. Latif testified in federal district court on May 21, 2002, that Ms. Maddox's signature on the October 2 letter was a forgery, but indicated that, after asking Ms. Maddox whether there had been unauthorized withdrawals on his account, he let the unauthorized withdrawal of funds go because "it sounded so ludicrous."
19. Mr. Latif revisited his failure to investigate the unauthorized withdrawal of funds and letter forged on his office letterhead, remarking "You know, Judge, initially when it happened, that's why I said, well, I'll just continue to pay my filing fees, because I—it was so bazaar [sic]."
20. Ms. Maddox subsequently testified that she had no knowledge of the unauthorized withdrawal of funds, that her signature had been forged on the October 2 letter and that she would not have known whether there were overdrafts on Mr. Latif's trust account because she did not do the books and Mr. Latif kept the bank statements.
21. On May 17, 2002, because Mr. Latif had previously failed to appear for three show cause hearings ordered by the bankruptcy court, the federal district court entered an order compelling the U.S. Marshals to take Mr. Latif into custody for a show cause hearing before the federal district court on May 22, 2002.
22. When he appeared in court, Mr. Latif testified that he did not receive the show cause order mailed to him on May 17, 2002, and knew nothing about the show cause hearing until the United States Marshals contacted his office that morning.
23. A bankruptcy court employee testified that the bankruptcy court had mailed Mr. Latif three orders directing him to appear for show cause hearings on November 15, 2001, February 7, 2002, and May 16, 2002, and that he failed to appear for all three hearings.
24. After Mr. Latif claimed that he filed a motion to continue the November 15th show cause hearing and that the bankruptcy court had entered an order continuing the matter, the federal district court advised Mr. Latif that the bankruptcy court had never received a motion to continue and did not enter an order continuing the matter.
25. Ms. Maddox subsequently testified that she spoke to the bankruptcy judge's secretary about the November 15th show cause hearing, obtained a new hearing date of December 13, 2001, prepared a motion to continue the hearing and gave it to Ms. Jennings to mail.
26. Ms. Maddox admitted that she never received an order from the bankruptcy court continuing the show cause hearing to December 13, 2001.
27. When the federal court inquired whether Mr. Latif appeared before the bankruptcy court to show cause on December 13, 2001, Mr. Latif testified that he did not appear because the judge's secretary, Barbara Okes, told Ms. Maddox that he did not need to appear because he had complied with the bankruptcy court's order.
28. After Mr. Latif claimed that he knew nothing about the May 16th show cause hearing before the bankruptcy court, the federal district court produced a certified mail receipt showing that Ms. Maddox had signed for the show cause order on May 3, 2002.
29. When Mr. Latif questioned whether the signature on the certified mail receipt was actually Ms. Maddox's signature, the court indicated that if Mr. Latif intended to claim any documents were forgeries, he needed to let the court know right away so the FBI could investigate.
30. The federal district court continued the May 21st hearing to give Mr. Latif sufficient time to prepare his response to the contempt allegations and directed Mr. Latif on the record to file a written response explaining why he had not obeyed each of the court orders in question.
31. On May 22, 2002, the court entered an order requiring Mr. Latif to file his written response by June 12, 2002.
32. When Mr. Latif appeared before the federal district court at the second show cause hearing on June 24, 2002, he had not filed a written response as ordered by the court.
33. Mr. Latif explained that he had not filed a written response because he had not received the court's order until "last week" and figured it was too late to file a response.
34. During the course of the June 24th hearing, the federal district court confirmed that the bankruptcy court had never received Mr. Latif's purported payment of a \$50 fine that the bankruptcy court imposed by order entered on January 11, 2002.
35. Mr. Latif testified that he wrote a check for \$50 on January 18, 2002, placed the \$50 check across the

bankruptcy court's order imposing the fine, and gave the check and the order to Ms. Maddox.

36. After listening to Mr. Latif's explanation of what happened, the judge asked him, "Do you still have this same secretary?" When Mr. Latif replied affirmatively, the court exclaimed, "Then why do you have the same secretary . . . Apparently the person is totally incompetent."
37. Mr. Latif then called Ms. Maddox, who testified that she sent the check with the original copy of the January 11th order to the bankruptcy court.
38. Mr. Latif admitted that the \$50 check that he allegedly sent the bankruptcy court never cleared his account.
39. Ms. Maddox denied receiving a copy of the show cause order even though she acknowledged receiving a copy of the January 11th order imposing the \$50 fine.
40. Ms. Maddox also denied receiving a copy of the order that the bankruptcy court entered on February 19, 2002, imposing additional sanctions of \$10 a day on Mr. Latif until he paid the \$50 fine.
41. The only court order that Ms. Maddox acknowledged receiving was the show cause order entered on May 2, the receipt for which, contrary to Mr. Latif's assertion that her signature was forged, she admitted she signed.
42. When the federal district court inquired at the hearing on June 24, 2002, whether Mr. Latif had ascertained if any certified mail receipts had been forged, Mr. Latif indicated that he was still attempting to do that.
43. The federal district court held a third show cause hearing on July 25, 2002.
44. At a show cause proceeding before the federal district court on July 25, 2002, Mr. Latif denied receiving a memorandum dated September 15, 2001, that the Deputy Bankruptcy Court Clerk mailed him, indicating that a \$15 check he submitted to the court for a conversion fee in a bankruptcy case had been returned for insufficient funds.
45. The \$15 check returned for insufficient funds was drawn on Mr. Latif's attorney trust account.
46. On July 25, 2002, Barbara Okes, the bankruptcy court employee with whom Ms. Maddox allegedly spoke about continuing the first show cause hearing before the bankruptcy court on November 15, 2001, testified that motions for continuances must be in writing and that she would never say that a continuance would be granted automatically or that an attorney need not appear.
47. Based upon the evidence presented at the three show cause hearings, the federal district court found that Mr. Latif's explanations of the matters before the court were not credible; that he evaded the court's questions, offered inconsistent and illogical answers and failed to admit any responsibility for his failure to act as an officer of the court; and that his actions conclusively demonstrated a lack of integrity.
48. After Mr. Latif filed a motion for rehearing, a fourth hearing was held before the federal district court on September 27, 2002.
49. On September 23, 2002, Mr. Latif submitted a written response alleging that the show cause hearing scheduled for November 15, 2001, was removed from the bankruptcy court's docket and that Ms. Okes indicated to Ms. Maddox that Mr. Latif had complied with the first show cause order issued by the bankruptcy court.
50. At the hearing before the federal district court on September 27, 2002, Mr. Latif represented to the court that a woman named Margaret from the bankruptcy court clerk's office had contacted Mr. Latif's bank and persuaded the bank to issue a certified check for \$350 from his trust account without his knowledge or approval.
51. Mr. Latif admitted that he "should have" but did not report this incident to anyone. to the court.
52. When the judge questioned Mr. Latif about the status of his investigation of the unauthorized withdrawal of funds from his account, Mr. Latif indicated that the bar was investigating that issue.
53. At the end of the September 27 hearing, Judge Moon took the contempt matter under advisement; to date, Judge Moon has not issued a ruling.
54. In a letter addressed to Judge Moon dated October 14, 2002, Mr. Latif blamed "each and every event involved in the problems I have had in your jurisdiction" upon Ms. Maddox.
55. Mr. Latif represented to the court that he strongly suspected that Ms. Maddox had been embezzling from his accounts and clients for some period of time.
56. Mr. Latif represented to the court that he had begun a careful audit and an investigation into all of Ms. Maddox's dealings which appeared suspect.
57. Mr. Latif represented to the court that Ms. Maddox had forged his name to a letter addressed to the bar explaining two overdrafts on his attorney trust account.
58. Mr. Latif represented to the court that he would "be advising our Commonwealth Attorney in reference to her embezzlements."
59. By letter to the Commonwealth's Attorney dated January 20, 2003, Mr. Latif asked the Virginia State

Police to conduct a criminal investigation of Ms. Maddox and enclosed a report, prepared by a retired FBI agent, dated December 12, 2002.

60. The agent's report indicates that Ms. Maddox embezzled money from Mr. Latif.

B. Findings of Misconduct

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

RULE 1.15 Safekeeping Property

- ***
 (c) (1) (iii), (iv) and (v) ***
 (f) (4) (i) and (ii) ***
 (5) (1) (ii) and (iii) ***
 (6) ***

RULE 3.4 Fairness To Opposing Party And Counsel

- A lawyer shall not:

 (d) ***

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

- With respect to a nonlawyer employed or retained by or associated with a lawyer:

 (b) and (c) (2) ***

III. VSB Docket Nos. 02-031-2876, 02-031-3117, 02-031-3344, 02-031-3345, 03-031- 0175, 03-031-0895 and 03-031-0920

Trust Account Overdrafts

A. Findings of Fact

1. A Trust Account Notification Agreement that Bank of America, N.A. f/k/a NationsBank, N.A. entered into with the Virginia State Bar on August 25, 1999, obligates Bank of America to notify the Virginia State Bar, as well as Mr. Latif, of any overdrafts on his attorney trust account.
2. On or about February 28, 2002, the Virginia State Bar received a notice from Bank of America dated January 24, 2002, that Mr. Latif's trust account was overdrawn by \$967.68.
3. On or about February 28, 2002, the Virginia State Bar received a second notice from Bank of America dated February 25, 2002, that Mr. Latif's trust account was overdrawn by \$629.68.
4. On or about March 19, 2002, the Virginia State Bar received a notice from Bank of America dated March 14, 2002, that Mr. Latif's trust account was overdrawn by \$717.68.
5. On or about April 2, 2002, the Virginia State Bar received a notice from Bank of America dated March 28, 2002, that Mr. Latif's trust account was overdrawn by \$1,029.68.

6. On or about July 1, 2002, the Virginia State Bar received a notice from Bank of America dated June 25, 2002, that Mr. Latif's trust account was overdrawn by \$590.68.
7. On or about August 19, 2002, the Virginia State Bar received a notice from Bank of America dated August 13, 2002, that Mr. Latif's trust account was overdrawn by \$1,428.68.
8. On or about August 21, 2002, the Virginia State Bar received a notice from Bank of America dated August 14, 2002, that Mr. Latif's trust account was overdrawn by \$2,228.68.
9. On or about September 24, 2002, the Virginia State Bar received a notice from Bank of America dated September 18, 2002, that Mr. Latif's trust account was overdrawn by \$679.71.
10. Between January 2002 and September 2002, Bank of America reported overdrafts on Mr. Latif's trust account totaling \$8,272.24.
11. Bank of America notified Mr. Latif of each of the overdrafts referenced above as did the Virginia State Bar.
12. Client funds were deposited into Mr. Latif's operating account between July and November 2001, and February and July 2002.
13. Mr. Latif's operating account was overdrawn in July, September, October, November and December 2001, and January, February, March, April, May, June, July and August 2002.
14. Mr. Latif cannot explain why funds totaling more than \$5,000 were transferred from his law firm operating account to his trust account on July 11, August 30 and September 11, 2002.
15. Mr. Latif failed to account properly for client funds withdrawn from his attorney trust account and paid to third parties and himself.
16. No later than October 30, 2001, Mr. Latif knew the bankruptcy court would not accept checks from him because at least two checks written on his attorney trust account had been returned for insufficient funds.
17. Mr. Latif maintains that he did not know there were numerous other overdrafts on his trust account until October 8, 2002, when the bar investigator advised him of that fact.
18. On October 8, 2002, Mr. Latif also learned from the bar investigator that on or about April 29, 2002, Ms. Maddox had prepared and forged his name to a letter, sent to Assistant Bar Counsel, which purportedly explained two overdrafts on his attorney trust account.
19. In addition to his own unethical acts of omission and commission with respect to his attorney trust account,

Mr. Latif's violation of the disciplinary rules governing safekeeping of client property facilitated conduct by Ms. Maddox, and perhaps another nonlawyer assistant working under his direct supervision, that was inconsistent with Mr. Latif's professional obligations as a lawyer.

20. Notwithstanding his knowledge of irregularities in his attorney trust account and office procedures, Mr. Latif failed to take reasonable remedial action to ascertain why and how the trust account overdrafts and other irregularities occurred and the extent of the losses incurred.

B. Findings of Misconduct

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

RULE 1.15 Safekeeping Property

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

(c) A lawyer shall:

(3) ***

(e) (2) (iii), (iv) and (v) ***

(f) (2), (3), (4) (i) and (ii), (5) (i), (ii) and (iii), (6) ***

(6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(b) and (c) (2) ***

IV. Disposition

Accordingly, the Disciplinary Board, Khalil Wali Latif, his counsel, and Bar Counsel agree that a **Four Month Suspension with Terms**, with the terms to take effect immediately and the suspension to take effect on September 1, 2003, as representing an appropriate sanction if this matter were to be resolved via an evidentiary hearing before the Disciplinary Board, taking into consideration the Respondent's disciplinary record.

Compliance with the following terms and conditions are a predicate for the proposed disposition:

1. Mr. Latif shall obtain an agreement in writing from an attorney acceptable to Bar Counsel whereby that attorney shall agree to serve as a practice mentor for Mr. Latif for a period of two-years. The practice mentor shall assist Mr. Latif in organizing his law practice and managing it in accordance with the Rules of Professional Conduct, and regularly consult with Mr. Latif about any problems that may arise in his law practice, including supervision of non-lawyer personnel, communications with clients and case management.

2. Mr. Latif shall employ a part-time bookkeeper approved by his practice mentor, certify in writing to Bar Counsel that he has done so before the end of his four month suspension and provide Bar Counsel the part-time bookkeeper's name and home address. If the part-time bookkeeper should leave Mr. Latif's employ before the end of Mr. Latif's two year consultation with his practice mentor, Mr. Latif shall promptly inform the bar in writing when and why the bookkeeper left his employ, employ another part-time bookkeeper approved by his practice mentor, certify in writing to the bar that he has complied with this term within thirty days of the date the original bookkeeper left his employ and provide Bar Counsel the new bookkeeper's name and home address.
3. Mr. Latif shall retain, before his four month suspension ends, a certified public accountant approved by his practice mentor to review his trust and operating account records no less than every three months to ensure that Mr. Latif's handling of client funds complies with the Rules of Professional Conduct; Mr. Latif shall certify in writing to Bar Counsel that he has retained a certified public accountant and provide Bar Counsel the accountant's name and address.
4. If the certified public accountant ends his engagement with Mr. Latif before the end of Mr. Latif's two year consultation with his practice mentor, Mr. Latif shall promptly inform the bar in writing when and why the engagement ended, retain another certified public accountant approved by his practice mentor, certify in writing to the bar that he has retained another accountant within thirty days of termination of the original accountant's services and provide Bar Counsel the name and address of the new accountant.
5. It shall be Mr. Latif's responsibility to provide the bookkeeper and certified public accountant all the financial information they need, including original trust account records and supporting documentation, including, but not limited to, original receipts, checks, ledgers and bank statements. Mr. Latif's failure to provide complete financial information will constitute a breach of the terms of the agreed disposition.
6. Mr. Latif shall not accept any new clients or client matters of any nature between May 21, 2003, and September 1, 2003, when the four month suspension takes effect.

Upon satisfactory proof that all terms and conditions of the Agreed Disposition have been met, these matters shall be closed. Mr. Latif's failure to comply with any one or more of the agreed terms and conditions will result in the imposition of the alternative sanction of a **Two Year Suspension**. The imposition of the alternative sanction shall not require any hearing on the underlying charges of Misconduct, if the Virginia State Bar discovers that Mr. Latif has failed to comply with any of the agreed terms or conditions. In that event, the Virginia State Bar shall issue and serve upon Mr. Latif a Notice of Hearing to Show Cause why the alternative sanction of a two year suspension should not be imposed. The sole factual issue will be

whether Mr. Latif has violated one or more of the terms of the four month suspension without legal justification or excuse. The imposition of the alternative sanction shall be in addition to any other sanction imposed for misconduct during the probationary period.

It is **ORDERED** that the four month suspension shall take effect on September 1, 2003, the terms shall take effect immediately and that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the respondent.

Enter this Order this 23rd day of May, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, Presiding Chair



**BEFORE THE DISCIPLINARY BOARD
 OF THE VIRGINIA STATE BAR**

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

ORDER

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

The Chair polled the panel members to determine whether any member had a personal or financial interest in the matter which might affect or could reasonably be perceived to affect his or her ability to be impartial in the proceeding. Each member, including the chair, verified that they had no known conflicts

I. FINDING OF FACTS

1. At all times relevant hereto, Helena Daphne Mizrahi (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Respondent represented Landon T. A. Summers in Fairfax County Circuit Court post-divorce custody and visitation litigation. The Complainants in this matter, Joseph A. Condo and David Roop represented Marcia L. B. Summers in that litigation, with Mr. Roop acting as lead counsel. At the time of the events giving rise to these proceedings, issues concerning the prior order of the court addressing custody and visitation were on appeal to Virginia's appellate court.
3. On October 21, 1999, Circuit Court Judge Stanley P. Klein issued a Rule to Show Cause against Marcia L.B. Summers at the request of the Respondent and her client. The Rule

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

4. In his letter of October 19, 1999, Judge Klein advised counsel that while The Rule was returnable to November 5, 1999, he was of the view that a hearing would, "clearly take longer than thirty minutes". Under the local rules of the Fairfax Circuit Court, motions expected to take longer than thirty minutes were not to be heard on normal motions days, but were to be set for hearing when more time was available. Judge Klein therefore encouraged counsel to contact the calendar control judge to get a trial date for a hearing on the Rule. Judge Klein also noted to counsel that as the Rule could not be heard on the Show Cause return date in reference to consideration of a change in the prior custody order unless and until leave of the Virginia Court of Appeals was obtained thereby allowing further hearings in the Circuit Court of Fairfax addressing these issues, counsel needed to give due regard to the time which would be required for one or both parties to move the appellate court for such leave.
5. On October 28, 1999, Mr. Roop wrote to the Respondent discussing several matters involving the case. One issue addressed was the need to contact the court's Calendar Control to obtain a date for hearing the pending Rule. In a response letter dated October 29, the Respondent replied that the hearing on the Rule had been set for November 5th and asked Mr. Roop to clarify his request to go to Calendar Control.
6. On November 3, 1999, the Respondent and Mr. Roop held one or more telephone conversations (Mr. Roop thought there might have been more than one phone conversation that day) addressing the issue of continuance. According to Mr. Roop, the Respondent advised him that she was unavailable to go to Calendar Control prior to November 5th although she gave no firm reason why. She further advised Mr. Roop that if he desired a continuance, he could present his request and the reasons for it on the 5th prior to the hearing. The Respondent had a different recollection of these conversations and stated that she advised Mr. Roop that she would agree to such a continuance. The Board find that the weight of the evidence prevails in favor of Mr. Roop's version of the Respondent's position because the Respondent followed up the conversation(s) with a letter addressed to Mr. Roop, (VSB Exhibit 8) dated November 3, 1999, which clearly demonstrates that as of the 3rd, she was not in agreement with a continuance. The contents of that letter are as follows:

Dear Mr. Roop:

In response to our telephone conference today, Judge Klein's Order dated October 19, 1999, wherein Ms. Summers is ordered to appear in the Fairfax Circuit Court on November 5, 1999, at

10:00 a.m., prevails over the Judge's letter that you reference. Therefore, it appears that your client must appear in Fairfax Circuit Court on November 5, 1999, at 10:00 a.m., before Judge Klein.

