

## disciplinary actions

### 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
<b><u>SUPREME COURT</u></b>				
Kenneth Harrison Fails II	Washington, DC	Revocation	March 22, 2002	20
<b><u>CIRCUIT COURT</u></b>				
Steven Jay Marsey	Virginia Beach	Revocation	December 12, 2002	22
<b><u>DISCIPLINARY BOARD</u></b>				
William August Boge	Manassas	60 Day Suspension	January 1, 2003	24
James Kevin Clarke	Richmond	Public Reprimand w/Terms	December 17, 2002	27
Paul Byron Collins, Jr.	Purcellville	6 Month Suspension	December 9, 2002	31
Paul Byron Collins, Jr.	Purcellville	Public Reprimand w/Terms	December 20, 2002	32
Charles Anthony DiFazio	Mt. Laurel, NJ	Revocation	January 24, 2003	34
Francis Douglas Foord	Alexandria	30 Day Suspension	February 1, 2003	34
Michael Wills Cullinan Harris	Richmond	5 Day Suspension	December 10, 2002	37
Edward Joseph Hodkinson	Fall River, MA	Revocation	February 28, 2003	n/a
Harvey L. Lasky	Brooksville, FL	6 Month Suspension	February 28, 2003	n/a
Wesley Lee Pendergrass	Hampton	1 Year Suspension w/Terms	February 11, 2003	38
Benjamin Thomas Reed	Norfolk	30 Day Suspension	April 15, 2003	39
Clifford John Quinn	Crofton, MD	Summary Suspension	January 7, 2003	n/a
<b><u>DISTRICT SUBCOMMITTEES</u></b>				
John Wayne Bevis	Fairfax	Public Reprimand w/Terms	February 4, 2003	41
John Wayne Bevis	Fairfax	Public Reprimand w/Terms	February 6, 2003	42
Dale Alan Gipe	Richmond	Public Reprimand	January 6, 2003	43
Robert Michael Short	Vienna	Public Reprimand w/Terms	January 30, 2003	44

### **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	
Charles Daniel Chambliss, Jr.	Richmond	Disciplinary Board	January 23, 2003	n/a
Samuel George Kooritzky	Vienna	Disciplinary Board	January 22, 2003	n/a
David Roland Page	Vienna	Disciplinary Board	January 15, 2003	n/a

### DISABILITY SUSPENSIONS

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date	
Robert Dean Eisen	Norfolk	Disciplinary Board	December 17, 2002	n/a
Lawrence Bradford Haskin	Virginia Beach	Disciplinary Board	February 28, 2003	n/a

#### SUPREME COURT

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of January, 2003.*

#### **KENNETH HARRISON FAILS II**

V. RECORD NO. 021851  
 VSB DOCKET NOS. 00-042-2504, 00-042-2638,  
 01-042-1308, 01-042-1309  
 AND 01-042-1387

VIRGINIA STATE BAR

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board on the 6th day of May, 2002.

For reasons stated in writing and filed with the record, the Court is of the opinion that there is no error in the order appealed from. Accordingly, the order is affirmed. The appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the Virginia State Bar Disciplinary Board.

A Copy,  
 Teste:  
 David B. Beach, Clerk

FROM THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD

PRESENT: ALL THE JUSTICES

#### **KENNETH HARRISON FAILS II**

V. RECORD NO. 021851  
 VIRGINIA STATE BAR

OPINION BY  
 CHIEF JUSTICE HARRY L. CARRICO  
 JANUARY 10, 2003

This appeal is from an order of the Virginia State Bar Disciplinary Board (the Disciplinary Board) revoking the license of Kenneth Harrison Fails II (Fails), to practice law in Virginia. Disposition of the appeal involves the interaction between Part 6, § IV, ¶ 13(C)(6)(a)(i) of the Rules of Court (hereinafter, Rule 13(C)(6))<sup>1</sup> and Code § 54.1-3915.

Rule 13(C)(6) provides that a respondent in a proceeding before the Disciplinary Board shall be served with a Charge of Misconduct and with notice of the date fixed for hearing. The respondent may, within twenty-one days after such notice, (i) “file his answer which shall be conclusively deemed to be a consent to the jurisdiction of the Board,” or (ii) “file a demand that the proceeding before the Board be terminated and that further proceedings be conducted [by a three-judge court] pursuant to Article 6 of Chapter 39 of Title 54.1 of the Code of Virginia, whereupon further proceedings before the Board shall be terminated and Bar Counsel shall file the complaint required by § 54.1-3935 of the Code.”<sup>2</sup>

Code § 54.1-3915 provides in pertinent part as follows:

[T]he Supreme Court shall not promulgate . . . any rule or regulation or method of procedure which eliminates the jurisdiction of the courts to deal with the discipline of attorneys.<sup>3</sup> In no case shall an attorney who demands to be tried by a court of competent jurisdiction for the violation of any rule or regulation adopted under this article be tried in any other manner.

The record shows that by letter dated February 6, 2002, the Virginia State Bar served notice upon Fails of the certification by a district committee of charges of misconduct against him. The letter stated that, within twenty-one days of its date, Fails could (a) file an original and eight copies of an answer, or (b) demand that the charges against him be heard by a three-judge court pursuant to Code § 54.1-3935. The letter also advised that the matter was set for hearing before the Disciplinary Board on March 22, 2002.

On March 6, 2002, Fails filed an answer to the certification, and on March 12, 2002, he moved for a continuance of the hearing scheduled for March 22, 2002, in order to retain counsel. After a pre-hearing conference call involving Fails, the chair of the Disciplinary Board, and the assistant bar counsel, an order was entered by the Disciplinary Board on March 13, 2002, denying the motion for a continuance.

Fails then on the same date demanded that he be tried by a three-judge court and that the proceeding before the Disciplinary Board be suspended. Following a telephone conference call again involving Fails, the chair of the Disciplinary Board, and the assistant bar counsel, an order was entered by

the Disciplinary Board on March 19, 2002, denying Fails’ demand as untimely because the demand was made past the twenty-one day limitation of Rule 13(C)(6).

On March 22, 2002, Fails appeared with counsel at the hearing before the Disciplinary Board and renewed his demand for a trial before a three-judge court. When the Disciplinary Board refused the demand, Fails and his counsel excused themselves from the remainder of the proceedings. The Disciplinary Board heard the evidence, found Fails guilty of misconduct, and revoked his license to practice law in Virginia. Fails appeals as a matter of right from the Disciplinary Board’s final order.

Fails argues that when he demanded a trial before a three-judge court, the Disciplinary Board lost subject matter jurisdiction to hear the certification of charges against him. Fails recognizes the authority of this Court under Code § 54.1-3909 to prescribe “a code of ethics governing the professional conduct of attorneys” and to prescribe “procedures for disciplining, suspending, and disbaring attorneys.” Fails says, however, that the General Assembly limited this authority by providing in Code § 54.1-3915 that this Court could devise no procedure that eliminates the jurisdiction of the courts to deal with attorney discipline or that requires an attorney to be tried in any forum other than a three-judge court after a demand therefore. Fails states that an interpretation of Rule 13(C)(6) that would require an attorney to elect trial by a three-judge court within twenty-one days of service of notice of misconduct would conflict with Code § 54.1-3915 in that it would eliminate the jurisdiction of the courts to deal with the discipline of attorneys and force attorneys to be tried by a forum other than a three-judge court.

Fails maintains that Code § 54.1-3915 neither provides any time or procedural constraints upon an attorney’s demand to be tried by a three-judge court nor permits this Court to place constraints upon such a demand. Therefore, Fails says, Rule 13(C)(6) is void and the Disciplinary Board’s order of revocation is void as well.

Finally, Fails insists that he did not waive his right to a three-judge trial by filing an answer with the clerk of the Disciplinary System. Fails says the provision of Rule 13(C)(6) that the filing of an answer “shall be conclusively deemed to be a consent to the jurisdiction of the Board” is “in opposition to the statutory mandate that an attorney who demands to be tried for disciplinary charges before a court of competent jurisdiction shall be tried before no other forum.”

We disagree with Fails. On the jurisdictional question, as the State Bar asserts and Fails acknowledges, we have treated Rule 13(C)(6) “as a limit or restriction only on ‘territorial’ jurisdiction or venue and not on subject matter jurisdiction.” See *Smolka v. Second District Committee of the Virginia State Bar*, 224 Va. 161, 165-66, 295 S.E.2d 267, 269 (1982); see also *Stith v. Virginia State Bar*, 233 Va. 222, 224, 355 S.E.2d 310, 311-12 (1987). Fails has not convinced us that we should treat the Rule differently here, and we reject his argument that when he demanded trial before a three-judge court, the Disciplinary Board lost subject matter jurisdiction to hear the certification of charges against him.

On the question whether Rule 13(C)(6) conflicts with Code § 54.1-3915, we find no conflict. The message of Rule 13(C)(6)

FOOTNOTES

- 1 Since the conclusion of the disciplinary proceedings below on May 6, 2002, Part 6, § IV, ¶ 13 has been revised effective September 18, 2002. Rule 13(C)(6) is now Rule 13(D)(1)(a)(1)(a). We will refer in this opinion to the version of ¶ 13 in effect at the time of the proceedings below.
- 2 The provision for a demand for a three-judge court is now found in Rule 13(D)(1)(a)(1)(b).
- 3 Paragraph 13 itself recognizes this limitation. Rule 13(K)(6) provides that “[n]othing contained in this Rule 13 shall be so interpreted as to eliminate the jurisdiction of the courts of this Commonwealth to deal with the discipline of attorneys-at-law as provided by law.” This provision in slightly different language is now found in Rule 13(B)(1)(a).

is clear: If an attorney does not wish to be tried by the Disciplinary Board, he or she should not file an answer to a certification of misconduct within twenty-one days. Instead, the attorney should file within that time a demand for trial by a three-judge court. This simple procedural step neither eliminates the jurisdiction of the courts to deal with the discipline of attorneys nor denies the right of an attorney to trial by a three-judge court.

In fact, Rule 13(C)(6) complements Code § 54.1-3915. The Code section is silent on how and when an attorney must make a demand for trial by a three-judge court, and nothing in the statute forbids this Court from supplying the how and when. Rule 13(C)(6) fills the void in the statute with a reasonable requirement that puts the disciplinary authorities and the attorney on notice that they need not prepare for a hearing before the Disciplinary Board but before a three-judge court. Yet the key to the courthouse all along is in the attorney's own hands. He or she alone is free to make the choice whether to be tried by the Disciplinary Board or a three-judge court.

On the question of waiver, we find nothing whatsoever in Code § 54.1-3915 even suggesting that the right to be tried by a three-judge court may not be waived. By way of analogy, a party charged with crime may waive, among other constitutional rights, the right to demand counsel or the right to demand trial by jury. Surely, therefore, an attorney charged with misconduct may waive the less-important statutory right to be tried by a three-judge court. Indeed, in *Wright v. Virginia State Bar*, 233 Va. 491, 357 S.E.2d 518 (1987), we said that the "failure [of an attorney charged with misconduct] to make a timely demand for a three-judge court constitute[s] a conclusive waiver of the right to subsequently file such demand." *Id.* at 497, 357 S.E.2d at 520 (internal quotation marks omitted). In *Smolka, supra*, after interpreting the use of "jurisdiction" as establishing venue, we said that it "is implicit in [Rule 13(C)(6)] that, "[o]rdinarily, venue is waived if the defendant does not make a timely objection," 224 Va. at 165, 295 S.E.2d at 269, and that "[b]ecause Smolka filed his answer, he waived his privilege to assert lack of venue," *id.* at 166, 295 S.E.2d at 269. And in *Stith, supra*, we said that "[v]enue is waived if timely objection is not made." 233 Va. at 224, 355 S.E.2d at 312.

Fails neither mentions *Wright* nor attempts to distinguish it. He says *Smolka* and *Stith* are distinguishable on the ground that the attorneys in those cases failed to invoke their statutory right to a three-judge court prior to the conclusion of the hearings before the Disciplinary Board while he, Fails, invoked his right to a three-judge court twice prior to the commencement of his hearing before the Board. This is a distinction without a difference. Fails was still late under the twenty-one day limitation of Rule 13(C)(6) in filing his demand for a three-judge court, so the difference between this case and *Smolka* and *Stith* is in degree of tardiness only and not in substance.

For the reasons assigned, we will affirm the Disciplinary Board's order revoking Fails' license to practice law in this Commonwealth, effective March 22, 2002.

*Affirmed.*  
A Copy,  
Teste:  
David B. Beach  
Clerk



## CIRCUIT COURT

IN THE CIRCUIT COURT FOR  
THE CITY OF VIRGINIA BEACH

VIRGINIA STATE BAR EX REL.  
FIRST DISTRICT COMMITTEE  
COMPLAINANT,  
V. CHANCERY NUMBER CH02-1164  
**STEVEN JAY MARSEY**  
RESPONDENT.

### ORDER OF REVOCATION

This Cause came to be heard on August 29, 2002, by a duly convened, Three-Judge Court, appointed pursuant to Section 54.1-3935, Code of Virginia, as amended. The Respondent, Steven Jay Marsey, though duly noticed, failed to appear. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The Court received evidence and heard the argument of counsel. After due deliberation, it was the unanimous decision of the Court that the bar had proven by clear and convincing evidence the factual allegations contained in Paragraphs 1 through 14 of the Subcommittee Determination and Certification, a copy of which is attached hereto and incorporated herein. The Court found further, by unanimous decision, that the bar had proven by clear and convincing evidence violations of the following Disciplinary Rules: DR 1-102(A)(3), DR 1-102(A)(4), and DR 7-102(A)(1).

The Court then heard argument concerning an appropriate disposition, and recessed to determine what sanctions, if any, to impose. In light of the egregious nature of the Respondent's conduct, it was the unanimous decision of the Court to Revoke his license to practice law in the Commonwealth of Virginia.

