
DISCIPLINARY ACTIONS

The following 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	P
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CIRCUIT COURT

Donald Gregory Baker	Gate City	2-1/2 Year Suspension	December 15, 2003	
Harrison Benjamin Wilson III	Norfolk	1 Year Suspension	October 9, 2003	

DISCIPLINARY BOARD

John Michael DiJoseph*	Arlington	Revocation	November 21, 2003	
Robert Dean Eisen	Virginia Beach	Revocation	January 22, 2004	
Ellen Frances Ericsson	Stafford	2 Year Suspension and CRESPA Registration Suspension	January 1, 2004	
Vincent Napoleon Godwin	Carrollton	3 Year Suspension	December 12, 2003	
Edith Charmaine Gray	Fairfax	Public Reprimand w/Terms	January 8, 2004	
Antoine Ian Mann	Frederick, MD	Indefinite Suspension	December 29, 2003	
Beverly McLean Murray	Petersburg	Revocation	December 11, 2003	
Patrick Roger Owen	Arlington	Revocation	December 12, 2003	

DISTRICT COMMITTEES

Oliver Stuart Chalifoux	Glen Allen	Public Reprimand w/Terms	December 18, 2003	
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OTHER ACTIONS

Respondent's Name	Address of Record	Grounds	Effective Date
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COST SUSPENSIONS

Jordan Nichols Baker	Fairfax	Failure to Pay Costs	February 5, 2004
Steven Yeoul Lee	Fairfax	Failure to Pay Costs	February 5, 2004
David Nicholls Montague	Hampton	Failure to Pay Costs	January 27, 2004
Ann Bridgeforth Tribbey	Richmond	Failure to Pay Costs	February 2, 2004

INTERIM SUSPENSIONS

Eli S. Chovitz	Norfolk	Failure to Comply w/Subpoena	November 7, 2003
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** Respondent has filed an appeal in the Virginia Supreme Court*

CIRCUIT COURT

VIRGINIA:

**IN THE CIRCUIT COURT
OF THE COUNTY OF SCOTT**

VIRGINIA STATE BAR EX REL.
TENTH, SECTION II DISTRICT SUBCOMMITTEE,
COMPLAINANT,
V.
DONALD GREGORY BAKER, RESPONDENT
CASE NO. CLO3-47
VSB DOCKET NO. 03-102-1834

ORDER

On the 25th day of November, 2003, pursuant to the Supreme Court of Virginia Rules of Court Part 6, Section IV, ¶ 13(B)(5)(c) and Code of Virginia Section 54.1-3935(B), came the Virginia State Bar, by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Donald Gregory Baker, Esq., by his counsel, Russell V. Palmore, Jr., Esq. and Stephen D. Otero, Esq., and presented to the Court an Agreed Disposition arising out of the Complaint and Rule to Show Cause filed in the above-referenced matter. The Agreed Disposition is attached to this Order and incorporated herein by this reference. After hearing the argument of counsel, the Court retired to deliberate and thereafter voted to accept the Agreed Disposition. As such, the Court **FINDS** the following facts:

1. At all times material to this matter, the Respondent, Donald Gregory Baker (Baker or Respondent) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In the mid to late-1990s, Baker sought an appointment from the General Assembly as a full-time Judge.
3. In furtherance of that desire, in 1997 and again in 1999, Baker completed Judicial Selection Questionnaires directed to the General Assembly's Committee for Courts of Justice. In response to question 21 of each questionnaire asking if Baker had ever been arrested or charged for violation of any state or local law, Baker answered "no". Baker also responded in the negative to question 23 of both questionnaires asking if he had ever been a party to any legal proceeding.
4. In 1999, Baker was appointed as a Judge of the Juvenile and Domestic Relations Court of the Thirtieth Judicial Circuit.
5. In fact, in early 1994, Baker was arrested and convicted of solicitation for prostitution in the City of Richmond, Virginia, a crime and a violation of City Ordinance 20-81.
6. In mitigation of Baker's conduct, Baker's counsel presented to the Bar substantial proof that both before and after disclosure of the facts in paragraph 5 above, Baker enjoyed a reputation as an exemplary jurist, an opinion shared both by members of the legal profession and laypersons. Baker resigned his judgeship in February of 2003 and has not practiced law since that time. Baker has no prior disciplinary record with the Bar.

As a consequence of the facts set forth above, the Court **FINDS** Baker violated the following Disciplinary Rule:

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

In light of the facts and violations found, as well as the Agreed Disposition, it is hereby

ORDERED that the license of Donald Gregory Baker to practice law in the Commonwealth of Virginia is **SUSPENDED** for a period of two and one-half (2.5) years beginning on the date of the entry of this Order. It is further

ENTERED this 15th day of December, 2003.
FOR THE COURT:

HERMAN A. WHISENANT, JR.
Chief Judge Designate of the Three-Judge Court

KENNETH M. COVINGTON
Judge Designate

A. DOW OWENS
Judge Designate



VIRGINIA:

**IN THE CIRCUIT COURT
OF HENRICO COUNTY**

VIRGINIA STATE BAR, EX REL,
THIRD DISTRICT COMMITTEE, SECTION II
V.
HARRISON BENJAMIN WILSON, III
CASE NO. CL 03-764

ORDER OF SUSPENSION

CAME ON THIS MATTER FOR TRIAL on October 8 and 9, 2003, pursuant to Va. Code Section 54.1-3935, as amended, before a Three Judge panel consisting of The Honorable N. Wescott Jacob, The Honorable Joseph E. Spruill, Jr. and The Honorable Charles E. Poston, designated Chief Judge.

The Respondent, Harrison Benjamin Wilson, III, appeared in person represented by his attorney, Murray J. Janus. Deputy Bar Counsel Harry M. Hirsch represented the Virginia State Bar.

UPON the pleadings filed, evidence presented and arguments of counsel, the Court made the following findings with respect to each of the six Virginia State Bar complaints which were incorporated into this proceeding:

1. The Court found by clear and convincing evidence that the Respondent, Harrison Benjamin Wilson, III, was an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant to the instant complaints.

VSB Docket No. 01-032-2209 [Grady]:

The Court determined that the bar proved the following facts by clear and convincing evidence:

I. Findings of Fact:

2. In or about April of 1999, Complainant Felicia Grady's [Felicia] minor daughter allegedly swallowed metal while eating at a pizza restaurant. Felicia met with Wilson on August 3, 1999 and reached an agreement with Wilson that he would represent the daughter for a one-third contingency fee with respect to the pizza case and he would represent Felicia in a divorce case for a fee of \$500.00. It was also understood that Wilson would represent Felicia in a custody matter pending in the City of Richmond Juvenile & Domestic Relations District Court for no additional fees.
3. Wilson wrote Felicia by letter dated August 8, 1999 and enclosed a retainer agreement which recited a one-third contingency fee to represent the daughter in a products liability case and a \$500.00 fee to represent Felicia in a divorce. A retainer agreement was executed on August 17, 1999.
4. Felicia paid Wilson a total of \$500.00 by payments as follows: \$200.00 cash on August 25, 1999; \$200.00 by check; and \$100.00 by check on October 26, 1999.
5. Wilson appeared on behalf of Felicia in the Richmond Juvenile & Domestic Relations General District Court [J & D Court] on October 15, 1999.
6. In a November 22, 1999 letter addressed to the Honorable Ann Holton at the J & D Court, Wilson asked for a continuance of the custody matter and stated, *inter alia*, that he was ". . . serving as a mediator of sorts with the parties, although I officially represent Ms. Grady."
7. By letter dated December 16, 1999, Wilson sent Judge Holton an unsigned document entitled "Consent Agreement" which Wilson indicated he hoped the parties would sign at the hearing later that day. Wilson appeared in the hearing and the case was continued to February 23, 2000.
8. On February 23, 2000, just hours before the custody case was scheduled for hearing, Wilson contacted Felicia and informed her he could not appear in court on that date due to another case commitment. Wilson had scheduled himself to be in court on three different cases in more than one jurisdiction on the same date. One case settled before the court date. In a second case in another jurisdiction, although Wilson reached an agreement with the Commonwealth's Attorney, the client refused to accept the agreement. Faced with two cases in two jurisdictions on the same date, Wilson decided he would not appear at Felicia's hearing.
9. Wilson failed to inform the J & D Court that he would not appear at the February 23, 2000 hearing. Felicia's case was continued to May 17, 2000 on a telephone request from Felicia's husband who also could not appear.
10. Wilson's file contains a March 24, 2000 letter addressed to Judge Holton explaining his whereabouts on February 23, 2000, in which Wilson stated, *inter alia*, that he had "inadvertently triple-booked" his cases for that date. The court file does not contain this letter.
11. Wilson appeared in the custody matter on May 17, 2000; August 30, 2000; and September 13, 2000. Felicia obtained custody of her daughter.
12. Wilson's file contains a document entitled Agreement to Employ Legal Counsel for the pizza restaurant representation as well as an authorization for medical information. Felicia signed the medical information authorization form. The Agreement to Employ Legal Counsel calls for a 40% attorney's fee if the case is tried by a jury.
13. Wilson's file contains a letter dated November 1, 2000, from a claims adjuster acknowledging receipt of Wilson's letter of representation of Felicia's daughter.
14. Wilson's file contains an unsigned separation agreement dated April 27, 2001, which, *inter alia*, states that Wilson represents Felicia's husband and that Felicia is unrepresented; states that both parties relinquish spousal support and waive claims for employment, retirement, profit sharing, insurance and stock option benefits; but does not state any provision for support for either Felicia or her husband; states that the agreement was not to be incorporated into a final decree of divorce; and states that if any portion of the agreement is adjudged to be void or unenforceable, such adjudication *would* affect the validity and enforcement of the remainder of the agreement.
15. During Wilson's representation of Felicia and her daughter, Felicia tried to communicate with Wilson frequently. Many of her phone calls went unreturned although she left messages for Wilson to call her. When on one occasion Felicia received a message indicating that Wilson's phone was disconnected Felicia determined to file a bar complaint in March of 2001.
16. In May of 2001, Felicia retained new counsel.
17. In a December 20, 2001 memo to Virginia State Bar Investigator Cam Moffatt, Wilson stated that he had worked diligently for Felicia and was still representing Felicia on the divorce and Felicia's daughter on the personal injury matter. In a blind post script to Felicia, Wilson asked Felicia to provide him with her address.
18. Wilson never filed suit in the divorce for Felicia and never filed suit in the personal injury case for Felicia's daughter.
19. Wilson maintained no trust account subsidiary ledgers and deposited all funds received into his operating account whether or not said funds constituted earned fees upon payment.

II. Nature of Misconduct:

The Court found that the bar proved by clear and convincing evidence that such conduct on the part of Harrison Benjamin Wilson, III, constituted misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.1, Rule 1.3(a), Rule 1.3(b), Rule 1.4(a), Rule 1.16(a)(2).

The Court found that the bar failed to prove by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.3(c), Rule 1.16(a)(1), Rule 2.10(c).

The Court dismissed all alleged violations of the Virginia Code of Professional Responsibility in all of these matters.

VSJ Docket No. 01-032-2410 [Asjodi]:

The Court determined that the bar proved the following by clear and convincing evidence:

I. Findings of Fact:

20. On or about July 6, 1998, Complainant Mike M. Asjodi [Asjodi] was terminated from his employment by the Halifax County Department of Social Services. Asjodi met with Wilson on September 30, 1998. Wilson wrote a letter to Asjodi dated October 5, 1998 in which he enclosed a retainer agreement for Asjodi's signature and return. In the letter Wilson indicated that he will request the file of Asjodi's former attorney.
21. Asjodi and Wilson signed a retainer agreement dated October 5, 1998 for representation in a federal discrimination civil case for a fee of \$1,500.00 plus 1/4th of any recovery. The agreement shows that \$750.00 had already been paid and the balance was due November 16, 1998 plus a filing fee of \$150.00.
22. Asjodi paid Wilson the total amount due of \$900.00 by check number 1971 dated November 2, 1998. Asjodi noted in the memo portion of the check, "attorney fee, federal court filing fee."
23. Asjodi was issued a right to sue letter by the Equal Employment Opportunity Commission [EEOC] on September 30, 1999. Wilson wrote to the EEOC on January 5, 2000 and asked for a "right to sue date" and an estimate of the cost to obtain a copy of Asjodi's EEOC file. Asjodi paid Wilson \$41.50 for the copying costs of the EEOC file.
24. On or about January 14, 2000, Wilson filed a complaint in the U.S. District Court, Eastern District of Virginia, Richmond Division, styled *Mike M. Asjodi v. Halifax County Department of Social Services* [case]. The complaint contained three counts: employment discrimination alleging disparate treatment and retaliatory firing in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000 *et. seq.* [Title VII] and a violation of the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et. seq.* [ADEA].
25. By an agreed order dated March 14, 2000, the case was transferred to the Western District of Virginia, Danville Division because the case had been filed in the wrong venue. Wilson notified Asjodi of the transfer of the case to Danville by letter dated March 28, 2000.
26. On April 3, 2000, opposing counsel Ronald N. Regnery [Regnery] sent Wilson the defendant's first set of interrogatories and a request for production of documents.
27. A pretrial order was entered by the court on April 5, 2000. The order required, *inter alia*, that both written and oral discovery be completed 45 days prior to trial; and, except for good cause shown, if briefs in opposition to motions are not filed, it will be deemed that the motion is well taken.
28. The due date for plaintiff's responses to defendant's discovery was May 8, 2000.
29. On May 26, 2000, Regnery sent Wilson a letter with a copy of a subpoena *duces tecum* issued to Halifax Regional Hospital for documents relating to Asjodi's claims.
30. On May 31, 2000, Regnery wrote to Wilson referring to a recent discussion which they had and reiterating that discovery responses were due on May 8, 2000, that no responses had been received. Regnery stated that if the plaintiff's response to defendant's discovery was not received by June 7, 2000, Regnery would have to file a motion to compel. Regnery also gave Wilson alternative dates on one of which Regnery wished to depose the plaintiff.
31. On June 5, 2000, Regnery wrote Wilson confirming Wilson's agreement to respond to defendant's discovery on or before June 8, 2000. In the letter Regnery asked Wilson to have Asjodi stop contacting employees of Halifax County Department of Social Services and Regnery reminded Wilson to make information requests through the discovery process.
32. On or about June 16, 2000, Wilson left a telephone message with Regnery's secretary that a fire in his building had prevented him from making a response to the defendant's discovery, that he was in the process of responding and would call Regnery about the matter.
33. On or about June 20, 2000, Regnery wrote Wilson indicating that discovery responses were a month and a half overdue, that the responses must be made immediately, that if responses to discovery were not received by June 22, 2000, Regnery would file a motion to compel. Regnery also indicated that he had not received Wilson's available dates for depositions and his prior letters and telephone calls went unanswered.
34. On or about June 23, 2000, Regnery filed a motion to compel with an accompanying memorandum of law in support of the motion.
35. On July 7, 2000, Regnery noticed Wilson for the deposition of Asjodi on July 27, 2000 and July 28, 2000.
36. On July 24, 2000, the motion to compel of the defendant was granted and Asjodi was ordered to respond to all outstanding discovery on or before close of business on July 25, 2000. The defendant's motion for sanctions was denied but the court stated it could be renewed if Asjodi failed to respond to discovery as ordered.
37. By letter dated July 25, 2000, Wilson provided Regnery with Asjodi's responses to defendant's first set of interrogatories and request for production of documents.
38. By letter to Regnery dated August 22, 2000, Wilson made settlement demands as follows: a firm demand of \$30,000.00 or alternatively a settlement of \$20,000.00 if Asjodi was returned to his job at Halifax County Department of Social Services with seniority. Wilson stated that any settlement required a neutral reference and needed to "allow Mr. Asjodi to resign effective on the same date he was terminated." Wilson asked Regnery to respond as soon as possible and stated:

If we cannot reach a meeting of the minds, we will need to begin to prepare for trial with the “rocket docket” we have in federal court in Virginia.

The case was set for trial on November 30, 2000.

39. Asjodi received a copy of Wilson’s August 22, 2000 letter to Regnery. The letter was the last communication which Asjodi had from Wilson.
40. Regnery responded to Wilson by his letter dated August 24, 2000, in which he rejected the settlement offer. Regnery also stated he would not provide Wilson with documents Wilson had requested at Asjodi’s deposition because Wilson had not made the requests by written interrogatory or request for production of documents. As of the date of the letter, Regnery had not received written discovery from Wilson.
41. Regnery filed a motion for summary judgment on September 15, 2000. A copy of the motion had been hand delivered to Wilson’s office the day before.
42. By his letter to Wilson dated September 19, 2000, Regnery enclosed for endorsement a sketch order permitting attachments of the defendant’s memorandum of law in support of the motion for summary judgment to be placed under seal. Regnery also indicated that the court was holding October 10, 2000, as a date for oral argument on the defendant’s motion for summary judgment.
43. By his letter to Wilson dated September 22, 2000, Regnery sent a notice of hearing for oral argument on the motion for summary judgment. On Wilson’s request for an extension of time to file a brief in opposition to the motion for summary judgment, Regnery granted an extension until the close of business on October 2, 2000, if Wilson had delivered the brief that date. Regnery also noted that Wilson had not endorsed the sketch order sealing the attachments to defendant’s memorandum of law in support of the motion for summary judgment.
44. On October 10, 2000, oral argument was heard on the defendant’s motion for summary judgment. Wilson failed to appear for the argument and failed to contact the court or Regnery about his nonappearance.
45. On October 13, 2000, Wilson filed a motion to rehear. In said motion Wilson, *inter alia*:

—stated that a response to the defendant’s motion for summary judgment was due September 29, 2000;

—stated that Wilson was admitted to a hospital on September 18, 2000 and September 19, 2000;

—stated that Wilson was unaware of a filing extension granted by Regnery to October 2, 2000;

—stated that Wilson did not contact either the court or Regnery about any inability to prosecute his client’s case;

—stated that Wilson had made “scheduling and administrative mistakes” in the last four weeks;

—referred to Wilson’s “poor performance” and “negligence;”

—asked for a ten day extension to respond to the motion.