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

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

7. Upon receiving the above letter on November 3rd, Mr. Roop faxed a notice to the Respondent that he intended to obtain a hearing/trial date from the Calendar Control Judge the following morning, November 4th. (Respondent's Exhibits, page 139.) The Respondent responded, via a letter faxed to Mr. Roop, which stated that she was unavailable the following morning. (Respondent's Exhibits, page 138.) In this letter, she gave no reason for her unavailability. She again advised Mr. Roop that if he desired a continuance, he could request it when the parties appeared before Judge Klein on November 5th. She did not advise Mr. Roop in this letter that she was in favor of a continuance, as she testified was the case at the hearing.
8. On November 4, 1999, in accordance with the notice sent to the Respondent, Mr. Roop was heard by Judge Leslie Alden, sitting as calendar control judge. Mr. Roop advised Judge Alden of the Respondent's objections and gave her a copy of the Respondent's letter which had been faxed to him the previous day. Judge Alden set March 29, 2000, as the trial date and continued all matters, including the Rule to Show Cause, to such date. Late in the afternoon of the 4th, Mr. Roop faxed a letter to the Respondent advising her of the trial date set by Judge Alden. (Respondent's Exhibits at pages 141-42.) Both the Respondent and her client, whom she called as a witness on her behalf, acknowledged that they knew the continuance had been granted, because of this November 4th fax.
9. Due to the short passage of time between the entry of Judge Alden's order of continuation and the preparation of the Motions Day docket for November 5th, the clerk of the court failed to remove the Rule to Show Cause from the following day's schedule where it was shown as being set before Judge Marcus D. Williams. Nevertheless, all parties were aware prior to the morning of the 5th that the case was not to be heard that date.
10. Notwithstanding the above, the Respondent and her client appeared in Fairfax County Circuit Court on Friday, November 5, 1999. Mr. Roop, understanding that the matter was no longer on the Friday docket, was not present. However, Mr. Condo, Mr. Roop's partner who was aware of the case and its status, was by chance in Judge William's courtroom that morning in reference to another matter. Mr. Condo noted that the Respondent and her client were there.
11. Mr. Condo approached the Respondent and advised her that the date for the Rule and other matters had been continued to March 29, 2000, and, therefore, the matter should not have remained on the Friday motion's docket. Mr. Condo testified that the Respondent told him she understood that a trial date had been set, but she nonetheless intended to proceed before Judge Williams.
12. When the case was called, Mr. Condo testified that the Respondent advised Judge Williams that The Rule had been properly issued and served upon the Complainant and the Complainant had failed to appear. It was Mr. Condo's recollection that the Respondent did not inform Judge Williams of Judge Klein's directive to get a trial date nor did she advise Judge Williams that Judge Alden had already set a trial date continuing the matter in its entirety to March 29, 2000. The Respondent and her client testified that she did inform Judge Williams of the continuance, but she was seeking a different, earlier date than had been set the day before.
13. In response, Mr. Condo advised Judge Williams of Judge Klein's directive to counsel and of Judge Alden's decision to set a trial date. Upon hearing this from Mr. Condo, Judge Williams directed that the Respondent and Mr. Condo needed to go to Judge Alden's courtroom to resolve the matter. Mr. Condo had another matter requiring his attendance in Judge William's courtroom and as the Respondent indicated that she was unwilling to wait for him, Mr. Condo made a call to his office advising Mr. Roop to hurry to the courthouse to take care of the matter. As Mr. Roop had not anticipated being called to court that date, he was not appropriately dressed and therefore needed to return to his home to change before his appearance. For this reason, it was mid to late morning before he arrived at the court. At that time, Mr. Condo was still in Judge William's court and was unaware that Mr. Roop had arrived and was present in another courtroom.
14. Mr. Roop, having arrived at court, appeared with the Respondent before Judge Alden. According to the Respondent, before she was even permitted to speak, Judge Alden stated that she had previously set the hearing for March 29, 2000, and was unwilling to reopen the matter that morning. Judge Alden advised the Respondent that if she objected to what had occurred, the only appropriate action for the Respondent would be to file a motion for reconsideration in which case she (the Judge) would agree to reconsider the matter. Mr. Roop recalled the argument before Judge Alden differently and recalled that the Respondent presented her argument as to why the matter should be heard sooner than March 29th.
15. Believing the issues to have been now resolved, Mr. Roop left the courthouse, never having seen Mr. Condo. The Respondent, however, did not leave the courthouse, choosing instead to see if she could arrange a meeting

with the Chief Judge, The Honorable Bruce Bach, in order to seek his advice on what had happened and in the Respondent's words, "what she had done wrong". The Respondent was not able to see Judge Bach, but was able to speak with a clerk who, having heard the Respondent's story approached Judge Klein and obtained initial consent from Judge Klein to hear her request to the matter that same day even though the matter had already been heard that morning by both Judge Williams and Judge Alden. The Respondent had not requested that Judge Klein hear the matter, however, when the Respondent was advised that Judge Klein was willing to make himself available to hear the matter, she did not then advise the Judge's clerk that the matter had already been considered that very morning by two other judges. Instead, in compliance with the instructions of Judge Klein, she called Mr. Roop and left a message instructing him to again return to the courthouse and to report to Judge Klein's courtroom. The same message was conveyed by note to Mr. Condo, who was still in Judge Williams' courtroom.

16. Following the completion of his appearance before Judge Williams, Mr. Condo went to Judge Klein's courtroom. Once again, the Respondent restated her motion to be immediately heard on the Rule. According to the testimony of Mr. Condo, the Respondent failed to advise Judge Klein that the matter had been before both Judge Alden and Judge Williams earlier the same day. Mr. Condo himself did not yet know that Judge Alden had denied the Respondent's motion only an hour or so earlier.
17. Judge Klein, being unaware that Judge Alden had already ruled in the same matter just hours before, but recognizing that Judge Alden had ruled the previous day, declined to act in the matter and again advised the Respondent that the only proper thing for her to do would be to file a motion before Judge Alden for reconsideration of the scheduling order entered on the 4th.
18. The testimony of Mr. Condo stating that the Respondent had never mentioned to Judge Klein or to him that she had appeared earlier that same day before Judge Alden was supported by that of Mr. Roop. Having received the call to return to the courthouse, Mr. Roop arrived sometime around 1:30 p.m. While entering the court from the parking garage, he ran into Mr. Condo who had just left the hearing with the Respondent and Judge Klein. Being unaware that Mr. Roop had already been to the court and gone, Mr. Condo believed he was there for the first time in response to the call placed to him early that morning. As both Mr. Roop and Mr. Condo described it, Mr. Condo expressed strong displeasure with what he believed was Mr. Roop's failure to handle the matter in an appropriate manner. It was only after Mr. Roop explained to Mr. Condo that he had been present in Judge Alden's courtroom, following which Mr. Condo advised Mr. Roop what had just transpired in Judge Klein's court, that they both understood what had occurred.
19. At some point following the hearing before Judge Klein, the Respondent went to the Clerk's Office to obtain a copy of Judge Alden's Order of November 4th continuing the case. When it was provided to her, the Respondent related

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

II. FINDINGS OF THE PANEL

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

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

DR 1-102. Misconduct.

- (A) A lawyer shall not:
(1) and (4) * * *

The Panel further finds that the filing of the Order in the Court's file on the afternoon of November 5th after the issue of the continuance had been addressed not once, but three separate times before three separate judges, which order contained

both material misrepresentations of fact and sought relief which as a matter of law, the Respondent knew were not within the authority of the circuit court to grant in light of the pending appeal, violates DR 1-102 (A) (1), DR 1-102(A) (4) and DR 7-102 (A) (2) which read as follows:

DR 1-102. Misconduct.

- (A) A lawyer shall not:
- (1) and (4) ***

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

- (A) (2) ***

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

ENTER THIS ORDER THIS 22nd day of May, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 BY: Karen A. Gould, Second Vice Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF:
JOSEPH DEE MORRISSEY
 VSB DOCKET NO. 01-000-2648

ORDER

THIS MATTER came on April 25, 2003, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), consisting of Roscoe B. Stephenson, III (the "Chair"), V. Max Beard (Lay Member), William C. Boyce, Jr., Robert L. Freed and Peter A. Dingman, pursuant to a Show Cause Order entered September 25, 2002, and duly served upon Joseph Dee Morrissey ("Respondent"). The Virginia State Bar (the "Bar") was represented by Edward L. Davis, Esq., Assistant Bar Counsel. Appearing for Respondent were H. Morgan Griffith, Esq. ("Griffith"), and Michael L. Rigsby, Esq. ("Rigsby"). The proceedings were recorded and transcribed by Theresa S. Griffith of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia, 23227; telephone number (804) 730-1222.

The Hearing commenced promptly at 9:00 a.m., with the Chair reciting the purpose of the Hearing to determine whether, upon the allegation that Respondent had failed to comply with the obligations imposed by Part Six, Section IV, Paragraph 13.K.(1) of the Rules of the Supreme Court of Virginia, arising in relation to the suspension imposed on Respondent in a proceeding styled *Virginia State Bar; ex rel, Third District Committee, Section II, Joseph D. Morrissey* Chancery No. HK, 1655 (Richmond Cir. Ct. Feb. 18, 2000), Respondent's license to practice law in the Commonwealth of Virginia should not be further suspended or revoked. The Chair

then polled the members of the Board as to whether any of them were conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter. Each member, including the Chair, answering in the negative, the Hearing proceeded.

As preliminary matters, the Board was presented with a Motion for Continuance advanced on behalf of Respondent and a Motion of Rigsby for leave to withdraw as counsel, should the Hearing proceed as scheduled, on the grounds that Rigsby's testimony would be required as to some issues in the case, Respondent being absent from the Hearing and, to his counsel's knowledge, in the country of Ireland. The Board first heard argument on Rigsby's Motion to Withdraw. Griffith, arguing for Respondent, asserted that the testimony of Rigsby would be critical to the case of Respondent on the issue of notice in that Respondent was unavailable to testify to those issues, being in Ireland where Respondent is reportedly pursuing an advanced degree while teaching at a local college. The Bar responded, arguing that the absence of Respondent was voluntary, the Hearing date having been set in February by agreement with Rigsby, and Respondent having had ample opportunity to be present if he so chose. Further, the Bar stated that it would not seek sanctions against Rigsby for proceeding as attorney in this matter, nor would the Bar object to his testimony on the grounds of his participation in the case as attorney for Respondent.

The Board then retired to consider the Motion to Withdraw and, after deliberation, reserved its ruling on this Motion, electing to first hear argument on the Motion to Continue.

Griffith argued for Respondent that the matter should be continued as it was the preference of Respondent that Henry L. Marsh, III, Esq., participate as lead counsel on behalf of Respondent and Mr. March was unavailable on April 25, 2003, having on April 23rd, by letter to the Chair, advised that he would be attending a conference in Boston, Massachusetts, from April 24, 2003, through April 26, 2003. Griffith stated that, if Rigsby were permitted to withdraw, Griffith would be "minimally competent" to proceed with the Hearing in this matter, but that Respondent would be disadvantaged by the absence of his preferred lead counsel. The Bar again argued that this matter had been previously continued twice at Respondent's request and was scheduled for April 25, 2003, with the agreement of Rigsby on behalf of all of Respondent's counsel. The Board, then, retired to consider both Motions.

Upon resuming the Hearing, the Chair announced that the Motion to Continue was denied, but that Rigsby's withdrawal would be permitted, at his option. That is, counsel was advised, the Board determined that it was clear that Respondent's absence was voluntary, and that no issue was presented under Rule 3.7 of the Rules of Professional Conduct regarding Rigsby's testimony, in that the Board would not object to his testimony and the matter of filing of notices was largely uncontested. Rigsby's testimony would be limited to matters within his own personal knowledge. The Board then took a recess to allow counsel for Respondent to determine whether Rigsby would withdraw and in what fashion they would proceed given the rulings of the Board.

The Hearing then resumed with Rigsby electing to remain as counsel. The Hearing proceeded then with the Bar presenting its evidence through its exhibits, filed, received and heard herein, and its witnesses: Vivian Byrd, Deputy Clerk of the Disciplinary System, Barbara Sayers Lanier, Clerk of the Disciplinary System, Michael Huberman, Assistant Commonwealth Attorney for Henrico County, Kevin Watson, a former client of Respondent who testified via telephone from the Stone Mountain Correctional Center in Norton, Virginia, Clady Watson, Kevin Watson's grandmother, and Talaya Glenn, an Assistant Clerk of the Disciplinary System. For the record it is noted that Kevin Watson gave his testimony at the Stone Mountain Correctional Center in Norton, Virginia, before Craig Miller, of Linda C. Miller, Court Reporters, P.O. Box 115, Norton, VA 24273; telephone (276) 679-1000, who transcribed his testimony.

After the Bar rested its case, Respondent presented his evidence through his exhibits filed, received and read herein and the testimony of Alice David, a former legal assistant of Respondent, and Rigsby. Respondent then rested and the parties argued their case.

The Board then retired to consider the evidence and arguments presented to it. The Board concluded that the following facts had been proved by clear and convincing evidence:

1. That on February 18, 2000, a three-judge court entered an Order of Suspension in Chancery No. HK-1655, Circuit Court of the City of Richmond, which order included requirements imposed by Part Six, Section IV, Paragraph 13.K.(1) (hereinafter cited as "Rule 13K"), requiring in brief summary:

that the Respondent shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the suspension order, and make such arrangements as are required herein within 45 days of the effective date of the suspension order. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the suspension order that such notices have been timely given and such arrangements for the disposition of matters made

2. Respondent pursued an appeal from the above-described Order of Suspension and on March 27, 2000, the Supreme Court of Virginia stayed the suspension of Respondent's license pending the appeal. On November 3, 2000, the Supreme Court of Virginia affirmed the judgment of the three-judge court and on December 15, 2000, the three-judge court entered an "Order Imposing Suspension". That later order did not reference Rule 13K.
3. On January 18, 2001, Vivian R. Byrd sent a letter to Respondent enclosing a copy of the "Order Imposing

Suspension", reminding Respondent of "your duty under the Rules of Court" and quoting Rule 13K which is, by its own terms, applicable to "any attorney who is disbarred or suspended".

4. On January 22, 2001, by courtesy copy sent to Ms. Byrd of a letter addressed to James T. Maloney, Respondent acknowledged receipt of Ms. Byrd's January 18, 2001, letter and asked Mr. Maloney to assist with preparation of a list of all clients "so that [Respondent] can formally notify them".
5. On February 13, 2001, Ms. Byrd wrote to Respondent reminding him of his obligations under Rule 13K.
6. On June 21, 2001, Barbara Sayers Lanier, Clerk of the Disciplinary System, wrote to Respondent again reminding him of his obligations under Rule 13K and again quoting the Rule in its entirety.
7. On September 5, 2001, Ms. Lanier again wrote to Respondent reminding him of his responsibilities under Rule 13K and noting that the Bar, as of that date, had not received any proof of his compliance with Rule 13K.
8. On December 28, 2001, Respondent sent a letter to Ms. Lanier which, among other things, asserted that he "gave notice of my suspension to all of my clients following the December 15, 2000, suspension."
9. On January 7, 2002, Ms. Lanier wrote to Respondent informing him, among other things, that "at this time, our office has not received copies of the suspension notification letters with certified return receipts."
10. On January 11, 2002, Respondent wrote to Ms. Lanier asserting that "there were no suspension notification letters because I had no clients at the time."
11. On January 15, 2002, Ms. Lanier responded to that letter, sending to Respondent a copy of his January 22, 2001, letter which indicated that "you intended to comply with this Rule" [Rule 13K].
12. No proof of notification was thereafter received by the Bar prior to the issuance of the Show Cause Order in this matter.
13. Exhibits presented by Respondent at the Hearing and the testimony of Ms. David and Rigsby indicated that, on or about February 9, 2001, Respondent did send notice letters to a number of clients and that many such letters indicated copies were also sent to opposing counsel. Some courts may also have been notified at that time.
14. After Rigsby was consulted by Respondent regarding the Show Cause Order in this matter, in October or November of 2002, Ms. David found a file containing copies of letters to clients and certified mail, return receipt cards in Respondent's former offices. This file was offered to the Bar, for the first time, on April 1, 2003, and was retrieved by the Bar from Rigsby's office on April 23, 2003.

15. Kevin Watson was a client of Respondent who had been represented by Respondent in trial court proceedings and in appellate proceedings before the Court of Appeals of Virginia. On January 3, 2001, Mr. Watson's Petition for Appeal was scheduled to be heard by an authorized representative of the Supreme Court of Virginia. Mr. Watson and his grandmother both testified that neither was advised prior to the date and time of that hearing of the fact of Respondent's suspension or that the matter would be presented not by Respondent, but by James T. Maloney. This unadvised and unapproved substitution was particularly egregious given the grandmother's testimony that she had advised the Respondent that she had little money for lawyers and that the Respondent had assured her that he got good results in Henrico County. Michael Huberman, the Assistant Commonwealth's Attorney responsible for the prosecution of the matter in which Mr. Watson was a defendant, testified that he was also not advised of the suspension of Respondent's license by Respondent either prior to or subsequent to the hearing on the Petition for Appeal. The Exhibits submitted by the Bar included a letter from the office of the Clerk of the Supreme Court of Virginia attesting that the Court never received notice from, prior to the hearing in the Watson case, that his license had been suspended.

IN CONSIDERATION WHEREOF, THE BOARD FINDS:

That the matters presented to the Board at the Hearing on April 25, 2003, showed by clear and convincing evidence that Respondent failed to comply with the requirements of Rule 13K, as to his obligation to give timely notice to his clients, opposing counsel and courts before which matters were pending, to make appropriate arrangements in compliance with the wishes of his clients and to furnish proof thereof to the Bar.

The Board thereupon invited the parties to submit such evidence and arguments as they might offer respecting the appropriate sanction to be imposed in this matter. The Bar submitted a summary of Respondent's previous record regarding professional disciplinary matters which includes, three matters which were dismissed with terms, one private reprimand, one public reprimand, one six-month suspension, a three-year suspension (the underlying matter), and his disbarment by the United States District Court for the Eastern District of Virginia. The Bar requested that the Board revoke the license of Respondent, arguing that the circumstances of this case and his prior record demonstrate a lack of the necessary respect for his profession and merits the complete revocation of his license. Respondent's counsel argued that the Board should draw a distinction between cases of active misconduct and violations of administrative requirements, suggesting that compliance with Rule 13K is an administrative matter, that "umbrage by the Bar" at the tardiness of the delivery of certain proofs of notice does not merit revocation and that the evidence showed substantial compliance with Rule 13K.

The Board retired to consider the appropriate disposition and, by unanimous decision, concluded as follows:

ORDERED that, the license of Respondent, Joseph Dee Morrissey, to practice law in the Commonwealth of Virginia, be, and the same hereby is, REVOKED, effective April 25, 2003 (a summary order being entered that date); and

ENTERED this 15th day of May, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, III, First Vice Chair



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

**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
VICTOR ALAN MOTLEY
 VSB DOCKET NOS. 00-032-0680, 01-032-3160

ORDER

This matter comes on a certification from a Subcommittee of the Third District Disciplinary Committee, Section II, alleging a series of trust account violations, and in a separate incident, an instance of practicing law while suspended. A hearing was held on March 28, 2003 in Hearing Room B, of the State Corporation Commission, 1300 East Main Street, Second Floor, Richmond, Virginia 23219.

The Board consisted of Theophlise L. Twitty, Acting Chairman, Thaddeus T. Crump, William C. Boyce, Jr., David R. Schultz, and Frank B. Miller, III. The Respondent, Victor Alan Motley, appeared without counsel. Harry Hirsch, Deputy Bar Counsel, appeared as counsel for the Virginia State Bar. The proceedings were transcribed by Donna Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

The Chairman polled the Board to determine if any conflicts existed which would prevent any member from hearing the case objectively and fairly, and all members answered in the negative.

Prior to taking evidence, Mr. Motley objected to the hearing going forward claiming that there was no proof of him being properly served. The Board overruled Mr. Motley's objection. Mr. Motley then demurred, claiming that the Bar could not proceed with an allegation of unauthorized practice of law since Mr. Motley had not been convicted in a criminal court of any such conduct. Mr. Motley's demurrer was denied due to the fact that no such demurrer had been filed in writing prior to the hearing.

Findings of Fact

VSB Docket No. 00-032-0680, VSB/Trust Account Violations

- (1) At all times relevant hereto, the Respondent, Victor Alan Motley (hereinafter referred to as "Motley") has been a registered lawyer with the Virginia State Bar. Motley's license, however, was suspended for misconduct effective November 30, 2000, for a period of eighteen months. Motley's license was again suspended for failure to pay the assessment of disciplinary costs effective July 20, 2001. Motley's license remained suspended for this reason.