Accordingly, it is **ORDERED** that the license of Steven Jay Marsey to practice law in the Commonwealth of Virginia be, and the same is, hereby **REVOKED**.

Further, it appearing that the Respondent filed a demurrer to the instant complaint, and that the bar filed a response, and it appearing further that the parties did not schedule a hearing for the Court to consider the demurrer, on the motion of the Virginia State Bar, the demurrer is hereby **OVERRULED**.

Following the aforementioned trial, the Respondent, on September 30, 2002, filed a motion to quash any order entered in this matter and to rehear the matter, alleging that the Respondent was not properly served with notice pursuant to statute, and that there was no service prior to ten days before the trial. On October 30, 2002, the Three-Judge Court considered the motion by telephone conference, to which procedure the Respondent objected. The Respondent, Steven Jay Marsey, participated in the telephone conference, *pro se*. Edward L. Davis, Assistant Bar Counsel, appeared for the Virginia State Bar, and the matter was argued by counsel. Upon due consideration of the Respondent's comments and the records in this matter, the Three-Judge Court **DENIED** the Respondent's motion to quash and motion to rehear the matter.

It is further **ORDERED** that the bar will send a draft Order of these proceedings to the Respondent, Steven Jay Marsey, at 511 Bunker Drive, Virginia Beach, Virginia 23462-4507, who will endorse the order, either concurring or objecting thereto,

within five (5) days of receipt, and return the same to the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, who will forward the Order to the Three-Judge Court for entry. If the Respondent fails to endorse the Order within five days and return it to the Bar as ordered herein, the Three-Judge Court will enter the Order without the Respondent's endorsement, in accordance with Rule 1:13 of the Rules of the Supreme Court of Virginia.

ENTER: 12/12/02.  
William C. Andrews III, Chief Judge  
Three-Judge Court  
  
E. Everett Bagnell, Judge (Retired)  
Buford M. Parsons, Jr., Judge (Retired)

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

IN THE MATTER OF  
**STEVEN JAY MARSEY**  
VSB DOCKET NO. 99-010-1755

**SUBCOMMITTEE DETERMINATION  
(CERTIFICATION)**

On December 15, 2000, a meeting in this matter was held before a duly convened First District Subcommittee panel consisting of John D. Eure, Jr., Chair, J. Wayne Sprinkle, Member and Durwood Curling, Lay Member.

Pursuant to Part 6: § IV, ¶13(B)(5) of the Rules of the Supreme Court of Virginia, the First District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Certification:

**I. ALLEGATIONS OF FACT**

1. During all times relevant hereto, the Respondent, Steven Jay Marsey (hereinafter Respondent or Mr. Marsey) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. From 1988 through January 31, 1998, Mr. Marsey was employed as a full time associate at the law firm of Glasser & Macon, P.C., in Chesapeake, Virginia. Initially, his pay arrangement was a salary plus 50 percent of the receipts from cases he originated and brought to the law firm, and derived from his efforts in those cases. Subsequently, his salary was increased to \$32,000 per year plus one third of the receipts derived from cases that he originated and brought to the law firm, and derived from his efforts in those cases.
3. During 1997, Messrs. Glasser and Macon became aware of a client who was referred to their law firm by an individual who had previously referred other clients to their firm. They were previously unaware of the referral because, unbeknownst to them, Marsey had referred the client to another law firm. When Marsey referred the client to the other firm, he instructed the client to execute a retainer agreement with the other law firm without reference to Glasser & Macon. The referral to the other firm included an oral agreement to pay a portion of any recovery to Glasser & Macon, all without the knowledge of Messrs. Glasser and Macon. Mr. Marsey never opened a file on this case at the law firm of Glasser & Macon, and none was ever created there. The client never executed a retainer agreement at Glasser & Macon, and no evidence regarding the case existed there.
4. As a result of these actions, Glasser & Macon terminated Mr. Marsey's employment on January 31, 1998. During their exit discussions, Mr. Glasser inquired of Mr. Marsey about whether there were any other cases that Mr. Marsey had referred to other lawyers or law firms without advising them. Mr. Marsey responded that there were no such other cases.
5. Messrs. Glasser and Macon also asked Mr. Marsey to prepare a list of all outstanding and closed cases that he had been involved with while employed at the firm. In response, Mr. Marsey prepared and submitted a list.
6. After Marsey's termination from the firm, Glasser & Macon received correspondence from the law firm of Huff, Poole, & Mahoney enclosing a check in the amount of \$8,333 payable to Steven Jay Marsey, Esq., and Glasser & Macon. The letter, addressed to Mr. Marsey, referenced the case of *Botelis v. Oak Crest Manor*, and indicated that the check was his firm's share of the settlement in that matter. The letter closed by thanking Mr. Marsey for referring the case to them. Messrs. Glasser and Macon had never heard of the case, and Mr. Marsey did not list it on the list of outstanding cases.
7. Unbeknownst to Messrs. Glasser and Macon, Mr. Marsey previously referred the Botelis case to the law firm of Huff, Poole, and Mahoney with the agreement that he would receive one third of any attorney's fees recovered. The case settled in November 1996 for a gross amount of \$62,500. Huff, Poole and Mahoney received a 40 percent contingent fee of \$25,000, and the check for \$8,333 represented Mr. Marsey's share.
8. In anticipation of the settlement, Mr. Marsey wrote to Jeffrey F. Brooke at Huff, Poole, and Mahoney on October 22, 1996. In the letter, Marsey said that he intentionally failed to inform Glasser and Macon about the case, and asked that his check be made available for pick-up rather than mailed directly to Glasser & Macon, and that the check be made payable to Steven J. Marsey. In the letter, he misrepresented that he did not have an exclusive arrangement with Glasser & Macon. He said that Glasser & Macon would not appreciate being unable to participate in the recovery if they learned of their arrangement, and said that he appreciated Mr. Brooke's confidence in the matter.
9. In response, Huff, Poole, & Mahoney wrote to Mr. Marsey indicating that they planned to issue the check payable to Glasser & Macon, and Mr. Marsey. After receiving the letter, Marsey called Mr. Brooke demanding that the check be made payable to him only, that he had an agreement with Reeves Mahoney of that firm to receive payment that way. He said further that if they did not issue the check payable to him only, he would sue them for breach of contract, and that he would likely be fired from his job at Glasser & Macon.
10. Huff, Poole & Mahoney refused to issue the check to Mr. Marsey exclusively. Marsey then instructed Huff, Poole & Mahoney to withhold forwarding the \$8,333.33 fee check

until he requested it. Glenn A. Huff of that firm confirmed this in a letter to Mr. Marsey, dated November 13, 1996. Huff, Poole & Mahoney never received any request from Mr. Marsey to forward the check, so it forwarded the check to Glasser & Macon on March 24, 1998. Upon receipt of the letter and check on March 25, 1998, Mr. Glasser wrote to Mr. Marsey by Certified Mail, Return Receipt Requested. Although he signed for the letter, Mr. Marsey never responded.

11. As a result of his conduct, an arrest warrant issued charging Marsey with attempted embezzlement of greater than \$200 from Glasser & Macon, a felony, in violation of Virginia Code Section 18.2-111 (1950). The grand jury returned an indictment, and trial was held on January 21, 2000, in the Circuit Court for the City of Chesapeake. Following the presentation of the Commonwealth's evidence, Mr. Marsey's counsel made a motion to strike. The Court denied the motion. Then, pursuant to an agreement with the Commonwealth, Mr. Marsey tendered a plea of guilty to trespass, a misdemeanor, in violation of 18.2-152.4. The Court accepted the plea and sentenced him to 12 months in jail, all suspended, 200 hours of community service, and two years of probation.
12. In referring the client in the Botelis matter to Huff, Poole & Mahoney, Marsey falsely stated that Glasser & Macon did not handle that kind of case, a slip and fall case. Glasser & Macon, however, did accept such cases.
13. During 1998, Marsey referred a married couple to attorney John W. Hart concerning a loan that the couple had from Isaac Glasser. Marsey mentioned the fact that he had filed a lawsuit against Glasser & Macon. When Mr. Hart mentioned the small amount of damages asked for in the suit, Marsey said that he wanted to make Mr. Glasser sweat. Marsey encouraged Mr. Hart to file a suit against Mr. Glasser on behalf of the couple without notifying Mr. Glasser, to further embarrass Mr. Glasser. He said that he wanted to harm Mr. Glasser's reputation. According to Mr. Hart, Marsey was attempting to provide a mechanism for the couple to avoid repaying its loan to Glasser & Macon. Mr. Hart, however, settled the dispute between the couple and Mr. Glasser.
14. Upon termination of Marsey's employment by Glasser & Macon, Mr. Glasser discovered that Marsey had used firm monies for his own personal use without authorization. Specifically, Marsey used funds from a law firm account to file lawsuits on behalf of himself and members of his families relating to rental property he owned, and other matters. The law suits were of no benefit to Glasser & Macon. When confronted about his use of the law firm's monies, Marsey reimbursed Glasser for those monies that Glasser & Macon knew about at the time. Subsequently, the firm's bookkeeper requested information about other monies used by Marsey for his personal benefit without reimbursement to Glasser & Macon. Marsey declined, saying, "Good luck, those are personal files, not at the office."

**II. NATURE OF MISCONDUCT**

The following Disciplinary Rules are affected:

**DR 1-102.** Misconduct.

(A) (3), (4) \* \* \*

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

(A) (1) \* \* \*

**III. CERTIFICATION**

Accordingly, it is the decision of the First District Subcommittee to certify the charges of misconduct to the Virginia State Bar Disciplinary Board.

FIRST DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By John D. Eure, Jr.  
Subcommittee Chair



**DISCIPLINARY BOARD**

**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF  
**WILLIAM AUGUST BOGE, ESQUIRE**  
VSB DOCKET NUMBERS 00-053-2749  
00-053-3273  
01-053-0751  
01-053-1830

**ORDER**

This matter came on December 9, 2002, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District-Section III Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Bruce T. Clark, Esquire, Joseph Roy Lassiter, Jr., Esquire, Gordon P. Peyton, Esquire, Mr. V. Max Beard, lay member, and John A. Dezio, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, William August Boge, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated November 26, 2002, reflecting the terms of the Agreed Disposition.

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

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

**As to VSB Docket No. 00-053-2749:**

2. The Respondent represented Ms. Angelina M. Yanello (hereafter "Complainant") as court-appointed counsel in connection with a sentencing hearing conducted on or about August 27, 1999, in the Prince William County, Virginia, Circuit Court. The Complainant had earlier pled guilty to the charges for which she was sentenced, and was represented by different counsel at the time her guilty pleas were entered.
3. The Complainant was sentenced to a term of incarceration by the Court. Thereafter, the Virginia State Bar received a written Complaint from the Complainant, stating that she

had made written request of the Respondent for her file, but that she had not received any response from him.

4. On April 19, 2000, Virginia State Bar intake counsel sent a letter to the Respondent requesting that he respond to the Complainant's request for her file, indicating that a resolution of the matter would avoid the necessity of the Bar's opening a formal ethics inquiry.
5. On April 20, 2000, the Respondent sent a letter to the Complainant stating, *inter alia*: "Please allow me at least two (2) business days to get the file in the mail, as it is quite voluminous and will require some time to copy." The Respondent also wrote directly to the Bar on the same date, indicating that he would "forthwith" send the Complainant her file.
6. As of May 24, 2000, the Complainant had yet to receive her file from the Respondent, and so advised the Bar by letter of that date. Consequently, on June 5, 2000, the Bar's intake counsel directed yet another letter to the Respondent reminding him of the prior correspondence relative to the matter, and requesting that he provide the Bar with an update on the situation within ten (10) days following the date of intake counsel's letter.
7. Having received no response from Respondent to the June 5, 2000, letter, intake counsel directed yet another letter to Respondent on June 23, 2000, asking for a response within five (5) days following that date, indicating that it would be "highly likely" that an active investigation file would be opened in the event Respondent did not respond to the Bar.
8. The Respondent did not respond to intake counsel's June 23, 2000, letter and an active investigation file was opened and assigned to Bar Counsel. On July 14, 2000, Bar Counsel directed a letter of that date to Respondent, enclosing the complaint, and stating, *inter alia*, in bold, underlined text, the following: "please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter."
9. The Respondent made no written or other response to the Bar's July 14, 2000, letter, and the matter was forwarded by Bar Counsel for investigation on August 29, 2000, and was thereafter assigned to a Virginia State Bar investigator.
10. The Virginia State Bar investigator interviewed the incarcerated Complainant by telephone on November 17, 2000, and was advised that the Complainant had received her file from the Respondent toward the end of June 2000. On November 21, 2000, the Respondent provided the Virginia State Bar investigator with documentation supporting Respondent's assertion to the investigator that he had mailed the Complainant her file on June 20, 2000.

**As to VSB Docket No. 00-053-3273:**

11. On March 2, 1999, Ms. Debra G. Whitney-Sundberg (hereafter "Complainant") retained the Respondent to handle a personal injury claim.
12. Between March 2, 1999, and May 6, 2000, when Complainant discharged him as her counsel, the Respondent did not gather all evidence pertinent to the matter and did not make

demand on the tortfeasor's insurance carrier and/or file suit against the tortfeasor.