46. On October 26, 2000, a memorandum in opposition to the motion to rehear was filed. In the memorandum it was noted, *inter alia*, that Wilson had filed no written discovery, had taken no depositions and had issued no subpoenas. It was also noted that Wilson had failed to comply with the pretrial order because he had not filed a brief in support of the motion to rehear.
47. On November 2, 2000, the court granted the defendant’s motion for summary judgment and denied Wilson’s motion to rehear. In denying the motion to rehear, the court found no excusable neglect or good cause to grant the motion, indicating that at the very least Wilson should have notified the defendant and the court of his inability to presently prosecute Asjodi’s case.
48. On November 17, 2000, costs were taxed in the case in the amount of \$3,143.30 which became part of the judgment against Asjodi.
49. By his certified letter sent to Wilson on January 31, 2001, Asjodi asked Wilson about the status of his case and specifically whether the case had settled or whether there was a need to go to court again.
50. Wilson maintained no subsidiary ledgers for his trust account and deposited all funds received into his operating account whether or not said funds constituted earned fees upon payment.

II. Nature of Misconduct:

The Court determined that the bar proved by clear and convincing evidence that such conduct on the part of Harrison Benjamin Wilson, III, constituted misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.1, Rule 1.3(a), Rule 1.3(b), Rule 1.4(a), Rule 1.16(a)(2), Rule 3.4(e).

The Court found that the bar failed to prove by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.3(c), Rule 1.16(a)(1).

VS B Docket No. 01-032-3201 [Wilkins]:

The Court found that the bar had failed to meet its burden of proof by clear and convincing evidence with respect to all allegations of violations of provisions of the Virginia Rules of Professional Conduct and the Court dismissed the Wilkins complaint.

VS B Docket No. 02-032-0612 [Conyers]:

The Court determined that the bar proved the following facts by clear and convincing evidence:

I. Findings of Fact:

51. The minor daughter of Complainant Conyers [Conyers] [daughter] was allegedly assaulted in 1994 on the premises of a private church affiliated school. Upon learning of the assault in July of 1994, Conyers subsequently hired Wilson to represent Conyers and her daughter with respect to the incident [case]. Conyers maintains that she paid Wilson the sum of \$250.00 at some point during the representation.
52. Wilson maintains that he was retained by Conyers to pursue the case in 1999 on a 25% contingency fee basis without a written fee agreement.
53. Wilson sent a letter dated September 28, 1999 to the director of the school indicating a desire to resolve the case "from a civil versus criminal standpoint" and short of expensive and lengthy litigation.
54. By letter dated October 29, 1999, Lauri E. Cleary, Esq. [Cleary] identified herself and her firm as counsel for the school and church and indicated that in a prior phone call Wilson had agreed to respond with details of the claim.
55. By his letter to Cleary dated November 4, 1999, Wilson stated, *inter alia*, that he was anxious to hear from Cleary, that a demand of \$150,000.00 was reasonable, that he had reduced his fee from 1/3 to 1/4 and further stated that, "We would like to quietly resolve this matter."
56. During the period from approximately November 4, 1999, until about June 26, 2001, Wilson took no action on behalf of Conyers or her daughter with respect to the case.
57. On or about June 26, 2001, Conyers spoke with Wilson. Wilson indicated that he would file the case within 7 to 10 days.
58. Conyers' bar complaint, dated June 18, 2001, was received by the bar on August 30, 2001.
59. Wilson's file contains a letter dated August 31, 2001, addressed to the clerk of the circuit court which states that it enclosed a motion for judgment in the case and a check in the amount of \$150.00 for a filing fee. The letter reflects that Conyers and Cleary were copied.
60. Wilson's file contains a letter dated September 26, 2001, addressed to the clerk of the circuit court which states that it encloses a motion for judgment in the case and a check in the amount of \$150.00 for a filing fee. The letter also reflects that Conyers and Cleary were copied.
61. According to Conyers, Wilson asked her for funds to pay court filing fees and she went to Wilson's office and gave him a check for the filing fees payable to the clerk of the circuit court.
62. A suit was filed in the case against the school and church on or about September 28, 2001, by Wilson in the Circuit Court of the City of Richmond, Case No. CL01M02373-00, seeking \$500,000.00 for sexual assault and battery. At Wilson's direction the suit was not served. The clerk's office receipt for filing fees indicates that Wilson paid the filing fees in the form of a money order of \$150.00 plus \$34.00 in cash.
63. By his letter to Wilson dated November 12, 2001, defense co-counsel Peter M. Rosenberg [Rosenberg] indicated that he had a copy of the motion for judgment and wished to meet with Wilson at his office in Bethesda, Maryland, to discuss the case. Wilson wrote to Rosenberg by letter dated November 19, 2001, accepting the offer to meet in Bethesda to discuss an amicable resolution of the case.
64. On December 14, 2001, Wilson faxed a letter to Cleary with a proposal for a structured settlement costing \$150,000.00. In the letter Wilson stated that, "We are anxious to come away from Bethesda with a firm settlement."
65. On December 18, 2001, Wilson and Conyers met with defense counsel in Bethesda, Maryland.
66. By letter dated December 21, 2001, Rosenberg renewed an offer of settlement of \$22,000.00 composed of a \$10,000.00 lump sum payment plus a tax free annuity totaling \$12,000.00 payable in 4 annual payments of \$3,000.00 each beginning on daughter's nineteenth birthday.
67. Wilson sent Rosenberg's \$22,000.00 settlement offer to Conyers by letter dated December 27, 2001 indicating that he wished to meet with Conyers and others, that he believed the defendants would settle for \$50,000.00, that his reduced fee would be \$15,000.00 and he would be willing to further reduce his fee to \$10,000.00. A \$15,000.00 fee on a \$50,000.00 settlement would have amounted to a 30% attorney's fee.
68. On January 2, 2002, Wilson sent Conyers a letter confirming a January 5, 2002, Saturday meeting on the case stating, *inter alia*, that he hoped those who attend would do so "with the thought of closing [daughter's] case to allow her to move forward with her life." The letter shows that it was copied to Investigator Moffatt and to Wilson's attorney representing him in the bar complaint. Conyers was unable to attend the meeting and left Wilson a voice mail message to that effect.
69. Wilson sent Conyers a letter dated January 9, 2002, seeking Conyers' permission to make a counter offer and explaining the posture of the case including the concepts of negligence, contributory negligence and damages. Wilson indicated in the letter that he needed Conyers' strong support for a proposal of a \$50,000.00 counter offer in order to maintain "the momentum of negotiations."
70. By letter dated January 21, 2002, to Conyers, copied to Investigator Moffatt and Wilson's attorney, Wilson indicated that he had tried to reach Conyers and was asking her for authority to settle the case for \$30,000.00 to \$50,000.00.
71. Wilson's file contains a memo to the file dated January 21, 2002, indicating that he would attempt to contact Conyers over the weekend, would move forward with litigation if Conyers rejects settlement discussions, and would need to serve papers ASAP and move forward with discovery.
72. By letter dated February 8, 2002, to Cleary, copied to Conyers and Conyers' niece, Wilson made an attempt to resume settlement discussions and made a counter offer including a \$50,000.00 cash payment plus twelve annual payments of \$10,000.00 each. Wilson noted the basis for

the twelve year payment period was “4 years of college and 8 years of medical school.”

73. Wilson sent a facsimile transmission to Cleary and Rosenberg dated February 14, 2002, indicating that he was anxious to discuss the possibility of settling the case amicably and asking for a return telephone call.
74. Cleary wrote to Wilson on February 19, 2002, responding to Wilson’s \$170,000.00 demand which she had discussed by phone with Wilson. In the letter Cleary reviewed the negotiations, made a full and final offer of \$20,000.00, indicated that Wilson need not respond unless he did so to accept the offer or make a counter offer which was realistically related to the value of the case; otherwise, Cleary suggested the motion for judgment should be served so litigation could proceed.
75. Wilson wrote to Conyers on February 20, 2002, enclosing the \$20,000.00 offer letter from Cleary. Wilson recommended that a counter offer be made of \$50,000.00 and he copied the letter to Conyers’ niece.
76. Wilson sent Conyers’ niece a facsimile transmission dated February 21, 2002, with a copy of the \$20,000.00 offer letter and his February 20, 2002, letter to Conyers about the offer. Wilson did so in order to obtain the niece’s help in persuading Conyers to authorize a settlement between \$20,000.00 and \$50,000.00. The facsimile transmission was copied to Investigator Moffatt and Wilson’s attorney.
77. During the representation, Conyers attempted to telephone Wilson on many occasions. Wilson only returned a few of the telephone calls.
78. Wilson took little or no action in the court case. Daughter became 18 years of age on February 12, 2002. The court case was settled by successor counsel for the plaintiff in the amount of \$26,000.00.

II. Nature of Misconduct:

The Court found that the bar proved by clear and convincing evidence that such conduct on the part of Harrison Benjamin Wilson, III, constituted misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.1, Rule 1.3(a), Rule 1.4(a), Rule 1.5(c).

The Court found that the bar failed to prove by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.3(b), Rule 1.3(c), Rule 1.5(a)(1) through (8), Rule 1.6(a)(1), Rule 1.6(a)(2), Rule 8.4(a).

VSB Docket No. 02-032-1345 [Epes]:

The Court determined that the bar proved the following by clear and convincing evidence:

I. Findings of Fact:

79. On or about January 27, 2000, Complainant Lewanda Epes [Epes] was terminated from employment with Wachovia Bank, N.A. [Wachovia] as a bank teller. Epes had executed personal transactions while on duty as a teller.

80. Epes filed, *pro se*, a motion for judgment in the City of Richmond Circuit Court in July of 2000 and Wachovia had the case removed to federal court [first case]. On September 25, 2000, Epes filed a charge of discrimination with the Equal Employment Opportunity Commission [EEOC], charge number 121A00756.
81. In October of 2000, Epes hired Wilson to represent her in her claim against Wachovia. No written fee agreement was executed; however, the agreed upon attorney’s fee for the representation was \$2,500.00.
82. On October 24, 2000, the first case was dismissed without prejudice by agreement because Epes had not received a right to sue letter from the EEOC and the court was without jurisdiction. On November 1, 2000, Epes filed an amended charge of discrimination with the EEOC, amended charge number 121A00756. On December 26, 2000, the EEOC issued a right to sue letter at the request of Wilson before the applicable 180 day investigative time period had elapsed. On March 20, 2001, Wilson filed a federal complaint against Wachovia and F & M National Corporation alleging discriminatory discharge of Epes and seeking \$300,000.00 in compensatory damages and \$400,000.00 in punitive damages [second case].
83. On April 13, 2001, the U.S. District Court, Eastern District of Virginia, Richmond Division [court] entered an order reciting that the defendants’ motions to strike because the federal complaint was unsigned were withdrawn upon agreement of the plaintiff to cure the defect.
84. Wilson had visited Epes at her Blackstone, Virginia, home twice before an April 2001 appointment date at his office in Richmond. Epes appeared for the appointment but Wilson failed to appear.
85. Wachovia filed a motion to dismiss the second case on April 23, 2001. On April 24, 2001, the federal complaint was dismissed with prejudice as to defendant F & M National Corp. by agreement of counsel.
86. On May 16, 2001, Wilson’s motion for enlargement of time to respond to Wachovia’s motion to dismiss was granted giving Wilson until May 18, 2001 to file a response. Wilson filed a response on May 18, 2001.
87. On June 11, 2001, a hearing was held on the motion to dismiss of Wachovia. The court withheld judgment on the motion and directed Wilson to file an amended complaint.
88. On June 13, 2001, a pretrial order was entered which, *inter alia*, set a trial date of November 19, 2001.
89. By letter to Epes dated June 28, 2001, Wilson reminded Epes of the November trial date. The letter made no mention of the pending motion to dismiss or court directive to file an amended complaint.
90. By July 2, 2001, Wilson had not filed an amended complaint. On July 2, 2001, the court entered an order directing Wilson to file an amended complaint no later than July 11, 2001.
91. On July 23, 2001, the court dismissed the second case based upon Rule 12(b)(6) of the Federal Rules of Civil Procedure. Wilson had failed to file an amended complaint.

92. By July 23, 2001, Epes had paid at least \$300.00 to Wilson as attorney's fees and Wilson had lowered his attorney's fee in the case to \$1,500.00.
93. Epes received an August 1, 2001, notice of foreclosure sale on her property. On August 9, 2001, Epes and Wilson had a telephone conversation. That day Epes wrote a letter to Wilson after the call indicating that her house was being foreclosed upon, the lender had accepted partial payments, enclosing copies of loan payment receipts and reciting names and telephone numbers for Wilson to contact. The foreclosure sale date was August 21, 2001.
94. On August 21, 2001, Wilson filed a notice of appeal in the second case and paid cash for the \$105.00 filing fee. The appeal was dismissed on October 10, 2001, by an order of the Clerk, Fourth Circuit Court of Appeals, for failure to prosecute.
95. On October 31, 2001, Wilson wrote Epes a letter in which he stated, *inter alia*:

This letter serves to inform you that I could not keep the Federal Court from dismissing your case. Due to the fact that other than several \$20 payments, you have been unable to pay anything towards your fee. This did not enable me to continue to do any substantial work to preserve your case.
96. Wilson informed Investigator Cam Moffatt that he did not file an amended complaint because Epes had not paid him and he noted an appeal in order "to protect" himself. Wilson also stated that no depositions were ever taken in the case.
97. Wilson never initiated any discovery in the second case.
98. By her letter to Wilson dated November 14, 2001, Epes requested the return of her papers in the case. As of January 7, 2002, Epes had not received her papers.
99. Wilson failed to communicate with Epes during the representation.
100. Wilson maintained no trust account subsidiary ledgers and deposited all funds received into his operating account whether or not said funds constituted earned fees upon payment.

II. Nature of Misconduct:

The Court found that the bar proved by clear and convincing evidence that such conduct on the part of Harrison Benjamin Wilson, III, constituted misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.1, Rule 1.3(a), Rule 1.3(b), Rule 1.4(a), Rule 1.4(b), Rule 1.15(a)(1), Rule 1.15(a)(2), Rule 1.15(e)(1)(iii), Rule 1.16(a)(2).

The Court found that the bar failed to prove by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.3(c), Rule 1.16(a)(1), Rule 1.16(e).

VSB Docket No. 02-032-2162 [DeLoatch]:

The Court determined that the bar proved the following by clear and convincing evidence:

I. Findings of Fact:

101. On or about January 25, 2001, Complainant Franklin DeLoatch [DeLoatch] and his wife met with Wilson. DeLoatch believed he had been discriminated against by his employer because he had not been offered a retirement package which had been offered to his supervisor and DeLoatch believed the company should have offered it to him when his superior refused the offer [case]. Wilson agreed to handle the case for a \$1,000.00 retainer and told DeLoatch he would contact the employer and try to work something out. If that was unsuccessful, Wilson agreed to file suit, for which he would need additional funds. No written fee agreement was executed.
102. DeLoatch paid Wilson the \$1,000.00 retainer by check number 7640, dated January 25, 2001, on the Bank of America, signed by Judith G. DeLoatch. Wilson negotiated the check on January 26, 2001.
103. Wilson wrote DeLoatch a letter dated February 2, 2001, in which Wilson thanked DeLoatch for entrusting his case to him; stated he would do a "solid" job for DeLoatch; stated he would develop a strategy and prepare a letter to the employer's legal department; and stated that he would stay in touch with DeLoatch.
104. In or about the middle of March 2001, DeLoatch called Wilson's office to find out the status of his case. DeLoatch left a message for Wilson, however, Wilson did not return the telephone call.
105. In or about May of 2001, DeLoatch began calling Wilson and leaving telephone messages for Wilson to call him back.
106. In or about July of 2001, DeLoatch reached Wilson. Wilson told him he would write DeLoatch a letter updating him on the case. DeLoatch did not receive such a letter and did not hear from Wilson again.
107. On December 5, 2001, DeLoatch wrote Wilson a letter expressing his displeasure with Wilson's services in the case. DeLoatch noted that he had not received any correspondence from Wilson since the February 2, 2001, letter and assumed that Wilson had taken no action on the case because DeLoatch had received no other correspondence from Wilson. DeLoatch also indicated that the only prompt action Wilson had taken in the matter was the negotiation of the \$1,000.00 check. DeLoatch stated if Wilson was unable or unwilling to take the case, he demanded the immediate return of his funds. DeLoatch also stated if he did not have a written response from Wilson within ten days, he would file a bar complaint.
108. Wilson did not respond to the December 5, 2001, letter from DeLoatch. DeLoatch filed a bar complaint on or about January 25, 2002. In his bar complaint DeLoatch stated, *inter alia*, that his only desire was to have his retainer refunded to him.
109. Wilson did not refund the \$1,000.00 retainer fee to DeLoatch.
110. The bar's investigation of this matter included an examination of certain bank accounts of Wilson including SunTrust

disciplinary actions

Account number 0000702225010 captioned, "Law Office of Harrison Wilson III Escrow" [trust account 5010]. The following reflect bank statement entries for trust account 5010 as shown:

3/26/01	29.00 Non-sufficient funds penalty	
3/26/01		-200.88
3/30/01	29.00 Non-sufficient funds penalty	
3/30/01		-239.88

Date of Entry

Collected Balance

Bank Statement 4/30/01:

Bank Statement 10/31/00:

10/1/00		-7.40
10/6/00		-614.31
10/11/00	116.00 Non-sufficient funds penalty	
10/11/00		-104.76
10/12/00	116.00 Non-sufficient funds penalty	
10/12/00		-220.76
10/13/00	58.00 Non-sufficient funds penalty	
10/13/00		-278.76
10/16/00	29.00 Non-sufficient funds penalty	
10/16/00	116.00 Non-sufficient funds penalty rebate	
10/16/00		-289.76
10/17/00	145.00 Non-sufficient funds penalty	
10/17/00		-611.52
10/18/00	145.00 Non-sufficient funds penalty	
10/18/00		-631.52
10/19/00	58.00 Non-sufficient funds penalty	
10/19/00		-589.52
10/20/00	58.00 Non-sufficient funds penalty	
10/20/00		-647.52
10/23/00	29.00 Non-sufficient funds penalty	
10/23/00		-676.52
10/24/00	116.00 Non-sufficient funds penalty	
10/24/00		-792.52
10/25/00	29.00 Non-sufficient funds penalty	
10/25/00		-821.52
10/26/00	58.00 Non-sufficient funds penalty	
10/26/00		-879.52
10/27/00	145.00 Non-sufficient funds penalty	
10/27/00		-1,024.52
10/30/00	58.00 Non-sufficient funds penalty	
10/30/00		-1,082.52
10/31/00		-1,092.52

4/1/01		-239.88
4/9/01		-239.88
4/10/01		-121.88
4/25/01	29.00 Non-sufficient funds penalty (Closing transaction)	
4/25/01		-150.88

111. The negative balances in trust account 5010 shown in paragraph 121 herein constitute instances in which the account was out of trust.

