

Disciplinary Actions

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

| Respondent's Name | Address of Record (City/County) | Action | Effective Date | Page |
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| Circuit Court | | | | |
| Joseph Dee Morrissey | Richmond | 3 Year Suspension | December 15,2000 | 30 |
| Disciplinary Board | | | | |
| Richard Allen Frye | Saltville | Revocation | January 26,2001 | 31 |
| Joseph William Kaestner | Richmond | Public Reprimand w/Terms | January 24,2001 | 32 |
| John Carter Morgan,Jr. | Warrenton | Suspension | January 8,2001 | |
| Zane Bruce Scott | Gate City | Revocation | December 15,2000 | 33 |
| Jane Laury Freedlund Wagner | Glen Echo, MD | Suspension | January 8, 2001 | |
| Rickey Gene Young | Martinsville | 18 Month Suspension | Appealed | |
| District Committee | | | | |
| William B. Allen,III | Woodstock | Public Reprimand w/Terms | February 6,2001 | 36 |
| Stuart W. Atkinson | Newport News | Public Reprimand w/Terms | December 27,2000 | 36 |
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| John Henry Partridge | Herndon | Public Reprimand w/Terms | January 23,2001 | 39 |
| James Spaulding Powell | Golden,CO | Public Reprimand | January 19,2001 | 41 |

Surrenders with Disciplinary Charges Pending

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

| Respondent's Name | Address of Record (City/County) | Jurisdiction | Effective Date |
|--------------------------|---------------------------------|--------------------|-------------------|
| Woodson Terry Drumheller | Richmond | Disciplinary Board | December 15, 2000 |
| Bruce Wilson McLaughlin | Leesburg | Disciplinary Board | January 26, 2001 |
| George C. Rawlings, Jr. | Fredericksburg | Disciplinary Board | December 15, 2000 |

Circuit Court

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND

VIRGINIA STATE BAR, ex rel.
THIRD DISTRICT COMMITTEE, SECTION II

Complainant,
v.

JOSEPH DEE MORRISSEY,
Respondent,
Chancery No. HK-1655

ORDER IMPOSING SUSPENSION

On December 28 and 29, 1999, a three-judge panel of this Court, appointed pursuant to Section 54.1-3935 of the Code of Virginia (1950) as amended, heard evidence in the above-captioned matter. On February 18, 2000, this Court entered an Order suspending the license of the Respondent, Joseph D. Morrissey, to practice law in this Commonwealth for a period of three years, effective March 28, 2000. On March 7, 2000, Mr. Morrissey filed a Motion to Reconsider or Modify the length of the suspension. After hearing the argument of counsel, this Court denied the Motion.

On March 22, 2000, Mr. Morrissey noted an appeal to the Supreme Court of Virginia and requested a stay of the suspension of his license pending the appeal. By Order entered March 27, 2000, the Supreme Court of Virginia stayed the suspension of Mr. Morrissey's license to practice law pending the appeal.

On November 3, 2000, the Supreme Court of Virginia affirmed the judgement of this Court suspending the license of the Respondent, Joseph Dee Morrissey, to practice law in this Commonwealth for three years.

Accordingly, it is ORDERED that the license of the Respondent, Joseph D. Morrissey, to practice law in the Commonwealth of Virginia is hereby SUSPENDED for a period of three years, effective upon the entry of this Order.

ENTER this Order this 15th day of December, 2000
By Alfred D. Swersky, Chief Judge
Three Judge Court

A Copy,
Teste: Bevill M. Dean
Clerk

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Disciplinary Board

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
RICHARD ALLEN FRYE
VSB Docket No. 95-102-0946

ORDER ON SHOW CAUSE NOTICE AND
MOTION TO IMPOSE ALTERNATIVE SANCTION

On January 26, 2001, this matter came before the Disciplinary Board, consisting of, Donna A. DeCorleto, Robert E. Eicher, Karen A. Gould, Robert E. Freed and John A. Dezio, Second Vice Chair, on a Notice to Show Cause and Motion to Impose Alternative Sanction against Richard A. Frye.

The Respondent, Richard A. Frye, did not appear either personally or by a representative, although the Board finds that he was given proper notice of these proceedings. Richard E. Slaney, Assistant Bar Counsel, appeared for the Virginia State Bar ("VSB").

This matter is governed by Rule 13(C) of the Rules of Court, Part Six, Section IV and Rule IV(D)(11) of the VSB Disciplinary Board's Rules of Procedure. The issue before the Board was whether Respondent had fulfilled the Terms imposed by the 1998 Order of the Disciplinary Board in this matter. It was Respondent's burden to prove by clear and convincing evidence that he had complied with the Terms imposed. If he failed to meet that burden, then, pursuant to the Terms of the Board's 1998 Order, the sanction of revocation of Respondent's license to practice law in the Commonwealth of Virginia would be imposed.