- (2) On September 3, 1999, the Consolidated Bank & Trust Company of Richmond, Virginia, reported that two overdrafts had occurred as a result of the payment of two checks against insufficient funds from account number 1004135112, such account denominated "Victor A. Motley, Sr., Escrow Account, P.O. Box 25786, Richmond, Virginia 23260-5786". The first check, number 5994 was in the amount of \$50.00 and the second check, number 5995 was in the amount of \$74.30.
- (3) Upon payment of check number 5994 in the amount of \$50.00 the account balance, according to the monthly statement, was -\$5.02.
- (4) Upon payment of check number 5995 in the amount of \$74.30 the account balance, according to the monthly statement, was -\$79.32.
- (5) Motley was notified by the bank of checks paid against insufficient funds on August 27, 1999. The notice indicated that the two checks had been paid and that a handling fee of \$60.00 had been charged to the account and that the resulting account balance was -\$139.32.
- (6) On August 30, 1999, Mr. Motley deposited cash in the amount of \$140.00 in order to bring the account up to a positive balance. The money deposited was at least in part Motley's personal funds.
- (7) As a result of the bank's notification to the Bar, the Bar assigned Investigator David Abrams to examine Motley's trust account. Investigator Abrams discovered numerous occasions on which the account was out of trust, including numerous negative balances. Investigator Abrams discovered \$712.00 in overdrafts.
- (8) Investigator Abrams also determined that Motley earned interest on two occasions in the amount of \$65.00 and \$136.00.
- (9) The Bar introduced a detailed accounting of Investigator Abrams's findings which was admitted into evidence.
- (10) During the years 1998 and 1999, Motley failed to operate the account in accordance with the trust account requirements of Canon 9 of the Virginia Code of Professional Responsibility.

Nature of Misconduct

The Board finds by clear and convincing evidence that such conduct on the part of Victor Alan Motley constitutes misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility:

DR 1-102. Misconduct

A lawyer shall not:

- (1) * * *

The Board finds by clear and convincing evidence that Mr. Motley's course of conduct during this period constitutes a deliberately wrongful act in violation of this Section.

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

- (1) (1) and (2) * * *

The Board finds by clear and convincing evidence that Motley's commingling of funds in the trust account violated these Sections.

Findings of Fact

VS B Docket No. 01-032-3160 (The Scholl Complaint)

- (1) At all times relevant hereto, the Respondent, Victor Alan Motley (hereinafter referred to as "Motley") has been a registered lawyer with the Virginia State Bar. Mr. Motley's license, however, was suspended for misconduct effective November 30, 2000, for a period of eighteen months. Mr. Motley's license was again suspended for failure to pay the assessment of disciplinary costs effective July 20, 2001. Mr. Motley's license remained suspended for this reason.
- (2) On June 11, 2001, Knanoni Bey (hereinafter referred to as "Bey") was involved in an automobile accident. Since Motley had provided legal services to Bey's family in the past, Bey contacted Motley for representation regarding the property damage and personal injuries sustained in the accident. It was agreed that Bey would pay Motley a percentage of the recovery for his services.
- (3) Motley sent a letter dated June 12, 2001, by facsimile transmission to Meg Scholl, a claim representative for GMAC Insurance, and the complainant in this matter. The reference block in the letter noted the following: "Bey, Khanoni [sic], Social Security Number 154-72-3308, Your Insured—Mary Cosby". In the letter Motley stated the following:

"Please be advised that I am the settlement agent with respect to the above-referenced. Please direct all correspondence to the attention of the undersigned."
- (4) The letter was typed on Motley's former law office letterhead stationery. Much of the letterhead, however, had been obscured with a felt tip marker. The letterhead, as presented to Ms. Scholls, read Victor A. Motley, Ltd., Tax ID Number 54-1585922. The address on the stationery remained the same as did the telephone number. The fax number had been obscured and a substitute fax number was provided.
- (5) Finding the stationery suspicious, Ms. Scholl called the Virginia State Bar to determine the status of Motley's license, and determined that Motley had been suspended from the practice of law in November of 2000.
- (6) Scholl then telephoned Motley about the letter and asked him if he represented Bey regarding property damage and personal injury claims. Motley stated that he did. Scholl asked Motley if he was taking a fee for his services and Motley confirmed that he was. Scholl tape recorded the telephone conversation and a transcript of the conversation was admitted into evidence.

- (7) On June 18, 2001, Motley sent Scholl, by facsimile transmission, language from Unauthorized Practice Rule 2, Lay Adjusters, Rules of the Virginia Supreme Court, Part 6, Section 1. It was Motley's contention that he was acting as a "Settlement Agent" and not as a lawyer.
- (8) Scholl pointed out to Motley that he could not represent Bey as a lay adjuster or "settlement agent" with respect to alleged property damage and personal injury resulting from the accident, since such a claim constituted a third party claim, pursuant to Unauthorized Practice Rule 2-105. Motley withdrew from representation.
- (9) On June 19, 2001, Bey obtained the services of a properly licensed lawyer to represent him in this matter, which was subsequently settled.
- (10) Practicing law while not properly licensed to do so is a class one misdemeanor in violation of Virginia Code Section 54.1-3904, of the Code of Virginia of 1950, as amended.
- (11) Motley was acting as a lawyer when representing Bey in the personal injury matter in that he, by his own admission, gave advice regarding the potential defendant's liability as well as the value of the claim.
- (12) Motley held himself out to Scholl as qualified or authorized to practice law in the Commonwealth of Virginia when in fact he was suspended.
- (13) Under any circumstances, Motley was not qualified to act as a lay adjuster since the matter involved a third party claim.
- (14) Motley's actions constitute the unauthorized practice of law.

Nature of Misconduct

The Board finds by clear and convicting evidence that such conduct on the part of Victor Alan Motley constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 5.5 Unauthorized Practice of Law

- (1) A lawyer shall not:
- (1) ***

RULE 8.4 Misconduct

- It is professional misconduct for a lawyer to:
- (2), (3) and (4) ***

Sanction

In determining the appropriate sanction, the Board considered Motley's disciplinary record. Motley's record consists of nine disciplinary sanctions, including two public reprimands, one of which was originally a private reprimand with terms with which Motley failed to comply thereby triggering the pub-

lic reprimand; a private reprimand with terms, two dismissals with terms, three administrative suspensions for failing to pay costs associated with disciplinary proceedings, and an eighteen month suspension arising out of a real estate transaction and involving competence, neglect, failure to communicate, and trust violations.

To Motley's credit, the Board considered that none of the trust violations proven by the Bar in this case resulted in a loss to any client.

In view of Mr. Motley's lengthy record, a portion of which involves trust account violations, and in view of the fact that Mr. Motley continued to practice law after his license to do so was suspended, the Board finds that Motley's license should be, and hereby is revoked effective March 28, 2003.

ENTERED this 22nd day of April, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Theophilise L. Twitty, Acting Chairman



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
CLAYMAN RICARDO NORFLEET, ESQUIRE
 VSB DOCKET NUMBERS
 03-080-0802, 03-080-1274, 03-080-1426,
 03-080-1576, 03-080-1793, 03-080-1794,
 03-080-0650, 03-080-2532, 03-080-2662
 AND 02-080-3546

ORDER OF REVOCATION

On June 27, 2003, at 9:00 o'clock a.m., this matter came before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Robert L. Freed, Chair, Deborah A. J. Wilson, David R. Schultz, William J. Sturgill, and Peter A. Dingman, upon a sworn petition (the "Petition") of the Virginia State Bar (the "Bar") pursuant to Part 6, §IV, ¶ 13.I.b.1¹, of the *Rules of Supreme Court of Virginia* (the "Rules"). The Bar appeared by its counsel, Claude V. Worrell, II. Although sent notice of the hearing, and after the Chair directed his name to be called three times in the hall, Clayman Ricardo Norfleet (the "Respondent") did not appear. The proceedings were reported by Theresa S. Griffen of Chandler & Halasz, Registered Professional Reporters, P.O. Box 9349, Richmond, VA, 23227, phone number (804) 730-1222.

Prior to proceeding in this matter, the Chair polled the members of the Board participating in this hearing as to whether any of them was conscious of any personal or financial interest or bias which would prevent such member from fairly and impartially hearing the matter. Each member, including the Chair, answering in the negative the hearing proceeded

1 The Petition filed by the Bar incorrectly cited Paragraph 13(C)(5)(i) of the Rules. The notice sent to Clayman Ricardo Norfleet, at his address of record with the Bar by the Clerk of the Disciplinary System cited the correct paragraph of the Rules. The Board concluded that this incorrect reference was, if error, harmless.

with the Bar presenting its evidence via testimony of witnesses and documentary exhibits admitted to record. At the conclusion of the Bar's presentation of evidence, and following argument of its counsel, the Board retired to consider the evidence presented and found that the following facts had been proved by clear and convincing evidence:

1. At all times relevant hereto, Respondent, Clayman Ricardo Norfleet, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Virginia State Bar Investigator C. Kenneth Venable made many attempts to reach the Respondent but was not able to meet with the Respondent. Mr. Venable went to the Respondent's home and received no answer to his knocks on the Respondent's door, even though neighbors advised that Respondent lived there. The Respondent has not responded to the Bar's requests for information in any matter referred to above and has failed to cooperate with the Bar's investigation into all of the charges of misconduct detailed in this certification, save docket number 03-080-0650.

VSB Docket Number 02-080-3546

3. James W. Carter (hereinafter, as to this case number, the "Complainant") asked the Respondent to represent him on criminal charges and paid the Respondent \$1,475.00 to represent him at trial. The Complainant was found guilty of malicious wounding and use of a firearm in the commission of a felony and wished to appeal his conviction to the Virginia Court of Appeals. The Complainant hired the Respondent to represent him in his appeal. The Respondent noted the appeal on July 24, 2002. The Complainant was sentenced on June 26, 2002.
4. The Respondent received a letter from Shannon Sakalas, the court reporter at the Complainant's trial, informing him that the cost of the trial transcript would be \$1,200.00. Ms. Sakalas sent another letter on August 5, 2002, indicating that she had tried to contact the Respondent three times to discuss the cost of the Complainant's transcript. Ms. Sakalas also stressed that time was of the essence because the deadline to file the transcript was near.
5. On August 26, 2002, the Respondent filed two motions in the Virginia Court of Appeals, one for a determination of indigency and another for an extension of time to file the transcript from the Complainant's trial. The motion for an extension was denied on August 29, 2002. On August 30, 2002, the Virginia Court of Appeals issued a rule to show cause why the appeal should not be dismissed due to the Respondent's failure to file a transcript and a statement of facts. The Court demanded a reply by September 14, 2002. On September 24, 2002, the appeal was dismissed. The Court noted that the Respondent did not respond to the rule to show cause. On September 24, 2002, the Virginia Court of Appeals issued another order denying the Complainant's motion to appoint new counsel.
6. On November 26, 2002, the Honorable William Broadhurst, Judge asked and or appointed Melissa Friedman, Esquire to

represent the Complainant in his attempt to have his appeal reinstated.

VSB Docket Number 03-080-0650²

7. The Complainant (as to this case number), Stacy Watkins, through his mother hired the Respondent to file a motion for post-conviction release from incarceration and admission to home electronic incarceration or home electronic monitoring. The Complainant paid the Respondent \$425.00 to file the motion on his behalf. The Complainant's mother, Virginia Martin-Price sent the check along with a letter dated May 26, 2002.
8. The Respondent accepted payment by either cashing or depositing the check but did nothing for the Complainant. The Respondent failed to contact the Complainant. The Respondent also moved out of the offices he shared with Perry Harrold, Esquire and left no forwarding number or address. Mr. Harrold's office advised the Complainant that they could not locate the Respondent.
9. The Virginia State Bar, by Mary Martelino, Assistant Intake Counsel, sent a letter of inquiry to the Respondent and advised him of the Complainant's concerns. By letter dated August 19, 2002, the Respondent told Ms. Martelino that on or about July 21, 2002, on behalf of the Complainant, he filed, with the Virginia State Parole Board, an application for special conditional release and home electronic monitoring. In case that was not approved, he asked that the Complainant be transferred from the therapeutic drug center where he was housed. The Parole Board did receive an application from the Respondent on August 9, 2002.
10. The Complainant heard nothing from the Parole Board or from the Respondent. In a letter to the Virginia State Bar dated January 20, 2003, he advised the Bar that he had not heard from the Respondent. He also stated that he tried to contact the respondent but was unable to reach him. To date, the Respondent has not communicated with his client concerning his application for special release.

VSB Docket Number 03-080-1274

11. The Respondent failed to pay his Virginia State Bar dues for 2002-2003. The Respondent's dues were to have been paid on or before July 31, 2002. As a result of his failure to pay his dues on time, several late fees and reinstatement fees were added to the \$250.00 in dues he already owed. Because the Respondent failed to pay his dues his license to practice law in Virginia was suspended on October 9, 2002. The Respondent was notified of the suspension by certified letter on October 10, 2002. At the time of his suspension the Respondent owed the Virginia State Bar \$450.00.

² Although this case number and case number 03-080-2532 were not listed in the caption of the Bar's Petition or the Order setting this matter for hearing, nor explicitly referenced in the notice letter sent to Respondent, the cases are fully set forth in the body of the Petition, a copy of which was attached to the notice letter, and the Board concluded that their omission from the caption and reference line was, if error, harmless.

12. On October 21, 2002, the Respondent appeared before the Honorable Charles N. Dorsey, Judge in the Circuit Court of Roanoke City to represent Sandra Marie Goodwin in her appeal from General District Court. Prior to starting the trial, Judge Dorsey asked the Respondent if there were any problems with his law license. The Respondent responded that the problem was "all cleared up." The problems were not "all cleared up."
13. On October 23, 2002, the Bar received the Respondent's check for \$300 and applied that amount to the balance owed. Martha Shippee of the Virginia State Bar Membership Department called the Respondent to notify him that his payment was insufficient to have his license reinstated and that he need to send an additional \$150.00. On October 29, 2002, the Virginia State Bar received the Respondent's check for \$150.00.
14. The Respondent's check for \$150.00 was returned by the bank because it had been written on a closed account. The Respondent's license was suspended again and he was notified of that fact by certified letter dated November 14, 2002. On November 26, 2002, the Respondent and his secretary appeared at the Bar's office and paid the \$150.00 fee in cash. The Respondent was reinstated on November 26, 2002.

VS B Docket Number 03-080-1426

15. Regina Alexander (hereafter, as to this case number, the Complainant) hired the Respondent to represent her in a child custody case. The Complainant paid the Respondent more than \$900.00 in fees. The Respondent went to court several times with the Complainant in Bedford County. At the conclusion of a hearing held on June 17, 2002, the next hearing was set October 1, 2002.
16. On October 1, 2002, the Complainant and the attorneys for the other parties appeared. The Respondent failed to appear. The Honorable Kenneth Farrer, Judge was presiding. A Deputy Clerk took a phone call from the Respondent who informed the Clerk that his car was in the "shop" and he would not be in court. He left a contact number for the Clerk. The Clerk phoned the Respondent to ask him if he could find a ride or get to court by some other means. The Respondent said he would try and call the Clerk back. The Respondent never called back and did not appear in court. As a result, Judge Farrer issued a rule to show cause for the Respondent's failure to appear. On January 14, 2003, Judge Farrer conducted a hearing on the rule to show cause and took the matter under advisement for a period of twelve months.
17. Due to the Respondent's failure to appear at the October 1, 2002, hearing, the Complainant fired the Respondent and hired Robert Armstrong, Esquire to replace him in her custody case.

VS B Docket Number 03-080-1576

18. As previously stated in paragraphs 11 and 12 above, the Respondent failed to pay his dues on time. For the sake of

clarity and completeness the information is repeated. Consequently, several late fees and reinstatement fees were added to the \$250.00 he already owed as dues. The Respondent's license to practice law was suspended on October 9, 2002, and on October 10, 2002, the Respondent was again notified by certified letter that his license was suspended because he failed to pay his Virginia State Bar dues as required. At the time of his suspension the Respondent owed the Virginia State Bar \$450.00.

19. On October 23, 2002, the Bar received the Respondent's check for \$300.00 and applied that amount to the balance owed. Martha Shippee of the Membership Department of the Virginia State Bar again called the Respondent to notify the Respondent that his payment was insufficient to have his license reinstated and that he need to send \$150.00 more. On October 29, 2002, the Virginia State Bar received the Respondent's check for \$150.00.
20. The Respondent's check for \$150.00 was returned by the bank because the Respondent had written the check on a closed account. The Respondent's license was suspended again and he was notified of that fact by certified letter dated November 14, 2002.
21. On November 25, 2002, the Respondent appeared in the Roanoke Juvenile and Domestic Relations District Court as counsel for a criminal defendant. The Respondent's license to practice law was still suspended for his failure to pay Virginia State Bar dues. The Honorable Joseph M. Clarke, II, was present and received a note from the Respondent regarding his license to practice law.
22. The Respondent averred that his license was, to the best of his knowledge, reinstated and his secretary was on her way to the Virginia State Bar's office in Richmond to make sure that his license was reinstated. He went on to state that his secretary would arrive at the Bar's office by 4:00 p.m. and had the funds to pay any fee he owed to the Bar. The Respondent also requested that the judge call his case at the end of the docket. The Respondent's secretary did not appear at the Bar's office in Richmond on November 25, 2002.
23. On November 26, 2002, the Respondent and his secretary appeared at the Bar's office in Richmond and paid the \$150.00 fee in cash. The Respondent was reinstated on November 26, 2002.

VS B Docket Numbers 03-080-1793 and 03-080-1794

24. The Complainants, Janice M. Warren and her boyfriend, Randolph Stump, hired the Respondent. Ms. Warren hired the Respondent to represent her in some disputes she was having with her ex-husband over real estate. She paid the Respondent \$913.00 on or about November 16, 2001. As requested, the Respondent had the name of Ms. Warren's ex-husband removed from the deed to her home. However, he did not have the ex-husband's name removed from the deed to the property at 1031 Andrews Road, the property that the Respondent was renting from her.

25. On or about July 8, 2001, Mr. Stump paid the Respondent \$500.00 to file a bankruptcy petition. The Respondent informed Mr. Stump that his bankruptcy would be completed by Thanksgiving of 2002. The Respondent has never filed the petition but has repeatedly told Mr. Stump that he has filed the documents. The Respondent has also not returned Mr. Stump's records so he can give them to another attorney.

VS Docket Number 03-080-2532

26. The Complainant, Johnnie Spencer, hired the Respondent to represent him in a case in the Circuit Court of Henry County. The Complainant was charged with first degree murder and other felony offenses. The Respondent represented the Complainant through trial. The Complainant was found guilty of second degree murder and other felonies. On appeal, the Complainant was represented by a public defender. The Complainant needs the file from his Circuit Court trial to petition for a writ of *habeas corpus*. He has tried to contact the Respondent to request his file, but has been unable to reach the Respondent. The Complainant has sent at least three letters to the Respondent and left phone messages for the Respondent. The Respondent has not responded to any of the Complainant's requests.

VS Docket Number 03-080-2662

- 27. The Respondent represented Mr. Joseph Taylor in a forfeiture proceeding in the Circuit Court of the City of Martinsville. Mr. Taylor contested the forfeiture and prevailed after a hearing.
- 28. The Martinsville Police Department attempted to return to Mr. Taylor the funds taken from him in the forfeiture proceeding by a check made payable to the Respondent and Mr. Taylor. The Respondent told Mr. Taylor he would receive \$750.00 and the rest would be applied to his legal fees. Mr. Taylor did not object to that arrangement.
- 29. The Respondent negotiated the check but never gave Mr. Taylor the \$750.00. In January of 2003, Mr. Taylor contacted the Martinsville Commonwealth's Attorney, Joan Ziglar, Esquire (hereafter, as to this case number, the Complainant) and complained that the Respondent had stolen the money from him. Mr. Taylor also said he had filed a warrant in debt against the Respondent. The Respondent did not appear in court to contest the warrant in debt and judgment was entered in favor of Mr. Taylor.
- 30. The Complainant discussed the matter with the Honorable Charles Stone and Judge Stone set a hearing for February 24, 2003 at 1:45 p.m. to hear from the Respondent. The Complainant spoke to the Respondent on February 19, 2003, and told him about the hearing. The Respondent agreed to appear at the hearing.
- 31. On February 24, 2003, the Complainant and Mr. Taylor appeared for the hearing. The Respondent again failed to appear. Mr. Taylor gave the Complainant a note from the Respondent who said he had obtained a cashier's check for \$750.00 and would meet Mr. Taylor at Mr. Taylor's home to give him the check. The Respondent never met

Mr. Taylor and Mr. Taylor never received his money from the Respondent.