112. Upon the deposit on January 26, 2001, into trust account 5010 of the \$1,000.00 retainer fee paid to Wilson for Deloatch, some of the positive collected balances of trust account 5010 were as follows on the dates shown:

Date	Collected Balance
1/26/01	\$ 832.54
1/31/01	98.11
2/1/01	98.11
2/2/01	68.11
2/5/01	138.11
2/7/01	208.55
2/8/01	208.55
2/21/01	26.65
2/22/01	6.65
2/23/01	756.65
2/27/01	686.65
2/28/01	676.65
3/1/01	621.65
3/2/01	261.65
3/5/01	161.65
3/6/01	126.65
3/7/01	96.65
3/9/01	46.65

Bank Statement 11/30/00:

11/1/00	58.00 Non-sufficient funds penalty	
11/1/00		-1,150.52
11/2/00	29.00 Non-sufficient funds penalty	
11/2/00		-1,179.52
11/3/00	29.00 Non-sufficient funds penalty	
11/3/00		-1,208.52
11/16/00	87.00 Non-sufficient funds penalty	
11/16/00		-68.54

113. Upon Wilson's January 26, 2001, deposit of the \$1,000.00 Deloatch retainer, the collected balance of trust account 5010 was less than \$1,000.00. The collected balance of trust account 5010 remained below \$1,000.00 from the deposit date until April 27, 2001, when the account was closed.

114. The investigation of trust account 5010 indicated that client funds were deposited into the account as shown:

Bank Statement 12/31/00:

12/12/00	29.00 Non-sufficient funds penalty rebate	
12/12/00	116.00 Non-sufficient funds penalty rebate	

Deposit Date	Amount	Client	Notation
Bank Statement 12/31/00:			
12/21/00	\$15,000.00	Sonya Johnson and Howard Johnson	CNA insurance check for any and all claims and liens

Bank Statement 3/31/01:

3/13/01	58.00 Non-sufficient funds penalty	
3/13/01		-97.09
3/14/01	58.00 Non-sufficient funds penalty rebate	
3/14/01		-39.09
3/20/01	29.00 Non-sufficient funds penalty	
3/20/01		-143.71
3/22/01	29.00 Non-sufficient funds penalty	
3/22/01	29.00 Non-sufficient funds penalty rebate	
3/22/01		-157.32

Bank Statement 1/31/01:

1/22/01	150.00	Alphonzo Taylor	Thanks (File w/ court)
1/26/01	1,000.00	Franklin DeLoatch	

disciplinary actions

Date	Check No.	Amount	Payee	Notation	Date	Check No.	Amount	Payee	Notation
Bank Statement 2/28/01:									
2/7/01	150.00	Ronald McCollum	Filing fee		11/26/00	1103	10.00	Third St. Bethel AME	(offering)
2/22/01	750.00	Morris Christian	Insurance check for full and final release of all claims		10/20/00	1047	250.00	Geary Gunter II	(Reimbursement 1/2)
					11/25/00	1100	59.01	Food Lion	
					11/29/00	1113	60.81	Kroger	
					11/27/00	1106	100.00	Kiniry & Co.	Rent & office expense
Bank Statement 4/30/01:									
4/9/01	118.00	Geary Gunter II	Filing fee		11-----	1109	1,040.35	Temple-Inland HBWIII mortgage co.	mortgage-modified (Expenses)
115. The collected balance of trust account 5010 prior to the deposit on April 9, 2001 of \$118.00 as a filing fee for Geary Gunter, II, was -\$239.88. The collected balance of the account after the deposit on April 9, 2001 was also -239.88. The collected balance of the account remained negative until the account was closed on April 27, 2001.					12/14/00	counter	100.00	Cash	Football B-day
					12/13/00	1120	19.58	Champs	Towing
					12/20/00	counter	20.00	Cash	Partial fee (Expenses)
					12/23/00	1122	700.00	Cash	Expenses
					12/26/00	1125	200.00	Cash	Expenses
					12/28/00	1128	15.65	Papa John's	pizza & tip (Settlement)
116. Wilson wrote the following checks on trust account 5010 most of which constituted utilizing the account as a personal checking account and/or an operating account, as shown:					12/28/00	1131	7,800.00	Sonya H. Johnson	Expenses
					1/03/01	1135	100.00	Cash	Expenses
					1/04/01	1105	55.00	Cash	Expenses
					1/5/01	1136	261.00	Gundlach	Harrison Wilson, III Home 402 Whitmore Ct. (Secretarial)
10/6/00	1020	404.57	Cabin Creek Amoco	blue car	1/5/01	1117	422.67	Faithful Temps	Secretarial (Van)
10/7/00	1024	419.88	Cabin Creek Amoco	ticket #F74538	1/6/01	1138	100.00	Hylas Auto	(Russell)
10/7/00	1026	12.27	BP	big milk, cereal, small milk	1/6---	1139	22.31	Disco Sports	
10/6/00	1023	310.00	Holy Angels	day care	1/10/01	1144	25.00	Cash	
9/12/00	0096	25.00	NCAA Clearinghouse	Harry [or Harvey] Wilson	1/11/01	1146	106.94	Ukrops	
					1/11/01	1151	27.46	Ukrops	
					1/12/01	1156	75.00	Touchdown Club	Harry Wilson (3 tickets)
10/2/00	1010	295.00	Bill Baker's Auto Service	(passat)	1/13/01	1154	40.00	University of Virginia	admissions fee (Lunch)
10/5/00	counter	40.00	Cash	Exps	1/---/01	counter	20.00	Cash	
10/3/00	1012	30.00	Cash	Exps	1/10/01	1150	40.00	Wake Forest University	admissions fee
9/28/00	counter	5.48	Golden Boys	lunch					
10/10/00	counter	10.44	Ukrops		1/23/01	1159	55.97	Ukrops	
10/16/00	1038	6.56	Golden Boys	lunch	1/23/01	1158	8.44	Ukrops	[illegible]
10/22/00	1049	15.00	Third St. Bethel AME Church	offering	1/12/01	1155	55.00	University of North Carolina	[illegible]
10/22/00	1048	15.05	Bogey's	(Golf practice)	1/18/01	1157	98.00	Roto-Rooter	(Plumbing)
					1/12/01	1153	65.00	Duke University	Admissions fee
10/20/00	1042	187.66	Richmond Free Press	(advertising)					Witt
10/25/00	1053	83.01	Kroger		1/28/01	1168	18.80	Disco Sports	
11/7/00	1062	50.00	Cash	Expenses	1/05/01	1137	20.00	Friends of Holy Angels	
11/6/00	1059	300.00	County of Henrico	water bill	12/29/00	1130	2,000.00	Temple Inland	gymnastics 4001865 rent nov/dec (mortgage)
11/10/00	1078	30.00	Cash						(Mortgage) 4001865 (Service charge)
11/17/00	1080	20.00	Cash	Expenses					
11/10/00	1075	310.00	Holy Angels	Anna's day care - [illegible]	1/1/01	1132	1,000.00	Temple-Inland	
11/12/00	1079	85.76	Food Lion	(Grocs)	1/11/01	1147	20.00	Ukrops	
11/15/00	1082	15.12	East Coast	Gas & food B-fast	1/29/01	1171	5.29	Golden Boys	
					1/31/01	bank debit	1,400.00	-----	deducting money from account
11/16/00	1089	112.79	Food Lion						
[undated]	1098	31.53	7-11						
11/25/00	1101	12.69	7-11						

disciplinary actions

2/5/01	1178	10.00	Harrison B. Wilson III	or cash (Lunch & expenses)	12/21/01	29.00	Insufficient funds penalty	
					12/21/01			-497.08
					12/24/01	29.00	Insufficient funds penalty	
2/2/01	1172	65.00	Dartmouth College	Filing fee (HBWIV)	12/24/01	29.00	Reversal of insufficient funds penalty	-797.08
					12/24/01			
2/12/01	1175	50.00	M.B.N.A.	(Acct # stated)	12/26/01	29.00	Insufficient funds penalty	
					12/26/01	29.00	Reversal of insufficient funds penalty	-677.08
3/2/01	1180	360.00	Cash		12/27/01	29.00	Insufficient funds penalty	
3/5/01	bank debit	100.00	-----	Transfer to 702224820	12/27/01	29.00	Reversal of insufficient funds penalty	-706.72
					12/28/01	29.00	Insufficient funds penalty	
3/12/01	1186	5.74	Golden Boys		12/28/01	29.00	Reversal of insufficient funds penalty	-744.78
3/11/01	1183	80.00	Pet Boys	(Brakes)	12/28/01			-754.78
3/18/01	1184	75.62	Food Lion	(Grocs & gas)	12/31/01			

119. The negative balances in trust account 4480 shown in paragraph 129 herein constitute instances in which the account was out of trust.

120. The investigation of trust account 4480 indicated that client funds were deposited into the account as shown:

Deposit Date	Amount	Client	Notation
Bank Statement 7/31/01:			
7-26-01	7,500.00	Victor Q. Banks	insurance company check referencing stated claim number [part of \$12,500.00 deposit]
7-26-01	5,000.00	Victor Q. Banks	settlement H & W Properties, Hall Associates; Hall, Walker and Hodges [part of \$12,500.00 deposit]

117. The utilization of trust account 5010 for personal purposes or as an operating account constituted the commingling of personal funds with trust funds and/or misappropriation of trust funds.

118. The bar's investigation of this matter included an examination of certain bank accounts of Wilson including SunTrust Account number 0000702224480 captioned, "Law Office of Harrison Wilson III Escrow" [trust account 4480]. The following reflect bank statement entries for trust account 4480 as shown:

Date of Entry	Collected Balance
Bank Statement 6/30/01:	
6/8/01	29.00 Insufficient funds penalty
6/8/01	-71.34
6/15/01	29.00 Insufficient funds penalty refund
6/26/01	29.00 Insufficient funds penalty
6/26/01	-111.51
6/27/01	-111.51
Bank Statement 7/31/01:	
7/3/01	138.48 Paid item [debit for tax levy]
7/3/01	-9.99
7/10/01	-9.99
Bank Statement 12/31/01:	
12/11/01	58.00 Insufficient funds penalty
12/11/01	-406.33
12/12/01	29.00 Insufficient funds penalty
12/12/01	-435.33
12/13/01	29.00 Insufficient funds penalty
12/13/01	-464.33
12/20/01	29.00 Insufficient funds penalty
12/20/01	29.00 Reversal of insufficient funds penalty
12/20/01	-468.08

121. Wilson wrote the following checks on trust account 4480 most of which constituted utilizing the account as a personal checking account and/or an operating account, as shown:

Check Date	Check No.	Amount	Payee	Notation
5/29/01	0091	10,000.00	Collegiate School	Harry Wilson IV
undated	counter	550.00	Cash	
6/6/01	0096	1,000.00	Cash	
6/11/01	0097	25.88	Tiki Tiki	Dinner (Fee)
6/20/01	counter	100.00	Cash	We have debited your account in response to a tax levy
7/3/01	bank debit	138.48		Debit per client
7/31/01	bank debit	50.00		(Bus lunch)
8/7/01	counter	20.00	Cash	Banks fee
8/8/01	counter	50.00	Cash	

8/7/01	1010	6.04	Golden Boys	
8/15/01	1015	50.00	Cash	
11/2/01	bank debit	6,800.00		Guaranty Mortgage Co.
11/2/01	bank debit	500.00		Transfer to 703190768
11/2/01	1019	207.00	Cash	
11/2/01	1022	10,000.00	Kiniry & Co.	(rent)
11/2/01	1021	450.00	Zenobia Peoples	rent for Nov.
11/10/01	1033	400.00	Cash	
11/9/01	1032	10.00	Mobil	Gas only Norfolk
11/24/01	1049	800.00	Guaranty Mortgage Co.	acct no. 4001865
11/28/01	1062	7.23	Padow's	
11/28/01	1063	50.00	Steak Escape	
11/27/01	1057	5.00	Cash	(Expenses)
11/23/01	1047	134.82	Kelleher Heating & Cooling	
11/21/01	1045	300.00	Cash	Deposit
11/9/01	1031	73.00	Chance Center on St. Pauls Cottage	
11/12/01	1039	7.17	Exxon	
11/12/01	1038	14.49	Crown	
11/11/01	1036	10.00	Cabin Creek Amoco	
11/11/01	1035	5.00	Third St. Bethel AME	(missions)
11/11/01	1037	18.94	Farm Fresh	
12/3/01	1067	25.00	Cash	
11/25/01	1053	322.00	Washington Mutual Finance	
12/4/01	1068	75.23	Disco Sports	
11/30/01	1066	24.09	The Oak Leaf	bus lunch
12/4/01	1069	61.58	Ukrops	
12/6/06	counter	100.00	Cash	(Expenses)
12/6/01	1072	441.00	Zenobia Peoples	(Rent)
12/11/01	Electronic Debit	328.83	Progressive Ins.	Ins. prem
12/11/01	1040	14.20	East Coast	
12/20/01	1079	25.00	Cash	
12/20/01	1080	300.00	Cash	(Sect)
12/23/01	1083	29.64	7-11	

122. The utilization of trust account 4480 for personal purposes or as an operating account constituted the commingling of personal funds with trust funds and/or misappropriation of trust funds.
123. The investigation of trust account 4480 revealed that on July 3, 2001, the account was debited for a tax levy. The investigation also revealed that on December 11, 2001, the account incurred an electronic debit denoted "Progressive Ins. Ins Prem."

124. During the time frames shown in the foregoing paragraphs with respect to trust account 5010 and trust account 4480, Wilson failed to operate the trust accounts in accordance with the trust account requirements of Canon 9 of the Virginia Code of Professional Responsibility and Rule 1.15 of the Virginia Rules of Professional Conduct.

II. Nature of Misconduct:

The Court found that the bar proved by clear and convincing evidence that such conduct on the part of Harrison Benjamin Wilson, III, constituted misconduct in violation of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.1, Rule 1.3(a), Rule 1.4(a), Rule 1.15(a)(1), Rule 1.15(a)(2), Rule 1.15 (e)(1), Rule 1.15(e)(2), Rule 1.15(f)(1)(i), Rule 1.15(f)(2), Rule 1.15(f)(3), Rule 1.15(f)(4), Rule 1.15(f)(5), Rule 1.16(a)(2), Rule 1.16(d). The Court found that the bar had failed to prove by clear and convincing evidence violations of the following provisions of the Virginia Rules of Professional Conduct: Rule 1.3(b), Rule 1.3(c), Rule 1.5(a)(1) through (8), Rule 1.15(b), Rule 1.15(c)(1) through (4), Rule 1.15(f)(1)(ii), Rule 1.15(f)(1)(iii)(a) through (c), Rule 1.15(f)(1)(iv), Rule 1.15(f)(1)(v), Rule 1.15(f)(1)(vi), Rule 1.16(a)(1), Rule 8.4(b), Rule 8.4(c).

Suspension of License

The Court heard evidence and arguments of counsel regarding the appropriate sanction which should be imposed. The evidence included the prior record of Harrison Benjamin Wilson, III, consisting of a disciplinary suspension of license for two years effective May 31, 2002 imposed by a Three Judge panel sitting in the Circuit Court of Henrico County and an administrative suspension of license imposed by the Virginia State Bar Disciplinary Board on November 12, 2002 for failure to pay costs arising out of the two year suspension trial.