The undisputed evidence in this matter is as follows:

1. On November 25, 1998, the Disciplinary Board entered an Order in this matter. The Order accepted an Agreed Disposition, which was attached to the Order and incorporated therein by reference. It was admitted at the hearing of this matter as Exhibit A. The Order was duly served upon the Respondent, Richard Allen Frye (Mr. Frye), by certified mail sent from the Disciplinary System's Clerks Office on December 1, 1998.
2. By letter dated October 12, 2000, counsel for the Virginia State Bar (the Bar) wrote David Ross Rosenfeld (Mr. Rosenfeld), counsel of record for Mr. Frye, seeking proof that Mr. Frye had fulfilled the requirements of Terms numbered 3 through 9 inclusive, as set forth in the Agreed Disposition. This letter was admitted as Exhibit B.
3. By letter dated October 25, 2000, Mr. Rosenfeld advised he was no longer representing Mr. Frye and stated he forwarded a copy of Exhibit B to Mr. Frye for response. This letter was admitted as Exhibit C.
4. On November 29, 2000, counsel for the Bar wrote Mr. Frye directly, seeking any information regarding his compliance with the terms imposed. This letter was admitted as Exhibit D.
5. The Bar never received any of the reports required under the Agreed Disposition and Order; and, specifically, did not receive any quarterly reports from Mr. Frye's certified

public accountant (Term 5 of the Agreed Disposition), did not receive any quarterly reports from Mr. Frye's mentor (Term 7 of the Agreed Disposition), and did not receive any quarterly reports from Mr. Frye's treating physician or therapist (Term 9 of the Agreed Disposition). The Bar also did not receive any response from Mr. Frye to the letters described above in paragraphs 2 and 4 above (Exhibits B and D).

6. The Agreed Disposition calls for "strict compliance with the terms set forth . . ." Mr. Frye has failed to comply with Terms numbered 5, 7 and 9 of the Agreed Disposition, as incorporated into the Board's November 25, 1998 Order.
7. The terms of the Agreed Disposition provided that:

[I]n the event that it is formally alleged by the Virginia State Bar that [Mr. Frye] has violated any of the foregoing terms, then his license to practice shall be summarily suspended and reinstated only when it is determined at said Show Cause hearing that in fact no violation occurred. The revocation of Respondent's license to practice law shall be in addition to any other sanction imposed for misconduct during the probationary period.

(Exhibit A, Agreed Disposition at 9.) The Agreed Disposition further provided that "[i]f at any time during the four year probationary period Respondent violates any one of the following terms, then Respondent's license to practice law shall be revoked." (Exhibit A, Agreed Disposition at 7.)

WHEREFORE, it is ORDERED that Mr. Frye's license to practice law in the Commonwealth of Virginia is hereby revoked, as called for in the Agreed Disposition and the Board's Order of November 25, 1998 accepting and incorporating the Agreed Disposition.

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

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

FURTHER ORDERED that Respondent, Richard A. Frye, shall, as appropriate, furnish true copies of all letters noticing the revocation of his license to practice law, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, within sixty days of the effective date of the revocation; and it is

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

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

ENTER this Order this 29th day of January, 2001
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By John A. Dezio, Second Vice Chair

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In the Matter of
 JOSEPH WILLIAM KAESTNER
 VSB Docket No. 97-032-1488

BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

ORDER OF PUBLIC REPRIMAND WITH TERMS

THIS MATTER came to be heard on December 15, 2000, upon the Certification dated February 11, 2000, of the Third District Committee, Section Two of the Virginia State Bar and upon proper notice to the Respondent, Joseph William Kaestner, and was heard by a duly convened Panel of the Virginia State Bar Disciplinary Board, consisting of John A. Dezio, presiding, Michael A. Glasser, Werner H. Quasebarth, Anthony J. Trenga, and Robert L. Freed.

Deputy Bar Counsel, Harry M. Hirsch, Esquire, appeared on behalf of the Virginia State Bar, and Craig S. Cooley, Esquire, appeared on behalf of the Respondent, Joseph William Kaestner, who was present.

Having considered the facts stipulated by Deputy Bar Counsel and Respondent, all exhibits introduced into evidence by Deputy Bar Counsel, without objection, and all other evidence introduced by Deputy Bar Counsel and Respondent, as well as arguments by Deputy Bar Counsel and the Respondent, the Virginia State Bar Disciplinary Board finds that by clear and convincing evidence that Deputy Bar Counsel has proved:

1. At all times relevant hereto the Respondent, Joseph William Kaestner, has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Complainant, Michael Moss, and his wife ("Mr. and Mrs. Moss") retained Respondent to represent them in a suit brought against them by Romark Builders ("Romark"). Romark sued Mr. and Mrs. Moss for sums due concerning the construction of a home. Mr. and Mrs. Moss countersued. A trial was held in August, 1991, resulting in judgement for the plaintiff on the suit and judgement for Mr. and Mrs. Moss on their countersuit. The net amount due was approximately Four Thousand Five Hundred Fifty-Eight Dollars (\$4,558.00) to Mr. and Mrs. Moss.

3. Respondent was asked to file a motion for reconsideration which he did. Respondent was also asked to appeal the case.
4. Respondent filed a notice of appeal in the Romark case. However, Respondent failed to perfect that appeal.
5. By letter dated March 10, 1992, Respondent wrote the following to Mr. and Mrs. Moss:

I received a copy of an order from the Virginia Supreme Court today. The Virginia Supreme Court has refused to hear your appeal of the Romark case. I am sorry for this turn of events.

- In fact, there was no order from the Virginia Supreme Court to which the letter referred.
6. By letter dated April 3, 1992, Respondent wrote the following to Mr. Moss:

. . . there is absolutely nothing more that can be done. There is no further fight that can be waged nor is there anything further that you can do before the Virginia Supreme Court. I mean this most emphatically, there is absolutely nothing you can do further before the Virginia Supreme Court.