VS Docket Number 03-080-0802

- 32. The Complainant as to this case number, Ms. Jody Roach, hired the Respondent to represent her boyfriend Frederick L. Bush, Jr., in criminal matters. Ms. Roach agreed to pay the Respondent \$5,000.00 to represent Mr. Bush, and paid the Respondent \$2,500 in advance fees on July 13, 2002. The Respondent obtained a bond hearing for Mr. Bush on July 17, 2002, and Mr. Bush was admitted to bond. At the time of Mr. Bush's release, the Respondent instructed Mr. Bush to call his office and make an appointment for the following week. The Complainant and Mr. Bush called the Respondent's office as instructed. The Respondent informed them that he had not talked to or met with the Commonwealth's Attorney assigned to the case, but scheduled them an appointment with him, the Respondent, for August 12, 2002.
- 33. On August 12, 2002, the Complainant called the Respondent's office to ask if their appointment with him was still going to occur, but the Respondent was not in and did not return her call until August 13, 2002. The Respondent said he did not return the call because he was out of town. They rescheduled the meeting for August 15, 2002.
- 34. The preliminary hearing was scheduled for August 28, 2002, but was continued to September 4, 2002. The Respondent met with Randy Krantz, Assistant Commonwealth's Attorney, on August 29, 2002. Following the meeting, the Respondent called the Complainant and Mr. Bush and instructed them to call his office and make an appointment for that day or sometime over the weekend. Again, they did as instructed but could not reach the Respondent. They called at least three or four times a day and left messages but no calls were returned.
- 35. On September 4, 2000, Mr. Bush and Ms. Roach went to court without any preparation or information from the Respondent. The Respondent failed to appear at the hearing but called and said he was going to the hospital because he had acid reflux. The case was rescheduled for September 30, 2002. After the hearing, the Complainant and/or Mr. Bush attempted to contact the Respondent by leaving messages on his answering machine but the Respondent did not call them back.
- 36. The Complainant and Mr. Bush heard nothing from the Respondent until November of 2002, when the Respondent called Ms. Roach. Ms. Roach demanded a refund from the Respondent. The Respondent said he would examine his records, determine the appropriate refund amount and call her the next day. The Respondent did not call the Complainant the next day. The Complainant called the phone number she had for the Respondent and spoke with the Respondent's wife. Mrs. Norfleet told the Complainant that the Respondent no longer lived at home and was not there to receive phone calls. The Complainant and Mr. Bush have not heard from the Respondent since November of 2002.

37. Mr. Frederick Bush, Jr. has also made a complaint against the Respondent and it has been listed under this case number. Mr. Bush indicated that the Respondent was appointed to represent him in an appeal of a sentence he received for violating the terms and conditions of his probation. Mr. Bush received a sentence of six (6) years to serve for the probation violation and he has been incarcerated since he was convicted in September 2002.
38. Mr. Bush has tried to contact Mr. Norfleet without success. Mr. Bush waited five (5) months for Mr. Norfleet to contact him and has heard nothing from Mr. Norfleet. No appeal was filed for Mr. Bush.

Upon these findings of fact, the Board concluded that the Bar had (again, by clear and convincing evidence) established that Respondent had violated the following Rules of Professional Conduct:

RULE 1.1 Competence

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 1.15 Safekeeping Property

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

RULE 1.16 Declining Or Terminating Representation

(a) (1), (2) or (3), (b), (c), (d) and (e) ***

RULE 3.3 Candor Toward The Tribunal

(a) (1), (2), (3) or (4) ***

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) ***

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application, in connection with any certification required to be filed as a condition of maintaining or renewing a license to practice law, in connection with a disciplinary matter, shall not:

(a), (b), (c) or (d) ***

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a), (b), (c), (d) or (e) ***

All other Charges of Misconduct contained in the Petition were dismissed.

After announcing these conclusions, the Board heard such evidence as the Bar chose to offer in mitigation and/or aggravation, and the Board then retired to consider the appropriate sanctions to be imposed. The Board then returned and announced its decision as follows:

ORDERED that, the license of Respondent, Clayman Ricardo Norfleet, to practice law in the Commonwealth of Virginia, be, and the same hereby is, REVOKED, effective June 27, 2003 (a summary order being entered that date).

ENTERED this 6th day of July, 2003.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Robert L. Freed, Second Vice Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
SANG KUEN PARK, ESQUIRE
VSB DOCKET NUMBER 00-052-1892
AND 00-052-1959

ORDER

This matter came before the Virginia State Bar Disciplinary Board on the 8th day of May, 2003, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Sang Kuen Park, Esquire, based upon the Certification of the Fifth District Committee Section II. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of James L. Banks, Jr., Esquire, Joseph Roy Lassiter, Jr., Esquire, Bruce Taylor Clark, Esquire, V. Max Beard, Lay Member, and Karen Ann Gould, Esquire, Second Vice Chair, presiding. Noel D. Sengel, Esquire, representing the Bar, and the Respondent, Sang Kuen Park, Esquire, by his counsel, Timothy J. Battle, Esquire, presented an endorsed Agreed Disposition.

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

**STIPULATIONS OF FACT
AND DISCIPLINARY RULE VIOLATIONS**

1. At all times relevant hereto, the Respondent, Sang Kuen Park, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In 1993, Jae W. Jeong, a Korean national, hired the Respondent to assist him and his wife, Young Joo Jeong, in obtaining visas that would allow them to work and live legally in the United States, and, ultimately, to become permanent residents. The Jeongs hired the Respondent based in part on the Respondent's claim that he was an expert in immigration law. About ten percent of the Respondent's law practice actually consisted of immigration law work.
3. Immediately after being hired by the Jeongs, the Respondent filed applications for work (H-1) and dependency (H-4) visas for the Jeongs which initially were

- rejected by the United States Immigration and Naturalization Service (INS). The Respondent failed to file the correct application fee for Mr. Jeong's application which caused both Mr. and Mrs. Jeong's applications to be denied initially. When Mr. Jeong asked the Respondent about the status of the applications, the Respondent told Mr. Jeong that the applications had been delayed because Mr. Jeong's employer, Pen, Inc., had been late in providing the correct information.
4. In May of 1993, the Jeongs' work and dependency visas were issued. They were valid until April 30, 1996, and could be renewed for one additional three-year period. The Respondent continued to represent the Jeongs in obtaining their permanent residency visas. By August of 1995, the Respondent had all the necessary documentation, including an affidavit from Mr. Jeong's employer, which had been executed on July 28, 1995, for filing a complete I-140 application for permanent residency for the Jeongs. The Respondent informed the Jeongs that he had filed the appropriate application with the INS. For the next eighteen months, during numerous conversations, the Respondent told the Jeongs that he was monitoring their application and that the application was moving through the process and that all delays in the application's finalization were just part of the process.
 5. In early 1996, while waiting for the INS to process their permanent residency application, the Jeongs realized that their visas would expire on April 30, 1996. They asked the Respondent to file applications that would extend their visas for another three years. The Respondent waited until five days before the Jeongs' visas expired to file the applications, and filed the extension application with an expired labor certification. The applications were denied. The Respondent then obtained an affidavit from Mr. Jeong's employer, placing the blame on the employer for the out-of-date labor certification, and proceeded to appeal the INS decision.
 6. In February of 1997, after the Jeongs raised the issue of the delay in their case with Mr. Moon, the managing attorney of the Respondent's law firm, a search of the firm's files showed that the Jeongs' application for permanent residency had been placed in a file with a similar name which file had been closed and placed among the firm's closed files.
 7. On February 18, 1997, eighteen months after he told the Jeongs that he had filed their application, the Respondent actually filed the application with the INS. On or about February 25, 1997, the Respondent admitted to the Jeongs that he had, in fact, just filed their application with the INS, and had not done so in September of 1995 as he told them. The Jeongs asked the Respondent for copies of what he had actually filed. The Respondent could not locate a copy of a dated cover letter he had sent to the INS when he filed the application, so he manufactured one, with the date of February 6, 1997. The Respondent presented the letter to the Jeongs as a copy of the actual cover letter he had sent with their application. The Jeongs fired the Respondent and hired other counsel to handle their immigration matter.

8. The Jeongs hired the law firm of Sherman & Fromme to file a malpractice suit against the Respondent. Prior to the filing of the suit, the firm gave the Respondent notice of the claim and demanded that the Respondent inform his malpractice carrier. The Respondent did not do so in a timely manner, and the carrier refused to provide coverage.
9. The malpractice case, *Jeong, et al. v. Park, et al*, L178097, was heard by a jury in the Fairfax County Circuit Court in early January of 2000. On January 7, 2000, the jury found for the Jeongs and awarded them \$35,000.00, including \$20,000.00 in punitive damages. The Respondent appealed the decision to the Virginia Supreme Court, but certiorari was denied. The Respondent has paid the judgment in full. After the trial, the Sherman & Fromme law firm and the presiding judge both filed complaints with the Bar against the Respondent.

The Board finds by clear and convincing evidence that such conduct on the part of Sang Kuen Park, Esquire constitutes a violation of the following Disciplinary Rules:

DR 1-102. Misconduct.

(A)(4) * * *

DR 2-104. Specialists; Limitation of Practice.

(A)(1) * * *

DR 6-101. Competence and Promptness.

(B) * * *

It is hereby ORDERED that the Respondent shall receive a Public Reprimand, upon entry of this Order, as representing an appropriate sanction if this matter were to be heard.

Enter this Order this 16th day of May, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Karen A. Gould, Second Vice Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
SANG KUEN PARK
 VSB DOCKET NO. 00-052-0251

ORDER OF SUSPENSION

This matter came before the Virginia State Bar Disciplinary Board for hearing on May 15, 2003. The hearing was held before a duly convened panel of the Board consisting of William C. Boyce, Jr., Peter A. Dingman, Ann N. Kathan, Werner H. Quasebarth, Lay Member, and John A. Dezio, Chair.

All required notices were sent by the Clerk of the Disciplinary System. The Virginia State Bar was represented by Noel D. Sengel, Senior Assistant Bar Counsel. Sang Kuen Park, the Respondent in this proceeding (the "Respondent"), appeared in person and was represented by Timothy J. Battle,

Esquire. Donna T. Chandler with Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, having been duly sworn, reported the hearing.

The Chair opened the hearing and the panel was then polled as to whether any member had any conflict of interest or other reason why the member should not participate in the hearing. Each member, including the Chair, answered in the negative.

The Prior Proceedings

This matter arises out of a complaint filed by Soon Jung Park, the Complainant herein (the "Complainant"), against the Respondent involving: (i) the Respondent's preparation of a will for the Complainant's husband Mr. Keun Young Jang, and the circumstances surrounding the execution and subsequent probate of that will; and (ii) the preparation of a visa application for the benefit of the Complainant. This matter was referred to the Board by a Subcommittee Determination (Certification) (the "Certification") issued by a duly convened subcommittee panel of the Fifth District Committee Section II. This matter is governed by the Disciplinary Rules of the revised Virginia Code of Professional Responsibility as they were in effect at the time the complaint was filed against the Respondent.

Misconduct

The Certification charged violations of the following provisions of the Disciplinary Rules:

DR 1-102. Misconduct.

(A) (3) and (4) ***

DR 6-101. Competence and Promptness.

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

DR 7-101. Representing a Client Zealously.

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

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

(A) (3), (4), (5), (6) and (8) ***

At the onset of the hearing the Bar withdrew the allegations of misconduct under DR 2-104 and DR 7-102(A)(2), as set forth in the Certification.

Disposition

After due deliberation, the Board unanimously made the following findings on the basis of clear and convincing evidence:

- (i) the Bar has not furnished clear and convincing evidence that the Respondent engaged in conduct that violates Disciplinary Rule 1-102(A)(3);
- (ii) the Bar has proven by clear and convincing evidence that the Respondent engaged in conduct that violates Disciplinary Rule 1-102(A)(4);

- (iii) the Bar has proven by clear and convincing evidence that the Respondent engaged in conduct that violates Rules 6-101(A)(1) and 6-101(A)(2);
- (iv) the Bar has not furnished clear and convincing evidence that the Respondent engaged in conduct that violates Disciplinary Rules 6-101(B), 6-101(C), or 6-101(D);
- (v) the Bar has not furnished clear and convincing evidence that the Respondent engaged in conduct that violates Disciplinary Rules 7-101(A)(1), 7-101(A)(2), or 7-101(A)(3);
- (vi) the Bar has not furnished clear and convincing evidence that the Respondent engaged in conduct that violates Disciplinary Rules 7-102(A)(3), 7-102(A)(4), 7-102(A)(5), or 7-102(A)(6); and
- (vii) the charge raised by the Bar under Disciplinary Rule 7-102(A)(8) is redundant and, thus, unnecessary.

Sanction

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent's counsel, including the Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by the Respondent. After due deliberation, the Board reconvened to announce the sanction imposed. The Chair announced that the appropriate sanction is the suspension of the Respondent's license for six (6) months.

Accordingly, it is so ORDERED that the license of Sang Kuen Park to practice law in the Commonwealth of Virginia is hereby SUSPENDED FOR SIX (6) MONTHS effective May 15, 2003.

ENTERED this 30th day of May, 2003
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 John A. Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
DAVID REDDEN
 VSB DOCKET NO. 01-010-2981

ORDER

This matter came to be heard on June 12, 2003, upon an Agreed Disposition between the Virginia State Bar and the Respondent, David Redden, Esq.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Bruce T. Clark, Esq., Robert L. Freed, Esq., Ann Nicole Kathan, Esq., Chester J. Cahoon, Lay Member, and, Roscoe B. Stephenson, III, Esq., 1st Vice Chair, presiding, considered the matter by telephone conference. The

Respondent, David Redden, participated in the conference, *pro se*. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

It is the decision of the Virginia State Bar Disciplinary Board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar and the Respondent are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, David Redden (hereinafter Respondent or Mr. Redden) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In April 2001, Mr. Redden's bank, Wachovia, reported to the Virginia State Bar that he had overdrawn his trust account on two occasions. Each overdraft was caused by his presenting checks for payment against insufficient funds. The first check was in the amount of \$117.50, and the second was for \$17.
3. During October 2001, Mr. Redden met with a Virginia State Bar investigator. He explained that the overdrafts in his trust account were caused by his failure to keep a running balance in his check register as he should have. He said that he simply estimated how much money was in the account before making a check, and that in this instance, he miscalculated. He said that prior to April 2001, he was not reconciling his trust account every month.
4. Mr. Redden explained further that he did not have a cash receipts or cash disbursements journal, and that he did not have any client subsidiary ledgers prior to April 2001.

II. DISCIPLINARY RULE VIOLATIONS

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

RULE 1.15 Safekeeping Property

(c) (2) and (3) ***

RULE 1.15 Safekeeping Property

(e) (1) (i), (ii), (iii), (iv) and (v) ***

RULE 1.15 Safekeeping Property

(f) (2), (4) (i) and (ii), (5) (i), (ii) and (iii), (2) ***

III. DISPOSITION

Upon consideration of the Stipulations of Fact and Disciplinary Rule violations, the comments of counsel, and the Respondent's prior disciplinary record, the Board accepts the agreed upon sanction of a **PUBLIC REPRIMAND WITH TERMS**, the alternate sanction being a **one (1) year suspension** of the Respondent's license to practice law in the Commonwealth of Virginia if he fails to comply with any of the terms within the time periods given. The terms and conditions are as follows:

1. The Respondent, David Redden, is placed on probation for a period of one (1) year, said period to begin the date that the Board enters this Order. Mr. Redden will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such probationary period. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of a one-year suspension of his license to practice law as an alternate sanction. The alternate sanction will not be imposed while Mr. Redden is appealing any adverse decision that might result in a probation violation.
2. By June 1, 2004, Mr. Redden will attend a continuing legal education (CLE) course containing a block of instruction on trust account management and/or handling funds as a fiduciary for no annual continuing legal education credit. The Respondent will seek approval of the course from the Bar Counsel's office at the Virginia State Bar before attending the course, and certify his attendance at the course in writing to the Bar Counsel's office by June 1, 2004. The Respondent may contact the Virginia State Bar's Department of Mandatory Continuing Legal Education at (804) 775-0577 for information about suitable courses.
3. The Respondent will read the publication *Lawyers and other People's Money*, and provide written certification to the Bar Counsel's that he has done so office by July 1, 2003.
4. The Respondent will contact Virginia State Bar Investigator Ronald Pohrivchak at (757) 426-8673 and arrange a meeting between himself and Mr. Pohrivchak at the Respondent's office by August 1, 2003, to review the Respondent's trust account records and verify whether he continues to maintain the required records and reconciliations as he was during his last meeting with the investigator. Any finding that the Respondent has failed to maintain the required records and reconciliations will be deemed a violation of these terms.

The imposition of the alternate sanction will not require a hearing before the Board on the underlying charges of misconduct stipulated herein if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. The imposition of the alternate sanction shall be in addition to any other sanctions imposed for misconduct during the probationary period.

ENTERED THIS 18th Day of JUNE, 2003
 THE VIRGINIA STATE BAR DISCIPLINARY BOARD
 BY Roscoe B. Stephenson, III
 1st Vice Chair



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

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
JEFFREY BOURKE RICE
VSB DOCKET NO. 02-052-0197

ORDER

THIS MATTER came on to be heard on March 28, 2003, before a panel of the Disciplinary Board consisting of Roscoe B. Stephenson, III, Esquire, First Vice Chair, Larry B. Kirksey, Esquire, Chester J. Cahoon, Lay member, Joseph R. Lassiter, Jr., Esquire, and H. Taylor Williams, IV, Esquire. The State Bar was represented by Noel D. Sengel, Senior Assistant Bar Counsel. The respondent, Jeffrey Bourke Rice, appeared in person and represented himself. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative. Comiller T. Boyd, court reporter, 105 St. Claire Lane, Richmond, Virginia, (804) 644-2581, after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the District Committee Determination for Certification by the Fifth District Committee Section II.

I. FINDINGS OF FACT

VSB Exhibits 1 through 11 were admitted without objection. The Bar and Respondent entered into a stipulation of fact admitted as VSB Exhibit #12 without objection. The Board makes the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant hereto, Jeffrey Bourke Rice, hereinafter the "respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar has been 10521 Judicial Drive, Fairfax, Virginia, 22030. The respondent received proper notice of this proceeding as required by Part Six, §IV, ¶13 (E) and (I)(a) of the Rules of Virginia Supreme Court.
2. The Complainant, Curtis Lee Thompson, hereinafter referred to as "Thompson," was convicted in Madison County, Virginia, of a number of felonies and was sentenced to serve five (5) years in the Virginia State Penitentiary in December, 1999.
3. Mr. Thompson was still being housed in Culpeper County Jail in January, 2001, on behalf of Madison County.
4. Mr. Thompson communicated with respondent in January, 2001, requesting respondent to represent him on a motion to be filed in Madison County Circuit Court asking the court to reconsider its sentence imposed upon Thompson for his various felony convictions.

5. Respondent quoted a fee to Thompson of Seven Hundred Fifty Dollars (\$750.00) to engage him for the representation. Respondent had conversations with Thompson's mother and sister regarding payment of the quoted fee. On or about February 8, 2001, Thompson paid to respondent the sum of Seven Hundred Dollars (\$700.00) to engage respondent in representation in Madison County to request the court to reconsider the imposition of the sentence previously imposed upon him in December 1999, for various felony convictions.
6. After Thompson had paid respondent the fee of Seven Hundred Dollars (\$700.00), Thompson faxed respondent a letter dated February 21, 2001, requesting information about a court date and time on the motion for reconsideration to be filed in Madison County. Additionally, Thompson faxed a letter to respondent dated February 22, 2001, asking whether or not respondent had filed the motion for reconsideration in Madison County.
7. Pursuant to Virginia Code § 19.2-203 the circuit court that sentences a defendant may reconsider the imposition of a sentence upon a defendant "at any time before the person is transferred to the Department [of Corrections]." Therefore, time was of the essence in the representation undertaken by respondent on behalf of Thompson because the local circuit court could only maintain jurisdiction to reconsider Thompson's sentence while Thompson remained housed in the Culpeper County Jail.
8. On March 21, 2001, respondent filed a motion to reconsider Thompson's sentence and a praecipe noticing the Commonwealth that the motion would be heard in the Madison County Circuit Court on April 11, 2001.
9. On March 22, 2001, custody of Thompson was transferred from Culpeper County Jail to the Virginia Department of Corrections. The transfer of custody to the Virginia Department of Corrections deprives the Madison County Circuit Court of any further jurisdiction to modify Thompson's sentence pursuant to Virginia Code § 19.2-303.
10. Madison County Circuit Court has motion days on the second Wednesday of each month. Respondent did not file a motion to reconsider on behalf of Thompson prior to the motion days available on February 14, 2001, or March 14, 2001.
11. Respondent attempted to explain the delay as necessary because he was attempting to get a pre-sentence report from Thompson's counsel who represented him in the trial and at sentencing. Counsel delayed in sending the pre-sentence report to respondent, therefore respondent obtained permission from the court to get a copy of the pre-sentence report by order entered March 28, 2001. It should be noted that the motion for reconsideration was filed one week prior to the entry of the order granting respondent permission to get a copy of the pre-sentence report.
12. Respondent further explained the delay as being caused by Thompson's request for respondent to communicate

with two investigators to see if the investigators would be responsive to receiving information from Thompson in return for assistance from the investigators on the motion to ask the court to reconsider his sentence. It should be noted that the two faxes sent by Thompson to respondent make no mention of the request to speak to the investigators and that respondent did not produce any independent evidence that he had spoken with the investigators on behalf of Thompson.