IT IS ORDERED that effective October 9, 2003 the license of Harrison Benjamin Wilson, III, to practice law in the Commonwealth of Virginia is suspended for a period of one year, to run concurrently with the existing two year suspension imposed on May 31, 2002.

* * *

ENTERED THIS 15th DAY OF JANUARY, 2003.
 Charles E. Poston, designated Chief Judge
 N. Westcott Jacob, Judge
 Joseph E. Spruill, Jr., Judge



DISCIPLINARY BOARD

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

IN THE MATTER OF
JOHN MICHAEL DIJOSEPH
 VSB DOCKET NO. 02-041-2657, 02-041-3238,
 03-041-1063, 03-041-1293,
 03-041-1687, 03-041-1688,
 03-041-1689, 03-041-1690,
 03-041-1816, AND 03-041-2531

[Respondent has filed an appeal with the Virginia Supreme Court.]

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board for hearing on November 21, 2003, at 9:00am. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Roscoe B. Stephenson, III, Chair, presiding, and Dennis P. Gallagher, Lay Member, Larry B. Kirksey, James L. Banks, Jr., and H. Taylor Williams, IV.

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

The Respondent, John Michael DiJoseph (“Respondent” or “Mr. DiJoseph”) appeared in person represented by John Click, Esquire.

Seth M. Guggenheim, Esquire, Assistant Bar Counsel, appeared for the Virginia State Bar.

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

The Virginia State Bar filed thirty-four exhibits that were received and accepted into the record in addition to Respondent’s prior disciplinary record.

The Respondent filed no exhibits.

The Bar and Respondent further agreed to the following stipulated facts:

STIPULATED FACTS

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

As to VSB Docket No. 02-041-2657:

2. Ms. Kelly L. Bowman (hereafter “Complainant”) retained the Respondent in or around April, 2000, to research the possibility of vacating a felony conviction to assist her in becoming certified as an emergency medical technician.
3. The Respondent charged the Complainant a “flat fee” of \$2,000.00 for his legal services, which Complainant paid to him, in full, at the inception of Respondent’s engagement. The Complainant also supplied the Respondent with documents pertinent to her legal matter.
4. The Respondent met with the Complainant over an approximately eight month period.
5. Following the approximately eight month period during which the Respondent would meet with the Complainant, the Respondent continued responding to Complainant’s telephone messages and e-mail inquiries, but failed to respond in a timely manner as required by the rules of professional conduct.
6. On or about December 14, 2001, the Complainant sent the Respondent a letter stating, *inter alia*, as follows:

I am writing this final request asking for the return of all the papers and documents I loaned to

you for your review when I retained your services in April 2000. I, as well as my father, have repeatedly attempted to contact you via telephone at your home, cell phone, at your office, as well as through email seeking your cooperation with this matter. Your lack of response and communication has us both concerned. Your prompt response to this matter is greatly appreciated. If I do not receive the documents and accompanying paperwork within ten days I will refer this request to the Virginia Bar Association for action.

7. By way of response to her letter, the Complainant received a telephone call from someone on Respondent’s behalf, stating that the Respondent was unavailable and would be returning in mid-January, 2002. After waiting and then hearing nothing further from the Respondent, the Complainant renewed her efforts to secure her documents via a telephone call and an e-mail. The e-mail was sent to Respondent on Wednesday, January 16, 2002, and stated

This is my final attempt to contact you before going before the Virginia State Bar. I have received the return receipt from the registered letter I sent you requesting my documents be returned. I hope this finds you well; and I hope to hear from you soon.

8. The Respondent answered the Complainant’s e-mail on Thursday, January 17, 2002, stating: “Hi Kelly: I know that LM has talked to you. I should have your records ready by Monday. Will notify you. Best. JOHN”
9. The Complainant telephoned the Respondent on January 28, 2002. During the phone call, the Respondent stated that he wished to set up a time to meet with the Complainant to return her documents, and that she should call the Respondent again in a week. The Complainant telephoned the Respondent one week thereafter, only to receive his voice mail. As of the time that Complainant prepared her Complaint to the Virginia State Bar on February 11, 2002, she had heard nothing further from the Respondent.
10. In response to the Bar Complaint, the Respondent sent a fax to the Virginia State Bar intake office, dated March 11, 2002, stating, in pertinent part, as follows:

I last saw [the Complainant] about six months ago. I had not seen or heard from her for about six months prior to that meeting. I had placed her file that contained mainly research and court documents in storage prior to the next to last meeting as she had decided to forego litigation for various reasons. I told her at the last meeting, as I do with many of my clients, that I wanted to give her her file if she wanted it. If not, I would destroy it. She said she would let me know, which she never did. I have looked for her file and cannot find it. I vaguely recall giving her some of the file at the next to last meeting.

11. On October 18, 2002, the Respondent was interviewed by a Virginia State Bar investigator. The Respondent advised the investigator that during a lunch he had with the Complainant he had given her a portions of her file, consisting of one three ring binder, and that with the exception of his own research notes he had returned all of the Complainant’s documents to her.

12. To date, the Respondent has failed to return the portion of file which was not previously returned, and to furnish her with other of Respondent's file materials to which the Complainant is entitled. In fact, the portion of the Complainant's file which was not previously returned has been lost by the Respondent.

13. On March 6, 2003, the Respondent was served with a subpoena *duces tecum*, which, among other things, compelled the production of the "complete" client file for the Complainant's case, as well as

[a]ll documents of whatever type or description, or true copies of the same, in your possession, custody or control, of any type and nature, omitting nothing therefrom, pertaining to any legal fees, costs, and expenses incurred, or alleged to have been incurred, by or on behalf of [the Complainant] respecting your representation of [the Complainant], including, but not limited to, any fee agreement(s), all billing statements and billing records, including the trust account subsidiary and/or individual client ledger cards.

14. The Respondent produced no material related to Complainant's legal matter in response to the subpoena *duces tecum* beyond a written statement claiming "File returned to her." No fee agreements, billing statements and records, or any trust account records of any type or description for Complainant's legal matter were provided by the Respondent to the Virginia State Bar pursuant to the subpoena *duces tecum*, notwithstanding the fact that Complainant's payment of \$2,000.00 at the inception of the representation was an advance of legal fees which the Respondent was required to deposit in an attorney trust account and to maintain trust account records with respect thereto.

As to VSB Docket No. 02-041-3238:

15. On or about August 1, 2001, Mohammad I. Khokhar (hereafter "Complainant") retained the Respondent to represent his interests in a civil suit that had been filed against the Complainant and other individuals. The Complainant tendered a check made payable to the order of the Respondent on that same date in the sum of \$1,000.00. Subsequently, at the Respondent's request, the Complainant tendered an additional check made payable to the order of the Respondent in the sum of \$500.00.

16. At the time that Respondent was retained, a default judgment had been entered against the Complainant, but no final judgment had been entered inasmuch as an evidentiary hearing to set the amount of damages had yet to be conducted.

17. One possible defense which the Respondent discussed with the Complainant was to have been predicated upon averments that he was not a proper party defendant because he was a stranger to the transaction giving rise to the plaintiff's cause of action and that his identity had been confused with that of his brother who was also a defendant in the suit, and who was separately represented.

18. The Respondent did not move to set aside the default judgment that had been entered against the Complainant,

either before the evidentiary hearing which the Respondent did not attend, or prior to the time a judgment entered against the Complainant, in excess of \$62,000.00, became final.

19. The Complainant was subjected to enforcement action upon the judgment via an appearance before a Commissioner to conduct debtor's interrogatories, without benefit of counsel. The Complainant also sustained losses occasioned by the seizure and/or surrender of his assets as part of the enforcement action.

20. In response to the Bar Complaint filed by the Complainant, the Respondent stated and claimed that he had been retained during the pendency of the civil matter in question merely to "investigate" and "review" the Complainant's legal matter, which the Complainant disputes.

21. On March 6, 2003, the Respondent was served with a subpoena *duces tecum*, which, among other things, compelled the production of the "complete" client file for the Complainant's case, as well as

[a]ll documents of whatever type or description, or true copies of the same, in your possession, custody or control, of any type and nature, omitting nothing therefrom, pertaining to any legal fees, costs, and expenses incurred, or alleged to have been incurred, by or on behalf of [the Complainant] respecting your representation of [the Complainant], including, but not limited to, any fee agreement(s), all billing statements and billing records, including the trust account subsidiary and/or individual client ledger cards.

22. The Respondent produced no material related to Complainant's legal matter in response to the subpoena *duces tecum* beyond a written statement claiming "No file. Used file of Ted Kavrukov, Esquire, who represented Mr. Khokhar's friends." No fee agreements, billing statements and records, or any trust account records of any type or description for Complainant's legal matter were provided by the Respondent to the Virginia State Bar pursuant to the subpoena *duces tecum*. Respondent did not deposit the fees tendered into his attorney trust account.

As to VSB Docket No. 03-041-1063:

23. In or around October, 2001, McArthur Britt, Sr., (hereafter "Complainant") retained the Respondent to handle a civil matter then pending in state court in Prince George's County, Maryland. At that time, the Respondent met with the Complainant in the Complainant's home office in the state of Maryland, and rendered legal advice.

24. The Respondent requested, and was paid, the sum of \$1,800.00 by the Complainant at the inception of the representation. The Respondent failed to deposit the sum tendered by the Complainant in an attorney trust account, but instead deposited the entire sum in his operating account.

25. At the time scheduled on the first court date upon which the Respondent was to appear, he failed to do so, and the Complainant called him. By the time the Respondent arrived, the case had to be continued by the Court because time did not permit its full presentation.

26. On the occasion of the second scheduled court date, the Respondent appeared with counsel authorized to practice law in the state of Maryland, and informed the court that he, the Respondent, was not authorized to practice law in the state of Maryland. The presiding judge continued the case and requested the attorneys to attempt settlement of the matter.
27. The Complainant thereafter engaged a different attorney to handle his matter, and attempted via telephone and faxed messages over a period of months, without success, to secure the return of his documents from the Respondent.
28. The Respondent did not, at any time following the termination of legal services, tender a refund of unearned fees to the Complainant; nor did the Respondent account to the Complainant respecting the manner in which the fees tendered were applied to any legal services performed, or costs charged, respecting the Complainant's legal matter.
29. On October 23, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold and 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." 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.

As to VSB Docket No. 03-041-1293:

30. On or about August 14, 2002, Mr. Ron Berman (hereafter "Complainant") engaged the Respondent to enter his appearance and continue Complainant's representation in a suit filed pro se by the Complainant in the Montgomery County, Maryland, Circuit Court. As of the time he retained the Respondent, Complainant had made a credit card payment to the Respondent in the sum of \$1,500.00, which sum the Respondent deposited in his operating account, and not in an attorney trust account. After discharge, the Respondent failed to refund any portion of the fees or return the file.

As to VSB Docket No. 03-041-1687:

31. In or around October, 2001, Steven A. Hardy, (hereafter "Complainant") retained the Respondent to handle a civil matter then pending in state court in Prince George's County, Maryland.
32. The Respondent requested the sum of \$1,500.00 as a legal fee, and was paid the sum of \$700.00 by the Complainant at the inception of the representation. The Respondent failed to deposit the sum tendered by the Complainant in an attorney trust account, but instead deposited the entire sum in his operating account.
33. The Complainant discharged the Respondent following a court appearance in February, 2002.
34. The Respondent did not, at any time following the termination of legal services, tender a refund of unearned fees to the Complainant; nor did the Respondent account to the

Complainant respecting the manner in which the fees tendered were applied to any legal services performed, or costs charged, respecting the Complainant's legal matter. After termination, the Respondent did not refund any portion of fees or return the file.

35. On December 17, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

As to VSB Docket No. 03-041-1688:

36. In late 2001 and continuing into 2002, the Respondent met with several present and former female employees of the Washington Metropolitan Area Transit Authority (WMATA), and discussed filing a "class action" employment discrimination lawsuit against the employer. The Respondent was paid by the individuals who attended meetings with the Respondent, none of which advanced fees was placed in an attorney trust account, and all of which were deposited in Respondent's operating account.
37. The Respondent scheduled at least three meetings with these individuals.
38. During the course of these meetings, Clara B. Weaver (hereafter "Complainant") tendered by way of a credit card payment the sum of \$1,500.00 to the Respondent for representation of her interests as a member of the "class."
39. The Respondent deposited the entire sum of \$1,500.00 in his operating account, and not in an attorney trust account, as required.
40. The Respondent has filed no suit on the Complainant's and the other individuals' behalf; has failed to account to the Complainant respecting the sums she tendered to him; and has failed to refund all or any portion of the sums he was paid by the Complainant for the "class action" suit.
41. On December 19, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

As to VSB Docket No. 03-041-1689:

42. In the year 2000, Ms. Denise Brooks (hereafter "Complainant") hired the Respondent to represent her interests in a discrimination case. She paid him the sum of \$1,500.00, which Respondent deposited to his operating account, and not to an attorney trust account, as required.

43. The Respondent has filed no suit on the Complainant's and the other individuals' behalf; has failed to account to the Complainant respecting the sums she tendered to him; and has failed to refund all or any portion of the sums he was paid by the Complainant. The Respondent did not return the file.
44. On December 18, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

As to VSB Docket No. 03-041-1690:

45. Mr. John E. Davis (hereafter "Complainant") was one of sixteen WMATA bus drivers who met with Respondent, for the purpose of engaging him to represent them in a "class action" suit for back pay. The Respondent was to have made demand upon WMATA for the pay in question, and thereafter to have filed suit if the matter were not settled following the demand.
46. The Respondent accepted the sum of \$50.00 from the Complainant. The Respondent at no time deposited any sums so collected in an attorney trust account; rather all sums tendered were deposited in Respondent's operating account.
47. The Respondent has performed services and spent a number of hours performing work for the Complainant and other "class action" clients, but has not pursued the "class action" claim in court or any other forum on his clients' behalf; has failed to account to the Complainant and others respecting the sums tendered to him; and has failed to refund all or any portion of the sums he was paid by the Complainant and others for the "class action" representation.
48. On December 18, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

As to VSB Docket No. 03-041-1816:

49. In or around late 2001, Ms. Judy J. Jones (hereafter "Complainant") paid the Respondent the sum of \$1,500.00 to handle an employment retaliation matter. The Respondent deposited Complainant's payment into his operating account, as opposed to an attorney trust account, as required.
50. Before engaging the Respondent, the Complainant had prevailed in a suit against WMATA, and her objective was

to have Respondent enforce her rights against WMATA for retaliation arising from the Complainant's prior suit.

51. The Respondent informed the Complainant that the Court dismissed her retaliation claim, without prejudice.
52. Following dismissal of the matter as stated above, the Respondent requested additional fees from the Complainant to refile her retaliation case.
53. As Respondent was handling Complainant's retaliation matter, the Complainant joined other individuals interested in having Respondent file a "class action" employment discrimination lawsuit against WMATA. The Complainant paid the Respondent an additional sum of \$1,500.00, none of which was placed in an attorney trust account, and all of which was deposited in Respondent's operating account.
54. The Respondent scheduled and attended numerous meetings respecting the "class action" suit.
55. The Respondent has filed no suit on the Complainant's and the other individuals' behalf; has failed to account to the Complainant respecting the sums she tendered to him; and has failed to refund all or any portion of the sums he was paid by the Complainant for the "class action" matter.
56. The Respondent failed to timely respond to Complainant's letter to him requesting a refund and her file materials.
57. On January 3, 2003, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: "please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

As to VSB Docket No. 03-041-2531:

58. In October of 2000, Mr. Marion D. Lenoir (hereafter "Complainant") retained the Respondent to file a lawsuit against Prince George's County, Maryland, for a violation of Complainant's civil rights by members of the police department of that jurisdiction. At the time he retained the Respondent, the Complainant tendered a check to the Respondent in the sum of \$1,500.00 as an advance of legal fees.
59. After several weeks had elapsed, the Respondent communicated with the Complainant by telephone, advising him that the suit would be prepared within approximately one week. After approximately one and one-half weeks following that phone conversation, the Complainant received a draft of the proposed suit papers from the Respondent.
60. As of the time of filing of Complainant's complaint to the Virginia State Bar in February of 2003 concerning Respondent's failure to communicate and to pursue Complainant's legal matter, the contemplated lawsuit had not been filed. As of the time he was interviewed by a Virginia State Bar investigator on April 2, 2003, concerning

the Bar complaint, the Respondent had yet to file the lawsuit on behalf of the Complainant. One of the reasons for delay proffered to the investigator during the interview was that Respondent had difficulty getting Maryland-licensed attorneys to move his admission to the Maryland courts because the attorneys whom he consulted feared “retaliation” for being associated with a suit against the Prince George’s County, Maryland, government.