- This language reinforced the incorrect representation present in Respondent's letter dated March 10, 1992, which stated that there had been an appeal to the Virginia Supreme Court.
7. By letter dated December 4, 1992, Respondent wrote to Mr. and Mrs. Moss regarding, *inter alia*, the Romark case. In the letter, Respondent stated that he "attempted to perfect the appeal"; and Respondent admitted that he decided that the appeal would not be successful, that he did not proceed with the appeal, and he failed to give Mr. and Mrs. Moss the opportunity to decide whether or not they wished the appeal to proceed.
 8. Respondent failed to keep Mr. and Mrs. Moss informed about his representation, or the lack thereof, with respect to an appeal of the Romark case.
 9. On April 5, 1999, a Subcommittee of the Third District Committee, Section Two of the Virginia State Bar found that the Respondent had committed Misconduct and approved an Agreed Disposition wherein a Private Reprimand with Terms was imposed. One of the terms imposed was that Respondent adhere to the provisions of an agreement dated December 30, 1998, between Respondent and *Lawyers Helping Lawyers*, a program for the Substance Abuse Committee of the Virginia Bar Association (the "Rehabilitation Agreement"). (Exhibit 8).
 10. On February 11, 2000, the Third District Committee, Section Two of the Virginia State Bar found that the Respondent had failed to fulfill the terms of the Private Reprimand and certified this matter to the Virginia State Bar Disciplinary Board.
 11. Respondent's conduct constitutes Misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

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

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

Accordingly and on a vote of three of the five members of this Panel, it is ORDERED that a Public Reprimand be and is hereby imposed on the Respondent upon the following Terms:

The Rehabilitation Agreement shall be re-instituted effective December 15, 2000. If for any reason, *Lawyers Helping Lawyers* is unwilling or unable to reinstitute the Rehabilitation Agreement, Respondent shall enter into an agreement substantially similar to the Rehabilitation Agreement reasonably acceptable to Bar Counsel with an organization or person reasonably acceptable to Bar Counsel by January 15, 2001. The Rehabilitation Agreement, or acceptable alternate agreement, shall remain in effect until December 15, 2002. Respondent shall comply with all of the terms, provisions, and conditions of the Rehabilitation Agreement until December 15, 2002. In addition, Respondent shall have no Sanction imposed against him by the Virginia State Bar prior to December 15, 2002.

The majority of this Panel is of the opinion that the failure of Mr. and Mrs. Moss to file the complaint in this matter for over five years, the lack of any clear, potential harm to Mr. and Mrs. Moss, the Respondent's voluntary disclosure to his client in December of 1992, the Respondent's contributions to the Bar in the intervening years since the Misconduct occurred, the fact that the Subcommittee imposed only a Private Reprimand with Terms in this matter, and the progress that Respondent appears to have made in dealing with his alcoholism, mitigate against a Suspension and weigh in favor of the Public Reprimand with Terms imposed above. The majority is mindful of the factors underlying the dissent in this matter and are extremely respectful of the minority's opinions; however, on balance and by the slenderest of margins, the majority does not feel that a Suspension is warranted in this case at this time.

It is further ORDERED, that if the Respondent fails to adhere to and comply with all of the Terms imposed above, the Respondent's license to practice law in Virginia shall be SUSPENDED for a period of one year and one day, the Alternate Disposition required by the Virginia State Bar Disciplinary Board Rule of Procedure IV D(9) and the Rules of Supreme Court of Virginia, Part Six, § IV, ¶ 13.C (6).

It is further ORDERED that the Clerk of the Disciplinary System shall assess costs pursuant to Part Six, § IV, ¶ 13.K (10) of the Rules of the Supreme Court of Virginia.

ENTERED this 24th day of January, 2001
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
By Robert L. Freed, Panel Member

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
JOSEPH WILLIAM KAESTNER
VSB Docket No. 97-032-1488

CONCURRENCE AS TO FINDINGS OF MISCONDUCT;
DISSENT AS TO SANCTION TO BE IMPOSED

We concur with the findings of the majority concerning the violation by Respondent of the Disciplinary Rules. We dissent regarding the appropriate sanction.

According to the Standards for Imposing Lawyer Sanctions, published by the American Bar Association, Rule 4.62, (1991)

Suspension is generally appropriate when a lawyer knowingly deceives a client, and causes injury or potential injury to his client.

During the hearing, the Respondent conceded that he lied to his clients regarding the status of their appeal to the Virginia Supreme Court. In doing so, he breached a keystone duty of the attorney-client relationship—the duty to deal honestly with the clients. Had the respondent perfected the appeal as instructed by the clients, there is the possibility that the client's legal position could have improved. Not only was the appeal not perfected, but deception was employed by the Respondent to initially cover the omission.

A subcommittee of the Third District Committee, Section II, on these facts, previously sanctioned the Respondent with a private reprimand and terms similar to those the majority imposes here. The matter comes to the Disciplinary Board based on a certification by the Third District Committee, Section II following a Show Cause hearing which determined the Respondent had failed to fully comply with the terms imposed.

Based on this factual background and the presence, in our opinion, of factors that, on balance, are aggravating, including the Respondent's prior disciplinary offenses, we feel a suspension of the Respondent's license to practice law for one year and one day would be an appropriate sanction.

VIRGINIA STATE BAR DISCIPLINARY BOARD
John A. Dezio, 2nd Vice-Chair
Michael A. Glasser, member of panel

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BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
ZANE BRUCE SCOTT
VSB Docket No. 99-102-0092

ORDER OF REVOCATION

On December 15, 2000 this matter came on for hearing upon certification by the Tenth, Section II District Subcommittee of the Virginia State Bar dated January 24, 2000. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Henry P. Custis, Jr.,

Chair, Richard J. Colten, Chester J. Cahoon, Jr., Dennis P. Gallagher, and Roscoe B. Stephenson, III.

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

The Respondent appeared in person, represented by his counsel, Rhetta M. Daniel, Esquire.

Richard E. Slaney, Esquire, appeared as counsel for the Virginia State Bar.

Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, having been duly sworn, reported the hearing.

The Chair opened by polling all panel members 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.