13. Respondent did attend the hearing in Madison County Circuit Court scheduled for April 11, 2001. The Court appropriately denied the motion for reconsideration of Thompson's sentence because it no longer had jurisdiction over Thompson. Thompson learned of the circuit court's decision denying the request for reconsideration after he called the respondent's office.
14. On October 22, 2002, respondent was served in person with a summons to appear before the District Committee for a hearing concerning this complaint. The hearing was scheduled for November 19, 2002. Respondent failed to appear at the hearing.
15. Respondent attempted to explain his failure to appear at the hearing on November 19, 2002, before the District Committee by stating that he failed to put the hearing on his calendar. Respondent stated that he had no scheduling conflicts for the hearing on November 19, 2002.

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

(a) ***

RULE 1.4 Communication

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

RULE 8.1 Bar Admission and Disciplinary Matters

(a) ***

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1 through 11, and the stipulation of facts admitted as VSB Exhibit 12, upon evidence from witnesses presented on behalf of the Bar and upon evidence presented by respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its findings as follows:

1. The Board determined that the Bar failed to prove by clear and convincing evidence any violation of Rule 1.4(a), (b), and (c).
2. The Board determined that the Bar did prove by clear and convincing evidence that the respondent was in violation of Rule 1.3 (a) and Rule 8.1(c).

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and respondent, including respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as a one-year suspension of respondent's license to practice law in the Commonwealth of Virginia. In announcing the sanction the Chair informed respondent that the Board placed great emphasis on respondent's lengthy prior disciplinary record, with references to similar types of misconduct and took notice of the effort exerted by the Bar to have notice of the District Committee hearing served upon respondent only to have respondent forget the hearing date and fail to appear at the hearing.

Accordingly, it is ORDERED that the license to practice law in the Commonwealth of Virginia of respondent, Jeffrey Bourke Rice, shall be suspended for one (1) year effective March 28, 2003.

ENTERED this 5th day of May, 2003.
Roscoe B. Stephenson, III, First Vice Chair
Virginia State Bar Disciplinary Board



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF:
ROBERT SIDNEY RICKS
VSB DOCKET NOS.
02-010-0908, 02-010-1014,
02-010-1071, 02-010-1137,
02-010-1431, 02-010-1432,
02-010-1790, 02-010-3319,
02-010-3427, 02-010-3990,
02-010-2261, 02-010-2650,
02-010-3329, 02-010-3628,
AND 03-010-0210

ORDER OF REVOCATION

These matters were certified to the Virginia State Bar Disciplinary Board ("Board") by the First District Committee, and were heard on May 16, 2003, by a duly convened panel consisting of Roscoe B. Stephenson, III, 1st Vice Chair, Thaddeus T. Crump, lay member, Robert L. Freed, Joseph R. Lassiter, Jr., and Janipher W. Robinson. The Respondent, Robert Sidney Ricks (hereinafter "Mr. Ricks" or "Respondent"), was present and proceeded pro se. The Virginia State Bar (hereinafter "the Bar") was represented by Edward L. Davis, assistant bar counsel.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the chair, verified that they had no conflicts.

The Bar presented to the panel a total of sixty-six (66) exhibits pertaining to the individual complaints listed below, all

of which were received into evidence without objection. In addition, the parties presented to the Board a 46 paragraph Stipulations of Fact, which further stipulated that the parties agreed that the stipulated facts gave rise to violations of the Disciplinary Rules and Rule of Professional Conduct, as set forth below. In addition, the parties orally stipulated that Respondent discovered the embezzlement of client funds by his longtime employee, Ms. Mehalko, in December 1999 or January 2000.

STIPULATIONS OF FACT

The Stipulations of Fact entered into by the Bar and Mr. Ricks are as follows:

1. During all times relevant hereto, the Respondent, Robert Sidney Ricks (hereinafter Respondent or Mr. Ricks) was an attorney licensed to practice law in the Commonwealth of Virginia.

02-010-0908

Complainant: Latashia M. Baker

2. In 1998, complainant Latashia M. Baker hired Mr. Ricks to represent her in a personal injury claim resulting from a traffic accident that occurred on January 20, 1998. Mr. Ricks told her that he would contact the other driver's insurance carrier and try to arrange a suitable settlement. This was the only time that she saw Mr. Ricks. Thereafter, she saw only Mr. Ricks long-term secretary, Cynthia Mehalko. Ms. Baker would contact Ms. Mehalko about the status of her claim. When she informed Ms. Mehalko that she was in need of cash, Ms. Mehalko had her execute three loans with Bynum Finance, Inc., as well as assignments of her personal injury claim to Bynum.
3. By letter dated January 27, 1998, Mr. Ricks notified the other driver's liability carrier, Allstate, of Ms. Baker's personal injury and property damage claims. Ms. Mehalko signed the letter for Mr. Ricks. By letter dated February 10, 1998, Allstate acknowledged the claim, and by letter, dated January 14, 2000, asked Mr. Ricks to provide information about Ms. Baker's treatment status and medical bills.
4. No one ever provided the information requested by Allstate, and no one ever perfected Ms. Baker's claim against Allstate or the other driver. Allstate did pay a subrogation claim to Ms. Baker's insurance carrier, State Farm, for the damage to Ms. Baker's motor vehicle. With respect to the personal injury claim, however, Allstate closed its file after the applicable statute of limitations ran, and notified Mr. Ricks about this by letter, dated March 21, 2000.
5. As a result of her claim not being asserted, Ms. Baker was left with more than \$7,000 (seven thousand dollars) in unpaid loans and interest to Bynum Finance, and \$1,440 (one thousand four-hundred forty dollars) in unpaid medical bills owed to Portsmouth Orthopedic. She left several messages with Ms. Mehalko for Mr. Ricks to call her, however, he never did.
6. On January 22, 2002, Mr. Ricks advised the Virginia State Bar investigator that Ms. Baker was his client, but that

his secretary had absconded to Florida with the files. He said that he had no knowledge of the loans from Bynum finance.

02-010-1014

Complainant: Mary Evelyn Sellars

7. On May 4, 1998, complainant Mary Evelyn Sellars was injured a traffic accident when her vehicle was struck by another driver. She provided the pertinent information to Ms. Mehalko, her sister-in-law, and later met with Mr. Ricks. Mr. Ricks told her something to the effect that it was a matter that insurance would handle. Thereafter, she never saw or spoke with Mr. Ricks again.
8. On July 15, 1998, Ms. Mehalko arranged for Ms. Sellars to execute a \$1,580 loan with Bynum Finance, Inc., as well as an assignment of her personal injury claim to Bynum. She used the money to repair the damage to the vehicle, and to pay Ms. Mehalko \$500, purportedly a fee to Mr. Ricks. Ms. Mehalko told her that the loan would be repaid from her settlement. Bynum, however, demanded payment, saying that Mr. Ricks had never settled her claim. Ms. Baker left several messages for Mr. Ricks, but never heard from him. No one ever asserted Ms. Sellars' claim against anyone, and the statute of limitations ran. Ms. Sellars filed a warrant in debt against Mr. Ricks.
9. On January 22, 2002, Mr. Ricks advised the Virginia State Bar investigator that he recalled telling Ms. Sellars to settle with the insurer directly, because it was a property damage claim only. He said that Ms. Sellars never hired him, and that he could find no file on the case, suspecting that Ms. Mehalko absconded with it. He denied any knowledge of the loan or assignment.

02-010-1071

Complainant: Allen Bynum

10. Complainant Allen Bynum operates a finance company that makes loans to clients in personal injury cases. The borrowers agree to repay the loans from funds that they recover in their personal injury cases. Mr. Bynum furnished the bar with a list of 22 debtors, all purported clients of Mr. Ricks, who never repaid their loans, and purportedly never received any funds from Mr. Ricks either. Several of the borrowers are the other complainants mentioned in this certification.
11. One of the delinquent loans, made on December 17, 1999, was to Mr. Ricks' secretary, Cynthia Mehalko. The amount of the loan was \$5,700. The amount owing on the loan, as of November 30, 2001, was \$9,769.80. In this case, Mr. Ricks witnessed the execution of the loan, and endorsed the assignment to Bynum. According to Mr. Bynum, he agreed to the loan because Mr. Ricks assured him that the underlying case was good, and that Mehalko would pay the loan. Mr. Ricks explained that the loan would be repaid from Ms. Mehalko's proceeds from a real estate transaction, and by payroll deduction beginning in January 2000. Mr. Bynum, however, never received any payments on the Mehalko loan. Mr. Ricks did not forward any payroll deductions from Mehalko's pay as promised.

02-010-1137

Complainant: Vivian A. Scott

12. On August 5, 1999, complainant Vivian A. Scott was injured when she fell at a grocery store. Based upon a referral from a neighbor, Trina Artis, she saw Mr. Ricks, and gave him her medical bills. (Mr. Ricks has no recollection of this meeting, and did no work for Ms. Scott.) Thereafter, Ms. Scott never saw Mr. Ricks again, and saw only his secretary, Cynthia Mehalko. No one ever asserted a claim against the grocery store, or made demand for Ms. Scott, and the statute of limitations ran.
13. By letter, dated September 30, 1999, Risk Management Services, Inc., on behalf of the grocery store, asked Ms. Scott to endorse an authorization of release of medical information. The company never received a response from Ms. Scott, and closed its file.
14. On the advice of Ms. Mehalko, Ms. Scott executed three loans with Bynum Finance, Inc., as well as assignments. The aggregate total of the loans was \$3,250. She did not pay the loans, Ms. Mehalko having explained that they would be paid out of her settlement. The last of the three loans, executed on May 12, 2001, took place after Mr. Ricks knew that Ms. Mehalko had been embezzling from him. At the time, however, he had kept her in his employment, thinking that she would pay back the money that she had embezzled from him.

02-010-1431 – Complainant: Denita L. Baker

02-010-1432 – Complainant: Lizzie B. Goodman

02-010-1790 – Complainant: Trina D. Artis

15. On February 12, 1998, complainants Denita Baker, Lizzie B. Goodman, and Trina D. Artis were injured when their vehicle was struck in the rear by a drunken driver. The other driver was uninsured. The three women and a fourth occupant, Joyce A. Harris, hired Mr. Ricks to represent them in their personal injury claims. Ms. Goodman also hired Mr. Ricks to pursue her vehicular damage claim. They met with Mr. Ricks only once. Thereafter, they saw only his secretary, Ms. Mehalko.
16. By letter dated July 13, 1998, Mr. Ricks asserted a claim against Ms. Goodman's uninsured motorist protection policy on behalf of all four of his clients. The insurer, State Farm, issued medical payment checks to Ms. Harris on August 17, 1998, to Ms. Artis and Ms. Goodman on August 20, 1998, and to Ms. Baker on September 17, 1998. On an unknown date, Ms. Mehalko called the four women to a meeting at Ms. Goodman's house where she instructed them to endorse all four checks and give them to Ms. Mehalko. Ms. Mehalko told them that the checks were for medical bills, and that they would remain in the law firm's safe until the case settled. The four clients, however, never received any of the money from the checks, and none was applied toward their unpaid medical bills.
17. The following year, on February 9, 1999, the insurance carrier issued four more checks, ranging in value from \$1,000 to \$1,300, payable to each of the four women jointly with Mr. Ricks. On February 11, 1999, an unknown person

endorsed the checks for the four women and Mr. Ricks, and deposited all four checks into Mr. Ricks' attorney trust account. Mr. Ricks' trust account records show that the funds were then drawn from the trust account promptly, but for an unrelated matter. Someone also endorsed releases for all four women and for Mr. Ricks, and sent the releases to the insurance carrier. Both Mr. Ricks and the four women claim that they never saw the checks or the releases, and that someone forged their signatures on the checks. Mr. Ricks never detected the improper disbursement reflected in his trust account records.

18. On Ms. Mehalko's advice, each of the four women also executed loans with Bynum Finance, Inc., and executed assignments to Bynum, with the understanding that their loans would be repaid from their settlements. The loans were never repaid. Mr. Ricks denied any knowledge of the loans or assignments, and cannot locate the files for these cases. Ms. Mehalko told the four women that she was moving to Florida and taking their files with her so that she could work on them some more. When Bynum demanded payment, the four women contacted Mr. Ricks, who explained that he had no knowledge of the loans or the status of their cases, and could not locate their files.

02-010-3319

Complainant: Jane E. Matthews

19. On an unknown date, James F. Peterson hired Mr. Ricks to foreclose on a residence he had previously sold to Millard and Ramona Hall on July 6, 1999. On November 24, 2000, Mr. Peterson died. The complainant, Jane E. Matthews, qualified as executrix of his estate on January 19, 2001, and asked Mr. Ricks to proceed with the foreclosure. Mr. Ricks requested \$1,500 to proceed, which Ms. Matthews paid with estate funds on January 26, 2001. Mr. Ricks did not place any of the funds in his trust account.
20. Ricks did not conduct the foreclosure until November 16, 2001. Ms. Matthews was the only bidder, effectively returning the home to Mr. Peterson's estate. Mr. Ricks, however, failed to file his trustee's report of foreclosure, and failed to deliver the foreclosure deed to Ms. Matthews. Having left several messages for Mr. Ricks, but receiving no response, she complained to the bar in April 2002. Ricks still did not prepare the deed, causing Ms. Matthews to hire another attorney to help her. Ricks finally prepared the deed sometime in August or September 2002. As of September 23, 2002, he still had not filed his trustee's report of foreclosure sale.
21. Meanwhile, the defaulting buyers remained on the property without paying the mortgage or property taxes. Ms. Matthews asked Mr. Ricks to initiate eviction procedures against the defaulting buyers. He failed to do so, however, and did not return any of Ms. Matthews telephone calls. She left messages for Mr. Ricks to return the file; however, he failed to do so.

02-010-3427

Complainant: Ms. Margaret R. Coleman

22. On December 30, 1996, complainant Margaret R. Coleman was awarded \$500 per month in spouse support pursuant to a final decree of divorce. Mr. Ricks was her

attorney. In 2001, her husband moved and stopped making payments. On November 29, 2001, Ms. Coleman hired Mr. Ricks to pursue the delinquency for her. She paid him \$750, and delivered him a copy of her divorce decree. Mr. Ricks did not place the funds in his attorney trust account. Thereafter, Mr. Ricks took no further action in the matter.

23. Mr. Ricks having done nothing, Ms. Coleman discharged him on more than one occasion. She would change her mind, however, when he mentioned hearing dates to her. She contacted the court, however, and determined that her case was not on the docket. She discharged him and demanded a refund of her advanced fee.
24. During his interview with the Virginia State Bar investigator, Mr. Ricks denied telling Ms. Coleman that he had scheduled hearings. Mr. Ricks, however, never pursued the matter, never returned the divorce decree, and never issued a refund.

02-010-3990

Complainant: Mr. Lance D. Nyman

25. On January 29, 1999, the complainant, Lance D. Nyman, hired Mr. Ricks to assist him with a homeowner's insurance claim relating to hail damage that occurred on May 1, 1997. He paid Mr. Ricks \$78 for filing fees. His check stated that it was for "filing fees" and Mr. Ricks issued a receipt indicating that the money was "Payment to file suit." Mr. Ricks, however, paid the filing fees with a check drawn on his office account. He did not file suit until April 28, 2000, and the case was dismissed because the insurance policy had a contractual provision for a two-year statute of limitations.

02-010-2261

Complainant: William H. Jones

26. On October 10, 1996, William H. Jones was injured in a traffic accident when a truck struck the vehicle he was driving. His vehicle was also damaged in the accident. He engaged Mr. Ricks, who asserted a claim against the liability carrier, State Farm Insurance. Unable to settle, Mr. Ricks filed a law suit for personal injury in the Portsmouth Circuit Court, and for property damage in the Portsmouth General District Court. On August 11, 1997, Mr. Ricks won a judgement for the property damage claim. The defendant, however, appealed to the circuit court, and the cases were consolidated.
27. On November 7, 2000, Mr. Ricks took a voluntary non-suit when his client failed to answer interrogatories. He delegated the duty of refiling the case to his secretary, Cynthia Mehalko. Ms. Mehalko failed to ensure that the case was refiled as directed, and the time for doing so expired, causing the cases being dismissed with prejudice. Mr. Ricks accepted responsibility for the neglect, and advised his client about his error. He did not suggest a malpractice claim.

02-010-2650

Complainant: Ms. Maria Shelia Herboso

28. On October 18, 1999, Shelia Herboso was injured in a traffic accident her vehicle was struck by an uninsured motorist. In October 1999, she contacted Mr. Ricks about representing her. On November 18, 1999, Mr. Ricks notified the insurer of the vehicle, Nationwide, that he was representing Ms. Herboso, and commenced negotiations.
29. On August 14, 2001, Nationwide issued a check in the amount of \$8,626.40 payable to Mr. Ricks and Ms. Herboso. The check was for medical expenses incurred by Ms. Herboso under the policy's medical payments coverage. This coverage was provided to Ms. Herboso by contract, and payment did not require any negotiation. Although he received the check, Mr. Ricks did not deposit it at that time. Subsequently, Mr. Ricks accepted \$21,000 for Ms. Herboso as full and final settlement of her personal injury claim. On October 2, 2001, Nationwide issued a check in that amount, payable to Mr. Ricks and Ms. Herboso.
30. On October 12, 2001, Mr. Ricks deposited both checks into his attorney trust account. The gross amount of the deposit was \$29,626.40, including the med-pay. Although the med-pay check was issued on August 14, 2001, Mr. Ricks did not deposit it until October 12, 2001 after he received the other check. Mr. Ricks explained to the bar that he "probably slipped it into the file" thinking that the other check would be "right behind."
31. On October 12, 2001, Mr. Ricks prepared a disbursement sheet that Ms. Herboso endorsed. According to the disbursement sheet, his attorney's fees were \$9,875.46, reduced to \$8,500. The figure of \$9,875.46 equals one-third of the gross amount received, including the contractually provided med-pay. There was no written fee agreement to indicate how much his fee would be, although the settlement sheet says "1/3." The net fee of \$8,500, however, is approximately 40.47% of the \$21,000 personal injury settlement figure. The sheet also reflects a balance of \$12,296.33 owed to the medical care providers. The remainder, payable to Ms. Herboso, was \$8,830.37.
32. On October 18, 2001, Mr. Ricks paid himself his attorney's fees of \$8,500 with a check drawn on his trust account, but did not pay Ms. Herboso her share of the settlement. He did not pay any of the medical care providers either, but did ask Ms. Herboso to allow him two or three weeks to negotiate with the medical care providers so that she could receive more money. Thereafter, Ms. Herboso's medical care providers began to dun her for payment, having received nothing from Mr. Ricks. Unable to reach Mr. Ricks, she paid one of the bills herself. In March 2002, Mr. Ricks having continued to fail to pay the medical care providers, she complained to the Virginia State Bar.
33. Mr. Ricks still did not pay Ms. Herboso or her providers. During a meeting on July 10, 2002, he advised the Virginia State Bar investigator that he felt that he should not disburse because of the bar complaint. No one at the bar advised Mr. Ricks to do so, however, and after meeting with the investigator, he paid the rest of the medical expenses. He also indemnified Ms. Herboso for the bill

she paid on her own. A review of his trust account showed that the account balance was never less than the amount of funds held in trust for Ms. Herboso.