61. On March 3, 2003, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainant in this matter, and stating, *inter alia*, in bold text, the following: “please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter.” The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.
62. On March 6, 2003, the Respondent was served with a subpoena *duces tecum*, which, among other things, compelled the production of the “complete” client file for the Complainant’s case, as well as

[a]ll documents of whatever type or description, or true copies of the same, in your possession, custody or control, of any type and nature, omitting nothing therefrom, pertaining to any legal fees, costs, and expenses incurred, or alleged to have been incurred, by or on behalf of [the Complainant] respecting your representation of [the Complainant], including, but not limited to, any fee agreement(s), all billing statements and billing records, including the trust account subsidiary and/or individual client ledger cards.
63. The only materials produced by Respondent for Complainant’s legal matter in response to the subpoena *duces tecum* were a copy of a search warrant and related return; the draft of a lawsuit; and a single-page, handwritten, seven-entry itemization of work allegedly performed for the Complainant. No fee agreements, billing statements and records, or any trust account records of any type or description for Complainant’s legal matter were provided by the Respondent to the Virginia State Bar pursuant to the subpoena *duces tecum*.
64. Neither the Bar nor the Respondent shall call witnesses during the misconduct phase of the proceeding, and each side shall argue its position with regard to the nature of the alleged misconduct.
65. The Respondent shall be permitted to present witnesses for the sanctions phase, if applicable, and the Bar shall be permitted to call witnesses for rebuttal purposes only.

FINDINGS OF MISCONDUCT

Having received the exhibits and stipulations of the parties, and after hearing argument, the Board retired to deliberate its findings of misconduct. The Board unanimously finds, by clear and convincing evidence that the evidence demonstrates the following violations:

1. As to VSB Docket No. 02-041-2657: Rules of Professional Conduct 1.4(a), 1.15(a), 1.15(e), 1.16(e), 8.1(a), and 8.4(b).

The Board did not find a violation of 1.3(a).

2. As to VSB Docket No. 02-041-3238: Rules of Professional Conduct 1.1, 1.3(a), 1.15(a), and 1.15(e).
3. As to VSB Docket No. 03-041-1063: Rules of Professional Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), 1.16(e), 5.5(a), and 8.1(c).
4. As to VSB Docket No. 03-041-1293: Rules of Professional Conduct 1.15(a), 1.16(d), and 1.16(e). The Board notes that based upon the evidence contained in VSB Exhibit 19 there was sufficient evidence to find that Respondent violated Rule of Professional Conduct 3.3(a) in this matter also. However, there was no certification to the Board for such a violation nor was there any stipulation regarding such a violation in this matter. Therefore, the Board makes no such finding here.
5. As to VSB Docket No. 03-041-1687: Rules of Professional Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), 1.16(e), and 8.1(c).
6. As to VSB Docket No. 03-041-1688: Rules of Professional Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), and 8.1(c).
7. As to VSB Docket No. 03-041-1689: Rules of Professional Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), and 8.1(c).
8. As to VSB Docket No. 03-041-1690: Rules of Professional Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), and 8.1(c).
9. As to VSB Docket No. 03-041-1816: Rules of Professional Conduct 1.15(a), 1.15(c)(3), 1.15(c)(4), 1.16(d), 1.16(e), and 8.1(c). The Board did not find a violation of 1.4(a).
10. As to VSB Docket No. 03-041-2531: Rules of Professional Conduct 1.3(a), 1.15(e), and 8.1(c).

IMPOSITION OF SANCTIONS

After announcing its findings the Board heard evidence and argument relative to sanctions. The Bar presented Respondent’s previous disciplinary record and made further argument for sanctions. Respondent presented evidence *ore tenus* and made argument for purposes of the Board’s consideration of sanctions. In considering all of the evidence and arguments regarding sanctions, the Board while noting Respondent’s minimal previous disciplinary record concluded that the number of violations along with the similar nature of the violations throughout the various complaints led it to the conclusion that the Board’s duty to protect the public required that Respondent’s license to practice law be revoked.

Accordingly, it is **ORDERED** that the license to practice law in the Courts of this Commonwealth heretofore issued to **JOHN MICHAEL DiJOSEPH**, Esquire, be and the same is hereby **REVOKED**, effective November 21, 2003.

ENTER THIS ORDER THIS 10th DAY OF December, 2003
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Roscoe B. Stephenson, III, Chair



VIRGINIA:

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF

ELLEN FRANCES ERICSSON, ESQUIRE

VSB DOCKET NUMBERS 02-053-0134

02-053-0916

02-053-4028

03-053-0618

04-000-0458

(CRESPA VIOLATIONS)

ORDER

This matter came on December 8, 2003, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District-Section III Subcommittee and the Notice of Violations of the Virginia Consumer Real Estate Settlement Protection Act ("CRESPA") and Virginia State Bar Regulations promulgated thereunder. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of V. Max Beard, lay member, James L. Banks, Esquire, Bruce Clark, Esquire, Peter A. Dingman, Esquire, and Robert L. Freed, Esquire, Second Vice Chair presiding.

Seth M. Guggenheim, Esquire, representing the Bar, the Respondent, Ellen Frances Ericsson, Esquire, and her counsel, Cary S. Greenberg and Daniel S. Schumack, Esquire, presented an endorsed Agreed Disposition, dated December 8, 2003, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Dorothy J. Lewis, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, telephone (804) 730-1222.

Having considered the Certification, the aforesaid Notice of Violations, 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, Ellen Frances Ericsson, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia, although not at all times in good standing.

As to VSB Docket No. 02-053-0134:

2. On April 25, 2001, the Respondent conducted a residential real estate refinance settlement for Edward J. Schiess and Elaine Schiess (hereafter "Complainants").
3. Contained among the lender's instructions to the Respondent was the requirement that she "provide [to the lender a] copy of renewed hazard insurance policy with paid receipt."
4. Respondent did not withhold any funds at closing with which to renew the existing hazard insurance policy. Neither the lender whose loan was being refinanced nor the new lender paid the insurance premium from their respective loan escrow accounts, and, as a consequence thereof, the Complainants received a notice of cancellation from their insurance company on or about June 1, 2001, advising them that their policy would be canceled on or about June 19, 2001.

5. Following the Complainants' receipt of the notice of cancellation, Complainant Elaine F. Schiess contacted Respondent's office, but was dissatisfied with the response received. Ms. Schiess thereafter investigated the circumstances herself, and procured a copy of the lender's settlement instructions from the lender. Ms. Schiess then attempted, via telephone calls and letters, to have the Respondent address the issue, but the Respondent failed to communicate with the Complainants thereafter.
6. On August 3, 2001, Bar Counsel directed a letter of that date to Respondent, enclosing a Complaint filed by the Complainants in this matter, and stating, *inter alia*, in bold and 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." 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.

As to VSB Docket No. 02-053-0916:

7. On May 31, 2001, the Respondent conducted a settlement for a residential real estate sale, wherein Jeffrey R. Bourne and Kristin M. Bourne (hereafter "Complainants") were the sellers.
8. The Complainants relocated from Virginia to Texas in advance of the real estate settlement, and had authorized the Respondent to execute settlement documents on their behalf.
9. On August 27, 2001, the Virginia State Bar received a Complaint from the Complainants alleging, *inter alia*, that despite promises made to them by the Respondent's personnel, no final documentation from the May settlement transaction had been forwarded to them and funds due them from a settlement tax escrow had not been wired to their bank account by the Respondent. The Complainants also alleged that telephone messages left at Respondent's office had not been returned since mid-July, 2001.
10. On September 13, 2001, Virginia State Bar intake counsel sent a letter to the Respondent requesting that she communicate with the Complainants and answer their questions about the status of their matter, and that she inform the Bar in writing of the action taken. Intake counsel further indicated that a resolution of the matter would avoid the necessity of the Bar's opening a formal ethics inquiry.
11. Having received no response from Respondent to the September 13, 2001, letter, intake counsel directed yet another letter to Respondent on September 27, 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.
12. The Respondent did not respond to intake counsel's September 27, 2001, letter and an active investigation file was opened and assigned to Bar Counsel. On October 12, 2001, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold and 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.” 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.

13. The Virginia State Bar conducted an investigation of the Complaint filed in this matter. *Inter alia*, the investigation revealed that:
 - a. At the time of the real estate settlement, the Respondent escrowed the sum of \$1,033.76 otherwise due the Complainants as proceeds of sale, pending verification from Prince William County, Virginia, that real estate taxes for the first half of 2001 had been paid.
 - b. Complainant Kristin Bourne asserts that she spoke by phone to a staff member in Respondent’s office on or about July 15, 2001, and was informed that verification had been received that the real estate taxes had been paid, and that the sums withheld at settlement by the Respondent would be wired to the Complainants.
 - c. On August 9, 2001, Respondent’s personnel signed for a certified letter sent to Respondent by the Complainant Jeffrey Bourne expressing dissatisfaction that the sums withheld at settlement for real estate taxes were never wired to the Complainants, as promised, and that the settlement documents had never been sent. The letter also informed the Respondent that the Complainants had placed approximately 15 calls to the Respondent’s office over the prior three months, with only three calls having been returned.
 - d. The Complainants had still not received from the Respondent the settlement documents and aforesaid escrowed sales proceeds from the May 31, 2001, settlement as of September 11, 2002, when a Virginia State Bar investigator conducted a telephone interview with Complainant Kristin Bourne.
14. During the course of investigating this, and the other matters set forth herein, the Virginia State Bar determined that Respondent’s license to practice law in the Commonwealth of Virginia was suspended on October 15, 2001, for her failure to comply with Paragraphs 11, 18 and/or 19, of Part Six, Section IV, of the Rules of the Supreme Court of Virginia, and that she personally signed for the certified mail notice from the Virginia State Bar issued on that date advising of her of such suspension. The suspension of Respondent’s license continued until November 8, 2001, when her license to practice law was reinstated.
15. Notwithstanding the said suspension, the Respondent continued to perform real estate sale and refinance settlement transactions, wherein she performed services, such as the preparation of deeds and legal instruments. Between October 17, 2001, and November 8, 2001, inclusive, the Respondent performed at least (19) such transactions, and she identified each one by name, file number, and transaction type to a Virginia State Bar investigator.

As to VSB Docket No.02-053-4028:

16. On June 26, 2002, the Virginia State Bar received a Complaint from Ms. Brooke Snyder (hereafter “Complainant”), a real

estate agent, alleging that two contractors had not been paid nominal amounts due them from Respondent, as settlement agent, from the proceeds of a residential real estate sale which settled on April 18, 2002.

17. On July 1, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold text, the following: “please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter.” The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.
18. Prior to the time the Complaint in this matter was filed, the Respondent and her staff failed to respond to Complainant’s repeated inquiries concerning the status of the payments due the contractors. A member of Respondent’s staff did, however, incorrectly inform the Complainant on June 18, 2002, that new checks had been mailed to the contractors on June 12, 2002, and that stop payments had been issued against checks earlier mailed to, but not received, by the contractors.
19. The investigation conducted by the Virginia State Bar revealed that no checks were issued to the contractors on June 12, 2002. As of the time a Virginia State Bar investigator interviewed the Respondent on August 14, 2002, the Respondent’s records reflected that she issued a check to one contractor on June 26, 2002, and that no “replacement” check had been issued to the second contractor. On August 14, 2002, the Respondent issued a check to the second contractor from the proceeds of a settlement that had been conducted on April 18, 2002.
20. During the course of the investigation of this, and the other matters contained herein, the Virginia State Bar determined that the Respondent had failed to transmit, for a period of weeks following the settlement, that portion of the available settlement proceeds required to pay off a seller’s (Jim Uphoff’s) residential mortgage loan.

As to VSB Docket No. 03-053-0618:

21. On August 30, 2002, the Virginia State Bar received a Complaint from Mr. John S. Williamson (hereafter “Complainant”) concerning Respondent’s failure to attend to certain post-settlement obligations related to the settlement of a real estate sales transaction which Respondent conducted on October 8, 2001.
22. On September 11, 2002, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold text, the following: “please review the complaint and provide a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter.” The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.
23. As of the time he filed his Complaint, the Complainant had not received from the Respondent the owner’s real estate title insurance policy which he had purchased at settle-

ment and the original, recorded, deed to his property. The Complainant began calling Respondent's office in April of 2002, in an effort to secure the documents due him, and he received inaccurate information and unfulfilled promises from Respondent's staff. The Complainant was informed that the Respondent was unavailable to take his calls, and she at no time returned any of Complainant's calls, despite his specific requests that the Respondent return his calls.

24. A Virginia State Bar investigator interviewed the Respondent on September 24, 2002, and asked her why she did not return the Complainant's calls and speak with him directly. The Respondent answered by stating that she does not return calls because she does not have the time.
25. As of the time of the Respondent's interview by the investigator on September 24, 2002, nearly one year following the real estate settlement, the Respondent had still not forwarded the owner's title insurance policy and the recorded deed to the Complainant. It was not until September 27, 2002, that the Complainant received those documents from the Respondent. The record shows that the deed was timely recorded, and that the owner's title insurance policy was issued retroactive to the closing date.

As to VSB Docket No. 04-000-0458 (CRESPA VIOLATIONS):

26. The Respondent's license to practice law in the Commonwealth of Virginia was administratively suspended on October 15, 2001, for her failure to pay dues, certify the status of professional liability insurance, and comply with continuing legal education requirements, pursuant to Paragraphs 11, 18 and/or 19, of Part Six, Section IV, of the Rules of the Supreme Court of Virginia. She personally signed for the certified mail notice from the Virginia State Bar issued on that date advising her of such suspension. The suspension of Respondent's license continued until November 8, 2001, when her license to practice law was reinstated.
27. As of the date of Respondent's law license suspension, she was duly registered as a "Registered Real Estate Settlement Agent" under CRESPA, and had been so registered since January 4, 2001.
28. Respondent's registration as a real estate settlement agent had been granted to her under CRESPA, and the Regulations promulgated thereunder, based on her status as an active member of the Virginia State Bar in good standing. When her license to practice law was suspended, as aforesaid, her eligibility to continue in the capacity of a real estate settlement agent terminated.
29. Accordingly, on October 17, 2001, the Director of Membership of the Virginia State Bar sent a certified letter to the Respondent, which stated as follows:

Pursuant to the suspension of your Virginia law license, your CRESPA file has been closed effective October 15, 2001. You cannot lawfully conduct residential real estate closings after this date.

If you should start performing escrow, closing, or settlement services, you must re-register as a settlement agent under CRESPA.

30. The Respondent personally accepted the October 17, 2001, letter from the Director of Membership, and signed the certified mail receipt therefor on October 25, 2001. The Respondent did not re-register as a real estate settlement agent under CRESPA until August 22, 2002. The Respondent asserts that she assumed that reinstatement of her law license on November 8, 2001, automatically reinstated her CRESPA registration.
31. Despite the cancellation of her CRESPA registration and her personal receipt of a letter from the Virginia State Bar stating that she could not lawfully conduct residential real estate closings after October 15, 2001, until she had re-registered under CRESPA as a settlement agent, the Respondent nonetheless continued to conduct residential real estate settlements as a settlement agent between October 25, 2001, and August 22, 2002. The Respondent conducted a significant number of residential real estate closings as a real estate settlement agent during the period when she was not registered as required under CRESPA and the Regulations promulgated thereunder.
32. The Respondent continued to perform residential real estate sale and refinance settlement transactions as an attorney settlement agent during the period of her aforesaid Virginia law license suspension. Between October 17, 2001, and November 8, 2001, inclusive, the Respondent performed at least nineteen (19) such transactions, and she identified each one by name, file number, and transaction type to a Virginia State Bar investigator.
33. On May 31, 2001, the Respondent conducted a settlement for a residential real estate sale, wherein Jeffrey R. Bourne and Kristin M. Bourne were the sellers.
34. At the time of the real estate settlement, the Respondent escrowed the sum of \$1,033.76 otherwise due the Bournes as proceeds of sale, pending verification from Prince William County, Virginia, that real estate taxes for the first half of 2001 had been paid.
35. The Respondent failed to timely disburse the Bournes' escrowed proceeds to them. The Bournes had still not received from the Respondent the escrowed sales proceeds from the May 31, 2001, settlement as of September 11, 2002, when a Virginia State Bar investigator conducted a telephone interview with Kristin M. Bourne.
36. On April 18, 2002, the Respondent acted as settlement agent in the settlement of a residential real estate sale of property located in Virginia. The Respondent was not registered under CRESPA, as required, at the time of the settlement. On June 26, 2002, the Virginia State Bar received a Complaint from Ms. Brooke Snyder, a real estate agent, alleging that two contractors had not been paid sums due them from Respondent, as settlement agent, from the proceeds of the said settlement.
37. Prior to the time Ms. Snyder complained to the Bar, the Respondent and her staff failed to respond to Ms. Snyder's repeated inquiries concerning the status of the payments due the contractors. A member of Respondent's staff did, however, incorrectly inform the Complainant on June 18, 2002, that new checks had been mailed to the contractors on June 12, 2002, and that stop payments had

been issued against checks earlier mailed to, but not received, by the contractors.