All exhibits listed by the Virginia State Bar in its pre-hearing filing were received and accepted into the record without objection. The Respondent did not pre-file any exhibits, nor did he offer exhibits at the hearing. During the course of the hearing two additional exhibits were offered and received in evidence.

Both sides produced witnesses. At the close of the evidence, the panel deliberated and found the following facts by clear and convincing evidence:

1. At all times material to this proceeding, the Respondent, Zane Bruce Scott (Scott) was an attorney licensed to practice law in the Commonwealth of Virginia. Further, at all times material to this proceeding, Scott was an Assistant Commonwealth's Attorney for Wise County, Virginia.
2. At all times material to this proceeding, Rhonda Joyce Clay (whose surname at the time of the hearing was "Hill," but who will be referred to herein as "Clay") of Coeburn, Virginia, was a court reporter in the Wise County area, and knew Scott.
3. On April 11, 1998 Clay was charged in Wise County under two felony arrest warrants alleging violations of §18.2-22 of the *Code of Virginia*, 1950, as amended, conspiracy to fraudulently obtain or procure and possess a controlled substance.
4. Shortly after her arrest on these charges, and before her arraignment, Clay met with Scott and presented to him her version of the facts underlying the charges. Scott was then acting as the prosecutor assigned to the Clay cases. Clay could not remember whether Scott advised her to consult with legal counsel about the matter, but it is clear that Scott discussed the merits of the charges with Clay at this encounter.
5. Thereafter, attorney Anthony Collins (Collins) was appointed to represent Clay on these charges.
6. Shortly after his appointment, Collins received a telephone call from Clay, during which she indicated she was calling from Scott's office and she and Scott were discussing the charges. Collins immediately went to Scott's office and found Clay and Scott discussing the charges. Scott advised Collins and Clay he believed Clay's version of the events leading to her arrest, that in his opinion she was not guilty, and that he would work with Clay to assure the charges against her were dropped. This meeting occurred prior to Memorial Day, 1998.
7. Prior to Memorial Day, 1998, Scott told Clay he might need her to assist him as a court reporter in Lebanon, Virginia on the Monday of the Memorial Day holiday. Scott later told Clay he would need her to assist him on Memorial Day.
8. On Memorial Day, 1998, Scott and Clay met and began to drive to Lebanon together in Scott's automobile. Scott, who was driving, did not go to Lebanon, but instead drove toward Abingdon, Virginia. When Clay asked where they were going, Scott responded that she needed to relax and forget her problems, and that she would feel much better next week when the charges against her were cleared up. Scott and Clay went to the Comfort Inn in Abingdon and engaged in sexual relations. Clay engaged in the sexual relations as a direct result of coercion and intimidation exercised upon her by Scott, growing out of his prosecutorial powers in her two felony cases. In explaining why she did not resist going into the motel with Scott, Clay testified, "I felt I had the choice between that motel room and a jail cell."
9. Thereafter, Scott informed Collins that he would not be prosecuting the charges against Clay, but that another prosecutor would handle the matter. When Collins relayed this to Clay, she became upset, and told Collins what had occurred on Memorial Day.
10. Clay then decided to tape record her next conversation with Scott, and did so (Tape A, VSB Exhibit 5). The conversation recorded on Tape A confirms the actions of Scott and Clay on Memorial Day. Further, Scott now admits he engaged in sexual relations with Clay at the Abingdon Comfort Inn on Memorial Day, 1998.
11. Clay took Tape A to Collins, and Collins voiced concern to Scott's superior, Greg Kallen (Kallen), the Wise County Commonwealth's Attorney. Kallen and another Assistant Commonwealth's Attorney, Karen Bishop, confronted Scott with this information on July 10, 1998. Scott then denied meeting with Clay at the Abingdon Comfort Inn.
12. Thereafter, a meeting was arranged at Collins' office between Scott, Clay and Collins. That meeting was secretly tape recorded (Tape B, VSB Exhibit 7). During that meeting, Scott repeatedly inquired about the existence of a taped conversation, and was told Tape A existed. Scott suggested they give him Tape A and either deny Tape A existed or deny anything untoward was discussed on Tape A and refuse to produce it.
13. Tape A and Tape B were played for Kallen. On July 14, 1998, Kallen again confronted Scott. Scott admitted he went to the Comfort Inn but denied it was with Clay. Kallen then suspended Scott; however, within 30 minutes thereafter Scott resigned.

14. In another case, on November 21, 1997, one Kimberly M. Bowen (Bowen) was indicted in Wise County for unlawfully and feloniously receiving public assistance from the Department of Social Services of Wise County and for perjury (the First Indictment). Bowen was later indicted on June 3, 1998 in Wise County for several counts of distribution of marijuana (the Second Indictment).
15. On two occasions, both occurring after the First Indictment, Scott spoke to Bowen and intimated that if they had sexual relations, he would make sure any pending indictments were dismissed.
16. On a third occasion, which happened after the First Indictment and probably after the Second Indictment, Bowen and Scott had sexual relations in his office. Afterward, Scott told Bowen he would keep his promise to her regarding the criminal charges against her.

The Board finds with clear and convincing evidence that the proven facts establish violations of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

DR 1 102. (A)(3) and (4) ***

DR 7 102. (A)(6) and (8) ***

DR 7 103. (A)(1) and (2) ***

DR 8 101. (A)(3) ***

DR 9 101. (C) ***

Having made these findings of misconduct, the Board proceeded to hear evidence in aggravation and mitigation. The Virginia State Bar made it known that the Respondent has no prior record of misconduct. The Respondent testified in mitigation and produced two character witnesses on his behalf. After hearing this evidence the parties rested and made final argument for disposition.