13. During the period of Respondent's representation, the Respondent failed to return many of Complainant's calls to him.
14. After discharging the Respondent, the Complainant went to his office to retrieve her file. Although the Respondent was not in his office at the time, the Complainant was able to retrieve her file.
15. After discharging the Respondent and retrieving her file, the Complainant attempted to settle her personal injury claim on her own, and without benefit of counsel. The insurance carrier refused to enter into settlement negotiations with the Complainant unless and until it received from Respondent a letter stating that he no longer represented the Complainant and that he asserted no lien against any proceeds of settlement for legal fees.
16. On July 20, 2000, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint that Complainant had filed with the Bar in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.
17. On August 29, 2000, the Respondent was interviewed by a Virginia State Bar investigator respecting these matters. At that time, the Respondent stated that he would immediately write a letter to the insurance company in question, stating that he no longer represented the Complainant and that he asserted no liens for fees. He further promised to send a copy of that letter to the Virginia State Bar investigator.
18. The investigator did not thereafter receive from the Respondent a copy of the letter that he was to write the insurance carrier, as promised, in furtherance of Complainant's attempts to settle her claim on her own. Accordingly, the investigator left at least one message for the Respondent, per business day, between September 5 and September 13, 2000, none of which was returned. The investigator left several messages per day for the Respondent on every business day between September 15 and October 6, 2000, again to no avail.
19. On October 20, 2000, Bar Counsel issued a subpoena to the Respondent, compelling his attendance at the Northern Virginia Office of the Virginia State Bar on November 6, 2000. On the latter date the Respondent appeared pursuant to the subpoena, and conceded to the Virginia State Bar investigator that he had yet to write the letter to the insurance carrier with which Complainant was attempting to negotiate a resolution of her personal injury claim. Bar Counsel directed the Respondent to write the letter in question before leaving the Bar offices, with which direction Respondent complied.

**As to VSB Docket No. 01-053-0751:**

20. Respondent was appointed by the Prince William County, Virginia, Circuit Court as co-counsel for Alan Kenneth

Abraham to handle the appeal of Mr. Abraham's convictions of criminal charges in that Court. The Respondent had earlier served as co-counsel at trial on a retained basis.

21. On August 21, 2000, the Virginia State Bar received a Complaint filed by Mr. Abraham's wife, Ms. Ari D. Abraham (hereafter "Complainant"). The Complaint alleged, *inter alia*, that the Respondent had not communicated with her incarcerated husband for over one (1) year; that Respondent was avoiding contact with Complainant and her husband; that Complainant's telephone calls and her husband's written requests to Respondent for information concerning Mr. Abraham's appeal went unanswered; that the source of Complainant's and her husband's knowledge that his appeal had been denied by the Court was the Internet; and that Mr. Abraham had received no documentation concerning his case from the Respondent.
22. On September 6, 2000, Virginia State Bar intake counsel sent a letter to the Respondent requesting that he make specific responses to the Complaint, indicating that a resolution of the matter would avoid the necessity of the Bar's opening a formal ethics inquiry.
23. Having received no response from Respondent to the September 6, 2000, letter, intake counsel directed yet another letter to Respondent on September 22, 2000, asking for a response within five (5) days following that date, indicating that it would be "highly likely" that an active investigation file would be opened in the event Respondent did not respond to the Bar.
24. The Respondent did not respond to intake counsel's September 22, 2000, letter and an active investigation file was opened and assigned to Bar Counsel. On October 20, 2000, Bar Counsel directed a letter of that date to Respondent, enclosing the complaint, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.
25. During an interview respecting these matters conducted in Respondent's office on November 15, 2000, the Respondent represented to a Virginia State Bar investigator that he would write a letter to Mr. Abraham, informing him of the status of his appeals and of his then-existing options. On November 21, 2000, the investigator reminded Respondent of his promise to write the aforesaid letter, and the Respondent stated that he would send such letter on November 22, 2000, by mail to Mr. Abraham, and by fax to the investigator. Neither the investigator, nor the Complainant, nor Mr. Abraham ever received any such letter from the Respondent.
26. The Virginia State Bar investigator made several requests of the Respondent, beginning in November 2000, that he furnish Mr. Abraham with Mr. Abraham's file. Despite promises made to the investigator by the Respondent that he would furnish Mr. Abraham with his file, the Respondent at no time furnished the file to Mr. Abraham or to the Complainant.

**As to VSB Docket No. 01-053-1830:**

27. On December 22, 2000, the Virginia State Bar received a Complaint filed by Mr. Dewain A. Moten (hereafter "Complainant"). The Complaint alleged, *inter alia*, that the Respondent, as Complainant's court-appointed counsel, "never sent" the Complainant's "brief or opposition for [Complainant's] appeal."
28. On January 8, 2001, Virginia State Bar intake counsel sent a letter to the Respondent requesting that he respond to the Complainant's request by communicating with the Complainant concerning the status of his appeal, and that he advise the Virginia State Bar in writing of his action taken pursuant to the Bar's request. Intake counsel's letter indicated that a resolution of the matter would avoid the necessity of the Bar's opening a formal ethics inquiry.
29. Having received no response from Respondent to the January 8, 2001, letter, intake counsel directed yet another letter to Respondent on January 29, 2001, asking for a response within five (5) days following that date, indicating that it would be "highly likely" that an active investigation file would be opened in the event Respondent did not respond to the Bar.
30. The Respondent did not respond to intake counsel's January 29, 2001, letter and an active investigation file was opened and assigned to Bar Counsel. On February 22, 2001, Bar Counsel directed a letter of that date to Respondent, enclosing the complaint, and stating, *inter alia*, in bold text the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.
31. A Virginia State Bar investigator interviewed the Respondent in Respondent's office on March 27, 2001, at which time Respondent advised the investigator that he, the Respondent, filed the Complainant's Petition for Appeal a day late, which resulted in dismissal of the Petition for Appeal by the Virginia Court of Appeals on June 23, 2000. The Respondent also advised the investigator that he, the Respondent, never notified the Complainant that his appeal had been dismissed and that he did not advise the Complainant of the availability of a *habeas corpus* petition as an avenue for reinstatement of Complainant's right of appeal.
32. Aggravating factors recognized by the ABA include the following:
  - a. prior disciplinary offenses; and
  - b. a pattern of misconduct.
33. Mitigating factors recognized by the ABA include the following:
  - a. absence of a dishonest or selfish motive;
  - b. full and free disclosure to the Disciplinary Board and cooperative attitude toward these proceedings;
  - c. character and reputation;

- d. remorse; and
- e. interim rehabilitation.

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

**DR 6-101. Competence and Promptness.**

(B) and (C) \* \* \*

**RULE 1.3 Diligence**

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

**RULE 1.4 Communication**

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

**RULE 1.16 Declining Or Terminating Representation**

(d) and (e) \* \* \*

**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:

(c) \* \* \*

Upon consideration whereof, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of sixty (60) days, commencing on the 1st day of January, 2003.

\* \* \*

ENTERED this 13th day of December, 2002.  
JOHN A. DEZIO, Chair  
Virginia State Bar Disciplinary Board



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

**IN THE MATTERS OF  
JAMES KEVIN CLARKE**

VSB DOCKET NOS. 00-031-2428, 01-031-0039,  
01-031-1085, 01-031-2626,  
01-031-3163, AND 02-031-1723

**ORDER AND OPINION**

These matters came before the Virginia State Bar Disciplinary Board ("Board") upon certification from the Third District Subcommittee, Section I, and were heard on December 13, 2002, by a duly convened panel consisting of Thaddeus T. Crump, Lay Member, James L. Banks, Jr., Ann N. Kathan, Joseph R. Lassiter, Jr. and John A. Dezio, Chair. The Respondent, James Kevin Clarke, (hereinafter "Mr. Clarke" or "Respondent") was present with counsel, Craig S. Cooley and Barbara Ann Williams, Bar Counsel, represented the Virginia State Bar (hereinafter "the Bar").

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.

**FINDINGS OF FACT AND MISCONDUCT**

The Board adopts the *Stipulated Allegations of Fact and Findings of Misconduct* submitted by the Bar and the Respondent, and finds as follows:

**I. General Findings of Fact**

1. The respondent, James Kevin Clarke, was admitted to the Virginia State Bar on May 3, 1994.
2. Mr. Clarke was an active member of the Virginia State Bar, in good standing to practice law in the Commonwealth of Virginia, at all times relevant to these proceedings.
3. Mr. Clarke has no prior attorney disciplinary record.

**II. VSB Docket No. 00-031-2428 (Stephen L. Brown)**

4. On January 8, 1999, Mr. Clarke conferred with Stephen L. Brown in the Petersburg jail about Mr. Brown's desire to petition the Petersburg Circuit Court for a reduction of his felony sentence for breaking and entering.
5. Following that meeting, Mr. Clarke determined that an error had been made in calculating Mr. Brown's sentence, concluded that the facts supported the conviction and conferred with the Assistant Commonwealth's Attorney.
6. On January 15, 1999, Stephen L. Brown retained Mr. Clarke to represent him and paid Mr. Clarke \$500, after executing an Information and Fee Agreement.
7. On March 5, 1999, after speaking with several witnesses, Mr. Clarke visited Mr. Brown at the Petersburg jail and provided him copies of a motion to reduce sentence and a motion to postpone transfer into the Department of Corrections.
8. Mr. Clarke filed both motions on March 8, 1999.
9. On July 1, 1999, Mr. Clarke wrote Mr. Brown and advised him that the judge preferred to decide the issues in question based solely upon the motions filed, but that he was still trying to set a hearing date and would keep Mr. Brown informed of his progress.
10. On July 1, 1999, Mr. Clarke wrote potential witnesses, requesting that they draft letters that could be submitted to the court in lieu of testimony.
11. Mr. Clarke also wrote Mr. Brown's probation officer, who had prepared the sentencing calculation, citing the alleged errors therein.
12. By letter dated July 19, 1999, the probation officer advised Mr. Clarke that there was indeed an error in scoring but that error actually inured to Mr. Brown's benefit.
13. On August 6, 1999, Mr. Brown wrote Mr. Clarke inquiring about the status of his case and threatening to file a bar complaint.
14. By letter dated August 26, 1999, Mr. Clarke told Mr. Brown what he had learned, and suggested that if Mr. Brown retracted his request for a sentence reduction, Mr. Clarke would reimburse him the retainer he had paid.

15. Meanwhile, Mr. Brown wrote Mr. Clarke requesting him to acknowledge the representation and indicating that he had not heard from Mr. Clarke since July 1, 1999.
16. On September 17, 1999, Mr. Brown wrote Judge Oliver Pollard, Jr., inquiring about the status of sentence reduction motion.
17. Mr. Brown did not receive Mr. Clarke's letter dated August 26, 1999, until September 28, 1999.
18. On October 6, 1999, Mr. Brown wrote Mr. Clarke, advising him that he wished to retract his request to reduce his sentence and that he wanted to be reimbursed for the retainer fee that he paid Mr. Clarke.
19. On or about November 9, 1999, Mr. Brown submitted a bar complaint against Mr. Clarke, alleging that Mr. Clarke had abandoned his case after accepting a retainer for legal services.
20. Intake attempted to deal with Mr. Brown's complaint proactively and granted Mr. Clarke's request for an extension of time to respond to the complaint.
21. Although Mr. Clarke advised Intake that he would refund Mr. Brown's retainer, Mr. Clarke never responded to the bar complaint.
22. During the course of the bar's investigation of Mr. Brown's complaint, Mr. Clarke did not respond to Bar Investigator David Abrams' numerous requests for an interview.
27. Mr. Clarke convinced the court to order a psychological evaluation of Mr. Webb, and after he was found competent to stand trial and not insane at the time of the offense, represented Mr. Webb at a preliminary hearing on June 15, 1998, at which time the charge was certified to circuit court.
28. Mr. Webb was released on bond pending trial, but on August 6, 1998, was arrested in the City of Petersburg for 18 felonies including grand larceny, forgery, uttering and related charges.
29. The Prince George County Circuit Court revoked his bond and Mr. Webb was incarcerated; the Petersburg charges were transferred from general district court to juvenile and domestic relations district court because the victim was Mr. Webb's mother.
30. A September 1, 1998 trial date in Prince George County was continued, after Mr. Clarke requested that the judge recuse himself; the trial was reset for October 8, 1998.
31. Mr. Clarke filed a motion to suppress the Commonwealth's evidence but withdrew that motion after Mr. Webb pled guilty to cocaine possession on October 10, 1998.
32. On October 26, 1998, Mr. Clarke successfully argued a motion to reduce Mr. Webb's bond from \$20,000 with surety to \$10,000 with surety, but the bond was still too high for Mr. Webb to post, and he remained in the Petersburg City Jail.
33. On December 8, 1998, the Prince George County Circuit Court sentenced Mr. Webb to five years with all but 12 months suspended.
34. During his representation of Mr. Webb on the cocaine possession charge in Prince George County, Mr. Clarke expended an exceptional amount of time and energy, not only frequently meeting with his client in jail and attempting to allay his anxieties, but also meeting with his client's mother and various witnesses.
35. After the Prince George County matter was resolved, Mr. Clarke focused on the Petersburg charges, and regularly communicated with Mr. Webb, his father and mother, the prosecuting attorney, and the clerk of court about the status of Mr. Webb's case.
36. At the preliminary hearing in the Petersburg Juvenile and Domestic Relations General District Court on March 25, 1999, Mr. Clarke obtained a *nolle prosequi* from the Commonwealth on all charges.
37. As a result of Mr. Webb's arrest and conviction in Prince George County, he was brought before the Circuit Court of the City of Petersburg to show cause why his previously suspended sentence in that jurisdiction should not be revoked.
38. While he was serving time in the Riverside Regional Jail on the Prince George drug conviction, Mr. Webb was seriously injured in a fight with another inmate.
39. Due to the severity of Mr. Webb's injuries, in April 1999, Mr. Clarke successfully moved to have the unserved portion of Mr. Webb's sentence on the Prince George drug conviction suspended, to have Mr. Webb released from jail

The foregoing allegations give rise to the following charges of misconduct under Rules of Professional Conduct:

**DR 6-101. Competence and Promptness.**

(C) \*\*\*

**RULE 8.1 Bar Admission And Disciplinary Matters**

[A] lawyer . . . in connection with a disciplinary matter, shall not:

(d) \*\*\*

**III. VSB Docket No. 01-031-0039 (Rodney Webb)**

23. On or about July 19, 1994, Rodney Webb pled guilty in Petersburg Circuit Court to three felony charges of cocaine distribution and one felony charge of conspiracy to distribute cocaine; he received a suspended sentence, which included 20 years of good behavior.
24. On January 25, 1998, by telephone, Mr. Clarke discussed with Mr. Webb at great length charges pending against Mr. Webb in Prince George County and obtained a list of possible witnesses.
25. On January 26, 1998, after Mr. Clarke had reviewed the general district court file, Mr. Webb retained him to represent him on charges of cocaine possession in Prince George County.
26. By February 6, 1998, Mr. Clarke had met with the Commonwealth's Attorney and Assistant Commonwealth's Attorney, contacted the arresting officer, spoke with a State Trooper involved in Mr. Webb's prior arrest, obtained a copy of the certificate of analysis and researched recent case law.

and to delay the show cause hearing on whether the suspended sentence handed down by the Petersburg Circuit Court should be revoked.