38. The investigation conducted by the Virginia State Bar revealed that no checks were issued to the contractors on June 12, 2002. As of the time a Virginia State Bar investigator interviewed the Respondent on August 14, 2002, the Respondent's records reflected that she issued a check to one contractor on June 26, 2002, and that no "replacement" check had been issued to the second contractor. On August 14, 2002, the Respondent issued a check to the second contractor from the proceeds of a settlement that had been conducted on April 18, 2002.
39. During the course of the investigation of this, and the other matters contained herein, the Virginia State Bar determined that the Respondent had failed to transmit, for a period of weeks following the settlement, that portion of the available settlement proceeds required to pay off a seller's (Jim Uphoff's) residential mortgage loan.
40. During the course of investigations related to matters contained herein, the Virginia State Bar investigator was presented with a copy of a letter to the Respondent dated July 8, 2002, from a representative of the Chicago Title Insurance Company. The letter stated that the title insurance company had "received a few calls recently from mortgage companies and brokers because they did not receive funds in accordance with the lender's instructions." The letter also stated that when the representative visited the Respondent's office what he found "was an operation in great need of organization and additional staff." The letter identified "issues" that "must be resolved in the near future" as follows:
 - **The office needs to be adequately staffed and organized.**
 - **Packages to lenders must go out in accordance with the lender's instructions. There can be no excuse for not sending checks to brokers, lenders, appraisers, surveyors, and others in a timely fashion.**
 - **The escrow account must be fully reconciled on a monthly basis. The Company will want to see evidence that this has been done and will continue to be done by August 15th.**
 - **All documents that pertain to a particular file (title work, commitment, signed settlement statement, recorded documents, surveys, affidavits, etc.) must be secured in the file.**
 - **Each file must reflect that there was a bring down done from the date of the commitment through recording.**
 - **Policies must be sent to your clients in a timely fashion and reported to Chicago Title within 90 days of settlement unless there are unusual circumstances.**

The Respondent was not registered under CRESPA at the time the title insurance company representative visited her office and wrote her the aforesaid letter concerning the unsatisfactory conditions referred to therein.

41. The Respondent submitted a certification to the Virginia State Bar on January 4, 2001, wherein she sought an exemption from the CRESPA requirement that she obtain a blanket fidelity bond or an employee dishonesty insurance policy covering employees or the legal entity in which she practiced. To obtain such an exemption, the Respondent certified that she had "no employees other than [herself] or other licensed owner(s), partner(s), shareholder(s), or member(s) of the legal entity in which [she] practice[d]." The Respondent was granted the exemption on the basis of her certification.
42. Between January 4, 2001, and August 22, 2002, when the Respondent re-registered with CRESPA, as aforesaid, the Respondent hired employees to perform services on her behalf in her capacity as settlement agent, without so informing the Virginia State Bar that she was no longer eligible for the aforesaid fidelity bond and/or employee dishonesty insurance policy exemption. The Respondent would testify, however, to the fact that she timely obtained the bond required, despite her failure to notify the Bar.

The Board finds as applicable mitigating factors recognized by the American Bar Association, as follows:

- a. (previous) personal and emotional problems;
- b. absence of a prior disciplinary record; and
- c. interim rehabilitation.

The Board finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provisions of the Rules of Professional Conduct, the Virginia Consumer Real Estate Protection Act ("CRESPA"), and the Virginia State Bar Regulations adopted pursuant to CRESPA:

RULE 1.1 Competence

RULE 1.3 Diligence
(a) ***

RULE 1.4 Communication
(a) ***

RULE 1.15 Safekeeping Property
(c) (4) ***

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

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

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

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

RULE 5.5 Unauthorized Practice Of Law
(a) (1) ***

RULE 8.1 Bar Admission And Disciplinary Matters
(c) ***

Respondent's aforesaid conduct also violates the following provisions of the Virginia Consumer Real Estate Protection Act ("CRESPA"), and the following Virginia State Bar Regulations adopted pursuant to CRESPA:

Sections 6.1-226A and 6.1-2.27 of the 1950 Code of Virginia, as amended.

15 VAC 5-80-50 D of the Virginia State Bar Regulations.

Upon consideration whereof, it is ORDERED that:

1. The Respondent shall receive a twenty-four (24) month suspension of her license to practice law in the Commonwealth of Virginia and of her CRESPA registration as an attorney real estate settlement agent, with all but sixty (60) days thereof to be suspended upon the condition that the Respondent commits no further violations of the Rules of Professional Conduct and/or CRESPA and the Regulations promulgated thereunder between the date this Agreed Disposition is approved by the Virginia State Bar Disciplinary Board and December 15, 2005. The effective date of the active sixty (60) day portion of Respondent's law license and CRESPA registration suspensions shall be January 1, 2004. Should any disciplinary tribunal of the Virginia State Bar, including a three-judge circuit court, find that Respondent committed a violation of the Rules of Professional Conduct and/or CRESPA and the Regulations promulgated thereunder between the date this Agreed Disposition is approved by the Virginia State Bar Disciplinary Board and December 15, 2005, then, and in such event, the Virginia State Bar Disciplinary Board shall impose the balance of the suspended portion of the twenty-four (24) month law license and CRESPA registration suspension terms. Prior to any imposition of the said suspended term, as provided for herein, the Respondent shall be entitled to show cause by clear and convincing evidence, if any she can, before the Virginia State Bar Disciplinary Board, why the suspended portion of her law license and CRESPA registration suspensions should not be imposed. Unless the term of Respondent's active suspension exceeds one year, the provisions of Part Six, § IV, ¶ 13(D)(7)(c) of the Rules of the Supreme Court of Virginia ("Reinstatement After Disciplinary Suspension for More than One Year") shall not apply.
2. Neither the Respondent nor any business entity in which she has any interest shall receive any income which is in any way related to real estate settlement transactions conducted on any date falling within the period that Respondent's law license and CRESPA registration are actively suspended pursuant to the terms of Paragraph 1 hereof. "Income" shall be deemed to include any payments or things of value tendered as salary, compensation as an independent contractor, commissions, title insurance premiums, and/or any fee-for-service. The specific intent of this Paragraph 2 is that Respondent receive no compensation of any character whatsoever, either directly or indirectly, on account of real estate settlement transactions conducted during the active term of her law license and CRESPA registration suspensions as provided for herein. Notwithstanding anything to the contrary set forth in this Paragraph, the Respondent shall be entitled to receive the proceeds of title insurance premiums charged by any title insurance agency that she may lawfully operate during the term of her active suspension.
3. Subject to the provisions appearing below, when the Respondent resumes the private practice of law as a Virginia-licensed attorney following the term of her active suspension, including her acting as a Registered Real Estate Settlement Agent under CRESPA, she shall thereupon promptly engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to review and make written recommendations concerning Respondent's law and real estate settlement practice policies, methods, systems, and procedures. Respondent shall institute and thereafter follow with consistency any and all recommendations made to her by Ms. Johnston following her evaluation of the Respondent's law and real estate settlement practice. Respondent shall grant Ms. Johnston access to her practice from time to time, at Ms. Johnston's request, for purposes of ensuring that Respondent has instituted and is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). Respondent will have discharged her obligations respecting the terms contained in this Paragraph if she has fulfilled and remained in compliance with all of the terms contained in this Paragraph for a period of two (2) years following the date of her engagement of Ms. Johnston's services. The provisions of this Paragraph 3 shall *not* apply during any period while Respondent is engaged in the private practice of law and/or as a Registered Real Estate Settlement Agent as a *bona fide* employee of a law firm or other business entity in which Respondent has no interest whatsoever as owner, shareholder, director, officer, partner, member, or manager; *provided, however*, that if and when the Respondent ceases to be a *bona fide* employee under the conditions referred to above, she shall engage, or re-engage, Ms. Johnston pursuant to the terms and conditions set forth above for the balance of the said two (2) year period, it being specifically intended that Respondent have the benefit and comply with Ms. Johnston's evaluation and recommendations for a period which, in the aggregate, covers a period of two (2) years.
4. The Respondent shall by checks made payable to the order of the "Virginia State Bar" pay a penalty for the violations of CRESPA and the Regulations promulgated thereunder in the sum of Seven Thousand Five Thousand Dollars (\$7,500.00). The terms of payment shall be as follows: \$2,500 on each of the following dates: January 1, 2004, April 21, 2004, and June 21, 2004. All checks tendered pursuant to the terms hereof shall be delivered on or before their respective due dates to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314.
5. If the Respondent engages in the practice of law and/or acts in the capacity of a "settlement agent" as defined in Section 6.1-2.20 of the 1950 Code of Virginia, as amended, during any period when her license to practice law and her CRESPA registration are suspended, or, if Respondent fails to comply with any of the terms set forth in the preceding Paragraphs 2 through 4, inclusive, in the manner

and at the time compliance with any such term is required, then, and in such event, the Virginia State Bar Disciplinary Board shall, as an alternative disposition to the license suspension otherwise provided for herein, REVOKE the Respondent's license to practice law in the Commonwealth of Virginia; and it is further

ENTERED this 8th day of December, 2003.
Robert L. Freed, Second Vice Chair
Virginia State Bar Disciplinary Board



VIRGINIA:

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

IN THE MATTER OF
VINCENT NAPOLEON GODWIN
VSB DOCKET NO. 00-010-1692
VSB DOCKET NO. 01-010-0068

OPINION AND ORDER OF SUSPENSION

These matters were certified to the Virginia State Bar Disciplinary Board (the "Board") by the First District Subcommittee and came on to be heard on December 12, 2003, by a duly convened panel of the Board, consisting of Roscoe B. Stephenson, III, Chair, W. Jefferson O'Flaherty, lay member, Richard J. Colten, Virginia W. Powell, and Robert E. Eicher. The Clerk of the Disciplinary System timely sent all notices required by law.

The respondent, Vincent Napoleon Godwin ("Respondent") was present and represented himself. The Virginia State Bar (the "Bar") was represented by Assistant Bar Counsel Edward L. Davis. The proceedings were recorded by Tracy J. Stroh, a registered court reporter, Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 780-1222, having been duly sworn by the Chair.

The Chair inquired of the members of the panel of the Board whether any of them had a personal or financial interest or bias that would preclude their hearing the matter fairly and impartially. Each member and the Chair answered the inquiry in the negative.

**I VSB Docket No. 00-010-1692
(Wilbert Hall)**

Bar Exhibits 1 through 8 were admitted in evidence without objection. The Board also received from counsel for the Bar a Certification as to Stipulations without objection from the Respondent. The Respondent did not offer any exhibits.

Oral testimony was received from witnesses called by the Bar, viz., Wilbert Hall, Eugene L. Reagan, who is an investigator for the Bar, and the Respondent. The Respondent testified on his own behalf.

Upon consideration of the evidence and argument, the Board finds that the following facts were proved by clear and convincing evidence, to wit:

1. At all times relevant to this matter, the Respondent was licensed to practice law in the Commonwealth of Virginia.
2. On April 26, 1999, the Respondent approached Wilbert Hall ("Mr. Hall"), a long-time family friend, about a loan from Mr. Hall because the Respondent was behind in the payment of some bills. Mr. Hall, who had made loans to the Respondent on prior occasions, agreed to make the loan the Respondent requested.
3. On April 27, 1999, Mr. Hall delivered his check payable to the Respondent in the amount of \$7,500. The Respondent endorsed the check in blank and returned it to Mr. Hall, whereupon Mr. Hall gave the Respondent what Mr. Hall claims to have been a loan of \$7,500, and the Respondent claims to have been a loan of \$5,000. The Respondent gave Mr. Hall the Respondent's promissory note, dated April 27, 1999, payable to Mr. Hall on or before June 1, 1999, in the amount of \$7,500. The Board notes that whether the loan made was \$5,000 or \$7,500 is of no consequence with respect to the charges of misconduct against the Respondent.
4. The Respondent did not repay the loan to Mr. Hall on June 1, 1999. Instead, the Respondent offered Mr. Hall a \$2,500 bonus if Mr. Hall would extend the time for repayment. Mr. Hall agreed, and on July 6, 1999, the Respondent delivered his promissory note to Mr. Hall in the amount of \$10,000, payable to Mr. Hall on or before September 1, 1999.
5. The Respondent defaulted in payment on September 1, 1999, but thereafter promised payment to Mr. Hall. On September 20, 1999, Mr. Hall obtained a warrant in debt against the Respondent in the amount of \$7,500, returnable to court on October 20, 1999. The Respondent met Mr. Hall at the courthouse steps on the return date and said he needed two more weeks to pay. Mr. Hall agreed and had the court continue the case until November 3, 1999.
6. On November 2, 1999, the Respondent delivered a check payable to Mr. Hall in the amount of \$10,000, which the Respondent postdated to November 12, 1999, telling Mr. Hall that it would take ten days for the money to be in the bank. Mr. Hall then continued the case to December 8, 1999. The Respondent's check for \$10,000, number 2007, was drawn on his law office Escrow Account at First Union National Bank.
7. The Respondent knew when he delivered the \$10,000 check drawn on his Escrow Account that there were not sufficient funds on deposit to cover the check. Mr. Hall deposited the Respondent's check on November 24, 1999, and it was returned on November 30, 1999, for not sufficient funds.
8. Subsequent to November 30, 1999, Mr. Hall called the Respondent about his returned check. The Respondent told Mr. Hall that the Respondent was having trouble getting money transferred in Canada to cover his check.
9. Mr. Hall appeared in court on December 8, 1999, and took judgment against the Respondent for \$7,500 pursuant to the warrant in debt.

10. The Respondent failed to appear in response to Mr. Hall's summons to answer debtor's interrogatories on March 15, 2000.
11. Mr. Hall informed the Respondent of Mr. Hall's intention to file a complaint with the Bar regarding the returned check drawn on the Respondent's Escrow Account. The Respondent replied that Mr. Hall should not file a complaint because the Respondent had used other checks drawn on his Escrow Account, the complaint would result in a "bag of worms" for his law license, Mr. Hall would have no way to get his money if the Respondent could not practice law.
12. The Bar's investigator's testimony, coupled with bank records of the Respondent's Escrow Account, showed three other checks that the Respondent drew against his Escrow Account for personal expenses, one for compensation due an employee and two for the Respondent's rent.

Upon consideration of the foregoing, the Board, in closed session, unanimously found by clear and convincing evidence that the Respondent's conduct constitutes a violation of the following:

DR 1-102. Misconduct.
(A) (3) ***

DR 9-102. Preserving Identity of Funds and Property of a Client.
(A) (1) and (2) ***

**II. VSB Docket No. 01-010-0068
(Geraldine Jones)**

Bar Exhibits 1 through 3 were admitted in evidence without objection. The Respondent did not offer any exhibits.

Oral testimony was received from witnesses called by the Bar, *viz.*, Geraldine Jones, Eugene L. Reagan, who is an investigator for the Bar, and the Respondent. The Respondent testified on his own behalf.

Upon consideration of the evidence and argument, the Board finds that the following facts were proved by clear and convincing evidence, to wit:

1. At all times relevant to this matter, the Respondent was licensed to practice law in the Commonwealth of Virginia.
2. Geraldine Jones ("Mrs. Jones") met with the Respondent at his office on July 7, 1998, about filing an individual bankruptcy proceeding for her and her husband. The meeting lasted approximately fifteen minutes. The Respondent gave her an information sheet to fill out and return. The Respondent stated his fee as \$600, and Mrs. Jones paid him \$200 on account.
3. Mrs. Jones and her husband had second thoughts about a bankruptcy. She did not meet with the Respondent again until December 30, 1999, when he told her that she needed to update the information sheet for him to move the bankruptcy filing along. Mrs. Jones paid \$225 to the Respondent on December 30, 1999, which he either deposited in his operating account or placed in his desk drawer, instead of in his trust account.

4. Mrs. Green returned to the Respondent's office to meet with him in April of 2000 and pay the balance of \$175 due. The Respondent told her to come back in a couple of weeks. Mrs. Jones returned to the Respondent's office a couple of weeks later and found the office locked and the Respondent's name removed from the door. The Respondent had not informed Mrs. Jones of a change in his location or address.
5. The Respondent never prepared or filed a bankruptcy petition for Mrs. Jones and her husband and had no file to turn over to her. Mrs. Jones hired another bankruptcy lawyer.
6. Between July of 1998 and April of 2000 the Respondent had no communication with Mrs. Jones excepting her visit to his office on December 30, 1999.
7. The Respondent's Escrow Account at First Union National Bank was closed on January 31, 2000, and was then overdrawn. The last deposit had been on November 1, 1999. On July 24, 2000, the Respondent told Mrs. Jones that he would refund \$425.00 to her; he has not done so.

Upon consideration of the foregoing, the Board, in closed session, unanimously found by clear and convincing evidence that the Respondent's conduct constitutes a violation of the following:

DR 1-102. Misconduct.
(A) (3) ***

DR 9-102. Preserving Identity of Funds and Property of a Client.
(A) (1) and (2) ***
(B) (4) ***

As to misconduct that took place after January 1, 2000, the Board found that the following Rules of Professional Conduct are applicable were violated:

RULE 1.4 Communication
(a) ***

RULE 1.15 Safekeeping Property
(a) (1) and (2) ***
(c) (3) and (4) ***

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

The Board, after announcing its findings of misconduct, called for evidence in mitigation or in aggravation. Counsel for the Bar stated that the Respondent had no prior disciplinary record, that the Respondent resides in Massachusetts, and that the Respondent does not engage in the practice of law.

The Respondent testified that the \$10,000 check he gave Mr. Hall should not have been drawn on his Escrow Account, that his doing so occurred because the check books for his Escrow Account and Operating Account were similar, and that he took the Escrow Account check book from his desk hurriedly and did not pay attention to which check book he was using. The Respondent said he knew that he did not have \$10,000 in the bank when he delivered the check, and that he did not expect Mr. Hall would deposit the check.

With respect to the other three checks drawn on his Escrow Account, the Respondent said that the check book was at hand, and that it was expedient to use it because the payments had to be made. The Respondent admitted that he was wrong and made a serious mistake in drawing checks on his Escrow Account for personal expenses.

The Respondent said he knew that he should have refunded Ms. Jones' \$425 to her. He also said that he should have notified her he was closing his law practice. In the Hall matter and the Jones matter, the Respondent said that his conduct was completely out of character because of extreme stress he was undergoing in his family life during the relevant time period. The Bar's investigator testified that the Respondent appeared to be under stress when he interviewed the Respondent.