The Board then deliberated and determined that the proper disposition of this misconduct is revocation. There are numerous factors that make this conduct particularly egregious. The awesome powers of a prosecutor in relation to an accused place on the prosecutor the high duty to remain true to his oath. Misuse or abuse of these powers not only can result in harm to the accused, but also can result in improperly compromised prosecutions and/or faulty convictions. On the facts before us, we see strong evidence of personal harm to these two women who stood accused of criminal behavior, and also evidence of improperly compromised prosecutions. On the second point, we know, at the very least, that Scott's misconduct in the Clay charges resulted in the appointment of a special prosecutor to handle those charges. The special prosecutor moved for a nolle prosequi on those charges on September 22, 1998; action Scott attributes to complications arising from his sexual encounter with Clay.

Although he steadfastly denies it in his testimony before the Board; when the spotlight turned on him, Scott clearly tried to coax Clay and Collins to relinquish Tape A and to falsely represent to the Commonwealth Attorney that the tape either did not exist or contained nothing remarkable. Scott explains these actions as an attempt to gain control of the tape because

he thought Clay and Collins would alter it. We do not believe his testimony on that point.

A prosecutor's actions are constantly in the public eye. Scott, himself, testified that his tryst with Clay caused a great deal of adverse publicity in the media. It is probable that his misconduct has undermined public confidence in the administration of justice. We believe it put the entire legal profession in a bad light.

On a final note, we believe Scott made every attempt to minimize his misconduct through denials and misrepresentation, up to and including his testimony before this Board. After persistent denials spanning a period of some six weeks, Scott found himself boxed in by the two tape recordings, and he then admitted the encounter with Clay. He claims, however, that it resulted from mutual desires stemming from a lengthy personal friendship. He denied under oath: first, that he ever acted as the prosecutor on Clay's charges; second, that he used his position to pressure Clay into the sex acts; and finally, that he bartered leniency or acquittals for sex. He thereby maintains the position that this was only an embarrassing personal indiscretion that had nothing to do with his office or the legal profession in general. We do not believe these denials.

Scott insists that Bowen fabricated her entire story after hearing publicity of the Clay matter, but he presented no evidence to show that Bowen has in any way gained benefit from coming forward. However, we believe Bowen. It was apparent that Bowen would rather not have appeared before us. She was reluctant to recount the events. Her testimony caused her obvious discomfort and embarrassment. Her demeanor was not that of a person motivated toward some gain or other self interest. But Scott's motivation to flatly deny Bowen's accusations is easily understood. These two had never known each other as friends or otherwise. Their sexual encounter in Scott's courthouse office cannot be characterized as voluntary on Bowen's part. He has nothing here to admit and explain away, so he denies it all. We believe Scott coerced sex from Bowen using not his charm, but only the power of his office. There is no other explanation.

Even though Scott had prior personal acquaintance with Clay, we believe that it was not the type of relationship that would lead to their sexual encounter. We take note of the undisputed fact that they never again made plans to rendezvous. Were this a mutual affair, unrelated to the prosecution, Clay would not have taped the telephone conversation and the meeting with Collins and Scott. She would not have had Collins go to the Commonwealth Attorney with the tapes. There would have been evidence of other contacts between them in furtherance of their affair. We are convinced that Scott used his office to coerce Clay to submit to his desires on Memorial Day, 1988, and that his explanation falls far from the truth.

In summary, it is hard to envision a pattern of lawyer misconduct more predatory than this. It is damaging to the profession as a whole. Scott refuses to acknowledge the extent of his professional misconduct. Instead he has compounded it with his untruthfulness.

ACCORDINGLY, IT IS ORDERED that the license of ZANE BRUCE SCOTT be, and the same is hereby REVOKED, effective December 15, 2000.

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

It is further ORDERED that ZANE BRUCE SCOTT shall furnish true copies of all of the notice letters sent to all persons notified of the revocation, with the original return receipts for said notice letters, to the Clerk of the Disciplinary System, on or before February 14, 2001.

It is FINALLY ORDERED that the Clerk of the Disciplinary System forward a copy of this order to the Respondent, by certified mail, at his address of record with the Virginia State Bar, and to Richard E. Slaney, Esquire, Assistant Bar Counsel.

ENTERED this 22nd day of February, 2001.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Henry P. Custis, Jr., Chair

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District Committee

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
WILLIAM B. ALLEN, III
VSB Docket NO. 98-070-1810

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On the 18th of January, 2001, a meeting in this matter was held before a duly convened Seventh District Subcommittee consisting of Glenn M. Hodge, Esq., Ann C. Hall, and Julia S. Savage, Esq., presiding.

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

I. FINDINGS OF FACT

- 1. At all times relevant hereto, the Respondent, William B. Allen, III, Esquire (hereinafter the Respondent), has been

an attorney licensed to practice law in the Commonwealth of Virginia.

- 2. In August of 1996, the Complainant, Kimberly A. Sutherly, hired the Respondent to represent her in a child custody case. She signed a fee agreement with the Respondent. The Complainant agreed to pay the Respondent an hourly rate of \$175.00, and paid the Respondent \$1,500 in advance payment of fees. The fee agreement violated Legal Ethics Opinion 1606 in that it stated that the fee was non-refundable.
- 3. In September of 1998, at the request of the Virginia State Bar's investigator, the Respondent provided copies of the bills he sent to the Complainant. The bills show that the Respondent's total time devoted to the Complainant's case was four and one half hours, at a rate of \$175 an hour, totaling \$787.50. There were no additional charges because the Complainant fired the Respondent on May 13, 1997.
- 4. The Complainant asked the Respondent to return the unearned portion of the retainer agreement. He did not return the unearned portion of the fee to the Complainant.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Disciplinary Rule has been violated:

DR 2-105.(A) and (B) * * *

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which by May 31, 2001, shall be a predicate for the disposition of this complaint by imposition of a public reprimand. The terms and conditions which shall be met by May 31, 2001 are:

- 1. The Respondent shall refund to the mother of Kimberly Sutherly the unearned portion of his fee, \$712.50, plus interest of \$204.25, totaling \$916.25.