40. Mr. Clarke drove Mr. Webb to see his doctor on more than one occasion and provided the prosecuting attorney with periodic updates on Mr. Webb's condition.
41. On December 20, 1999, the Petersburg Circuit Court entered an order substituting Mr. Clarke as counsel for Mr. Webb on the Petersburg drug charges, although Mr. Clarke had been assisting Mr. Webb prior to that time.
42. On April 3, 2000, Mr. Webb sent Mr. Clarke a certified letter complaining that he was unable to get in touch with him; the letter was returned to Mr. Webb unclaimed.
43. By letter dated June 21, 2000, in connection with the proposed revocation of Mr. Webb's suspended sentence based upon the Petersburg drug conviction, the Petersburg Circuit Court notified Mr. Webb and Mr. Clarke that "[d]ue to difficulty and delay in scheduling a hearing date in this matter, the Court is requiring your appearance on **July 19, 2000, at 9:00 a.m.** in the Petersburg Circuit Court. **Both parties must be present** (emphasis in the original).
44. Mr. Clarke contends that he either received the court's letter of June 21, 2000, after the court date had already passed or did not open the letter until after the court date had passed and therefore did not knowingly disobey the court's ruling.
45. On July 10, 2000, the Virginia State Bar received a bar complaint from Mr. Webb, dated June 28, 2000, complaining that Mr. Clarke had "disappeared."
46. When Mr. Clarke failed to appear for the revocation hearing on July 19, 2000, the circuit court issued a Rule to Show Cause requiring Mr. Clarke to appear before the court on August 14, 2000, and show cause why he should not be held in contempt for failing to appear on July 19.
47. At the hearing on August 14, 2000, the court held Mr. Clarke in contempt for his failure to appear, gave him a suspended jail sentence, imposed a \$50 fine and banned him from serving as court-appointed counsel in the 11th Circuit, which to that point had been a major part of his practice.
48. On September 15, 2000, Mr. Clarke paid the \$50 fine on the Rule to Show Cause.
49. Mr. Clarke did not submit a written response to Mr. Webb's bar complaint.
50. During the course of the bar's investigation of Mr. Webb's complaint, Mr. Clarke did not respond to Bar Investigator David Abrams' numerous requests for an interview.

The foregoing allegations give rise to the following charges of misconduct under Rules of Professional Conduct:

**RULE 1.3 Diligence**

(a) \* \* \*

**RULE 1.4 Communication**

(a) \* \* \*

**RULE 8.1 Bar Admission And Disciplinary Matters**

[A] lawyer . . . in connection with a disciplinary matter, shall not:  
(d) \* \* \*

**IV. VSB Docket No. 01-031-1085 (Mr. and Mrs. Robert T. Gunn)**

51. On March 20, 2000, Derrick S. Gunn, son of Mr. and Mrs. Robert T. Gunn, was convicted in the Circuit Court of Powhatan County of one count of arson and sentenced to serve ten years in jail, with nine years suspended.
52. A few days before July 18, 2000, Mr. Clarke spoke to Mr. Gunn by telephone and agreed that Mr. Clarke's fee for representing Derrick on appeal would be \$1,000, of which \$500 was to be a retainer
53. On July 18, 2000, Mr. Gunn met with Mr. Clarke and paid him \$500.
54. Before cashing the \$500 check on July 20, 2000, Mr. Clarke spent several hours researching relevant arson case law; Mr. Clarke never requested Mr. Gunn to pay the \$500 balance.
55. In Mr. Clarke's file is an unsigned letter to Mr. Gunn dated September 6, 2000, reassuring Mr. Gunn that Mr. Clarke was working on the appeal and promising to arrange a meeting to review what he had prepared.
56. Mr. Gunn did not receive Mr. Clarke's letter, and on or about October 3, 2000, Mr. and Mrs. Gunn filed a bar complaint against Mr. Clarke, claiming that they had been unable to contact Mr. Clarke.
57. After receiving two letters from Intake Counsel attempting to deal with the Gunn's bar complaint in a proactive manner, Mr. Clarke wrote Derrick on November 20, 2000, and sent him a copy of the Petition for Appeal and a motion submitting himself as Derrick's counsel on appeal.
58. Mr. Clarke failed to advise Derrick or his parents that the Court of Appeals denied the Petition for Appeal on January 8, 2001, although Derrick is copied on a letter dated January 21, 2001, requesting oral argument before a three-judge panel.
59. Mr. Clarke failed to advise Derrick or his parents that on March 23, 2001, the Court of Appeals denied the petition for appeal for the reasons stated in the order entered on January 8, 2001.
60. Mr. Clarke also failed to advise Derrick or his parents that he could appeal the Court of Appeals' decision to the Supreme Court of Virginia.
61. Mr. Clarke did not respond in writing to the Gunn's complaint.
62. During the course of the bar's investigation of the Gunn's complaint, Mr. Clarke did not respond to Bar Investigator David Abrams' numerous requests for an interview.

The foregoing allegations give rise to the following charges of misconduct under Rules of Professional Conduct:

**RULE 1.4 Communication**

(a) and (c) \* \* \*

**RULE 8.1 Bar Admission And Disciplinary Matters**

[A] lawyer . . . in connection with a disciplinary matter, shall not:

(d) \*\*\*

**V. VSB Docket No. 01-031-2626 (Kenneth Church)**

63. On or about February 16, 1999, Kenneth Church retained Mr. Clarke to represent him on breaking and entering, grand larceny and bomb threat charges in the Colonial Heights General District Court.
64. Mr. Clarke had previously represented Mr. Church on numerous occasions.
65. Even though the Colonial Heights charges were serious and extensive, Mr. Clarke agreed to accept a fee of \$1,500, including a \$500 retainer.
66. Mr. Clarke appeared on Mr. Church's behalf on at least five occasions in general district court, not only for matters directly associated with the charges, but also with respect to alleged violations of Mr. Church's pre-trial release and probation, bond revocation, request for bond reinstatement, and an additional, unrelated general district court matter.
67. In circuit court, Mr. Clarke made many appearances on Mr. Church's behalf, and on December 21, 1999, Mr. Church entered into a plea agreement, with sentencing set for April 10, 2000.
68. In March 2000, Mr. Church's pre-trial case worker noted several alleged violations of the conditions of Mr. Church's release and set them for hearing along with Mr. Church's sentencing.
69. Shortly before April 10, 2000, Mr. Church fled the jurisdiction.
70. Although Mr. Clarke appeared for the sentencing hearing, Mr. Church did not, and a *capias* was issued for his arrest.
71. Mr. Church was captured and returned to Virginia; his sentencing hearing was held on July 11, 2000.
72. Despite numerous violations of the conditions of Mr. Church's pre-trial supervision and his flight from justice, Mr. Clarke convinced the court not to deviate from the sentencing guidelines and sentenced him at the midpoint of the guidelines.
73. Mr. Clarke's representation of Mr. Church lasted 17 months, and involved an enormous amount of time and effort, including almost weekly contact with Mr. Church's pre-trial case worker.
74. Nonetheless, Mr. Church paid very little toward Mr. Clarke's fee and often failed to keep appointments with his counsel.
75. After Mr. Church was convicted and sentenced, he asked Mr. Clarke to file a sentence reduction motion; Mr. Clarke advised Mr. Church that he would not file the motion unless Mr. Church paid him the balance due for Mr. Clarke's prior fee, for which Mr. Church had previously signed an Acknowledgment and Affirmation of Debt.

76. On December 15, 2000, Mr. Church borrowed \$250 from his former employer and paid Mr. Clarke that amount and indicated that his brother would pay the remaining balance.
77. The balance was never paid.
78. Mr. Clarke did not respond in writing to Mr. Church's complaint.
79. During the course of the bar's investigation of Mr. Church's complaint, Mr. Clarke did not respond to Bar Investigator David Abrams' numerous requests for an interview.

The foregoing allegations give rise to the following charges of misconduct under Rules of Professional Conduct:

**RULE 1.4 Communication**

(a) \*\*\*

**RULE 8.1 Bar Admission And Disciplinary Matters**

[A] lawyer . . . in connection with a disciplinary matter, shall not:

(d) \*\*\*

**VI. VSB Docket No. 01-031-3163 (Hassan Shabazz)**

80. Hassan Shabazz was found guilty in the Circuit Court of Nottoway County of three counts of robbery and three counts of use of a firearm in the commission of a robbery; he was sentenced on December 22, 1999, to serve 20 years with 113 years suspended .
81. On or about January 20, 2000, the Circuit Court of Nottoway County appointed Mr. Clarke to represent Hassan Shabazz on the appeal of his criminal conviction.
82. Mr. Clarke filed a Notice of Appeal with the Court of Appeals on Mr. Shabazz's behalf on January 21, 2000.
83. Mr. Shabazz learned that Mr. Clarke had been appointed to represent him when Mr. Clarke visited him at the Piedmont Regional Jail on February 4, 2000.
84. Mr. Shabazz did not hear anything from Mr. Clarke since February 4, 2000, although Mr. Shabazz and members of his family attempted to contact Mr. Clarke.
85. Mr. Shabazz learned that the Court of Appeals had denied his appeal on June 21, 2000, after he wrote the court.
86. By the time Mr. Shabazz learned his appeal had been denied, the deadline for appealing to the Supreme Court of Virginia had passed.
87. Mr. Clarke met with a bar investigator and reviewed Mr. Shabazz's complaint.

The foregoing allegations give rise to the following charges of misconduct under Rules of Professional Conduct:

**RULE 1.3 Diligence**

(a) \*\*\*

**RULE 1.4 Communication**

(a) \*\*\*

**VII. VSB Docket No. 02-031-1723 (Costella L. Forney)**

- 88. In 1999, Mr. Clarke was appointed to represent Costella L. Forney on armed robbery charges pending in the Richmond Circuit Court.
- 89. On or about December 18, 2001, Ms. Forney filed a bar complaint against Mr. Clarke, alleging that he had failed to provide her a copy of her file despite her repeated requests.
- 90. The Virginia State Bar tried to deal with the complaint proactively by requesting Mr. Clarke to either provide Ms. Forney a copy of her file or explain to her why he could not.
- 91. Mr. Clarke did not respond to the Virginia State Bar's efforts to resolve the complaint outside the disciplinary process or respond to the bar complaint after a disciplinary file was opened.
- 92. During the course of the bar's investigation of Ms. Forney's complaint, Mr. Clarke did not respond to Bar Investigator David Abrams' numerous requests for an interview.

The foregoing allegations give rise to the following charges of misconduct under Rules of Professional Conduct:

**RULE 1.4 Communication**

(a) \*\*\*

**RULE 1.16 Declining Or Terminating Representation**

(e) \*\*\*

**RULE 8.1 Bar Admission And Disciplinary Matters**

[A] lawyer . . . in connection with a disciplinary matter, shall not:

(d) \*\*\*

**PUBLIC REPRIMAND WITH TERMS**

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions, the lack of a prior disciplinary record, Respondent's mitigating factors, and based upon the *Proposed Disposition* signed and agreed to by both Bar Counsel and Respondent's Counsel, hereby imposes upon the Respondent, effective upon entry of this Order, a Public Reprimand with Term and such terms are as follows:

- 1. By December 31, 2002, Mr. Clarke shall make arrangements to be seen and evaluated by a psychologist and/or psychiatrist approved by Bar Counsel and Lawyers Helping Lawyers.
- 2. The purpose of the evaluation shall be to determine if Mr. Clarke has a condition that currently impairs his fitness to practice law.
- 3. Mr. Clarke shall execute whatever medical releases are necessary for the psychologist, psychiatrist and any other therapists, counselors or medical providers with whom he has consulted or been treated by, to upon request produce his records and communicate with the Virginia State Bar and Lawyers Helping Lawyers.
- 4. The evaluation shall be completed no later than January 31, 2003, and the provider who sees and evaluates Mr. Clarke shall submit a written report of his or her findings to Bar Counsel and Lawyers Helping Lawyers within one week of the evaluation.

- 5. If it is determined that Mr. Clarke has a condition that currently impairs his fitness to practice law, he shall follow the course of treatment recommended by the provider, and no later than February 14, 2003, enter into a Monitoring Agreement with Lawyers Helping Lawyers.
- 6. Mr. Clarke shall comply fully with the terms of the Monitoring Agreement, and Lawyers Helping Lawyers shall provide the Virginia State Bar quarterly reports on his progress through December 31, 2004.
- 7. If the provider determines that Mr. Clarke has a condition that materially impairs his fitness to practice law, a **Suspension for Disability** shall be imposed until such time as Mr. Clarke proves that the Disability no longer exists pursuant to Part Six, Section IV, Paragraph 13.I.5.e.(2) of the Rules of Court.

Upon satisfactory proof that all terms and conditions have been met, these matters shall be closed. Mr. Clarke'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. Clarke 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. Clarke 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 the Mr. Clarke has violated one or more of the terms of the Public Reprimand 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.