The Respondent said that he opened his law office in 1991, and that until the Hall matter and the Jones matter, he had never drawn a check on his Escrow Account for personal expenses, never had a check returned for insufficient funds, and never withheld money from deposit in his Escrow Account when he had not performed the services for which the money was paid him. The Respondent said that he moved to Massachusetts in June of 2000 and resides there and has not practiced law since at least June of 2000.

III. Imposition of Sanction

Upon consideration of the foregoing, the Board found, and it is so ORDERED, that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of three (3) years effective December 12, 2003.

ENTERED this 29th day of January, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD

By Roscoe B. Stephenson, III, Chair



VIRGINIA:
VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF
EDITH CHARMAINE GRAY, ESQUIRE
VSB DOCKET NUMBERS 02-052-2811
AND 02-052-2877

ORDER

This matter came on the 6th day of January, 2004, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of the Fifth District Committee Section I. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of James Leroy Banks, Jr., Esquire, Bruce Taylor Clark, Esquire, Peter Allan Dingman, Esquire, Thaddeus T. Crump, and Roscoe Bolar Stephenson, III, Esquire, presiding.

Noel D. Sengel, Esquire, representing the Bar, and the Respondent, Edith Charmaine Gray, Esquire, by her counsel, Michael L. Rigsby, Esquire, presented an endorsed Agreed

Disposition. The hearing was transcribed by Dorothy Lewis, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

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

1. At all times relevant hereto, the Respondent, Edith Charmaine Gray, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

VSB Docket Number 02-052-2811

2. In late December of 2001, the Respondent contacted Lender's Service, Inc. to reinstate her status as closing agent to conduct real estate closings for the company. Lender's Service, Inc. ("LSI") is a company that assists real estate mortgage lenders with the administrative details associated with coordinating residential real estate closings.
3. George and Nancy Penn (the "Penns") had applied for a loan ("refinance loan") with Wells Fargo Home Mortgage, Inc. ("Wells Fargo") to pay off their existing first and second mortgages with Bank of America and First Union National Bank, respectively. Wells Fargo approved the loan, and Mr. and Mrs. Penn made an appointment with the Respondent to close the refinance loan. It is unclear whether the appointment was made through Wells Fargo or LSI, but the Respondent did schedule a meeting with the Penns on January 26, 2002, at the offices of Real Settlement Group for the purpose of closing the Wells Fargo refinance loan. Wells Fargo failed to provide the needed documentation to conduct the closing on that date, and the closing was rescheduled for January 29, 2002.
4. The Penns met with the Respondent on January 29, 2002. At that time, neither Bank of America nor First Union National Bank had provided the Respondent with the pay-off amount necessary to pay off their respective loans. The Respondent completed the HUD 1 Settlement Statement for the transaction as completely as possible with the information then known to her.
5. The Respondent called Mrs. Penn on or about February 1, 2002, to enlist her aid in obtaining the payoff figures for the Penns' loans with Bank of America and First Union National Bank. The Respondent received the payoff amount from First Union National Bank by February 4, 2002, but did not receive the payoff amount from Bank of America until February 19, 2002.
6. The loan commitment from Wells Fargo was to expire on February 4, 2002. Wells Fargo sent its financing check to the Respondent who promptly deposited it in her real estate escrow account. The Respondent timely disbursed a payoff check to First Union National Bank. The Respondent did not inform the Penns, however, that she had paid off the First Union National Bank mortgage or that she continued to have difficulty in obtaining the payoff amount from Bank of America for some two weeks.
7. The Respondent paid off the Bank of America mortgage by check dated February 18, 2002, and made further dis-

bursements by checks dated February 19, 2002. The Respondent did not issue a check to the Penns for their net proceeds from the refinancing until February 26, 2002.

VSF Docket Number 02-052-2877

8. Between late January 2002 and February 15, 2002, LSI forwarded a number of residential real estate financing loans that had been approved by Wells Fargo. The Respondent was to schedule meeting dates with the borrowers, complete HUD 1 Settlement Statements, obtain signatures to notes and deeds of trust provided by Wells Fargo, receive loan proceeds from Wells Fargo, record the Wells Fargo Deed of Trust and disburse the loan funds as appropriate.
9. Between late January 2002 and February 15, 2002, LSI forwarded more than seventy (70) Wells Fargo loan closings to the Respondent for handling. The Respondent conducted thirty-four (34) of the Wells Fargo/LSI closings between late January of 2002 and February 15, 2002. On February 15, 2002, representatives from American Pioneer Title Insurance Company retrieved all the files that had been referred to the Respondent by Wells Fargo/LSI. Between February 19, 2002, and February 22, 2002, the Respondent and John Fries, an LSI employee, worked together to complete a number of HUD 1 Settlement Statements and disburse funds from the Respondent's real estate escrow account. Those files for which the Respondent had not yet conducted settlements were transferred to another agent within the LSI network for settlement.
10. The Respondent acknowledges that she received more closing files from LSI than she could promptly and properly handle. The Respondent further acknowledges that as a result she did not always deposit the loan proceeds check from Wells Fargo upon receipt or disburse funds following the three business days' right of rescission period in a refinance settlement.
11. During the approximately three (3) weeks the Respondent served as closing attorney for LSI, the Respondent did not ask LSI to refrain from sending her further closing files to handle despite the fact she could not handle the volume of work sent her by LSI and did not have the necessary staff to assist her.
12. During the approximately three (3) weeks the Respondent served as closing attorney for LSI, the Respondent's real estate escrow account was always in trust.
13. All fees due the Respondent from LSI were held by LSI and used for the clients' benefit. LSI and Wells Fargo paid late fees, additional interest and settlement agent closing fees for the clients affected by the Respondents delayed disbursements.

The Board finds by clear and convincing evidence that such conduct on the part of Edith Charmaine Gray, Esquire constitutes a violation of the following Rule(s) of the Virginia Code of Professional Responsibility:

RULE 1.3 Diligence
(a) ***

RULE 1.15 Safekeeping Property

- (c) A lawyer shall:
(4) ***

It is hereby ORDERED that the Respondent shall receive a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard. The terms and conditions shall be met by January 31, 2005, are as follows:

1. The Respondent shall complete twelve (12) hours of continuing legal education approved by the Virginia State Bar in the areas of real estate law and/or law office management in addition to the mandatory continuing legal education hours required to maintain her license to practice law in the Commonwealth of Virginia. Upon completion of such term, the Respondent shall so certify under oath in writing to the Assistant Bar Counsel assigned to this case, and provide to Assistant Bar Counsel assigned to this case Virginia State Bar MCLE Form 2, listing the name, date and location of the continuing legal education course and number of hours attended.
2. When and if the Respondent resumes the private practice of law as a Virginia licensed attorney, including acting as a Registered Real Estate Settlement Agent under CRESPA, she shall thereupon promptly engage the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to review and make written recommendations concerning the Respondent's law and real estate settlement practice policies, methods, systems, and procedures. The Respondent shall institute and thereafter follow with consistency any and all recommendations made to her by Ms. Johnston following her evaluation of the Respondent's law and real estate settlement practice. The Respondent shall grant Ms. Johnston access to her practice from time to time, at Ms. Johnston's request, for purposes of ensuring that the Respondent has instituted and is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of the Respondent's level of compliance with her recommendations. The Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). The Respondent will have discharged her obligations respecting the terms contained in this Paragraph if she has fulfilled and remained in compliance with all of the terms contained in this Paragraph until January 31, 2005. The provisions of this Paragraph 2 shall not apply during any period while the Respondent is engaged in the private practice of law and/or as a Registered Real Estate Settlement Agent as a bona fide employee of a law firm or other business entity in which the Respondent has no interest whatsoever as owner, shareholder, director, officer, partner, member, or manager. Provided, however, that if and when the Respondent ceases to be a bona fide employee under the conditions referred to above, she shall engage, or re-engage, Ms. Johnston pursuant to the terms and conditions set forth above for the balance of any period prior to January 31, 2005.

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 January 31, 2005, the alternative sanction shall be a suspension of the Respondent's license to practice law in the Commonwealth of Virginia and her ability to register as an agent under CRESPA for a period of six months (6) months.

It is further ORDERED that this matter be removed from the Board's docket and placed among the closed files, since there is no further action to be taken unless the Respondent fails to comply with the terms imposed by the Disciplinary Board, in which case a show-cause proceeding will be initiated.

It is further ORDERED that upon representation by the Assistant Bar Counsel to the Virginia State Bar Disciplinary Board that the Respondent has failed to comply with the terms and conditions as set forth above, a show-cause proceeding will be initiated before the Disciplinary Board seeking imposition of the alternative sanction. Any show-cause proceeding will be considered a new matter, and under Pt. 6, § IV, ¶¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court of Virginia, the Respondent will be assessed an administrative fee and costs of such show-cause proceeding.

Enter this Order this 8th day of January, 2004.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, III
 Chair



**VIRGINIA:
 VIRGINIA STATE BAR DISCIPLINARY BOARD**

IN THE MATTER OF
ANTOINE IAN MANN, ESQUIRE
 VSB DOCKET # 04-000-1341

ORDER OF SUSPENSION

This matter came to be heard on December 29, 2003, via telephone conference call, on an Agreement to Imposition of Reciprocal Discipline and a Rule to Show Cause and Order of Suspension and Hearing issued against Antoine Ian Mann, Esquire, ("Respondent"). This matter was heard by a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Roscoe B. Stephenson, III, presiding, Chester J. Cahoon, Jr., Robert E. Eicher, Glenn M. Hodge, and Ann N. Kathan.

Marian L. Beckett, Esquire, appeared on behalf of the Virginia State Bar, and the Respondent, Antoine Ian Mann, Esquire, appeared through and by his guardian *ad litem*, Gordon P. Peyton, Esquire, and presented an endorsed Agreed Disposition.

The court reporter for the proceeding, Donna Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia, 23227, (804) 730-1222, was duly sworn by Mr. Stephenson.

Each member of the panel stated on the record that he or she had no business or financial interest and no personal bias that would impair his or her ability to hear the matter fairly and impartially.

FINDINGS OF FACT

Having considered the Rule to Show Cause and Agreement to Imposition of Reciprocal Discipline with attachments, it is the unanimous decision of the Disciplinary Board that the Agreement to Imposition of Reciprocal Discipline be accepted and the Board finds by clear and convincing evidence as follows:

1. Respondent was licensed to practice law within the Commonwealth of Virginia on January 11, 1995. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia. At all times relevant hereto and until September 23, 2003, the Respondent has been an attorney licensed to practice law in the state of Maryland.
2. On September 23, 2003, the Court of Appeals for the state of Maryland indefinitely suspended Respondent's right to practice law in that jurisdiction. The suspension arose subsequent to the filing of charges against the Respondent at the request of the Maryland Review Board and/or the Maryland Attorney Grievance Commission related to eight (8) complaints of misconduct. Before the hearing on the merits of these complaints, the Respondent agreed to a Joint Petition for Indefinite Suspension by Consent. According to the Joint Petition, the parties agreed to an indefinite suspension "due to Respondent's psychological and/or psychotic problems that cannot be diagnosed at this time due to Respondent's abuse of alcohol." In addition, the Joint Petition states that the Respondent consented to an indefinite suspension "because he knows if a hearing were to be held, sufficient evidence could be produced to sustain the allegations of misconduct."
3. The disciplinary action of the Court of Appeals of Maryland constituted a final decision.
4. By Rule to Show Cause and Order of Suspension and Hearing dated November 14, 2003, Respondent's license to practice law in Virginia was immediately suspended pursuant to Paragraph 13(G), Part Six, § IV of the Rules of the Supreme Court of Virginia, as amended, and the Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. on December 12, 2003, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked. He was further ordered pursuant to the provisions of Paragraph 13, Part Six, § IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, as amended, to give notice by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to all clients for whom he was currently handling matters and to all opposing attorneys and presiding judges in pending litigation; and to make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of clients. It was further ordered that unless counsel for the Respondent entered an appearance with the Disciplinary Board within ten (10) days of the mailing date of the November 14, 2003, order, the Disciplinary Board would appoint a guardian ad litem to represent the Respondent at the hearing.
5. On November 17, 2003, pursuant to this Board's Show Cause Order and Order of Suspension and Hearing, Respondent was provided with notice of the hearing on

December 12, 2003, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, P.O. Box 831, Frederick, Maryland, 21705.

6. No counsel for the Respondent entered an appearance with the Disciplinary Board and by Order dated November 19, 2003, the Disciplinary Board appointed Gordon P. Peyton, Esquire to serve as guardian *ad litem* for the Respondent.
7. On December 9, 2003, three, (3), days prior to the scheduled hearing, the Respondent stated he wished to consent to the imposition of reciprocal discipline.
8. On December 10, 2003, a Joint Motion for Extension of Time to Reach an Agreed Disposition was filed by Assistant Bar Counsel and the Respondent's Guardian *ad litem*, requesting an extension of time for one week from the December 12, 2003, scheduled hearing date to accomplish an agreed disposition of reciprocal discipline. The Motion was granted and the matter was resolved by close of business on December 19, 2003.

DECISION OF THE BOARD

Paragraph 13(I)(6)(e), Part Six, § IV of the Rules of the Supreme Court of Virginia, as amended, entitled "Disbarment or Suspension in Another Jurisdiction" provides in relevant part:

. . . The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard . . . and shall be limited to at the hearing to proof of the specific contentions raised in any written response. . . . Except to the extent the allegations of the written response are established, the findings in the other jurisdiction shall be conclusive of all matters for the purposes of the Proceeding before the Board.

Paragraph 13(I)(6)(f) states in pertinent part:

If the Respondent has not filed a timely written response, or does not appear at the hearing or if the Board, after a hearing, determines that the Respondent has failed to establish the contentions of the written response by clear and convincing evidence, the Board shall impose the same discipline as was imposed in the other jurisdiction. . . .

The instant case requires analysis of both parts (I)(6)(e) and (I)(6)(f) of Paragraph 13 of Part Six, § IV of the Rules of the Supreme Court, as amended. Pursuant to Paragraph 13(I)(6)(e), the Respondent did file a written response in the form of an Agreement to the Imposition of Reciprocal Discipline, consenting to an indefinite suspension of his license to practice law in the Commonwealth of Virginia. No facts requiring proof by a clear and convincing evidentiary standard were alleged, other than those recited in the Maryland Attorney Grievance Commission's Petition for Disciplinary or Remedial Action and/ or the Maryland Joint Petition for Indefinite Suspension by Consent. As the Respondent did not challenge any of the facts alleged in those two pleadings, and in the absence of any contrary contentions, the findings of the Maryland jurisdiction are therefore considered conclusive of all matters for the purposes of this Proceeding before the Board.

Pursuant to Paragraph 13(I)(6)(f), the Respondent did file a

timely written response, again in the form of an Agreement to the Imposition of Reciprocal Discipline, which included no contentions that his license to practice law in the Commonwealth of Virginia should not be subject to reciprocal discipline.

To the Board's knowledge, this is a case of first impression for the reason that it involves both the imposition of an indefinite suspension as reciprocal discipline absent a documented disability, and an agreed disposition with the consent, cooperation and involvement of the Respondent.

With the exception of Paragraph 13(F) entitled "Disability," Paragraph 13 does not explicitly provide for an indefinite suspension of an attorney's license to practice law in the Commonwealth of Virginia. The instant case is not brought before the Board as a pure disability case, as language alluding to both "disability" and "misconduct" is included in the Maryland Joint Petition and is therefore of necessity considered here.

Virginia State Bar Disciplinary Board precedent exists for the imposition of an indefinite suspension of an attorney's license as reciprocal discipline absent a documented disability, although the basis for the indefinite suspension was factually different. *See: In the Matter of Bridget Miriam Harris, Esquire*, VSB Docket No. 01-000-3232. In the *Harris* case the Respondent failed to file a written response and failed to appear at the Disciplinary hearing. Therefore the Board determined that the language of Paragraph 13(I)(6)(f), (cited in the *Harris* Order as Paragraph 13[G]), not only allowed for but required the imposition of an indefinite suspension of the Respondent's license.

In the instant case, in the setting of the absence of proven contentions to the contrary, and with an agreed disposition with the consent, cooperation and involvement of the Respondent, we find that the language of paragraph 13(I) similarly permits and requires the Board to impose the reciprocal discipline of an indefinite suspension under the facts presented.

As in the *Harris* matter, more problematic are the requirements imposed by Paragraph 13(I)(7)(c) for reinstatement after a suspension of more than one year. Also problematic in this case are the requirements to be imposed for reinstatement after a suspension of less than one year. Given the fact that there are indicated psychological, substance abuse and related issues affecting the potential for reinstatement of Respondent Antoine Mann, the Board does not decide today the application of Paragraph 13(I)(7)(c) to the Respondent's suspension, beyond an acknowledgement that the initial burden to be overcome for reinstatement is the removal of the indefinite suspension and any other impediments to practice in the state of Maryland, and we leave this issue open for a future panel of this Board to decide should Respondent apply to this Board for reinstatement at any future time.

The Board does request, however, that should it come to the attention of Assistant Bar Counsel that a compelling reason exists in the future to establish a disability case against the Respondent that such a case will be constructed and brought.

After careful deliberation, it is the Disciplinary Board's unanimous decision to accept the presented Agreement to

Imposition of Reciprocal Discipline and to indefinitely suspend the Respondent's license to practice law in the Commonwealth of Virginia.