Upon satisfactory proof that the above noted term and condition has been met, a Public Reprimand with Terms shall then be imposed, and this matter shall be closed. If, however, the term and condition has not been met by May 31, 2001, this case shall be certified to the Disciplinary Board of the Virginia State Bar.

SEVENTH DISTRICT COMMITTEE
By Julia S. Savage, Chair/Chair Designate
Certified February 6, 2001

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BEFORE THE FIRST DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
STUART W. ATKINSON
VSB Docket No. 99-010-2420

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On December 14, 2000, a hearing in this matter was held before a duly convened First District Committee panel consisting of John D. Eure, Jr., Esquire, William H. Monroe, Esquire, Ray W. King, Esquire, Durwood Curling, Lay Member, Tyrone J. Melvin, Sr., Lay Member, and Michael S. Mulkey, Esquire, Chair, presiding.

The Respondent appeared in person *pro se*, and Edward L. Davis, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

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

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Stuart W. Atkinson (hereinafter Respondent or Mr. Atkinson) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On March 22, 1991, Mr. Atkinson qualified as Executor of the Estate of Eric Christopher Wrenn, who died on April 13, 1990.
3. Mr. Atkinson failed to file the Seventh Settlement of Accounts when due. On December 18, 1998, Commissioner of Accounts Erwin B. Nachman issued a summons requiring Mr. Atkinson to submit the settlement of accounts within thirty days. He failed to comply with the summons, and the Commissioner of Accounts requested a Rule to Show Cause requiring Mr. Atkinson to appear before the Circuit Court. The Court issued the Rule on March 23, 1999, requiring Mr. Atkinson to appear before the Circuit Court on April 29, 1999.
4. On April 29, 1999, Mr. Atkinson appeared, submitted a Seventh and Eighth Settlement of Accounts, and paid the filing fees and penalties. The Commissioner of Accounts approved the accountings, and the Rule to Show Cause was dismissed.
5. The Ninth Settlement of Accounts came due on July 22, 2000. Mr. Atkinson failed to file the accounting, and the Commissioner of Accounts issued a delinquency notice to Mr. Atkinson on August 8, 2000. Mr. Atkinson still failed to file the accounting, and the Commissioner of Accounts issued a summons on September 28, 2000, which was served on October 4, 2000. Mr. Atkinson did not respond to the summons within the thirty-day period as directed. Mr. Atkinson did, however, file an accounting on December 12, 2000, two days before the hearing before the First District Committee.
6. Testimony adduced at the hearing indicated that in 1994, Mr. Atkinson sold one of the estate assets, an automobile, for \$3,800.00. The buyer paid for the car with a money order that was delivered to Mr. Atkinson. Unfortunately, Mr. Atkinson lost the money order. All of the other estate assets were disposed of. Over the course of the next six years, Mr. Atkinson attempted to locate the buyer in an attempt to replace the lost money order, but could not do so. The automobile has been the only unresolved

issue remaining in the estate, all other issues having been concluded.

II. MISCONDUCT

The Committee finds that Virginia State Bar has proven violations of the following Disciplinary Rules and Rules of Professional Conduct by clear and convincing evidence:

DR 6-101. (A)(1)and(2) and (B) ***

Rule 1.1Competence

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 1.3Diligence

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

III. PUBLIC REPRIMAND WITH TERMS

Upon consideration of the evidence and the Respondent's prior disciplinary record, it is the decision of the Committee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this Complaint. The terms and conditions shall be met by the times set forth below.

1. Within six months of January 1, 2001, the Respondent shall complete six (6) hours of continuing legal education (CLE) on the subject of **trusts and estates** or **wills and estates** for no annual CLE credit.
2. Within six months of January 1, 2000, the Respondent shall attend six (6) hours of continuing legal education (CLE) on the subject of **law office management** for no annual CLE credit.
3. • The Respondent shall seek approval of said courses from Assistant Bar Counsel Edward L. Davis before attending.
• The Respondent may call the Virginia State Bar Department of Continuing Legal Education at 775-0577 for information on available courses.
• The Respondent shall certify his attendance at said courses to Assistant Bar Counsel, Edward L. Davis.
4. The Respondent shall reimburse the estate of Eric C. Wrenn, Fiduciary Number 7281, the amount of \$3,800.00 (three thousand eight hundred dollars) with interest within sixty (60) days from whatever date the Commissioner of Accounts deems that it is owed. (Bar Counsel shall advise the Commissioner of Accounts of the Committee's findings.)
5. The Respondent shall conclude the Estate of Eric C. Wrenn within such time as determined by the Commissioner of Accounts.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by the dates specified above, this Committee shall certify the matter for hearing before the Virginia State Bar Disciplinary Board.

FIRST DISTRICT COMMITTEE OF THE VIRGINIA STATE BAR By Michael S. Mulkey, Chair Certified December 27, 2000

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

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

In the Matter of ARTHUR CHARLES ERMILICH, JR. VSB Docket No. 99-021-0239

On January 11, 2001, a hearing in this matter was held before a duly convened Second District Committee, Section I, panel consisting of Lisa Ann Largey Broccoletti, Attorney at Law, Croxton Gordon, Esquire, Michael F. Fasanaro, Jr., Esquire, Ray Webb King, Esquire, Mr. Kurt M. Rosenbach (lay member), and William Hanes Monroe, Jr., Esquire, Chair, presiding.