02-010-3329

Complainant: Mr. Bruce E. Knight

34. On January 5, 2000, Bruce E. Knight was injured when another vehicle entered his lane of travel and struck him head-on. In addition to his injuries, Mr. Knight the total loss of his vehicle. The other driver was uninsured. On an unknown date, Mr. Knight hired Mr. Ricks, and Mr. Ricks asserted a claim against Mr. Knight's insurance carrier, Progressive. Thereafter, when Mr. Knight tried to contact Mr. Ricks, he spoke only with Mr. Ricks' former secretary, Cynthia Mehalko.
35. In July 2001, Ms. Mehalko called Mr. Knight and informed him that Progressive offered a settlement of \$8,200, and that Mr. Knight would receive \$3,000 from the settlement after the payment of medical expenses and fees. Mr. Knight refused the offer, and assumed that Mr. Ricks would continue to negotiate for him. In April 2002, one of the medical care providers began to dun Mr. Knight for payment, saying that they could not reach Mr. Ricks. Mr. Knight contacted Progressive, and learned that someone had accepted Progressive's \$8,200 settlement offer, despite his prior refusal. He also learned that Progressive issued a check in that amount, payable to Mr. Ricks and Mr. Knight, on July 22, 2001. The investigation revealed that someone forged both Mr. Ricks and Mr. Knight's signatures on the check, deposited it into his attorney trust account, and then withdrew the funds from the trust account. According to Mr. Ricks, he never saw the check or the money.
36. The investigation revealed further that it was Ms. Mehalko who accepted Progressive's settlement offer of \$8,200. The investigation also revealed that she previously rejected an offer of \$7,800 on June 28, 2001 without notifying Mr. Ricks or Mr. Knight. On August 6, 2001, Ms. Mehalko moved to Florida, taking that and other case files with her. She has not returned. Mr. Knight never heard from Mr. Ricks again.
37. Mr. Ricks kept Ms. Mehalko in his employment despite knowing that she had embezzled from him in the past. He did this in order to enable her to repay the money that she had previously embezzled.

02-010-3628

Complainant: Chantale L. Joseph

38. On February 21, 1997, Chantale L. Joseph was injured when her vehicle was struck from behind. On an unknown date, she hired Mr. Ricks to represent her. Thereafter, whenever she tried to contact Mr. Ricks, she could speak only with his former secretary, Cynthia Mehalko. In 2000, Ms. Mehalko called Ms. Joseph and told her that the liability carrier, Farmers Insurance Group, had issued them a settlement check, but that they lost it when they moved the office. In July 2001, Ms. Mehalko contacted Ms. Joseph again, and advised her that Farmers Insurance refused to issue a replacement check, and that a

court hearing was scheduled for September 27, 2001. Thereafter, Ms. Joseph heard nothing from Mr. Ricks or Ms. Mehalko. On September 19, 2001, with the purported hearing approaching, she called Mr. Ricks' office and spoke to his new assistant, who arranged a meeting. At the meeting, Mr. Ricks told Ms. Joseph that he had no recollection of ever meeting her, and had no case file or record of her case.

39. The investigation revealed that Farmers Insurance and someone in Mr. Ricks' office agreed to a settlement of \$8,100 on May 20, 1999. (Farmers Insurance's file indicates that they were communicating with someone named "Cyndi" in Mr. Ricks' office.) Farmers Insurance then issued the check, payable to Mr. Ricks and Ms. Joseph. Someone then forged their signatures, deposited the check into Mr. Ricks' trust account on May 27, 1999, and subsequently withdrew the funds. Farmers Insurance sent several written requests for Mr. Ricks to return an endorsed release, but this was never done. Mr. Ricks said that he never saw the check, and never participated in its processing. He surmised that Ms. Mehalko forged the signatures, and forged about ten of the thirteen checks that drew the funds from his trust account in this case. One of the checks was payment to a medical provider in another case. Ms. Joseph, however, never received any of the proceeds, and none of her medical providers were ever paid.
40. Mr. Ricks kept Ms. Mehalko in his employment despite knowing that she had embezzled from him in the past. He did this in order to enable her to repay the money that she had previously embezzled from him. On August 6, 2001, Ms. Mehalko moved to an unknown location in Florida, taking several case files with her.

03-010-0210

Complainant: Sylvia H. Simpson

41. In 1997-1998, Mr. Ricks represented Sylvia H. Simpson in a personal injury case. On February 11, 1998, Ms. Simpson's insurer, Southern Heritage, issued a medical payments check in the amount of \$1,322, payable to Ms. Simpson and Mr. Ricks. Mr. Ricks' former secretary, Cynthia Mehalko, told Ms. Simpson that they would hold the check in escrow to pay her medical care providers. Cover letters in Mr. Ricks' file indicate that he paid several of Ms. Simpson's medical care providers between December 1998 and February 1999.
42. Mr. Ricks continued to negotiate the personal injury claim with State Farm, the liability insurance carrier. In October 1998, State Farm offered \$3,000 to settle the claim, and Ms. Mehalko accepted it on behalf of Mr. Ricks and Ms. Simpson. On October 19, 1998, State Farm issued a check in the amount of \$3,000, payable to Mr. Ricks and to Ms. Simpson. Ms. Simpson endorsed the check, but someone forged Mr. Ricks' signature and deposited the check into his attorney trust account on October 23, 1998. The same day, someone forged Mr. Ricks' signature on a trust account check in the amount of \$1,000 for "legal fee Sylvia H. Simpson," and deposited it into his general account. On November 19, 1998, someone forged Mr. Ricks' signature on two more trust account checks, one in the amount of

\$2,620 and the other in the amount of \$350, both payable to Sylvia Simpson for "settlement for accident." Both checks were paid on November 23, 1998. The disbursements represented a total of \$3,970 drawn on a \$3,000 deposit. Mr. Ricks said that the signatures were not his. He suspected former secretary Cynthia Mehalko.

43. Ms. Simpson said that she received one check, in the approximate amount of \$2,300, and that she did not receive two checks. Ms. Simpson continued to be dunned by one medical care provider, Obici Hospital. By May 2000, Obici stopped dunning Ms. Simpson, so she assumed that someone paid the claim, although to this day, she does not know. In June 2002, she received a dunning letter from another provider, the Orthopaedic Surgery Center, indicating that she still owed money, and that they had not been able to contact her attorney, Mr. Ricks. When she contacted Mr. Ricks, he explained that his secretary had taken all of his money, and that he could not help her.
44. Neither Mr. Ricks nor his former assistant prepared a personal injury closing statement reflecting the disbursements. According to Mr. Ricks, he has no recollection of either insurance check coming to his office.
45. A review of Mr. Ricks' trust account bank statement indicated that check number 3273 was drawn on the trust account and made payable to Bell Atlantic, his telephone company.
46. Mr. Ricks kept Ms. Mehalko in his employment despite knowing that she had embezzled from him in the past. He did this in order to enable her to repay the money that she had previously embezzled from him. On August 6, 2001, Ms. Mehalko moved to an unknown location in Florida, taking several case files with her.

After admitting the exhibits into evidence and receiving the stipulations of the parties, the Board retired to deliberate the issues of misconduct. Following the consideration of all the evidence so received, the Board found by clear and convincing evidence the following findings of misconduct, which are in accordance with the stipulations of the parties, *to wit*

FINDINGS OF MISCONDUCT

The Board finds by clear and convincing evidence that the Respondent has violated the following Disciplinary Rules and Rules of Professional Conduct:

DR 1-102. Misconduct.

(A) (3) ***

DR 2-105. Fees.

(C) ***

DR 3-104. Nonlawyer Personnel.

(A) (1), (2) and (3), (C) and (D) ***

DR 6-101. Competence and Promptness.

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

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

(B) (1) (2), (3) and (4) ***

DR 9-103. Record Keeping Requirements.

(B) (4) (a) and (b), (5) (a), (b) and (c) ***

From the conduct that occurring after January 1, 2000, the Board finds by clear and convincing evidence that the Respondent has violated the following Rules of Professional Conduct:

RULE 1.1 Competence

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

RULE 1.3 Diligence

(a) and (b) ***

RULE 1.4 Communication

(a) and (c) ***

RULE 1.5 Fees

(c) ***

RULE 1.15 Safekeeping Property

(a) (1) and (2), (c) (1), (2), (3) and (4), (f) (4) (i) and (ii), (5) (i), (ii) and (iii) ***

RULE 1.16 Declining Or Terminating Representation

(e) ***

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) ***

Upon returning its findings on the issues of misconduct, the Board proceeded to hear evidence on the issues of sanctions. Mr. Ricks' prior disciplinary record was submitted to the Board for consideration.

SUMMARY OF DECISION

Fifteen ethical complaints were filed against Mr. Ricks and consolidated for purposes of this hearing. Eleven of the complaints involve Mr. Ricks' long-term secretary, Cynthia Mehalko. The stipulations, including Ms. Mehalko's admissions to Mr. Ricks no later than January 2000, establish that Ms. Mehalko routinely signed retainer agreements for Mr. Ricks, negotiated settlements with insurance adjusters, met with clients to obtain endorsements on settlement checks, forged client endorsements, and forged Mr. Ricks' signature on settlement checks, trust account checks, and operating account checks. Upon learning in the fall of 1999 that Ms. Mehalko had embezzled at least \$12,000 in client funds from Mr. Ricks' trust account, Mr. Ricks kept Ms. Mehalko on his payroll as his sole employee.

Mr. Ricks stated that he did so, thinking she would pay back the money that she had embezzled. Mr. Ricks admitted during oral argument that, after learning that Ms. Mehalko had embezzled \$12,000 from one client, he questioned her and she admitted taking client funds from "six or eight other clients." Mr. Ricks did not conduct any investigation of his trust account records and files in order to establish the true extent of Ms. Mehalko's defalcations.

At least four of the eleven complaints arising from personal injury cases involve malfeasance by Ms. Mehalko after she admitted her criminal activity to Mr. Ricks in January 2000. In *Scott*, Mehalko obtained a loan for the client in May 2001. In *Jones*, Ricks nonsuited the client's case in November 2000, and relied upon Ms. Mehalko to refile the suit, which never occurred and the statute of limitations ran. In *Knight*, Mehalko negotiated a settlement without Mr. Ricks' involvement, and then settled the case in July 2001, contrary to the client's instructions and without the client's knowledge. Mehalko forged both the client's signature and Mr. Ricks' signature on the settlement checks. In *Joseph* Mehalko continued to make misrepresentations to the client during 2000 and as late as July 2001, about the whereabouts of the settlement check. The case had apparently been settled by Mehalko in May 1999.

In at least three other complaints, Mr. Ricks could not point to Ms. Mehalko to explain his inattention to his clients' files. In *Herboso* Mr. Ricks handled a personal injury claim himself and received payment for the medical payments claims in August 2001. Mr. Ricks failed to deposit the medical payments checks into his trust account until October, 2001, two months later, at which time he drew down his fee but did not disburse to the client. In March 2002, Ms. Herboso filed her bar complaint because she still had not received her settlement proceeds. Mr. Ricks did not disburse her settlement proceeds to her until July 2002, after the bar investigator suggested to him that he should disburse the funds. To compound the matter, Mr. Ricks clearly charged her a contingency fee on the medical payments recovery, a non-contingent matter. In *Matthews*, Mr. Ricks accepted a \$1,500 fee in January 2001, to institute foreclosure proceeds, which he deposited directly to his operating account. He did not conduct the foreclosure until November 2001, and he failed to file a foreclosure report or to prepare a trustee's deed. Ultimately he prepared the deed in August or September 2002, but had still not filed his report as of September 23, 2002. In *Coleman*, Mr. Ricks accepted a \$750.00 fee to collect spousal support arrears owed to a former divorce client, but took no action to collect the arrears and never refunded the fee.

There is no suggestion in the record that Mr. Ricks was in any way a participant in Ms. Mehalko's criminal activity. Bar counsel and the bar investigator both advised the panel that Mr. Ricks had been very cooperative throughout the investigation, ultimately stipulating to the charges. However, the magnitude of the harm to Mr. Ricks' clients is overwhelming. The personal injury clients have in most cases lost their ability to recover from the tortfeasors, and are left with substantial, often overwhelming medical bills. Mr. Knight testified before the panel that he had borrowed heavily to pay his medical bills. Ms. Artis testified that her husband's wages were still being garnisheed to pay her medicals. Mr. Ricks asked the panel to take into consideration the impact that Ms. Mehalko's criminal activi-

ties have had on him. More pertinently, the panel must take into consideration the impact that Ms. Mehalko's defalcations have had on his clients. Mr. Ricks used incredibly naive and questionable judgment in failing to terminate Ms. Mehalko's employment when he first learned in January, 2000, that she had stolen at least \$12,000 from one of his clients and further admitted to taking funds from a half dozen other clients. Mr. Ricks further compounded the problem by failing to ascertain the extent of the criminal activity, and failing to put satisfactory controls in place to make sure the defalcations would not continue. The bar investigator testified that the total of funds known to be embezzled by Ms. Mehalko exceed \$31,000.

The panel takes note of Mr. Ricks' prior record consisting of two private reprimands issued on December 4, 2001, both of which involve other clients bilked by Ms. Mehalko.

The Respondent has failed to produce any evidence that would support a determination that the problems that Mr. Ricks has experienced would not continue to occur were Mr. Ricks to continue the practice law. Having given due consideration to bar counsel's recommendation that Mr. Ricks' license be suspended for three years, the panel finds the Respondent guilty by clear and convincing evidence of the numerous ethics violations as set forth above, and that the Respondent's license to practice law should be revoked effective immediately.

IMPOSITION OF SANCTION

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions, and having considered the Respondent's prior disciplinary record, ORDERS pursuant to Part 6, Sec. IV, Para. I.f(2) of the Rules of the Virginia Supreme Court that the license of the Respondent, Robert Sidney Ricks, to practice law in the Commonwealth of Virginia be, and the same is hereby revoked effective May 16, 2003.

ENTERED this 20th day of June, 2003.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Roscoe B. Stephenson, III, First Vice Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
ROBERT MICHAEL SHORT
VSB DOCKET No: 03-000-2726

ORDER OF REVOCATION

THIS MATTER came before the Virginia State Bar Disciplinary Board (hereinafter referred to as the "Board"), sitting at the State Corporation Commission, Courtroom A, Tyler Building, in Richmond, Virginia, on March 28, 2003, upon a Petition for Expedited Hearing and Summary Suspension before a duly convened panel consisting of Roscoe B. Stephenson, III, presiding, and Lay Member Chester Cahoon, Larry B. Kirksey, Joseph R. Lassiter, Jr., and H. Taylor Williams, IV. The Virginia State Bar (hereinafter referred to as the "Bar") was represented by Noel D. Sengel, Esquire. The Respondent, Robert Michael Short (hereinafter referred to as the "Respondent") did not

appear at the hearing. Comiller T. Boyd, Chandler & Halasz, Registered Professional Reporters, P. O. Box 9349, Richmond, Virginia 23227 (phone number 804-730-1222), recorded the hearing after being duly sworn by the Chair. The panel was polled to determine whether any member had any business or financial interest or bias that would impair his ability to hear this matter fairly and impartially. Each member, including the Chair, responded in the negative.

Following a hearing on the evidence, the Board made the following findings as to the matter by clear and convincing evidence:

1. The Respondent was licensed to practice law in the Commonwealth of Virginia on October 18, 1996, and, as of the date of the filing of the petition herein, was licensed to practice law in the Commonwealth of Virginia.
2. On the afternoon of March 6, 2003, a member of the law firm of Trapeni, Romero & Morrison, P.C., located at 2565 Chain Bridge Road, Vienna, Virginia 22181, contacted the Virginia State Bar to report that the Respondent, an attorney who rented an office from the law firm, was missing and clients were calling and were stopping by the office asking for him. The Respondent had not been seen in the office since February 21, 2003, and had left no message stating he would be out of the office for any reason. The Respondent shared a receptionist with the law firm, but no support staff, and was not a member or employee of the law firm. The law firm had contacted the Respondent's former wife in an attempt to locate him but had been unable to find him.
3. Early on the following morning of March 7, 2003, James W. Henderson, investigator for the Bar, spoke with Thomas Morrison of the law firm who reported, then, a sizable theft from and an apparent forgery of the law firm's two trust accounts. Mr. Morrison had reviewed statements for his firm's trust accounts, recently received, and discovered five checks, payable to Robert M. Short, Esquire, in the total amount of \$439,006.41, drawn on the law firm trust accounts and bearing the forged signature of Joseph T. Trapeni, Jr., a proper member of the firm. The law firm contacted its banks and a fraud investigation was begun.
4. Investigation disclosed that a deposit in the amount of \$436,006.41 was made to the Respondent's trust account on February 20, 2003, the day before his disappearance, apparently in a split deposit with \$3,000.00 being received in cash. The Respondent was not entitled to receive any funds from the law firm and there was no reason he should have had checks from the law firm made out to him for deposit to his own trust account. All but \$1,059.18 of the funds which were deposited on February 20, 2003, have since been transferred out of the Respondent's trust account to another unknown checking account. The last transfer of funds out of the Respondent's trust account was in the amount of \$167,947.23 on February 28, 2003, from a location in Nevada.
5. Further investigation also determined that the Respondent had been arrested in Thomas County, Kansas, near the

Colorado border on February 27, 2003, for misdemeanor drug possession and had been released, unfortunately, after a brief period of detention. At the time of the Respondent's arrest, \$207,700.00 in cash and a .357 caliber Sigsauer semi-automatic handgun were seized from the trunk of his car.

6. Additional investigation revealed that the Respondent had rented a 1999 Camry from Rent-A-Wreck car rental agency in Falls Church, Virginia, on February 24, 2003, which was to be returned by March 3, 2003. The Respondent never returned the car and the rental agency has heard nothing further from him.
7. On March 12, 2003, a receiver was appointed by the Circuit Court of Fairfax County. Subsequently, the receiver discovered the existence of a number of open, active client files.

Based upon the evidence presented, the Board finds by clear and convincing evidence that Robert Michael Short has abandoned his practice of law and has stolen funds from the trust accounts of Trapeni, Romero & Morrison, P.C., and has engaged in a pattern of deceit and theft, neglect and abandonment, and failure to communicate and is in violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

(b) * * *

RULE 1.4 Communication

(a) * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

Based upon the evidence presented, the Board finds that the allegations that Respondent violated Rule 1.3(a) and (c) [Diligence] of the Rules of Professional Conduct were not proven by clear and convincing evidence.

The Board, having taken into consideration all of the evidence, found by clear and convincing evidence that the above-referenced violations have been committed by Respondent and that the imposition of an immediate sanction is reasonable and necessary. Accordingly, it is ORDERED that, as a result of the violations, Robert Michael Short's license to practice law in the Commonwealth of Virginia be and hereby is REVOKED, effective March 28, 2003.

ENTERED this 2nd day of June, 2003.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, III, 1st Vice Chair



DISTRICT COMMITTEES

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

IN THE MATTER OF
KHALIL WALI LATIF
 VSB DOCKET NO. 02-031-0343

**SUBCOMMITTEE DETERMINATION
 PUBLIC REPRIMAND**

On May 13, 2003, a meeting in this matter was held before a duly convened Third District, Section I, Subcommittee consisting of Cheryl J. Wilson, Esquire, Patricia B. Clary, Lay Member, and C. Gilbert Hudson, Jr., Esquire, presiding.

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

I. FINDINGS OF FACT

1. Alan Eugene Barnett, Sr., now known as Khalil Wali Latif or Khalil Abdal Latif, was admitted to the practice of law in the Commonwealth of Virginia on April 25, 1991.
2. At all times relevant to these proceedings, Mr. Latif was an attorney in good standing to practice law in the Commonwealth of Virginia.
3. In March 1999, Donella Grant-Crist retained Mr. Latif to represent her in a sexual harassment case against the Department of Corrections.
4. Mr. Latif suggested that filing for bankruptcy would enhance Ms. Grant-Crist's claims.
5. On May 22, 2000, Ms. Grant-Crist paid Mr. Latif \$200 to file a bankruptcy petition on her behalf.
6. Mr. Latif cashed Ms. Grant-Crist's check on June 5, 2000, but never filed the bankruptcy petition.
7. On or about July 30, 2000, Ms. Grant-Crist filed a bar complaint against Mr. Latif alleging, *inter alia*, that he had failed to properly represent her interests in the sexual harassment case.
8. Mr. Latif filed a written response to Ms. Grant-Crist's bar complaint and submitted two affidavits in support of his response but canceled an appointment for an interview with Virginia State Bar Investigator Albert E. Rhodenizer, Jr. scheduled for May 16, 2002, so his counsel could be present, then failed to respond to Mr. Rhodenizer's efforts to schedule another interview.
9. As a result of Mr. Latif's failure to respond to the bar's lawful demand for the information an interview would have supplied, Mr. Latif never addressed Ms. Grant-Crist's allegations that he failed to file the bankruptcy petition.