Accordingly, it is ORDERED that pursuant to the provisions of Paragraph 13 of the Rules of the Supreme Court of Virginia, as amended, as cited *supra*, the license of the Respondent, Antoine Ian Mann, Esquire, to practice law in the Commonwealth of Virginia be, and the same hereby is, suspended indefinitely, effective December 29, 2003. Such suspension shall continue until the Respondent presents satisfactory evidence to this Board that the State of Maryland has removed all impediments to the Respondent's practice of law in such jurisdiction, and that the Respondent has fully established his rights to practice in the state of Maryland.

It is further ORDERED that a certified true copy of the September 23, 2003 ORDER of the Court of Appeals of Maryland suspending the right of Antoine Ian Mann to practice law in the state of Maryland, Case No. 10-C-03-001297 OC be attached to this Order of Indefinite Suspension and be made a part thereof.

Enter this ORDER this 13th day of January, 2004.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, III, Chair



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

IN THE MATTER OF
PATRICK ROGER OWEN

VSB DOCKET NOS. 03-041-3728, 03-041-3729,
 03-041-3730, 03-041-3731,
 03-041-3732, 04-041-0618,
 04-041-1187

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board for hearing on December 12, 2003, at 9:00 a.m. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board ("Board") consisting of Roscoe B. Stephenson, III, Chair, presiding, and Richard J. Colton, Robert E. Eicher, W. Jefferson O'Flaherty, lay member and Virginia W. Powell.

The Clerk of the Disciplinary System sent all notices required by law. The Respondent, Patrick Roger Owen, did not appear in person or by counsel.

Marian L. Beckett, Assistant Bar Counsel, represented the Virginia State Bar. The proceedings were recorded by Tracy J. Stroh, a registered professional reporter of the firm of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, (804) 739-1222.

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

The Virginia State Bar filed 12 exhibits that were received and accepted into the record. The Respondent filed no exhibits. Having considered the Petition and Order for Expedited Hearing, the exhibits, testimony and argument, the Board unanimously finds, by clear and convincing evidence, the following:

1. The Respondent was licensed to practice law in the Commonwealth of Virginia on April 30, 1992, and, as of the date of the hearing, is currently licensed to practice law in the Commonwealth of Virginia. However, his license was suspended on October 21, 2003, for nonpayment of Virginia State Bar dues and for failure to show attorney financial responsibility.
2. The Respondent did not respond to the Bar's request for information in any of these matters referred to above and failed to cooperate with the Bar's investigation into all of the charges of misconduct detailed in the Petition.
3. Virginia State Bar Investigator James W. Henderson made repeated attempts to reach the Respondent but was not able to locate him.
4. It appears that Respondent has abandoned his law practice and left the state.

As to VSB Docket No. 03-041-3728

6. Carolina Gomez, (hereinafter the "Complainant"), hired the Respondent to obtain a green card for her and paid the Respondent an unspecified sum of money for fees and costs. Respondent's check subsequently written to the Immigration and Naturalization Service for costs on the Complainant's behalf was returned for insufficient funds, and the Complainant was forced to pay the fees a second time for processing of the required documents.
7. The Respondent accepted payment from the Complainant but did not communicate with her regarding her case and failed to contact her regarding the status of the case. The Respondent abandoned the case without completion of the work paid for and left no forwarding address. In addition, the Complainant's file was not returned to her. As of the date of the Petition she had not received her green card.
8. Complainant filed her complaint against Respondent on May 27, 2003.
9. On June 6, 2003, Virginia State Bar intake counsel Jane A. Fletcher sent a letter and a copy of the complaint to the Respondent informing him that the Bar was conducting a preliminary investigation of the matter. The June 6th correspondence stated, *inter alia*, in bold, the following directive: "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." In addition, the June 6th correspondence advised the Respondent that failure to provide a written answer would result in the filing of the case with a district committee for further action.
10. The Respondent made no written or other response to the Bar's June 6, 2003, letter, and the matter was forwarded to Bar Counsel for further disposition.

11. On July 8, 2003, Bar Counsel directed a letter of that date to the Respondent informing him that the matter had been referred to Section I of the Fourth District Committee for a more detailed investigation.
12. The Respondent did not respond to the Bar's July 8, 2003, letter.
13. On July 9, 2003, the matter was assigned to a Virginia State Bar investigator.
14. Virginia State Bar intake counsel's letter of June 6, 2003, and notification from the Immigration and Naturalization Service that the check submitted by the Respondent on behalf of Carolina Gomez was returned by the bank were admitted as VSB Exhibit #1.
22. On July 9, 2003, the matter was assigned to a Virginia State Bar investigator.
23. Receipts indicating payments by the Complainant to the Respondent, Virginia State Bar intake counsel's letter of June 6, 2003, and notification from the Immigration and Naturalization Service that the check submitted by the Respondent on behalf of Jose Cervantes was returned by the bank were admitted as VSB Exhibit #2.

As to VSB Docket Number 03-041-3730

As to VSB Docket Number 03-041-3729

15. Jose Cervantes, (hereinafter the "Complainant"), hired the Respondent regarding an immigration matter, and paid the Respondent \$6,052.00 for fees and costs. Respondent's subsequent check written to the Immigration and Naturalization Service for costs on the Complainant's behalf was returned for insufficient funds, and the Complainant had to pay the fees a second time for processing of the required documents.
16. The Respondent accepted payment from the Complainant but did not communicate with him regarding his case and failed to contact him regarding the status of the case. The Respondent abandoned the case without completion of the work paid for, and left no forwarding address. In addition, the Complainant's file was not returned to him. As of the date of the Petition, the matter for which Respondent was hired has not been completed.
17. The Complainant's complaint is undated, but it was received in the Intake Office of the Virginia State Bar on June 5, 2003.
18. On June 6, 2003, Virginia State Bar intake counsel Jane A. Fletcher sent a letter and a copy of the complaint to the Respondent informing him that the Bar was conducting a preliminary investigation of the matter. The June 6th correspondence stated, *inter alia*, in bold, the following directive: "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." In addition, the June 6th correspondence advised the Respondent that failure to provide a written answer would result in the filing of the case with a district committee for further action.
19. The Respondent made no written or other response to the Bar's June 6, 2003, letter, and the matter was forwarded to Bar Counsel for further disposition.
20. On July 8, 2003, Bar Counsel directed a letter of that date to the Respondent informing him that the matter had been referred to Section I of the Fourth District Committee for a more detailed investigation.
21. The Respondent did not respond to the Bar's July 8, 2003, letter.
24. Juan Meza, (hereinafter the "Complainant"), hired the Respondent to obtain a green card for him. Copies of certain documents completed by the Respondent were provided to the Complainant, but it is alleged that either the documents were never filed with the Immigration and Naturalization Service, or that the matter was abandoned without completion by the Respondent. The Complainant never received the green card which he hired the Respondent to obtain.
25. The Respondent accepted payment from the Complainant but did not communicate with him regarding his case and failed to contact him regarding the status of the case. The Respondent abandoned the case without completion of the work paid for, and left no forwarding address. In addition, the Complainant's file was not returned to him. As of the date of the Petition, he had not received his green card.
26. Proof that the Respondent accepted representation of the Complainant and prepared documents on his behalf is reflected in a portion of the documents admitted as VSB Exhibit #3.
27. Complainant filed his complaint on May 29, 2003.
28. On June 6, 2003, Virginia State Bar intake counsel Jane A. Fletcher sent a letter and a copy of the complaint to the Respondent informing him that the Bar was conducting a preliminary investigation of the matter. The June 6th correspondence stated, *inter alia*, in bold, the following directive: "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." In addition, the June 6th correspondence advised the Respondent that failure to provide a written answer would result in the filing of the case with a district committee for further action.
29. The Respondent made no written or other response to the Bar's June 6, 2003, letter, and the matter was forwarded to Bar Counsel for further disposition.
30. On July 8, 2003, Bar Counsel directed a letter of that date to the Respondent informing him that the matter had been referred to Section I of the Fourth District Committee for a more detailed investigation.
31. The Respondent did not respond to the Bar's July 8, 2003, letter.
32. On July 9, 2003, the matter was assigned to a Virginia State Bar investigator.

33. Documentation indicating preparation of documents by the Respondent and Virginia State Bar intake counsel's letter of June 6, 2003, were admitted as VSB Exhibit #3.

As to VSB Docket Number 03-041-3731

34. Ramon Meza, (hereinafter the "Complainant"), hired the Respondent to obtain a green card and paid the Respondent \$2,449.00 for fees and costs. Respondent's subsequent check written to the Immigration and Naturalization Service for costs on behalf of the Complainant was returned for insufficient funds, and the Complainant had to pay the fees a second time for processing of the required documents.
35. The Respondent accepted payment from the Complainant but did not communicate with him regarding his case and failed to contact him regarding the status of the case during the pendency of his representation. The Respondent abandoned the case without completion of the work paid for, and left no forwarding address. As of the date of the Petition, the Complainant had not received the green card for which purpose the Respondent was hired.
36. The Complainant filed his complaint on May 27, 2003.
37. On June 6, 2003, Virginia State Bar intake counsel Jane A. Fletcher sent a letter and a copy of the complaint to the Respondent informing him that the Bar was conducting a preliminary investigation of the matter. The June 6th correspondence stated, *inter alia*, in bold, the following directive: "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." In addition, the June 6th correspondence advised the Respondent that failure to provide a written answer would result in the filing of the case with a district committee for further action.
38. The Respondent made no written or other response to the Bar's June 6, 2003, letter, and the matter was forwarded to Bar Counsel for further disposition.
39. On July 8, 2003, Bar Counsel directed a letter of that date to the Respondent informing him that the matter had been referred to Section I of the Fourth District Committee for a more detailed investigation.
40. The Respondent did not respond to the Bar's July 8, 2003, letter.
41. On July 9, 2003, the matter was assigned to a Virginia State Bar investigator.
42. In a letter dated September 9, 2003, the Respondent informed the Complainant that he would no longer be able to assist the Complainant in any further proceedings. The Respondent enclosed materials from the file with the correspondence and urged the Complainant to consult with another attorney "as soon as possible."
43. Receipts indicating payments by the Complainant to the Respondent, notification from the Immigration and Naturalization Service that the check submitted by the Respondent on behalf of Ramon Meza was returned by the bank, Virginia State Bar intake counsel's letter of June 6,

2003, and the Respondent's letter of September 9, 2003 were admitted as VSB Exhibit #4.

As to VSB Docket Number 03-041-3732

44. Nicolas Meza, (hereinafter the "Complainant"), hired the Respondent to obtain a green card for him and to file an I-485 for an adjustment of status. The Complainant paid the Respondent \$4,163.00 for fees and costs to perform the requested work. Copies of certain documents completed by the Respondent were provided to the Complainant, but it is alleged that either the documents were never filed with the Immigration and Naturalization Service, or that the matter was abandoned without completion by the Respondent. The Complainant never received the green card which he hired the Respondent to obtain.
45. The Respondent accepted payment from the Complainant but did not communicate with him regarding his case and failed to contact him regarding the status of the case. The Respondent abandoned the case without completion of the work paid for, and left no forwarding address. In addition, the Complainant's file was not returned to him. As of the date of the Petition, he had not received his green card.
46. Proof that the Respondent accepted representation of the Complainant and prepared documents on his behalf is reflected in a portion of the documents admitted as VSB Exhibit #5.
47. Complainant filed his complaint on May 27, 2003.
48. On June 6, 2003, Virginia State Bar intake counsel Jane A. Fletcher sent a letter and a copy of the complaint to the Respondent informing him that the Bar was conducting a preliminary investigation of the matter. The June 6th correspondence stated, *inter alia*, in bold, the following directive: "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." In addition, the June 6th correspondence advised the Respondent that failure to provide a written answer would result in the filing of the case with a district committee for further action.
49. The Respondent made no written or other response to the Bar's June 6, 2003, letter, and the matter was forwarded to Bar Counsel for further disposition.
50. On July 8, 2003, Bar Counsel directed a letter of that date to the Respondent informing him that the matter had been referred to Section I of the Fourth District Committee for a more detailed investigation.
51. The Respondent did not respond to the Bar's July 8, 2003 letter.
52. On July 9, 2003, the matter was assigned to a Virginia State Bar investigator.
53. Documentation indicating preparation of documents by the Respondent, payment by the Complainant to the Respondent and Virginia State Bar intake counsel's letter of June 6, 2003 were admitted as VSB Exhibit #5.

As to VSB Docket Number 04-041-0618

54. The Complainant in this matter is Vernon Gutjahr, Esquire, an attorney whose primary area of practice is immigration law.
55. One of the Complainant's immigration clients was a former client of the Respondent. The client, Mr. Arturo Macedo, had terminated his relationship with the Respondent, in writing, on July 1, 2003. Mr. Macedo had repeatedly requested the return of his file from the Respondent to no avail.
56. The Complainant filed his complaint on August 15, 2003.
57. On August 27, 2003, Virginia State Bar intake counsel James C. Bodie sent a letter to the Respondent requesting that he communicate with the Complainant regarding the transfer of the file in question, indicating that a resolution of the matter would avoid the necessity of the Bar's opening a formal ethics inquiry. The August 27th correspondence stated, *inter alia*, in bold upper case letters the following directive: "PLEASE SEND ME YOUR RESPONSE TO THIS REQUEST WITHIN TEN (10) DAYS OF THIS LETTER."
58. The Respondent made no written or other response to intake counsel's August 27, 2003, letter, and an active investigation file was opened and assigned to Bar Counsel. On September 17, 2003, Bar Counsel directed a letter of that date to Respondent, enclosing the complaint, and stating, *inter alia*, in bold, underlined text, the following directive: "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."
59. The Respondent did not respond to the Bar's September 17, 2003, letter.
60. On September 26, 2003, the matter was assigned to a Virginia State Bar investigator.
61. A receipt for payment from the Complainant's client to the Respondent and the Virginia State Bar intake counsel's letter of August 27, 2003, were admitted as VSB Exhibit #6.

As to VSB Docket Number 04-041-1187

62. Wing Yin Leung, (hereinafter the "Complainant"), paid the Respondent \$1,920.00 for fees and costs on or about October 2002, to obtain a green card for her. The Complainant subsequently paid the Respondent \$300.00 on or about February 2003, to perform an adjustment of immigration status for her husband. It is alleged that the Respondent never performed any work regarding the obtaining of a green card or the adjustment of status.
63. On or about September, 2003, the Respondent returned client documents to the Complainant with a cover letter explaining that it was necessary for him to move out of the Washington, D.C. metropolitan area for health reasons, and that he had unilaterally decided to terminate the green card proceedings.

64. Subsequent investigation by Complainant's succeeding counsel revealed no filings on behalf of the Complainant with either the Department of Labor or the Virginia Employment Commission. No documents were found to have been filed on behalf of the Complainant's husband.
65. On November 6, 2003, Bar Counsel directed a letter of that date to the Respondent, enclosing the complaint, and stating, *inter alia*, in bold, underlined text, the following directive: "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."
66. The Respondent made no written or other response to the Bar's November 6, 2003, correspondence.
67. On November 6, 2003, the matter was assigned to a Virginia State Bar investigator. Due to the indications that Respondent had abandoned his law practice, an abbreviated investigation was conducted.
68. A draft indicating payment by the Complainant to the Respondent and Bar Counsel's letter of November 6, 2003, were admitted as VSB Exhibit #7.
69. The Bar did not seek to establish a receivership, as it appeared that there were no files or funds to be received, distributed or disbursed.
70. The existence and location of the Respondent's files, if any, is unknown.
71. Enrique Vargas, who formerly worked as a paralegal for the Respondent, informed Virginia State Bar investigator James Henderson that the last time he had occasion to inquire regarding the Respondent's trust account at Wachovia Bank, he learned that rather than the expected balance of \$8,000.00 to \$10,000.00, the balance was minus \$5.00. Mr. Vargas stated that the Respondent had two accounts at Wachovia Bank, an operating account from which he was paid, and a trust account for client funds. Documents subpoenaed from Wachovia Bank bear no evidence that either of those two accounts remains in existence. The Respondent appears to have most recently had two accounts at Wachovia which were both personal accounts. The narrative report of investigator James Henderson was admitted as VSB Exhibit #8.
72. The narrative report of Virginia State Bar investigator Robert K. Smith was admitted as VSB Exhibit #9.
73. The narrative report of Virginia State Bar investigator James W. Henderson dated November 20, 2003, was admitted as VSB Exhibit #10.
74. The Affidavit of Martha S. Shippee, Senior Staff Assistant for Membership, was admitted as VSB Exhibit #11.
75. The Notice of Hearing was admitted as VSB Exhibit #12.

The Board finds by clear and convincing evidence that Respondent's conduct described above constitutes a violation

of the following provisions of the following Rules of Professional Conduct:

RULE 1.3 Diligence
(a), (b), (c) ***

RULE 1.4 Communication
(a) ***

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

RULE 8.4 Misconduct
It is professional misconduct for a lawyer to:
(b) and (c) ***

IMPOSITION OF SANCTIONS

After announcing its findings, the Board was informed by Bar Counsel that there is no evidence of prior record. The Board then deliberated on sanctions and determined that the license to practice law in the courts of this Commonwealth heretofore issued to Patrick Roger Owen be revoked, effective December 12, 2003.

ENTER this Order this 7th day of January, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Roscoe B. Stephenson, III
Chair of the Virginia State Bar Disciplinary Board

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