Respondent Arthur Charles Ermlich, Jr. did not appear. Paul D. Georgiadis, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶13(B)(7) of the Rules of the Supreme Court, the Second District, Section II-I of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

- 1. At all times material to these allegations, the Respondent, Arthur Charles Ermlich, Jr., hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about April 7, 1998, Respondent made a formal appearance as defense counsel for William Garfield (hereinafter "Complainant") through a Motion for Substitution of Counsel in a pending probation revocation.
3. On April 27, 1998, Respondent appeared for the hearing on the probation revocation. The Court revoked the suspension of the sentence and ordered Complainant to serve the unserved portion of the sentence originally imposed on January 29, 1996. At that time or shortly thereafter, Respondent agreed to further represent Complainant and seek relief from the re-imposed sentence.

- 4. Shortly thereafter, Respondent had one or more communications with the Commonwealth's Attorney, who indicated her strong opposition to any sentence reduction or relief otherwise.
5. Notwithstanding the agreement of Respondent to further representation, Respondent thereafter failed to inform Complainant directly or indirectly through Complainant's friends and relatives who contacted Respondent of the Commonwealth's Attorney's opposition. He further failed to advise that he was not going to proceed further.
6. Respondent failed to either accept or return numerous telephone calls from Complainant and refused to respond to and return telephone calls from Complainant's mother who was authorized to call Respondent on Complainant's behalf.
7. As a consequence of Respondent's failure to communicate, to wit, repeated failures to return telephone calls from the Complainant and Complainant's mother, Complainant waited from April 27, 1998 to August 31, 1998 to learn whether relief from the Court's order would be obtained.

II. NATURE OF MISCONDUCT

The Committee finds that the Bar has proven violations of the following Disciplinary Rules by clear and convincing evidence:

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

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, committee does hereby reprimand the Respondent. It is further ordered that the Respondent is given an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions shall be met by July 31, 2001:

- 1. Respondent shall certify in writing to Assistant Bar Counsel that he has enrolled and attended four (4) hours of Continuing Legal Education in general Criminal Practice, which four (4) hours shall not be applied toward Respondent's annual Mandatory Continuing Legal Education requirements.

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 July 31, 2001, this district committee shall certify this complaint to the Disciplinary Board.

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

SECOND DISTRICT COMMITTEE, SECTION II-I By William Hanes Monroe, Jr., Chair Certified January 25, 2001

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

II. NATURE OF MISCONDUCT

In the Matter of
ARTHUR CHARLES ERMILICH, JR.
VSB Docket No. 99-021-0180

The Committee finds that the Bar has proven violations of the following Disciplinary Rules by clear and convincing evidence:

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

- 1. DR 6-101.(A)(1), (B), (C) and (D) * * *
- DR 2-108. (D) * * *

On January 11, 2001, a hearing in this matter was held before a duly convened Second District Section I panel consisting of Lisa Ann Largey Broccoletti, Attorney at Law, Croxton Gordon, Esquire, Michael F. Fasanaro, Jr., Esquire, Ray Webb King, Esquire, Mr. Kurt M. Rosenbach (lay member), and William Hanes Monroe, Jr., Esquire, Chair, presiding.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, committee does hereby reprimand the Respondent. It is further ordered that the Respondent is given an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions shall be met by July 31, 2001:

Respondent Arthur Charles Ermlich, Jr. did not appear. Paul D. Georgiadis, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

- 1. Respondent shall certify in writing to Assistant Bar Counsel that he has enrolled and attended four (4) hours of Continuing Legal Education in appellate practice, which four (4) hours shall not be applied toward Respondent's annual Mandatory Continuing Legal Education requirements.

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

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 July 31, 2001, this district committee shall certify this complaint to the Disciplinary Board.

I. FINDINGS OF FACT

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

- 1. At all times material to these allegations, the Respondent, Arthur Charles Ermlich, Jr., hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.
- 2. On or about March 18, 1997, Respondent was appointed as trial counsel for James W. Waters, Jr. (hereinafter "Complainant").
- 3. On or about November 21, 1997, Respondent filed a Notice of Appeal to the Court of Appeals of Virginia from the final judgment entered on October 22, 1997. The Notice of Appeal was filed *pro se*, although Respondent drafted and filed the pleading on behalf of the Complainant.
- 4. Thereafter, Respondent took no further steps to perfect the appeal resulting in the dismissal of the appeal on February 24, 1998.
- 5. Thereafter, Respondent did not move to withdraw as Complainant's counsel, although he has admitted he should have if he did not want to proceed with the appellate representation.
- 6. At no time did Respondent give notice to the Complainant of his intention not to continue the representation.
- 7. After filing the Notice of Appeal, Respondent failed to advise Complainant of further legal rights and steps to perfect such further legal rights.
- 8. Complainant did not learn of the dismissal of his appeal until June 3, 1999, when he received a response to his case inquiry from the Clerk of the Virginia Beach Circuit Court.

SECOND DISTRICT COMMITTEE SECTION I
By William Hanes Monroe, Jr., Chair
Certified January 25, 2001

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

In the Matter of
JOHN HENRY PARTRIDGE
VSB Docket NO. 00-053-2402

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS

On January 11, 2001, a meeting in this matter was held before a duly convened Fifth District—Section II Subcommittee consisting of Gregory Allen Porter, Esquire, Charles M. Hunter, and Joyce Ann N. Massey, Esquire, presiding.