ENTERED this 17th day of December, 2002.  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: John A Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF  
**PAUL BYRON COLLINS, JR.**  
VSB DOCKET #02-070-1433

ORDER

This matter came on to be heard on December 9, 2002, on the Agreed Disposition of the Virginia State Bar and the Respondent based on the Certification of the Seventh District Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of V. Max Beard, Bruce T. Clark, Joseph R. Lassiter, Jr., Gordon P. Peyton, Jr. and John Dezio, presiding.

Claude V. Worrell, II, representing the Bar and the Respondent, Paul Byron Collins, Jr., appearing *pro se*, presented an endorsed Agreed Disposition, dated December 9, 2002, reflecting the terms of the Agreed Disposition.

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

1. At all time relevant hereto, the Respondent, Paul Byron Collins, Jr., has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about October 9, 2001, the Respondent's license to practice law in the Commonwealth of Virginia was suspended by the Virginia State Bar for his failure to pay Bar dues and fulfill his Mandatory Continuing Legal Education requirement for the previous year. On November 2, 2001, the Respondent filed a motion in the General District Court of Loudoun County in Commonwealth v. Slaughter, T01-15719. The Complainant, the Honorable Julia T. Cannon, Judge, presided in the case, and had been informed by the Bar in mid-October that the Respondent was suspended. She called the Virginia State Bar to find out if the Respondent had since been reinstated, and was told by the Bar that he had not been. On November 5, 2001, the Respondent appeared before Judge Cannon to argue his motion. In chambers, Judge Cannon informed the Respondent that she knew his license had been suspended and she would therefor not consider his motion. The Respondent told her that he completed the Bar's requirements for his license to be reinstated and that he was in good standing. She informed him that she had spoken with the Bar at about 3:45 p.m. the day before and had been informed that his license had not been reinstated.
3. Judge Cannon instructed the Respondent to inform his client that the client's motion was not considered because the Respondent's license was suspended, which the Respondent did.
4. On December 5, 2001, the Respondent's wife had an Emergency or Preliminary Protective Order issued against the Respondent. The Respondent was served with the Protective Order. The Respondent violated the Protective Order on December 7, 2001, when he returned to the marital home to talk to his wife. The Respondent was arrested for violating the Court's order. At the hearing on February 20, 2002, the Respondent was fined fifty dollars and sentenced to serve thirty days in jail with all of that sentence suspended except for time already served. The Judge further ordered that the sentence be suspended based upon the Respondent's future good behavior, meaning that the Respondent have no unsupervised contact with his wife and no violent contact with his wife. On February 19, 2003, the matter will be review and closed as long as the Respondent has complied with the terms of his good behavior. The Juvenile and Domestic Relations District Court Judge did not enter a Permanent Protective Order.

The Board finds by clear and convincing evidence that such conduct on the part of Paul Byron Collins, Jr., constitutes a violation of the following Rules of Professional Conduct:

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (a), (b), (c), (d), (e) \*\*\*

Upon consideration whereof, it is ORDERED that Paul Byron Collins, Jr., shall receive effective this date a six month suspension of his license to practice law in the Commonwealth of Virginia.

Enter this 20th day of December, 2002  
 VIRGINIA STATE BAR DISCIPLINARY BOARD  
 By: John A. Dezio  
 Chair



**BEFORE THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD**

IN THE MATTER OF  
**PAUL BYRON COLLINS, JR.**  
 VSB DOCKET #02-070-1280

**ORDER**

This matter came on to be heard on December 9, 2002, on the Agreed Disposition of the Virginia State Bar and the Respondent based on the Certification of the Seventh District Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of V. Max Beard, Bruce T. Clark, Joseph R. Lassiter, Jr., Gordon P. Peyton, Jr. and John Dezio, presiding.

Claude V. Worrell, II, representing the Bar and the Respondent, Paul Byron Collins, Jr., appearing *pro se*, presented an endorsed Agreed Disposition, dated December 9, 2002, reflecting the terms of the Agreed Disposition.

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

1. At all time relevant hereto, the Respondent, Paul Byron Collins, Jr., has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On June 26, 2001, the Complainant, Ms. Rebecca Ashworth, met with the Respondent concerning a child support modification. Mr. Collins informed Ms. Ashworth that she had to have her original support order from Texas registered in Virginia. Once she had done that, the matter could be concluded in within one week. Mr. Collins agreed to take the Complainant's case, and on June 29, 2001, Ms. Ashworth paid Mr. Collins \$750.00 in advance fees. Mr. Collins went on vacation sometime after Ms. Ashworth hired him.
3. Ms. Ashworth tried to contact Mr. Collins and left several messages for him, but he failed to return her calls. On July 20, 2001, Ms. Ashworth finally spoke with Mr. Collins, and he told her that he had not received the support order from Texas but had the petition ready for her signature. Mr. Collins also told her that he had not spoken with anyone in the clerk's office in Texas, but would do so later that day. Mr. Collins called the clerk's office in Texas and someone faxed him the necessary paperwork, which he executed and returned to the clerk's office by over-night mail. Mr. Collins told Ms. Ashworth that he should receive the support order that week, and that he would call her when it arrived.
4. On July 27, 2001, she went to Mr. Collins' office and, at about 1:00 p.m., she met with him. The support order had arrived and was in Mr. Collins' office, unopened. Mr.

Collins opened the envelope while Ms. Ashworth was in his office and told her that he would have to draft a petition for her to sign. He offered to stop by Ms. Ashworth's home to have her sign the petition on his way to the Clerk's Office of the Loudoun County Juvenile and Domestic Relations District Court. Mr. Collins said there should be plenty of time because the Clerk's Office was open until 4:30 p.m.

5. Mr. Collins arrived at Ms. Ashworth's home with the appropriate documents. Ms. Ashworth confronted Mr. Collins about the fact that he had not returned her phone calls, was not diligent in obtaining the support order from Texas, and about the fact that he had told her that the petition had been ready for her signature, when, in fact, it had not been. In response, Mr. Collins said that Ms. Ashworth had called him far too often. Ms. Ashworth pointed out that all her calls might not have been necessary if he had returned even one of the calls. According to Ms. Ashworth she tried to fire Mr. Collins on the spot, and demanded a refund and her file. She told him that he could deduct costs, but she wanted the rest of her money back. Mr. Collins said he would return \$350 at a later date. Ms. Ashworth asked Mr. Collins if he felt that he had earned more than half the money, and Mr. Collins replied that he did. Ms. Ashworth again asked Mr. Collins for her file but he refused to give it to her.
6. Ms. Ashworth had no more funds to pay a new attorney with, and felt that she had no choice but to continue with Mr. Collins. The signed petition was returned to Mr. Collins and he spoke with Mr. Ashworth on or about Friday, July 27, 2001. Mr. Collins assured Mr. Ashworth that the petition would be filed the following Monday. Mr. Collins attempted to file the Petition on Wednesday, August 1, 2001.
7. On August 14, 2001, after a series of phone calls to Mr. Collins which he did not return, Ms. Ashworth called the Loudoun County Juvenile and Domestic Relations District Court Clerk's Office. The Clerk informed Ms. Ashworth that the petition that Mr. Collins had intended to file on August 1, 2001, was incorrect and could not be accepted by her office as filed. The Clerk also informed Ms. Ashworth that she, the Clerk, could not reach Mr. Collins to inform him of the problem, and that the support order from Texas would be registered but no petition to modify the order was before the Court. The Clerk gave Ms. Ashworth the case number and the court date of October 2, 2001.
8. On August 21, 2001, Mr. Ashworth found Mr. Collins in his office. It had been three weeks since Mr. Collins had been in contact with either Ms. Ashworth or Mr. Ashworth. Mr. Ashworth informed Mr. Collins of the case number and the court date. Mr. Collins indicated that he would draft a new petition and have it ready on August 24, 2001.
9. On August 24, 2001, Mr. Collins gave Mr. Ashworth the original documents. He had not prepared a new petition. He prepared the petition while Mr. Ashworth waited and gave a copy to Mr. Ashworth. Mr. Ashworth took a copy to his wife. Ms. Ashworth reviewed the petition and on Monday morning, called Mr. Collins to advise him of an error in the petition. Mr. Collins did not call back. Frustrated by the lack of communication, Ms. Ashworth filed a *pro se* Motion to Enforce a Registered Order on September 5, 2001.

10. On September 14, 2001, Ms. Ashworth went to Mr. Collins' office to get copies of the new petition and a subpoena *duces tecum* that he was supposed to have filed. Mr. Collins had not filed the subpoena and the petition had not been corrected. When Ms. Ashworth asked him about the error, Mr. Collins told her that he would just tell the Judge to ignore the error. Ms. Ashworth insisted he correct the document, which he did. Ms. Ashworth filed the petition and subpoena *duces tecum* herself.
11. The Court date was changed from October 2, 2001, to October 23, 2001. Mr. Collins never informed Ms. Ashworth that the hearing date had been changed. On October 16, 2001, Ms. Ashworth retrieved the subpoenaed documents from the Clerk's office. She went to Mr. Collins' office but he had moved without notifying her. On October 22, 2001, Mr. Collins called Ms. Ashworth at 8:30 p.m. Ms. Ashworth asked Mr. Collins where he had been and he replied "Oh, here, there, everywhere." Mr. Collins asked Ms. Ashworth to meet him at 12:00 p.m. at the courthouse. He indicated the subpoenaed documents should be in by now. He did not know that the documents had been returned and were in the possession of Ms. Ashworth because he never checked with the Clerk's office.
12. On October 23, 2001, Mr. Collins arrived at the courthouse at 1:20 p.m. for his 12:00 p.m. meeting with Ms. Ashworth. Mr. Collins asked the clerk for the file and the clerk told him that the Judge had the file. Mr. Collins had to ask Ms. Ashworth for her copies of the documents so he could review them. For the first time, Mr. Collins saw that opposing counsel had filed a petition to modify custody and visitation. Mr. Collins told Ms. Ashworth that he was unprepared to go to court and argue the motion. Mr. Collins agrees that he was late for the meeting and unprepared for the hearing. Mr. Collins stated that he knew that the case would be continued because the new opposing counsel would need more time and that they would take more time than the twenty minutes allotted for the hearing.
13. Opposing counsel moved to continue the case and that motion was granted. The support order was registered and a new hearing scheduled for February of 2002. Ms. Ashworth hired new counsel following the hearing.

The Board finds by clear and convincing evidence that such conduct on the part of Paul Byron Collins, Jr., constitutes a violation of the following Rules of Professional Conduct:

**Rule 1.4** Communication

(a), (b), (c) \* \* \*

**RULE 1.16** Declining Or Terminating Representation

(a)(1), (2) and (3)(c), (d), (e) \* \* \*.

**RULE 8.4** Misconduct

It is professional misconduct for a lawyer to:

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

Upon consideration whereof, it is ORDERED that Paul Byron Collins, Jr., shall receive effective this date Public Reprimand with terms. The terms and conditions shall be met as indicated in this order are as follows:

1. The Respondent shall, as soon as possible, enter into a contract with Lawyers Helping Lawyers and successfully fulfill and complete his obligations under that contract. Among other things, the contract with Lawyers Helping Lawyers should require the Respondent to remain alcohol and or drug free for a period of two years from the date of signing of the contract and to participate successfully in Alcoholics Anonymous or Narcotics Anonymous by obtaining a mentor and attending regular meetings during the time period the contract is in effect. The Respondent shall waive confidentiality with regard to treatment and his compliance with Lawyers Helping Lawyers so that the Bar can receive reports concerning the Respondent's compliance with his contract with Lawyers Helping Lawyers.
2. Refund the amount of \$750 to the Complainant in this matter by January 31, 2003.

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 December 13, 2004, this matter will be reviewed by the Board for further disciplinary action.

It is further Ordered that, pursuant to The Rules of the Supreme Court of Virginia, Pt. 6, § IV, Para. 13, (B)(8)(c), the Clerk of the Disciplinary System shall assess costs against the Respondent.

If Mr. Paul Byron Collins, Jr., fails to comply with the terms of this matter it shall be returned to the Disciplinary Board for further proceedings so that the Respondent show cause, if any, why he should not be found in violation of this Order and have further sanctions imposed. This matter would be a new matter and the costs attendant to that proceeding will be taxed against the Respondent.

Enter this 20th day of December, 2002  
 VIRGINIA STATE BAR DISCIPLINARY BOARD  
 By: John A. Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD**

IN THE MATTER OF  
**CHARLES ANTHONY DIFAZIO**  
 VSB DOCKET NO. 03-000-1835

**ORDER OF REVOCATION**

This matter came before the Virginia State Bar Disciplinary Board on January 24, 2003, pursuant to a Rule to Show Cause and Order of Suspension Hearing ("Rule to Show Cause Order") entered by the Virginia State Bar Disciplinary Board on December 26, 2002, in accordance with the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13.I.6.a. The hearing was held before a duly convened panel of the Board consisting of Theophilise L. Twitty, Joseph R. Lassiter, Jr., Ann N. Kathan, W. Jefferson O'Flaherty, Lay Member, and John A. Dezio, Chair.

The Virginia State Bar was represented by Linda Mallory Berry, Assistant Bar Counsel. Charles Anthony DiFazio (the "Respondent") failed to appear after the Clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf. Ms. Terry Griffith, with Chandler

and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 683-8779, having been duly sworn, reported the hearing. All required notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law.

The Chair opened the hearing by calling the case both in the hearing room and in the adjacent hall. The Respondent did not answer or appear. The panel was then polled as to whether any member had any conflict of interest, any apparent conflict of interest, or other reason why the member should not participate in the hearing. Each panel member, including the Chair, answered in the negative.

**The Prior Pennsylvania Proceedings**

This matter arises out of the Rule to Show Cause Order issued by this Board requiring the Respondent to show cause why the Board should not impose upon the Respondent the same discipline that was imposed upon him by the Bar of the Commonwealth of Pennsylvania. Specifically, the Respondent was disbarred on consent by the Bar of the Commonwealth of Pennsylvania by Order entered on August 21, 2002, in the Supreme Court of Pennsylvania.