II. NATURE OF MISCONDUCT

Respondent, his counsel and Bar Counsel agree that the findings of fact give rise to the following disciplinary rule violations:

RULE 1.3 Diligence

(c) ***

RULE 1.15 Safekeeping Property

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

III. PUBLIC REPRIMAND

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

THIRD DISTRICT SUBCOMMITTEE
 OF THE VIRGINIA STATE BAR
 By C. Gilbert Hudson, Jr.
 Subcommittee Chair

■ ■ ■

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

IN THE MATTER OF
WILLIAM MADISON McCLENNY, JR., ESQ.
 VSB DOCKET NO. 02-070-1765

**SUBCOMMITTEE DETERMINATION
 PUBLIC REPRIMAND WITH TERMS**

On the 28th day of April, 2003, a meeting in this matter was held before a duly convened a subcommittee of the Seventh District Committee consisting of Joseph W. Richmond, Jr., Esq., Ann C. Hall, and Peter C. Burnett, Esq., presiding.

Pursuant to Part 6, §IV, ¶13(G)(1)(c) of the *Rules of Virginia Supreme Court*, a subcommittee of the Seventh District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, William Madison McClenny, Jr. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Jerry Adams (hereinafter the Complainant) hired the Respondent to represent him on two speeding tickets and two expired inspection citations in Henrico County General District Court. The Respondent advised the Complainant that he did not have to appear and that the matters were continued to a different date. In fact, that matters were not continued to a different date and the Complainant was found guilty in his absence and fined. When the Complainant tried to contact the Respondent to find out what happened and how things could be rectified, the Respondent refused to speak with the Complainant.
3. The Respondent contends that he asked his secretary to phone the Court to have the matters continued but she

failed to make the call. He asserts that he advised the Complainant that the matters were continued because he thought his secretary called the Court to continue the cases. The Respondent's secretary, Lonnie Thompson, contradicts the Respondent and states that she refused to have anything to do with Mr. Adams because she was not fond of him. She advised the Bar's investigator that she provided Mr. Adams with some copies but in no way assisted in continuing of scheduling his pending cases.

4. The Henrico County General District Court Clerk's office has informed the Bar that the Complainant appeared *pro se* in Henrico County General District Court after he filed motions to rehear his cases. He was found guilty of lesser offenses and one expired inspection sticker offense was dismissed.

II. NATURE OF MISCONDUCT

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

RULE 1.1 Competence

RULE 1.3 Diligence

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

RULE 1.4 Communication

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

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

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

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by October 1, 2003, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by October 1, 2003 are:

1. The Respondent shall institute and maintain a docket control system which shall ensure that s/he reviews the status of all pending matters periodically, and remind him in advance of key deadlines and other obligations. The Respondent shall institute and maintain a written office policy relating to regular and informative client communication. This policy shall include provisions for providing the client with written copies of all documentation relating to the representation, engaging in regular meetings either in person or by telephone to discuss the progress of the case and to answer client inquiries. Both the docket control system and the communication policy shall be implemented immediately. The Respondent shall provide the assistant bar counsel handling this matter with a detailed

written description of both the docket control system and communication policy, and shall certify in writing under oath that s/he is using such systems in his office.

2. The Respondent shall complete eight (8) hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the areas ethics. **His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law.** He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Claude V. Worrell, II, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, VA 22314, promptly following his attendance of such CLE program(s).

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed. If, however, the terms and conditions have not been met by October 1, 2003, this matter shall be referred the Disciplinary Board for further action.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Peter C. Burnett



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

IN THE MATTER OF
BEVERLY McLEAN MURRAY
VSB DOCKET NO. 03-031-3340

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

On June 11, 2003, a show cause hearing was held before a duly convened district committee panel consisting of H. Martin Robertson, Esquire, W. Richard Hairfield, Esquire, Cheryl J. Wilson, Esquire, Melvin E. Rosen, Jr., lay member, and C. Gilbert Hudson, Jr., Esquire, presiding.

The Respondent, Beverly McLean Murray, appeared in person *pro se* Barbara Ann Williams appeared as counsel for the Virginia State Bar.

The Respondent was required to appear and show cause why the district committee should not issue a Public Reprimand for the Respondent's alleged failure to comply with a term imposed in connection with a Private Reprimand with Terms. On February 25, 2003, the district committee issued the Private Reprimand with Terms pursuant to an agreed disposition in VSB Docket No. 02-031-1494. In that matter, the Respondent conceded that she failed to represent the Complainant in a competent and diligent manner and failed to communicate with the Complainant. The term imposed in connection with the Private Reprimand required the Respondent to

refund her \$600 fee to the Complainant and to certify in writing to Bar Counsel that she had done so by March 31, 2003.

Based upon the evidence the Respondent and the bar presented at the show cause hearing, the district committee found that the Respondent had failed to refund the money in a timely manner and to certify in writing to Bar Counsel that she had finally refunded the fee.

Wherefore, pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Third District Committee, Section I, of the Virginia State Bar hereby serves upon the Respondent a Public Reprimand, the alternate sanction provided in the Private Reprimand with Terms issued on February 25, 2003.

THIRD DISTRICT COMMITTEE, SECTION I,
OF THE VIRGINIA STATE BAR
By C. Gilbert Hudson, Jr., Vice Chair



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

IN THE MATTER OF
JAMES CLIFFORD REEVES, III
VSB DOCKET NO. 03-090-0414 (GLENDA MORGAN)

**SUBCOMMITTEE DETERMINATION
(Public Reprimand)**

On April 8, 2003, a meeting in this matter was held before a duly convened Sub-committee of the Ninth District Committee consisting of Phillip Dandridge Payne, IV, Esquire, Ms. Langhorne S. Mauck, (Lay Member), and Paul Joseph Feinman, Esquire, Chair presiding.

Pursuant to an Agreed Disposition of the parties and Part 6, Section IV, ¶13G1c.(3) of the Virginia Supreme Court Rules of Court, the Ninth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent, James Clifford Reeves, III, the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, James Clifford Reeves, III, herein-after "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or around June 27, 2001, Glenda Morgan retained Respondent to defend her interests in an equitable distribution action pending in Bedford County Circuit Court. This concerned, *inter alia*, Morgan's interests in the couple's marital home. Morgan and her former estranged spouse were concurrently litigating their divorce action in a separate North Carolina action.
3. On October 15, 2001, the North Carolina court granted Morgan and her spouse a divorce, reserving property issues for future resolution.

4. From November 2001 to the filing of this complaint on August 13, 2002, Respondent failed to keep Morgan informed to her satisfaction about the status of the on-going equitable distribution matter in Bedford Circuit Court.
5. From May 2002 to August 2002, Respondent failed to maintain adequate communication with Morgan.

II. NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following rules of the Virginia Rule of Professional Conduct :

RULE 1.4 Communication

(a) * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, James Clifford Reeves, III, and he is so reprimanded.

NINTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By: Paul Joseph Feinman
Subcommittee Chair



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

IN THE MATTERS OF
TIMOTHY SCOTT RENICK
VSB DOCKET NOS. 02-060-2481 [HYATT]
02-060-3694 [VSB/COMMISSIONER OF ACCOUNTS]

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)**

On June 6, 2003, a meeting in these matters was held before a duly convened Sixth District Subcommittee consisting of Mark A. Butterworth, Lay Member; Gilbert A. Bartlett, Esq. and William L. Lewis, Esq., chair, presiding.

In these matters the bar was represented by Deputy Bar Counsel Harry M. Hirsch and the Respondent was represented by Michael L. Rigsby, Esq.

Pursuant to Part 6, Section IV, Paragraph 13.G.1.c. of the Rules of the Supreme Court, the Sixth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

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

VSB Docket No. 02-060-2481 [Hyatt]:

I. Statement of Facts:

2. In March of 2001, Complainant Rosa E. Hyatt [Hyatt] had an initial appointment with Renick concerning the filing of

- a bankruptcy. She was quoted a fee of \$700.00 including an attorney's fee of \$500.00 and a filing fee of \$200.00. Renick did not inform Hyatt that she needed to pay the \$700.00 before he would begin work on her case. Renick did tell Hyatt to stop paying on her bills, to notify her creditors that she was filing bankruptcy, to have her creditors call Renick if they contacted Hyatt and Renick asked Hyatt to provide a list of creditors. No written fee agreement was entered into.
3. On March 18, 2001, Hyatt brought a check in the amount of \$350.00 [first payment] to Renick's office with a list of her creditors. Upon payment of that check, Hyatt understood that Renick would begin work on her case.
 4. From March 18, 2001 until July 16, 2001, Hyatt called Renick on three occasions and left messages. On July 16, 2001, Hyatt called because she had not heard anything; Hyatt was told by Renick's mother who worked in his office on a part-time basis that full payment was due before work would begin on the case.
 5. On July 17, 2001, Hyatt issued Renick a check in the amount of \$350.00 [second payment], thus fully paying Renick his quoted fees and costs.
 6. Both the first payment and the second payment were deposited into Renick's operating account. The first payment was deposited on March 20, 2001. The second payment was deposited on July 26, 2001.
 7. Hyatt signed the bankruptcy petition on or about September 10, 2001.
 8. According to Renick, Hyatt's file was mistakenly placed with unpaid files and from September to November of 2001, the case "fell through the cracks."
 9. In December 2001, Hyatt began receiving calls from creditors again. She asserts that she attempted to reach Renick over a two week period by leaving telephone messages at Renick's office without response.
 10. On January 22, 2002, Hyatt determined that she would see Renick in person that day. She went to his office and waited until everyone else had left the premises. Renick saw her in the office and asked who she was. Hyatt confronted Renick about the unreturned phone calls and the status of her case. Renick informed her that he was sure her case had been filed but he could not find the file. Hyatt became upset because she had no more funds to hire another attorney. Hyatt asked Renick whether she could trust him. Renick responded affirmatively and promised to telephone Hyatt the next morning at 9:30 a.m. Renick did not make the promised call. Hyatt did not hear from Renick again until after she filed a bar complaint.
 11. On or about February 14, 2002, Hyatt filed a bar complaint. Letters regarding the complaint were sent by the bar to Hyatt and Renick on March 4, 2002. Renick received his letter from the bar on March 6, 2002.
 12. On March 4, 2002, Renick filed a Chapter 7 bankruptcy petition on Hyatt's behalf.
 13. By his letter to Hyatt dated March 7, 2002, Renick stated, *inter alia*, that, "Your bankruptcy was filed long before I received this complaint . . ."
 14. Renick wrote Hyatt by letter dated March 11, 2001 [sic] giving notice of the meeting of creditors. By letter to Hyatt dated March 14, 2002, Renick offered to refund \$500.00 and finalize the case at the meeting of creditors; he also inquired whether Hyatt wished him to continue representing her. Renick refunded to Hyatt \$500.00 by a personal check enclosed with a March 25, 2002 letter.
 15. Renick submitted a response to the bar complaint dated March 26, 2002, in which he stated, *inter alia*, that, "I have spoken with Rosa E. Hyatt in connection with the above referenced matter and it is my understanding that she does not want to pursue this matter any further." Hyatt disputes this statement insisting that in their March 25, 2002 phone call she told Renick that it was alright for Renick to refund the fee and finalize the bankruptcy; but as to the bar complaint she understood that it was no longer in her hands. According to Hyatt, she did not tell Renick that she no longer wished to pursue the bar complaint.
 16. Renick represented Hyatt at the meeting of creditors held on April 11, 2002. Renick has stated that at the meeting Hyatt told him she would refer clients to him; he has stated that she in fact sent four or five clients to him including her next door neighbor since the meeting of creditors. Hyatt denies that she had referred anyone to Renick. According to Hyatt, at the creditors' meeting she told Renick she would not speak ill of him to others but she would not recommend him to anyone.
 17. A discharge was issued in Hyatt's bankruptcy on June 20, 2002.
 18. In his letter to the bar dated October 24, 2002, Renick stated, *inter alia*, the following:

There appears to be two (2) major issues of concern that you [Investigator Powell] expressed concerning this file. The first deals with the fact that Ms. Hyatt's fee was deposited into my expense account by mistake. . . . Normally, we would deposit the filing fee in the Trust Account. However, it is my position that the bankruptcy fee of \$500.00 is a set fee, just like a criminal case. This fee is not a retainer and is not subject to increase or decrease.
 19. Renick received the fees paid by Hyatt before he had earned them.
 20. Hyatt attempted to contact Renick by telephone on many occasions during the representation. Renick failed to return Hyatt's telephone calls despite the fact that Hyatt left messages for Renick. If called to testify in any trial of this case, Renick would testify that he denies that he ever knowingly failed to return Hyatt's telephone calls.

II. Nature of Misconduct

Such conduct by Timothy Scott Renick constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.3 Diligence

(a) and (b) * * *

RULE 1.4 Communication

(a) * * *

RULE 1.5 Fees

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

RULE 8.4 Misconduct

(c) * * *

**VSBS Docket No. 02-060-3694
[VSBS/Commissioner of Accounts]:**

I. Statement of Facts:

a. Odor Estate

21. On or about October 18, 2001, Renick qualified as administrator c.t.a. of the Estate of John Franklin Odor. Mrs. Odor had met with Renick in July 2001 when Renick agreed to handle her husband's estate. The estate consisted of a 1967 Mustang, \$1,000.00 of personalty and an Ameritrade stock account. Renick effected the transfer of all stocks and open cash accounts from the Ameritrade account of John Odor to the Ameritrade account of Mrs. Odor on January 9, 2002.
22. Commissioner of Accounts Richard Manson [Manson] sent Renick a letter dated November 19, 2001, with general information concerning the duties of a court-appointed fiduciary and the filing requirements of an inventory and accountings. An inventory of an estate is due within four months after the fiduciary's qualification in circuit court. The first accounting is due sixteen months after qualification followed by annual accountings until the estate is completed.
23. An inventory should have been filed in the Odor estate on or before February 17, 2002. The first accounting should have been filed in the Odor estate on or before February 17, 2003.
24. On February 21, 2002, Manson sent Renick a letter in which he recited the inventory filing requirement and requested that Renick file an inventory.
25. On March 21, 2002, Manson again wrote to Renick regarding the inventory filing requirement for the estate.
26. On April 19, 2002, Manson called Renick's office and left a phone message.
27. On April 25, 2002, Manson issued a summons to Renick upon his failure to file an estate inventory. The summons was served upon Renick on May 1, 2002. Renick then filed an inventory for the estate.
28. On May 3, 2002, Manson wrote Renick indicating that Renick had failed to return any of Manson's messages, that Manson had no record of Renick having recorded a notice of probate required to be filed within thirty days of qualification in accordance with Va. Code Section 64.1-122, and

Renick had filed a deficient inventory. The inventory which Renick had filed had an incorrect total and lacked specificity with respect to the listed assets.

29. On June 1, 2002, Manson wrote to Judge Johnson of the Circuit Court of the City of Richmond requesting a hearing on the summons. On the same date Manson reported the situation to the Virginia State Bar in accordance with Va. Code Section 26-18. A show cause was issued by the court on May 30, 2002, for a June 24, 2002 hearing date.
30. The notices of probate which were required to be filed within thirty days of qualification were not issued by Renick until June of 2002.
31. On June 20, 2002, Renick sent Manson by fax a second inventory in draft form with a letter in which Renick stated that his staff takes care of the majority of the paperwork associated with estates and he admitted that the first inventory which had been filed had the vehicle improperly listed, had no personalty listed and reflected an incorrect total value of the assets. Manson responded by a fax of the same date instructing Renick to be in court on the show cause on June 24, 2002.
32. At the show cause hearing on June 24, 2002, Renick told the court that he was working on an inventory. The proceeding was continued.
33. On June 24, 2002, Renick wrote to Mrs. Odor seeking information for the administration of the estate.
34. On July 30, 2002, Renick wrote to Manson by fax enclosing a third inventory and indicating, *inter alia*, that the stock was held by the Odors jointly with Mrs. Odor as the beneficiary. Manson responded the same date by fax asking Renick to provide confirmation of the ownership of the stock.
35. The pending show cause proceeding was continued on two additional dates until Manson was able to approve Renick's final accounting.
36. On September 30, 2002, Renick billed Mrs. Odor a total of \$2,848.50 which he reduced by fifty per cent. He received a total of \$1,424.00 as attorney's fees in the matter from Mrs. Odor.

b. Aliff Estate

37. On or about September 7, 1999, Renick qualified as executor of the estate of Patricia E. Aliff. Aliff died testate on February 21, 1999.
38. An inventory was due to be filed in the Aliff estate on or before January 7, 2000. The first accounting was due to be filed on or before January 7, 2001, followed by annual accountings thereafter until completion of the estate administration.
39. On January 7, 2000, William W. Richardson, III [Richardson], Commissioner of Accounts at that time,

issued a rule to show cause to Renick requiring him to report to Richardson by February 4, 2000 to show cause why an inventory had not been filed in accordance with Va. Code Section 26-12. The rule was personally served on Renick on January 11, 2000.

- 40. On January 13, 2000, Richardson sent a letter to Renick pointing out the provisions of Va. Code Section 26-18 which required him to report to the Virginia State Bar the failure to file an inventory within thirty days of service of a summons. Richardson also asked Renick to file an inventory before the thirty days had passed.
- 41. On February 1, 2000, Renick faxed to Richardson an unsigned inventory.
- 42. By letter dated February 2, 2000, Renick informed Richardson that Aliff had a pending Chapter 13 bankruptcy at the time of her death which was dismissed on October 20, 1999.
- 43. On February 2, 2000, Richardson approved a more complete inventory dated that date which Renick had submitted.
- 44. By letter dated March 1, 2001, Audrey D. Holmes [Holmes], who had succeeded Richardson as Commissioner of Accounts for New Kent County, Virginia, notified Renick that the first accounting was due by January 7, 2001, assessed a personal penalty of \$25.00 for failure to timely file a settlement of accounts and notified Renick that within thirty days he was to file a settlement of accounts in proper form as well as a personal check in the amount of \$25.00.
- 45. Renick wrote to Holmes on March 8, 2001, enclosing an expense account check of \$25.00 and indicating that he was waiting for information from an English hospital concerning an outstanding bill.
- 46. On October 4, 2001, Annie Mae from Renick's office left a telephone message for Holmes indicating that she had an estate question.
- 47. In November and December of 2001, Renick exchanged correspondence regarding the outstanding English hospital bill of approximately \$11,219.00.
- 48. By letter dated January 7, 2002, Renick filed a "settlement of account" with Holmes. However, the filing actually was only an incomplete account summary sheet which Renick had signed.
- 49. By letter dated January 22, 2002, Holmes wrote to Renick returning the filing because it was incomplete, enclosing forms to help Renick, and noticing Renick that if he did not comply she would begin procedures in accordance with Va. Code Section 26-18 for enforcement.
- 50. On February 14, 2002, Renick wrote to Holmes filing another settlement of account with affidavits from his office staff regarding the hospital bill but without any supporting schedules.

51. By letter dated May 6, 2002, Renick wrote Holmes seeking ". . . what else you need to finalize this Estate," and stating that "I am definitely not any type of Estate expert!"

II. Nature of Misconduct:

Such conduct by Timothy Scott Renick constitutes misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

RULE 1.3 Diligence

(a) ***

III. PUBLIC REPRIMAND:

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

Sixth District Subcommittee
Of The Virginia State Bar
By William L. Lewis
Chair



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

IN THE MATTER OF
THOMAS HUNT ROBERTS
VSB DOCKET # 99-032-2070

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

On June 13, 2003, a hearing in this matter was held before a duly convened panel of the Third District Committee, Section Two, consisting of W. Ray Inscoe, Lay Member; Thomas O. Bondurant, Esq.; Virginia S. Duvall, Esq.; William S. Francis, Jr., Esq.; William J. Viverette, Esq.; and Cary A. Ralston, Esq., chair, presiding.

The Respondent, Thomas Hunt Roberts, appeared in person, *pro se* Deputy Bar Counsel Harry M. Hirsch appeared for the bar. At the beginning of the hearing, dismissal motions were made by Thomas Hunt Roberts and argued by counsel. At the end of the bar's case, a motion to strike was made by Thomas Hunt Roberts and argued by counsel. All of said motions were denied by the District Committee.