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

I. FINDINGS OF FACT

1. At all times relevant hereto, John Henry Partridge, Esq. (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or around March, 1997, Clarence W. Wahl (hereinafter "Complainant") hired the Respondent for domestic relations representation, to include negotiation and drafting of a property settlement agreement and procurement of a decree of divorce.
3. Complainant and his wife separated from each other in or around May of 1997, and they entered into a property settlement agreement in or around June of 1998.
4. In accordance with established practice, on September 1, 1998, Respondent took, in his offices, the depositions of Complainant and Complainant's corroborating witness in support of a divorce action then pending in the Loudoun County, Virginia, Circuit Court.
5. Following the taking of depositions, and despite repeated promises made to the Complainant, and thereafter to the Virginia State Bar, Respondent failed to process Complainant's divorce case to a timely conclusion. In fact, as of October 4, 2000, the date of Respondent's interview with a Virginia State Bar investigator, and some two years following the taking of all evidence necessary to support entry of a final decree of divorce. Respondent had still not obtained a final decree of divorce for Complainant.
6. When confronted by Complainant and the Virginia State Bar respecting his failure to procure Complainant's final decree of divorce, Respondent offered as an excuse for such delay the contentions a) that he could not locate Complainant's corroborating witness who needed to sign a certain affidavit; and b) that Complainant had an outstanding balance for legal services. Both such contentions offered to support Respondent's delay in attending to Complainant's case were dishonest and pretextual: The corroborating witness remained at the same address that she had on the date of her deposition testimony on September 1, 1998; it was not until April 24, 2000, that Respondent stated to Complainant that the delay in processing Complainant's divorce was occasioned by Complainant's failure to pay legal fees.
7. Complainant sustained financial harm as a result of Respondent's unnecessary delay in procuring a final decree of divorce, in that Complainant was obligated to pay health insurance premiums on behalf of his wife for so long as the parties remained married, and the wife's share of Complainant's retirement benefits increased through the time of the parties' divorce.
8. During the course of his representation of Complainant, Respondent lost a cashier's check in the sum of \$50,000.00 that had been entrusted to him by Complainant, and Respondent drafted a divorce decree which misspelled Complainant's name.
9. During the course of his representation of Complainant, Respondent failed on many occasions to respond in a timely manner to many of Complainant's inquiries, to

include certified letters and e-mails, respecting the status of Complainant's divorce case.

II. NATURE OF MISCONDUCT

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

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

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

DR 7-101. (A)(1), (2) and (3) * * *

DR 9-102.(B)(2) * * *

Rule 1.1 Competence

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

Rule 1.3 Diligence

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

Rule 1.4 Communication

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

Rule 1.15 Safekeeping Property

- (c) A lawyer shall:
 - (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable[.]

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation[.]

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 shall be a predicate for

the disposition of this complaint by imposition of a PUBLIC REPRIMAND WITH TERMS. The terms and conditions are as follows:

1. Respondent shall conclude Complainant's divorce case, without imposition of further legal fees, by obtaining a final decree of divorce to be entered by the Court no later than January 31, 2001; and
2. Respondent shall remit by certified, cashier's, or treasurer's check made payable to the order of the Complainant the sum of \$3,500.00, which shall represent a partial refund of legal fees paid Respondent by the Complainant. The payment that is due hereunder shall be made by delivery of a check, as aforesaid, to Seth Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than February 28, 2001.

Upon satisfactory proof furnished by Respondent to the Virginia State Bar that the above Terms have been complied with, in full, a PUBLIC REPRIMAND, WITH TERMS shall then be imposed, and this matter shall be closed. If, however, Respondent fails to comply with any of the Terms set forth herein, as and when his obligation with respect to any such Term has accrued, then, and in such event, the Committee shall, as an alternative disposition to a Public Reprimand with Terms, certify to the Virginia State Bar Disciplinary Board the foregoing Findings of Fact as Charges of Misconduct against the Respondent.

FIFTH DISTRICT—SECTION II SUBCOMMITTEE
By Joyce Ann N. Massey, Chair/Chair Designate
Certified January 23, 2001

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

In the Matter of
JAMES SPAULDING POWELL
VSB Docket No. 99-04202954

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On January 19, 2001, a meeting in this matter was held before a duly convened Fourth District—Section II Subcommittee consisting of Ann N. Kathan, Esquire, V. Max Beard, and Peter Allan Dingman, Esquire, presiding.

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

I. FINDINGS OF FACT

1. At all times relevant hereto, James Spaulding Powell, Esq. (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent placed an order with a stationer for business stationery on or about March 12, 1998. The order was

filled, and Respondent was invoiced for payment in the amount of \$466.55.

3. Following several demands by the stationer for payment of the invoice, Respondent issued to the stationer a worthless check for the aforesaid amount.
4. The stationer procured a civil judgment against Respondent in the Norfolk, Virginia, General District Court. When civil enforcement of the judgment against Respondent proved unavailing, the stationer made further written demand upon Respondent for payment, and indicated that it would procure a criminal warrant for the worthless check in the event of nonpayment.
5. Respondent did not make payment in the face of such demand, and was charged with having issued a worthless check, pursuant to §18.2-181 of the 1950 Code of Virginia, as amended. Pursuant to a plea agreement, the Circuit Court of the City of Norfolk, Virginia, entered a misdemeanor conviction on May 21, 1999, upon the worthless check charge, and sentenced Respondent to a jail term of six months, all of which was suspended.
6. Respondent has paid court costs, in full, and has made full restitution to the stationer

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Disciplinary Rule has been violated:

DR-102.(A)(3) * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND on Respondent, James Spaulding Powell, Esquire, and he is so reprimanded.

FOURTH DISTRICT—SECTION II SUBCOMMITTEE
By Peter a Dingman, Chair/Chair Designate
Certified January 19, 2001