The Respondent's disbarment in the Commonwealth of Pennsylvania ensued after ten (10) separate charges of professional misconduct were filed against him by the Disciplinary Board of the Supreme Court of Pennsylvania. Thereafter, the Respondent tendered his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania on July 18, 2002.

**Findings**

The Board finds that the Bar has furnished uncontroverted evidence to support a revocation of the Respondent's license to practice law in the Commonwealth of Virginia under Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13.I.6.a and the Board further finds that the Respondent has failed to show cause as to why such sanction should not be imposed.

**Sanction**

Because of the Respondent's disbarment in the Commonwealth of Pennsylvania and the Respondent's failure to show cause as to why his license should not be revoked in the Commonwealth of Virginia, the Board believes the appropriate sanction is the revocation of the Respondent's license, and it is so ORDERED that the license of Charles Anthony DiFazio to practice law in the Commonwealth of Virginia is hereby REVOKED, effective January 24, 2003.

ENTERED this 7th day of February, 2003  
 VIRGINIA STATE BAR DISCIPLINARY BOARD  
 John A. Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR  
 DISCIPLINARY BOARD**

IN THE MATTER OF  
**FRANCIS DOUGLAS FOORD, ESQUIRE**  
 VSB DOCKET NUMBERS 00-041-1868  
 00-041-2098  
 01-041-0812  
 01-041-3134  
 02-041-1296

**ORDER**

This matter came on January 2, 2003, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fourth District—Section I Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Bruce T. Clark, Esquire, Joseph R. Lassiter, Jr., Esquire, Larry B. Kirksey, Esquire, Werner H. Quasebarth, lay member, and Roscoe B. Stephenson III, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Francis Douglas Foord, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated December 23, 2002, reflecting the terms of the Agreed Disposition.

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

1. At all times relevant hereto, Francis Douglas Foord, Esquire (hereafter “Respondent”), has been an attorney licensed to practice law in the Commonwealth of Virginia.

**As to VSB Docket No. 00-041-1868:**

2. In or around February 1997, Ms. Teresa J. Biter (hereafter “Complainant”) retained the Respondent to represent her in a personal injury claim arising out of a motor vehicle accident that occurred on January 22, 1997.
3. The Complainant filed a Complaint with the Virginia State Bar, dated December 30, 1999, which the Bar received on January 4, 2000, alleging that the Respondent had made no contact with her in over six months, and that he did not return messages left on his answering machine.
4. Intake counsel for the Bar wrote to the Respondent on January 18, 2000, requesting that the Respondent communicate with the Complainant about the status of her case. By letter dated January 26, 2000, the Respondent wrote to intake counsel, attaching a copy of a letter dated January 26, 2000, purportedly sent to the Complainant. The letter to the Complainant stated, *inter alia*, the following: “Your case, *Biter v. Harrington*, Law Number 185779, is pending in Fairfax County Circuit Court. It is my hope that we can soon locate an address where the defendant can be served, and then proceed to trial.” The letter also stated: “I will be contacting you in the near future, perhaps before this letter is delivered, in regard to several issues relating to your case.”
5. On the strength of Respondent’s aforesaid correspondence to the Bar, intake counsel closed the Bar’s file on the matter on February 2, 2000. On February 23, 2000, intake counsel received another letter from the Complainant, again alleging that Respondent was failing to communicate with her. The Bar thereafter opened a formal Complaint against the Respondent.
6. On March 6, 2000, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold, underlined text, the following: “please review the complaint and provide this office with a written answer, including an original and one copy of your

response and all attached exhibits, within twenty-one (21) days of the date of this letter.”

7. The Respondent made no written or other response to the Bar’s March 6, 2000, letter, and the matter was forwarded by Bar Counsel for investigation and assigned to a Virginia State Bar investigator.
8. The investigation conducted by the Virginia State Bar revealed that:
  - a. The “case” referred to as “pending” in Respondent’s aforesaid January 26, 2000, letter to the Complainant was filed by the Respondent on January 24, 2000;
  - b. The Respondent made no further contact with the Complainant following his aforesaid letter to her dated January 26, 2000;
  - c. The Respondent accepted full time employment as an assistant public defender while appearing as counsel of record in the suit filed on Complainant’s behalf. The Respondent did not thereafter withdraw from representation or find substitute counsel for the Complainant, despite having been advised in writing by a Fairfax County Circuit Judge to “see that an Order of Substitution or other appropriate pleading is filed in a timely manner;”
  - d. The Respondent was noticed by the Court to appear on January 26, 2001, regarding a possible dismissal of the case for lack of service of process on the defendant within one year following the date of filing of the case; and
  - e. The Respondent made no appearance pursuant to the aforesaid Notice, and a Final Order was entered by the Court dismissing the case on January 26, 2001.
9. During an interview of the Respondent conducted in person by a Virginia State Bar investigator in Respondent’s office in the Office of the Public Defender in Fredericksburg, Virginia, on November 28, 2000, the Respondent stated to the investigator that he would provide the investigator with a copy of the Respondent’s file in Complainant’s legal matter.
10. Despite the investigator’s subsequent voice mail messages on December 21 and 28, 2000, and a January 5, 2001, message left with Respondent’s clerical staff, the Respondent neither provided the investigator with a copy of the file nor responded to the investigator’s three messages.

**As to VSB Docket No. 00-041-2098:**

11. On February 24, 2000, the Virginia State Bar opened a Complaint against the Respondent on the basis of written information it had received from a member of the Virginia State Bar concerning the status of certain client files remaining at Respondent’s former place of employment.
12. On March 3, 2000, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold, underlined text, the following: “please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter.”

13. The Respondent made no written or other response to the Bar's March 3, 2000, letter, within twenty-one (21) days, or at any time thereafter.
14. During an interview conducted by a Virginia State Bar investigator on November 28, 2000, the Respondent stated that he was aware that if he did not respond to bar complaints the matters involved would have to be investigated.

**As to VSB Docket No. 01-041-0812:**

15. In or around October 1999, Mr. Melvin Pittman (hereafter "Complainant") and Rhonda Pittman engaged the Respondent to recover damages from an individual who breached a contract with the Pittmans in connection with the sale of their motor vehicle.
16. The Pittmans paid Respondent legal fees of between \$800.00 and \$900.00, plus court filing fees. When the matter came on for trial, the Respondent had either lost or misplaced documentary evidence which had earlier been given to him by the Pittmans, and the party whom the Pittmans had sued prevailed at trial.
17. In view of the circumstances, the Respondent promised the Complainant that he would refund \$250.00 of the legal fees that had been paid to him. Despite such promise, the Respondent never made a refund of any fees to the Complainant, and Respondent failed and refused to return the Complainant's four (4) telephone messages to him in this regard.
18. The Complainant filed a Complaint with the Virginia State Bar, and on October 25, 2000, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold, underlined text, the following: "please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter."
19. The Respondent made no written or other response to the Bar's October 25, 2000, letter, within twenty-one (21) days, or at any time thereafter.
20. In an effort to interview the Respondent concerning this matter, a Virginia State Bar investigator telephoned the Respondent's office on December 21 and 28, 2000, and left messages on Respondent's voice mail. On January 5, 2001, the investigator telephoned the Respondent's office and requested that the clerical staff provide the Respondent with a personal message to call the investigator. The clerical staff informed the investigator that Respondent had been working throughout the time that the voice mail messages had been left; that Respondent was receiving his voice mail messages; and that they would provide the Respondent with the investigator's message.
21. Despite the efforts expended by the investigator, and notwithstanding the messages that had been left for him, as detailed in the foregoing paragraph, the Respondent did not return the investigator's calls, and was not interviewed respecting the Complaint filed in this matter.

**As to VSB Docket No. 01-041-3134:**

22. As of early May 2000, the Respondent, as an assistant public defender, had been appointed to represent Mr. Larry Ray Martin (hereafter "Complainant") in a probation revocation proceeding scheduled in the Circuit Court of King George County, Virginia, for May 30, 2000.
23. The Complainant, who was incarcerated during the period of Respondent's representation, requested on numerous occasions that the Respondent visit him in jail for purposes of preparing for the scheduled hearing. In particular, the Complainant wrote a letter, dated May 3, 2000, to the Respondent, which the Respondent received on May 8, 2000. The letter stated, in pertinent part, as follows:
 

I would like you to come and see me way befer court. I dont want you to come a week or so befer court and try and get stuff done and then have to turn around and say we have to post pone it because you didn't have time to get stuff done. All I want you to do is find out the Full Fathers name of Mr Covington and their new address. his son is one of the reasons why Im going up for my back up time. And please tell the secs to except my Phone call and set up a phone appointment since I don't know when you are in the office please. I've called about 12 times and she wont except the call. Try and come see me next week. please. [Errors in original.]
24. The Respondent did not visit or otherwise correspond with the Complainant pursuant to the Complainant's requests. Minutes before the scheduled hearing, the Respondent conferred with the Complainant. The Respondent developed no evidence for presentation at the hearing, and presented no evidence at the hearing which might have served to mitigate the severity of any sentence the Court was authorized by law to impose. The Court revoked the full term of Complainant's suspended sentence, a period of four (4) years, and ordered that it "run consecutive to any other sentence."
25. The Complainant filed a Complaint with the Virginia State Bar, and on June 26, 2001, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold, underlined text, the following: "please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter."
26. The Respondent made no written or other response to the Bar's June 26, 2001, letter, within twenty-one (21) days, or at any time thereafter. During a personal interview conducted by a Virginia State Bar investigator on February 12, 2002, the Respondent stated that he did not respond to the Bar Complaint because he did not have the time.

**As to VSB Docket No. 02-041-1296:**

27. On or about October 31, 2001, Mr. Kenneth Lewis (hereafter "Complainant"), an incarcerated defendant with criminal charges pending against him in the King George County, Virginia, Circuit Court, filed a Complaint with the Virginia State Bar against the Respondent, who, as assistant

public defender, was serving as Complainant's defense counsel. The specific allegations contained in the Complaint are not here presented as charges of misconduct against the Respondent.

28. On November 5, 2001, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, the following: "please review the complaint and submit a written answer within twenty-one (21) days of the date of this letter."
29. The Respondent made no written or other response to the Bar's November 5, 2001, letter, within twenty-one (21) days, or at any time thereafter. During a personal interview conducted by a Virginia State Bar investigator on February 12, 2002, the Respondent stated that he did not respond to the Bar Complaint because he did not have the time.
30. Aggravating factors recognized by the ABA include the following:
  - a. a prior disciplinary offense; and
  - b. a pattern of misconduct.
31. Mitigating factors recognized by the ABA include the following:
  - a. absence of a dishonest or selfish motive;
  2. full and free disclosure to the Disciplinary Board and cooperative attitude toward these proceedings; and
  3. remorse.

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

**DR 6-101. Competence and Promptness.**

(B), (C) and (D) \*\*\*

**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), (b) and (c) \*\*\*

**RULE 1.4 Communication**

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

**RULE 1.15 Safekeeping Property**

(c) (4) \*\*\*

**RULE 1.16 Declining Or Terminating Representation**

(a) (1) \*\*\*

**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:

(c) and (d) \*\*\*

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

(b) and (c) \*\*\*

Upon consideration whereof, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of thirty (30) days, commencing on the 1st day of February 2003.

\*\*\*

ENTERED this 7th day of January, 2003.  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
Roscoe B. Stephenson III, 1st Vice-Chair



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF  
**MICHAEL WILLS CULLINAN HARRIS**  
VSB DOCKET NO.: 03-000-1085

**ORDER**

THIS MATTER came on to be heard on November 22, 2002, before a panel of the Disciplinary Board consisting of Richard J. Colten, Acting Chair, Janipher W. Robinson, David R. Schultz, Thaddeus T. Crump, Lay member, and Ann N. Kathan. The State Bar was represented by Harry M. Hirsch, Deputy Bar Counsel. The Respondent, Michael Wills Cullinan Harris ("Harris"), after receiving due notice by certified mailing to the last known address provided to the State Bar, failed to appear either in person or by counsel.

The Acting Chair called the matter in the hearing room and in the hallway, without a response from the Respondent.

The matter came before the Board on a Motion and Notice of Show Cause Proceeding to Further Suspend or Revoke the License to Practice Law for Failure to Fulfill Duties of a Suspended Respondent.

**I. FINDINGS OF FACT**

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

1. At all times relevant hereto the Respondent, Michael Wills Cullinan Harris, was an attorney licensed, but not authorized to practice law in the Commonwealth of Virginia. As of February 12, 2001, Harris' membership status with the Virginia State Bar is "associate" member, not in good standing. (November 21, 2002 Affidavit of the Clerk of the Disciplinary System—**Exhibit C**). If called to testify, Harris would state that he voluntarily changed his membership status to "associate" upon the advice of his health-care professionals.
2. On or about November 16, 2001, The Board entered an Order of Disability Suspension imposing an indefinite disability suspension of Harris' license to practice law in the Commonwealth of Virginia.
3. The Order of Disability Suspension required Harris to fulfill the duties of a suspended respondent in accordance with Paragraph 13(K)(1).
4. By letter dated November 16, 2001, the Clerk of the Disciplinary System sent Harris an attested copy of the Order of Disability Suspension, directing Harris as to his responsibilities pursuant to the provisions of Paragraph 13(K)(1), enclosing forms for Harris to fulfill those responsibilities, and notifying Harris that he must provide the Clerk with proof of his compliance with the notice requirements on or before January 14, 2002. (Order and Forms—**Exhibit A**).
5. By letter dated January 15, 2002, the Clerk of the Disciplinary System mailed Harris a copy of her November 16, 2001, letter. The Clerk further stated in said letter that she had not received proof of compliance from Harris, and urged Harris to fulfill his duties under Paragraph 13(K)(1). The Clerk advised Harris that if he had not fulfilled his duties, he needed to advise the Clerk of the fact immediately. (Letter—**Exhibit B**).
6. The provisions of former Paragraph 13(K)(1) are substantially the same as the provisions of current Paragraph 13.M effective September 18, 2002.
7. Harris failed to fulfill the notice requirements recited in the November 16, 2001 Order of Disability Suspension, and requirements of former Paragraph 13(K)(1).