Pursuant to Part 6, § IV, ¶ 13.H.2.1.(2)(c) of the Rules of the Supreme Court, the Third District Committee, Section Two, of the Virginia State Bar hereby serves upon the Respondent the following Dismissal with Terms:

I. FINDINGS OF FACT

- 1. At all times relevant hereto the Respondent Thomas Hunt Roberts [Roberts] has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On May 7, 1997, Complainant Leroy M. Thurston, Jr. [Thurston] entered into a retainer agreement for Roberts to pursue on Thurston's behalf claims "arising from his employment at Louisa County Public Schools—Wage Violation FSLA & Title VII - race discrimination & retaliation."
3. On or about March 17, 1998, Thurston signed a settlement statement in the FSLA claim.
4. During the pendency of the remaining claims of race discrimination and retaliation, Thurston asked Roberts to lend him money. Roberts arranged for and made a loan of \$5,000.00 to Thurston and his wife [loan] through Bost Investment Corporation [Bost].
5. According to Roberts, he and his law firm owed Roberts' father money. Roberts disbursed to the Roberts Professional Law Corporation out of Roberts' operating account the sum of \$5,000.00 by check number 10173, dated September 28, 1998, which was then deposited into a trust account of the law firm.
6. Roberts then issued two trust account checks. The first check dated September 29, 1998, was in the amount of \$4,900.00, number 6883, payable to Thurston and his wife as net loan proceeds. The second check dated September 29, 1998, was in the amount of \$100.00, number 6884, payable to the law firm as an earned fee for the loan transaction.
7. Said deposit and disbursements were shown on a subsidiary ledger for Bost Investment Corporation [Bost]. The deposit was shown as received from "Thomas H. Roberts/for Thomas J. Ro." The check payable to the Thurstons of \$4,900.00 was noted as "Bost/TJR proceeds." The check payable to the law firm was noted as "Fee earned-Bost."
8. On September 29, 1998, Thurston and his wife executed a document entitled, "Promissory Note Bost Investment Corporation Credit Agreement" dated September 29, 1998, in the amount of \$10,000.00 [note]. The note had the following provisions, inter alia: payment to Bost or order, at the street address of Roberts' law firm, the sum of \$10,000.00 with interest from March 9, 1999 [sic] until paid at 18% per annum until paid [sic]; principal payable on demand, interest payable monthly; and that the loan proceeds were for a commercial purpose.
9. On September 29, 1998, Thurston and his wife also executed a document entitled, "Credit Line Deed of Trust," dated September 28, 1998, in which Thurston and his wife are named as borrowers, Bost is named as the beneficiary at the address of Roberts' law firm and reference is made to a \$10,000.00 credit agreement. The deed of trust conveys Thurston's property located at 647 Chopping Road, Mineral, VA 23117 in Louisa County, Virginia as security for the credit agreement.
10. On September 29, 1998, Thurston and his wife also executed a document entitled, "Acknowledgment" in which

they acknowledged, inter alia, that Roberts advised them against the loan, that Roberts represented Bost in the loan and not the Thurstons, and that Louisa County may make a settlement offer in Thurston's pending case within the week.

11. Roberts was the only officer of Bost in the years of 1998, 1999 and 2000 as reflected in annual reports submitted by Roberts to the State Corporation Commission for those years. Roberts was either the sole stockholder or the majority stockholder of Bost.
12. Roberts' representation of Thurston in the racial discrimination and retaliation case against the Louisa County School Board ended on March 22, 1999, with the entry of orders granting the defendant summary judgment and granting Roberts' motion to withdraw.

II. NATURE OF MISCONDUCT

The following Disciplinary Rules are deemed to have been violated:

DR 1-102. Misconduct.

(A) (2) ***

DR 5-103. Avoiding Acquisition of Interest in Litigation.

(A) (1) and (2), (B) ***

III. DISMISSAL WITH TERMS

Accordingly, it is the decision of the District Committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for closure of this complaint. The terms and conditions shall be met by **June 13, 2004**:

1. The Respondent shall take eight (8) hours of continuing legal education on the subject of legal ethics and certify to the Office of Bar Counsel the completion of said hours. Said hours shall be in addition to the bar's mandatory continuing legal education requirements and the Respondent shall not obtain any mandatory continuing legal education credit for said hours.
2. The Respondent shall perform forty (40) hours of pro bono legal services through Central Virginia Legal Aid. The Respondent shall be responsible for obtaining a certification of completion of said hours from Central Virginia Legal Aid and he shall provide said certification to the Office of Bar Counsel.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by June 13, 2004, the District Committee shall impose a Public Reprimand.

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



**BEFORE THE SIXTH DISTRICT COMMITTEE OF
THE VIRGINIA STATE BAR**

IN THE MATTER OF
CARL RANDALL STONE
VSB DOCKET NO. 03-060-1495 [00-062-0884]

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)**

On May 13, 2003, a hearing in this matter was held before a duly convened panel of the Sixth District Committee consisting of Mark A. Butterworth, Lay Member; Andrew C. Gallagher, Lay Member; Larry T. Lawrence, Lay Member; Christopher A. Abel, Esq.; Gilbert A. Bartlett, Esq.; William E. Glover, Esq.; L. Willis Robertson, Jr.; and William L. Lewis, Esq., chair presiding.

Carl Randall Stone appeared in person, *pro se* Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

This matter came on for a show cause hearing pursuant to Rules of Court, Part Six, Section IV, Paragraph 13. G.5. Enforcement of Terms.

Upon the evidence and arguments presented during the show cause hearing, the Sixth District Committee finds by clear and convincing evidence that Carl Randall Stone failed to fulfill the following terms imposed by the Sixth District Subcommittee Determination (Private Reprimand with Terms) issued to him on June 3, 2002 in VSB Docket No. 00-062-0884:

1. By July 31, 2002, the Respondent shall establish a mentor relationship with an active member of the Virginia State Bar. Such mentor shall be experienced in the area(s) of worker's compensation and shall be approved by the Assistant Bar Counsel handling this case prior to the establishment of the mentor relationship. The mentor shall meet with the Respondent at least bimonthly before and during the time the Respondent is handling worker's compensation case. The mentor shall monitor whether the Respondent's practice complies with the rules and opinions of the Virginia State Bar and provide support and advice to the Respondent in the areas of worker's compensation, civil litigation and law office management. The Respondent shall provide satisfactory evidence of the name of his proposed mentor to the Assistant Bar Counsel handling these case by July 31, 2002. The mentor shall report to the Assistant Bar Counsel handling this case on a bi-monthly basis whether the Respondent has cooperated fully with the mentor in ensuring the Respondent's compliance with rules and opinions of the Virginia State Bar.
2. The Respondent shall develop and implement a written office policy relating to regular and informative client communications. This policy shall include provisions for providing clients with written copies of correspondence, pleadings and other documentation relating to representation, engaging in meetings either by telephone or in person to discuss the progress and answer status inquiries from clients or clients' designated agents, and the return of telephone inquiries from clients within twenty four working hours. The Respondent shall develop and implement a checklist for all correspondence related to

appealed cases. The checklist shall include the date of correspondence and whether or not notice was sent to appropriate parties. The Respondent shall also develop and implement a written docket control system which will ensure that he reviews the status of all pending matters periodically, remind the Respondent in advance of key deadlines and other obligations, and otherwise serve as a malpractice tickler system. Both the office policy and the docket control system shall be implemented immediately. No later than July 31, 2002, the Respondent shall provide the Assistant Bar Counsel handling this matter with copies of the office policy and docket control system, and a written certification under oath that such office policy and docket control system are in use in the Respondent's office.

3. By January 15, 2003, the Respondent shall complete four (4) hours of continuing legal education credits by attending courses approved by the Virginia State Bar, two (2) hours in the area of ethics and two (2) hours in the area of worker's compensation. His Continuing Legal Education attendance obligation set forth in this paragraph shall *not* be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Claude V. Worrell, II, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his/her attendance of such CLE program(s).

Accordingly, the Sixth District Committee hereby imposes the alternative sanction of this Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Carl Randall Stone, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In the fall of 1996, Michael Cooke (hereinafter the Complainant) hired the Respondent to represent him in a worker's compensation case concerning his neck.
3. The Complainant was successful in his worker's compensation claim. The Complainant was deemed to be temporarily totally disabled and entitled to full disability benefits up to November of 1994, and was on partial benefits until May 23, 1995, when he returned to unrestricted work. The February 15, 1995, award order lists the Complainant's address in Cobbs Creek, Virginia.
4. After the Complainant returned to work, he experienced some neck problems and required surgery to correct the problems. The Complainant believed that the neck problems were the direct result of his work injury and therefore were covered under his worker's compensation claim. However, his doctors and insurance company did not think that the injury was related to the worker's compensation claim and denied coverage.
5. In April of 1996, the Complainant had neck surgery. In August of 1995 and November of 1996, he had shoulder

surgery. The Respondent told the Complainant that he would work on the case and try to get a hearing scheduled if there was evidence of a valid worker's compensation claim.

6. Shortly after the neck surgery, the Complainant lost contact with the Respondent. The Complainant recalls leaving messages for the Respondent and the Respondent returned some of the calls. The Respondent confirms that he and the Complainant stopped having contact by November of 1997. The Complainant called the Respondent in November of 1998 and advised him that he had a new attorney and wanted his file. The Complainant appeared at the Respondent's office a couple of days later to pick up his file. The Complainant informed the Respondent that he was living in Cobbs Creek. The Respondent did not communicate with the Complainant and did no discernable work on the Complainant's case from September 1996, to September 1998. The Respondent and the Complainant had little or no contact during this time.
7. The Respondent failed to file a change in condition application for the Complainant and did not preserve his client's interests in the worker's compensation complaint. Mary Ann Link, Chief Deputy Commissioner of the Worker's Compensation Commission (VWC), reviewed the Complainant's worker's compensation file and said the file contained a letter dated September 10, 1996 from the Respondent indicating that he had been hired to represent the Complainant. The Respondent had filed nothing else on behalf of the Complainant between September of 1996 and November 13, 1998. The Complainant filed a handwritten claim for benefits and/or a change in circumstances application on November 13, 1998. The filing was beyond the filing deadline. The Complainant had two years from his last payment to file a change in condition application.
8. On January 6, 1999, Ms. Link received a letter from the Respondent stating he no longer represented the Respondent. A hearing was scheduled as a result of the Complainant's filing. At the hearing, the Complainant's application for temporary benefits was denied. This decision was appealed. Ultimately, the Complainant was awarded medical benefits for the shoulder surgery but denied medical benefits for the neck surgery.

II. NATURE OF MISCONDUCT

Such conduct by Carl Randall Stone constitutes Misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility:

DR 6-101. Competence and Promptness.

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

DR 7-101. Representing a Client Zealously.

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

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Sixth District Committee to impose a public reprimand and Carl Randall Stone is hereby so reprimanded.

SIXTH DISTRICT COMMITTEE OF THE
VIRGINIA STATE BAR
BY William L. Lewis
Chair



**BEFORE THE SECOND DISTRICT, SECTION I,
SUBCOMMITTEE OF THE VIRGINIA STATE BAR**

IN THE MATTER OF
DWAYNE BERNARD STROTHERS
VSB DOCKET NO. 02-021-3261 (TILLERY)

**SUBCOMMITTEE DETERMINATION
(Public Reprimand)**

On April 30, 2003, a meeting in this matter was held before a duly convened Subcommittee of the Second District Committee, Section I, consisting of Afshin Farashahi, Esquire, Mr. Kurt Rosenbach (Lay Member), and Croxton Gordon, Esquire, Chair presiding.

Pursuant to an Agreed Disposition of the parties and Part 6, Section IV, ¶13G1c.(3) of the Virginia Supreme Court Rules of Court, the Section District, Section I, Subcommittee of the Virginia State Bar hereby serves upon the Respondent, Dwayne Bernard Strothers, the following Public Reprimand:

I. FINDINGS OF FACT

1. On or about April 3, 2002, Respondent was appointed by the Suffolk Circuit Court as counsel for Kenard Tillery. Following Tillery's conviction, Respondent was reappointed for the appeal of the conviction.
2. After advising Tillery on or about July 6, 2000 of the filing of the Notice of Appeal, Respondent failed thereafter to keep Tillery advised of the course of the appeal before the Court of Appeals and before the Virginia Supreme Court.
3. Following the denial of the appeal on March 14, 2001, Respondent filed a Petition for Rehearing, which the Court of Appeals denied on May 30, 2001.
4. On June 25, 2001, Respondent filed a Notice of Appeal with Suffolk Circuit Court. Thereafter, Respondent filed no further pleadings to attempt to perfect the appeal.
5. As of January 28, 2002, Tillery did not know the status of his appeal. Accordingly, on January 28, 2002, Virginia State Bar Intake Counsel Fletcher wrote to Respondent requesting that he communicate with Tillery about the status of his appeal and respond to Tillery's request for his file.
6. Notwithstanding several further requests by the Virginia State Bar Intake Office, Respondent failed to communicate with Tillery until he forwarded the requested case file on June 3, 2002.

II. NATURE OF MISCONDUCT

The Subcommittee finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Rules of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

RULE 1.4 Communication
(a) ***

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

III. PUBLIC REPRIMAND

Accordingly, pursuant to the Agreed Disposition entered into between Respondent and Assistant Bar Counsel, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, Dwayne Bernard Strothers, and he is so reprimanded.

SECOND DISTRICT, SECTION I, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By: Croxton Gordon
Subcommittee Chair



**BEFORE THE FIFTH DISTRICT SECTION II
SUBCOMMITTEE OF THE VIRGINIA STATE BAR**

IN THE MATTER OF
CHARLES JAMES SWEDISH, ESQ.
VSB DOCKET NOS. 01-051-0666, 01-051-1621,
02-051-0153, 02-051-2255

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS**

On the 17th day of June, 2003, a meeting in this matter was held before a duly convened a subcommittee of the Fifth District Committee Section II consisting of Fred M. Haden, Esq., Joseph C. Fleig, and Stephen H. Ratliff, Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the Rules of Virginia Supreme Court, a subcommittee of the Fifth District Committee Section II of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Charles James Swedish, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket Number 01-051-0666

2. In May of 1999, the Complainant hired the Respondent to represent him in a divorce. The Complainant paid the Respondent \$1,500 in advance fees. There was no written fee agreement.

3. On August 24, 1999, the parties signed a property settlement agreement prepared by the wife's attorney. On September 16, 1999, the wife's attorney filed a Bill of Complaint. On November 18, 1999, the Respondent filed an Answer to the Bill of Complaint and signed a Waiver of Service. The matter was set for an *ore tenus* hearing on December 15, 1999. However, by letter dated December 7, 1999, the wife's attorney informed the Respondent that the wife not longer wished to proceed with the divorce. The case was non-suited on December 15, 1999.

4. The Respondent contacted the Complainant and the Complainant told the Respondent that he wished to go ahead with the divorce. The Complainant gave the Respondent \$76.00 for the fee for the filing of the Bill of Complaint. The Respondent told the Complainant that it would cost him another \$750.00 in advance fees and that the Respondent would bill the Complainant on an hourly basis to complete the divorce. By letter dated January 11, 2000, Mr. Wade wrote the Respondent and told him that he could not pay him any more money. Mr. Wade also reminded the Respondent that the Respondent had told him that the divorce would cost Mr. Wade \$1,500.00. Shortly thereafter, the Respondent told Mr. Wade that he would complete the divorce for \$1,500.00 and "would get right on it."

5. In March of 2000, Mr. Wade went to the Fairfax County Circuit Court and discovered that the Respondent had not filed a Bill of Complaint in his divorce, despite the Respondent's assurance that he "would get right on it." By letter dated March 9, 2000, Mr. Wade wrote the Respondent, discharged him and requested a refund. The Respondent did not respond to this letter, provide Mr. Wade with a bill, or a refund of any unearned fees. The Respondent did not cash the \$76.00 check for the filing fee.

VSB Docket Number 01-051-0153

6. On February 19, 2001, the Complainant hired the Respondent to represent him on felony criminal charges. The Respondent told the Complainant that he would charge the Complainant a total flat fee of \$5,000.00 which would cover the whole case, including a trial and appeal. The Complainant made two initial payments totaling \$3,000.00. The Respondent deposited both payments into his personal checking account, one for \$2,000.00 on February 21, 2001, and one for \$1,000.00 on March 12, 2001.

7. On February 20, 2001, the Respondent attended an arraignment. On February 21, 2001, the Respondent also met with the Complainant and his employers. The Complainant then decided to hire another attorney, who he felt had more experience pertinent to his case. On March 12, 2001, the Complainant informed the Respondent of this, asked the Respondent to send his file to his new attorney, and to reimburse him any unearned portion of his advance fee of \$3,000.00. The Respondent did not provide the file at that time, but did agree to send the file to new counsel.

8. The Respondent sent a bill to the Complainant, quoting an hourly rate of \$195.00 and totaling \$2,973.75. The Respondent reimbursed the Complainant \$26.25, by check written from his trust account. The Respondent did not return the Complainant's file. The Complainant sued the Respondent for the full \$3,000.00 and subpoenaed his file. The Complainant's new attorney was able to review the file pursuant to the subpoena, but the Respondent never provided the Complainant or the Complainant's attorney with a copy of the Complainant's file.

VSb Docket Number 02-051-1621

9. In March of 2000, the Complainant hired the Respondent to defend him on criminal charges. In April of 2000, the Complainant was tried and convicted of obtaining property under false pretenses and forgery, and thereafter, sentenced to a term in the penitentiary. The trial judge appointed the Respondent to handle the Complainant's appeal.
10. On June 6, 2000, the Respondent filed a notice of appeal on behalf of the Complainant, and then a timely petition for appeal. On November 22, 2000, the Court of Appeals of Virginia denied the Complainant's appeal. The Respondent failed to inform the Complainant of the denial of his appeal, of his right to request a review by a three-judge panel and of his right to file an appeal with the Virginia Supreme Court. The Respondent also failed to request a review by a three-judge panel, and/or to file an appeal with the Virginia Supreme Court on the Complainant's behalf.

VSb Docket Number 02-051-2255

11. In December of 2000, the Complainant was convicted in Fairfax County of robbery and use of a firearm in the commission of a felony. In March of 2001, the Complainant hired the Respondent to represent him at sentencing, on appeal of his conviction, and on an additional unrelated charge of shooting into an occupied vehicle. The Complainant's family paid the Respondent \$4,000.00. In late April of 2001, the Complainant was sentenced to the penitentiary on the charges of robbery and use of a firearm. In June, the Complainant entered a plea on the unrelated charge.
12. In May of 2001, the Respondent filed a Notice of Appeal in the robbery and use of a firearm case. In October of 2001, the Respondent filed a petition to withdraw pursuant to *Anders v. Calif.* By letter dated October 2, 2001, the Respondent informed the Complainant that trial counsel failed to preserve any issues for appeal, and the issue of ineffective assistance of counsel needed to be

addressed through a *habeas corpus* petition. On October 9, 2001, the Court of Appeals of Virginia denied the Respondent's petition to withdraw, stating that the petition did not satisfy the requirements under *Anders v. Calif.* The Court directed the Respondent to file an amended petition within fifteen days.

13. The Complainant received notice that the Respondent's motion to withdraw pursuant to *Anders v. Calif.* was denied. Thereafter, the Complainant tried repeatedly to contact the Respondent to determine the status of his appeal and to inquire about filing a *habeas corpus* petition. The Respondent did not respond to the Complainant's letters or calls. On February 4, 2002, unable to contact his attorney and concerned about preservation of his rights, the Complainant filed a complaint with the Virginia State Bar.
14. The Respondent filed an amended petition on October 23, 2001. The appeal was denied on March 18, 2002, and the Respondent's petition to withdraw was granted.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence
(a) * * *

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

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

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by October 31, 2003, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by October 31, 2003, are:

1. The Respondent shall complete four (4) hours of continuing legal education in the areas of ethics or law office management. His Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education

requirement in Virginia or any other jurisdictions in which he may be licensed to practice law. He shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Forms (Form 2) to Noel D. Sengel, Senior Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).

2. The Respondent shall read Virginia Legal Ethics Opinion #1606 and shall certify in writing to the assistant bar counsel handling this matter that he has done so.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms

shall then be imposed. If, however, the terms and conditions have not been met by October 31, 2003, this matter shall be certified to the Virginia State Bar Disciplinary Board upon an agreed stipulation of facts and misconduct as the facts and misconduct are set forth herein for the sole purpose of the imposition of a sanction deemed appropriate by the Virginia State Bar Disciplinary Board.

FIFTH DISTRICT SECTION II
SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Stephen N. Rattiff
Chair/Chair Designate