**II. MISCONDUCT**

The Board finds by clear and convincing evidence that the Respondent, Michael Wills Cullinan Harris, has failed to comply with Part Six, Section IV, Paragraph 13.M (formerly Paragraph 13(K)(1)) of the Rules of the Supreme Court of Virginia, and thereby failed to show cause why further sanctions should not be imposed for his failure to furnish the Bar with the required proof of having given notice to clients, opposing clients and courts.

**III. DISPOSITION**

After review of the foregoing findings of misconduct, it is ORDERED that the license to practice law in the Courts of the Commonwealth of Virginia heretofore issued to Respondent Michael Wills Cullinan Harris be, and the same is hereby suspended for a period of five (5) days. Said five-day suspension shall begin at such time after the removal of the disability suspension.

ENTERED this 10th day of December, 2002.  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
By: Richard J. Colten, Acting Chair



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTER OF  
**WESLEY LEE PENDERGRASS**  
VSB DOCKET NO. 02-010-1841

**ORDER**

This matter came to be heard on February 7, 2003, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Wesley Lee Pendergrass, Esq.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Bruce T. Clark, Esq., Peter A. Dingman, Esq., Joseph A. Lassiter, Esq., V. Max Beard, Lay Member, and, Roscoe B. Stephenson, III, Esq., 1st Vice Chair, presiding, considered the matter by telephone conference. The Respondent, Wesley Lee Pendergrass, 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 Violation, 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, Wesley Lee Pendergrass (hereinafter Respondent or Mr. Pendergrass) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On November 20, 1997, a jury of the Circuit Court for the City of Newport News convicted Kermit Spence of second degree murder and the use of a firearm in the commission of a felony. The jury recommended a sentence of thirty-three years on the murder conviction and three years on the firearm conviction, for a net sentence of thirty-six years in prison. On January 14, 1998, the trial court imposed the sentences recommended by the jury. Mr. Pendergrass was Mr. Spence's court-appointed counsel. He timely noted an appeal to the Court of Appeals of Virginia, and filed a petition for appeal.
3. On July 9, 1998, the Court of Appeals dismissed the appeal because Mr. Pendergrass failed to preserve the appellate issues at trial, as required by Rule 5A:18 of the Rules of the Supreme Court of Virginia. On August 10, 1998, Mr. Pendergrass filed a petition for appeal to the Supreme Court of Virginia. Mr. Pendergrass informed Mr. Spence about the dismissal of the appeal and the appeal to the Supreme Court by furnishing copies of the pertinent records to his client. On August 31, 1998, the Supreme Court dismissed the appeal because Mr. Pendergrass failed to file a notice of appeal, as required by Rule 5:14(a) of the Rules of the Supreme Court of Virginia.

4. By letter, dated November 25, 2001, Mr. Spence complained to the Virginia State Bar that he had heard nothing about the status of his appeal since Mr. Pendergrass appealed it to the Supreme Court of Virginia. He said that he had written to Mr. Pendergrass several times, but never received a response and, for this reason, he complained to the bar. The bar advised Mr. Pendergrass about the complaint. By letter, dated December 28, 2001, Mr. Pendergrass advised Mr. Spence about the dismissal of his appeal, and enclosed a copy of the Order entered on August 31, 1998.
5. Mr. Pendergrass said that he had previously notified Mr. Spence about the dismissal more than three years ago. Mr. Pendergrass, however, had no record or copies of correspondence in his file to confirm this. Mr. Pendergrass acknowledged that he did not advise his client that the appeal was dismissed because of Mr. Pendergrass' error. He also acknowledged that he did not tell his client about any potential post-trial remedies deriving from his error, such as a writ of habeas corpus for a delayed appeal.

**II. DISCIPLINARY RULE VIOLATIONS**

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

**DR 6-101. Competence and Promptness.**

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

**RULE 1.4 Communication**

(a) \*\*\*

**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 one (1) year suspension of the Respondent's license to practice law in the Commonwealth of Virginia, with all of the said suspension suspended for a period of one (1) year, subject to the following terms and conditions:

The Respondent, Wesley Lee Pendergrass, is placed on probation for a period of one (1) year, said period to begin upon entry of this Order. Mr. Pendergrass 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 the Agreed Disposition incorporated in this Order and will result in the imposition of the full one-year suspension of his license to practice law as an alternate sanction. The alternate sanction will not be imposed while Mr. Pendergrass is appealing any adverse decision which might result in a probation violation.

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

the Agreed Disposition incorporated in this Order 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 11TH DAY OF FEBRUARY, 2003  
THE VIRGINIA STATE BAR DISCIPLINARY BOARD  
BY Roscoe B. Stephenson III, 1st Vice Chair



**BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD**

IN THE MATTERS OF

**BENJAMIN THOMAS REED**

VSB DOCKET NOS. 01-021-0137 (TERRY HENDRICKS)  
01-021-1360 (MARVIN T. OWENS)  
01-021-3005 (ARTAVISUS WARREN)  
01-021-3249 (VSB/JUDICIAL)

**ORDER OF SUSPENSION**

This matter was certified to the Virginia State Bar Disciplinary Board ("Board") by the Second District Committee, Section I. and was set for hearing on January 24, 2003 before a duly convened panel consisting of John A. Dezio, Chair, Theophlise L. Twitty, Ann N. Kathan, and W. Jefferson O'Flaherty, Lay Member.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶13B5c., the Virginia State Bar, by Paul D. Georgiadis, Assistant Bar Counsel, and the Respondent, Benjamin Thomas Reed, by John R. Fletcher, Respondent's Counsel, entered into a proposed agreed disposition and presented it to the convened panel. The bar and the Respondent waived the requirement for a full panel and agreed to have the proposed agreed disposition considered by the panel of four.

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.

**I. FINDINGS OF FACT**

1. During all times relevant hereto, Benjamin Thomas Reed, ("Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

**VSB Docket No. 01-021-0137  
(Hendricks)**

2. Following the January 11, 2000, sentencing of Terry Allen Hendricks, Respondent was appointed to represent Hendricks on his appeals.
3. On May 8, 2000, Respondent filed a Petition for Appeal in the Court of Appeals of Virginia. Therein he cited *Anders v. California*, 386 U.S.738 (1967).
4. On May 17, 2000, the Court of Appeals issued an order finding that Respondent's brief did not comply with *Anders* as it was "no more than a conclusory assessment by counsel that the appeal lacks merit." The Court of Appeals directed Respondent to file within fifteen (15) days an

amended petition for appeal. With the Court's decision, the Clerk of the Virginia Court of Appeals forwarded a memorandum entitled *How to Comply with Anders in the Court of Appeals of Virginia*.

5. Notwithstanding the Court's order of May 17, 2000, Respondent failed to file an amended petition for appeal.
6. On June 16, 2000, the Court of Appeals again ordered Respondent to file an amended petition for appeal, ordering that it be filed on or before June 26, 2000, together with a written statement explaining his failure to previously comply with the May 17, 2000 order.
7. On June 26, 2000, Respondent filed an Amended Petition for Appeal, the required Motion for Leave to Withdraw, Motion for Extension of Time, and letter of explanation as to Respondent's failure to comply with the May 17, 2000 order. Therein, Respondent explained that his failure to comply with the Court's order of May 17 was due to competing demands of consecutive trials for a capital murder defendant.

**VSJ Docket No. 01-021-3249 (VSJ/Judicial)  
(Stewart)**

8. In 1999, Respondent was appointed to represent Nikita Ray Stewart ("Stewart") in the appeal of his criminal conviction.
9. On December 21, 1999, the Court of Appeals of Virginia denied Stewart's appeal.
10. On or about December 21, 1999, Respondent advised Stewart by letter that as he believed there was no basis for further appeal, he was concluding his handling of the appeal.
11. Having so advised Stewart and receiving no instruction from Stewart to appeal further, Respondent did not appeal the matter to the Supreme Court of Virginia.
12. Thereafter, Stewart obtained a Writ of Habeas Corpus granting leave for a delayed appeal to the Supreme Court of Virginia.

**VSJ Docket No. 01-021-3249 (VSJ/Judicial)  
(Lawson)**

13. During this same time frame, Respondent served as court-appointed appeals counsel for Glen Lawson ("Lawson") for the appeal of his criminal conviction.
14. On April 6, 2000, Respondent advised Lawson by letter of the Court of Appeals order dated April 4, 2000, that denied his appeal. Respondent advised that he was not going to appeal further unless Lawson requested him to appeal further.
15. Respondent did not appeal the order of April 4, 2000.
16. Thereafter, Lawson filed for and was granted a Writ of Habeas Corpus granting leave for a delayed appeal.
17. On April 3, 2001, the Circuit Court of the City of Norfolk reappointed Respondent as counsel for the appeal.
18. Notwithstanding the enlarged time to file the appeal and his appointment as counsel to do so, Respondent failed to file the appeal to the Supreme Court of Virginia.

**VSJ Docket No. 01-021-1360  
(Owens)**

19. On or about August 5, 1994, the Circuit Court of the City of Virginia Beach appointed Respondent to represent Marvin T. Owens ("Owens"), who was facing multiple felony counts arising from the murder of four (4) individuals, including his grandmother. At the time of his trial, Owens was a juvenile, charged as an adult.
20. Respondent represented Owens through his trial and appeals, which concluded with the order dated August 1, 1997, in which the Virginia Supreme Court refused to grant an appeal. By letter dated August 8, 1997, Respondent advised Owens of the Virginia Supreme Court's order.
21. In his letter of August 8, 1997, to Owens, Respondent also advised that he assumed Owens wished him to pursue further appeal "through the Federal Court system." Accordingly, he advised Owens that he would "research . . . and protect . . . and do what is necessary to protect your right of appeal."
22. Notwithstanding Respondent's assumption of such duties, Respondent failed to undertake such research and failed to take any further actions, including, but not limited to, pursuing Federal Habeas relief or a Baker motion.
23. At no time did Respondent advise Owens that he would not be pursuing or protecting Owens' further avenues or relief.

**VSJ Docket No. 01-021-3005  
(Warren)**

24. On or about June 19, 2000, Respondent was appointed to represent Artavisus Warren ("Warren") to petition the Court for a new trial pursuant to the mandates of *Baker v. Commonwealth*, 28 Va. App. 306, 509 S.E.2d 394 (1998). In his transmittal letter to Respondent, the Circuit Court Clerk advised Respondent that the Court "has requested that counsel file briefs on the issue at hand."
25. Between June 26, 2000 and July 31, 2000, Warren wrote three (3) letters to the Respondent inquiring about his case as well as the conditions of his incarceration.
26. Respondent failed to reply to Warren's correspondence until September 6, 2000, when he advised him of the prospects and risks of his case.
27. Thereafter, Warren wrote Respondent on ten (10) further occasions from September 22, 2000, to June 4, 2001, inquiring about the status of his case.
28. To the ten (10) letters, Respondent never replied.
29. On June 29, 2001, Respondent filed a five page Motion to Set Aside and Vacate pursuant to *Baker v. Commonwealth*, 28 Va. App. 306, 509 S.E.2d 394 (1998).

**II. NATURE OF MISCONDUCT**

The Board finds that such conduct on the part of the Respondent in VSJ Docket No. 01-021-0137 (Hendricks) violates Rule 1.3.

The Board finds that such conduct on the part of the Respondent in VSJ Docket No. 01-021-3249 (VSJ/Judicial/Lawson) violates Rule 1.3.

The Board finds that such conduct on the part of the Respondent in VSB Docket No. 01-021-1360 (Owens) violates Rules 1.3 and 1.4.

**RULE 1.3 Diligence**

(a) \* \* \*

**RULE 1.4 Communication**

(a) \* \* \*

The Board finds that such conduct on the part of the Respondent in VSB Docket No. 01-021-3249 (VSB/Judicial/Stewart) does not constitute a violation of the Rules of Professional Conduct.

The Board finds that such conduct on the part of the Respondent in VSB Docket No. 01-021-3005 (Warren) does not constitute a violation of the Rules of Professional Conduct.

**IMPOSITION OF SANCTION OF SUSPENSION OF THIRTY (30) DAYS**

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. 13.I.2.f.2.d. of the Rules of the Virginia Supreme Court that the license of the Respondent, Benjamin Thomas Reed, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for thirty (30) days, effective April 15, 2003. It is further ORDERED that Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M., of the Rules of the Supreme Court of Virginia, on or before June 14, 2003. The time for compliance with said requirements runs from April 15, 2003. All issues concerning the adequacy of the notice and arrangements required by the Order shall be determined by the Board.

ENTERED THIS ORDER THIS 29TH DAY OF JANUARY, 2003  
VIRGINIA STATE BAR DISCIPLINARY BOARD  
By John A. Dezio, Chairman

**DISTRICT SUBCOMMITTEES**

BEFORE THE FIFTH DISTRICT SECTION I  
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**JOHN WAYNE BEVIS, ESQ.**  
VSB DOCKET NO. 02-051-1404

**SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND WITH TERMS**

On the 4th day of February, 2003, a meeting in this matter was held before a duly convened a subcommittee of the Fifth District Committee Section I consisting of Richard J. Ruddy, Jr., Esq., Stephen A. Wannall, and Sean P. Kelly, 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 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 relevant hereto the Respondent, John Wayne Bevis, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In June of 2000, the Complainant, Thomas R. Early, went to the closing on the sale of his home and learned that the buyer had failed to obtain the funds he needed to buy the property. In October of 2000, Mr. Early hired the respondent to sue the buyer for breach of contract. Mr. Early signed a fee agreement, agreeing to pay the Respondent one-third of any money recovered.
3. In January of 2001, Mr. Early called the Respondent's office to speak to the Respondent about his case. He had not heard from the Respondent since he hired him in October of 2000. The Respondent did not return his call. Mr. Early left several more messages but the Respondent still did not call him. In mid-February of 2001, Mr. Early sent the Respondent an email, which the Respondent did not answer. In May of 2001, after numerous more emails to which the Respondent did not respond, Mr. Early requested that the Respondent return his case file to him. He still did not hear from the Respondent.
4. In August of 2001, Mr. Early filed his complaint with the Virginia State Bar. On September 17, and October 3, 2001, the Bar's Intake Office sent letters to the Respondent, asking him to respond to Mr. Early's complaint. The Respondent did not reply to Intake's letters. He also did not respond to the opening letter sent to him on November 21, 2001 by Assistant Bar Counsel.
5. Virginia State Bar Investigator Robert K. Smith interviewed the Respondent on August 6, 2002. The Respondent informed Investigator Smith that the primary reason he had not contacted Mr. Early or responded to Mr. Early's messages was that there was still quite a bit of time before the statute of limitations ran out on filing the suit in Mr. Early's case. He also claimed that a staff person in his office, who had since been fired, had failed to pass on Mr. Early's emails and phone messages to him. On August 6, 2002, the Respondent told Investigator Smith that he would contact Mr. Early to discuss what Mr. Early wanted to do in his case. By the end of August, the Respondent still had not contacted Mr. Early.

**II. NATURE OF MISCONDUCT**

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

DR 6-101. Competence and Promptness.

(B) and (C) \* \* \*

RULE 1.3 Diligence

(a) \* \* \*

RULE 1.4 Communication

(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 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 May 1, 2003 are:

- 1. The Respondent shall institute and maintain a docket control system which shall ensure that he reviews the status of all pending matters periodically, and remind him in advance of key deadlines and other obligations. The Respondent shall institute and maintain a written office policy relating to regular and informative client communication. This policy shall include provisions for providing the client with written copies of all documentation relating to the representation, engaging in regular meetings either in person or by telephone to discuss the progress of the case and to answer client inquiries. Both the docket control system and the communication policy shall be implemented immediately. The Respondent shall provide the Assistant Bar Counsel handling this matter with a detailed written description of both the docket control system and communication policy, and shall certify in writing under oath that he is using such systems in his office.
2. The Respondent shall complete four (4) hours of continuing legal education in the areas of ethics and/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).

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 be met by May 1, 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 I SUBCOMMITTEE OF THE VIRGINIA STATE BAR By Sean P. Kelly Chair Designate



BEFORE THE FIFTH DISTRICT SECTION I SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF JOHN WAYNE BEVIS, ESQ. VSB DOCKET NO. 01-051-1629

SUBCOMMITTEE DETERMINATION PUBLIC REPRIMAND WITH TERMS

On the 4th day of February, 2003, a meeting in this matter was held before a duly convened a subcommittee of the Fifth District Committee Section I consisting of Richard J. Ruddy, Jr., Esq., Stephen A. Wannall, and Sean P. Kelly, 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 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 relevant hereto the Respondent, John Wayne Bevis, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In December of 1998, the Complainant, Hezzie Arrington, hired the Respondent to represent him in a divorce. The Complainant and his wife signed a property settlement agreement and the Commissioner's hearing was held in July of 2000. At that time, the Respondent informed Mr. Arrington that his divorce would be final by August 2000. By mid-September, Mr. Arrington had not heard from the Respondent, so he called the Respondent's office. The Respondent's assistant informed Mr. Arrington that there had been a problem with the final decree. Mr. Arrington requested that the assistant have the Respondent call him. The Respondent never returned Mr. Arrington's call. After repeated calls and no response, Mr. Arrington filed a Bar complaint.
3. On October 25, 2000, the Virginia State Bar received Mr. Arrington's complaint against the Respondent. The Respondent had still not contacted Mr. Arrington, and Mr. Arrington still did not know what was holding up his final decree of divorce. Mr. Arrington's final decree of divorce was not entered until March 30, 2001.

II. NATURE OF MISCONDUCT

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

DR 6-101. Competence and Promptness.

(B) and (C) \* \* \*

RULE 1.3 Diligence

(a) \* \* \*

RULE 1.4 Communication

(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 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 May 1, 2003, are:

1. The Respondent shall institute and maintain a docket control system which shall ensure that he reviews the status of all pending matters periodically, and remind him in advance of key deadlines and other obligations. The Respondent shall institute and maintain a written office policy relating to regular and informative client communication. This policy shall include provisions for providing the client with written copies of all documentation relating to the representation, engaging in regular meetings either in person or by telephone to discuss the progress of the case and to answer client inquiries. Both the docket control system and the communication policy shall be implemented immediately. The Respondent shall provide the Assistant Bar Counsel handling this matter with a detailed written description of both the docket control system and communication policy, and shall certify in writing under oath that he is using such systems in his office.
  
2. The Respondent shall complete four (4) hours of continuing legal education in the areas of ethics and/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).

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 May 1, 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 I SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By Sean P. Kelly



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

IN THE MATTER OF  
**DALE ALAN GIPE**

VSB DOCKET NOS.      99-031-3026  
                                 02-031-1879  
                                 02-031-3666

**SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND)**

On December 30, 2002, a meeting in this matter was held before a duly convened Subcommittee consisting of Robert Clinton Clary, Jr., Esquire, Patricia B. Clary, Lay Member and Marcus D. Minton, Esquire, presiding.

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

I. GENERAL FINDINGS OF FACT

1. Dale Alan Gipe was admitted to the practice of law in the Commonwealth of Virginia on June 3, 1977.
2. At all times relevant to these proceedings, Mr. Gipe was an attorney in good standing to practice law in the Commonwealth of Virginia.

**A. VSB Docket No. 99-031-3026  
Complainant: Olivia A. Neylan**

A. FINDINGS OF FACT

1. In November 1997, Olivia A. Neylan retained Mr. Gipe to file a bankruptcy petition on her behalf.
2. Mr. Gipe agreed to file the bankruptcy petition as soon as Ms. Neylan paid him a fee of \$400, plus \$175 for filing fees and \$16 for filing a homestead deed, for a total of \$591.
3. By December 1998, Ms. Neylan had tendered Mr. Gipe installment payments totaling \$525.
4. Ms. Neylan understood that Mr. Gipe would file the bankruptcy petition even though he had not received her final payment of \$66, but Mr. Gipe claims that Ms. Neylan's mother told him not to file the petition until he had received payment in full.
5. In April 1999, after she did not hear anything from Mr. Gipe, Ms. Neylan unsuccessfully attempted to contact him on numerous occasions.
6. She mailed Mr. Gipe her final payment of \$66 on April 29, 1999, but the letter was returned to her marked "Attempted Unknown" in late May 1999.
7. Ms. Neylan filed a complaint with the Virginia State Bar on or about June 1, 1999, alleging that he had accepted fees for services that he had failed to perform.
8. After speaking with a Virginia State Bar investigator on August 25, 1999, Mr. Gipe agreed to contact Ms. Neylan and file the bankruptcy petition by August 30th.
9. When Ms. Neylan reported that Mr. Gipe had not contacted her, the investigator called Mr. Gipe again on August 31, 1999.
10. Mr. Gipe filed the bankruptcy petition in September 1999, and the bankruptcy court granted Ms. Neylan a Chapter 7 discharge on December 15, 1999.

B. NATURE OF MISCONDUCT

**DR 6-101. Competence and Promptness.**

(B), (C) and (D) \*\*\*

**B. VSB Docket No. 02-031-1879  
Complainant: Grace Sayer**

A. FINDINGS OF FACT

- 1. Mr. Gipe was the settlement agent for the closing on a home in Virginia that the complainant, Grace Sayer, and her husband sold in order to purchase a home in Florida.
2. The closing on the Virginia property was scheduled for December 17, 2001, in Virginia; the closing on the Florida property was scheduled for December 18, 2001, in Florida.
3. Mr. Gipe's paralegal, Karen Taylor, assured the Sayers' closing attorney in Florida that the settlement proceeds would be wired to the Sayers in Florida immediately after the sale was closed and the deed was recorded in Virginia.
4. The recording of the deed and wiring of the sales proceeds were delayed because the closing did not take place until after 6:00 p.m. on December 17, 2001.
5. Ms. Taylor left Mr. Gipe's office before the finished signing all of the closing documents on December 17th and did not report for work on December 18th.
6. On December 18th, Mr. Gipe's temporary receptionist failed to hand him a message indicating that it was urgent that he wire the settlement proceeds to the Sayers.
7. Ms. Taylor also failed to report for work on December 19th.
8. Only after Ms. Sayers spoke to Mr. Gipe's other paralegal, Paige Frank, were funds sent by overnight express to the Sayers' closing attorney in Florida, finally arriving about 10:30 a.m. on December 20th.
9. The delayed closings caused the Sayers considerable hardship and distress.

B. NATURE OF MISCONDUCT

RULE 1.3 Diligence

(c) \*\*\*

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

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

\*\*\*

(b) \*\*\*

\*\*\*

C. VSB Docket No. 02-031-3666 Complainant: Walter A. Wilson, III

A. FINDINGS OF FACT

- 1. Karen Taylor, a paralegal in Mr. Gipe's office, handled title searches, and recording deeds and deeds of trust, for Bellwood Credit Union.
2. On or about May 31, 2002, it was reported to the Virginia State Bar that on May 30, 2000, a title agent overheard Mr. Gipe say in a court record room, among other things, that

one of his employees had delayed recording a number of deeds.

- 3. When interviewed by a bar investigator on June 3, 2002, Mr. Gipe admitted that he had known there were problems with Ms. Taylor not recording a number of deeds or deeds of trust based upon his review of the files and communications from Branch White, a Bellwood Credit Union employee.
4. Ms. Taylor took a vacation after the problems came to Mr. Gipe's attention, and Mr. Gipe's son, who worked as an assistant in his father's office, searched a file cabinet drawer labeled Bellwood in Ms. Taylor's office but was unable to locate the files in which deeds of deeds of trust had not been recorded.
5. According to Mr. Gipe, when Ms. Taylor returned from vacation, the files mysteriously reappeared, and Ms. Taylor claimed that they were in the Bellwood drawer all along.
6. Ms. Taylor admits that she did not record certain deeds or deeds of trust as she should have but claims that she was overworked.
7. Mr. Gipe identified thirty-two files in which deeds or deeds of trust that had not been recorded and arranged for the deeds and deeds of trust to be recorded.
8. Ms. Taylor is no longer employed by Mr. Gipe.

B. NATURE OF MISCONDUCT

RULE 1.3 Diligence

(c) \*\*\*

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RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

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

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(b) \*\*\*

C. 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 Marcus D. Minton, Subcommittee Chair



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

IN THE MATTER OF ROBERT MICHAEL SHORT, ESQUIRE VSB DOCKET NO. 02-052-3125

**SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND WITH TERMS**

On the 29th day of January, 2003, a meeting in this matter was held before a duly convened a subcommittee of the Fifth District Committee Section II consisting of Daniel M. Rathbun, Esq., William V. Hanson, and Donald F. King, 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, Robert Michael Short, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In January of 1999, the Complainant, Jolika Lewis, was involved in an automobile accident in which she sustained injuries. In June of 2000, she hired the Respondent to represent her in a claim for damages.
3. On July 5, 2000, the Respondent filed a Warrant in Debt in the General District Court of Fairfax County with a first return date of August 24, 2000. At the first return date, the Court ordered the plaintiff to file a Bill of Particulars by September 15, 2000. The Respondent failed to file a Bill of Particulars. On September 21, 2000, having received no Bill of Particulars and having had no other contact with the Respondent, counsel for the defendant noticed a motion for summary judgment to be heard on October 3, 2000. On October 3, 2000, the Respondent failed to appear and the Court granted the defendant's Motion for Summary Judgment. The Respondent did not tell Ms. Lewis that he failed to file a Bill of Particulars and to appear at the October 3, 2000, hearing, but he did appeal the judgment to the Circuit Court. Ms. Lewis only learned her case was before the Circuit Court when she appeared on November 14, 2000, for her previously-scheduled trial date in General District Court.
4. On December 1, 2000, defense counsel filed a Request for Production of Documents and Interrogatories. No responses were filed within twenty-one days, and by letter dated December 27, 2000, the defense counsel informed the Respondent that she would file a Motion to Compel if she got no response from the Respondent. Against Ms. Lewis' wishes, the Respondent filed a motion to non-suit her case. On January 19, 2001, the Court entered the Respondent's order.

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) \* \* \*

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 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 May 1, 2003 are:

1. The Respondent shall institute and maintain a docket control system which shall ensure that he reviews the status of all pending matters periodically, and remind him in advance of key deadlines and other obligations. The Respondent shall institute and maintain a written office policy relating to regular and informative client communication. This policy shall include provisions for providing the client with written copies of all documentation relating to the representation, engaging in regular meetings either in person or by telephone to discuss the progress of the case and to answer client inquiries. Both the docket control system and the communication policy shall be implemented immediately. The Respondent shall provide the assistant bar counsel handling this matter with a detailed written description of both the docket control system and communication policy, and shall certify in writing under oath that he is using such systems in his office.
2. The Respondent shall complete 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, 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 May 1, 2003, this matter shall be certified to the Virginia State Bar Disciplinary Board upon an agreed stipulation of facts as the facts are set forth herein for the sole purpose of imposition of a sanction deemed appropriate by the Virginia State Bar Disciplinary Board.

FIFTH DISTRICT SECTION II SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR  
By Donald Francis King

