

Disciplinary Actions

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

Respondent's Name	Address of Record (City/County)	Action	Effective Date	Page
<u>Supreme Court</u>				
Edward Delk	Chesapeake	Reinstatement Denied	March 1, 2002	34
<u>Disciplinary Board</u>				
Norvill Sherman Clark	San Jose, CA	Suspension	March 29, 2002	n/a
Kenneth Harrison Fails, II	Washington, DC	Revoked	March 22, 2002	n/a
Vincent Napoleon Godwin	Carrollton	Suspension	March 29, 2002	n/a
Robert Edward Howard	Alexandria	60 Day Suspension w/Terms	April 1, 2002	37
James Daniel Kilgore	Wise	Suspension	March 29, 2002	n/a
Raymond William Konan	Falls Church	Public Reprimand w/Terms	February 19, 2002	41
James F. Pascal	Richmond	Administrative Suspension	March 29, 2002	n/a
Gay Lynn Tonelli	Keysville	Public Reprimand	February 15, 2002	42
Jean Veness	Virginia Beach	One Year Suspension	March 13, 2002	44
Malcolm Bruce Wittenberg	Oakland, CA	Revocation	February 22, 2002	44

District Subcommittees

Gary M. Breneman	Reston	Public Reprimand	March 12, 2002	45
Walter Franklin Green, IV	Harrisonburg	Public Reprimand w/Terms	March 1, 2002	46
John Henry Partridge	Herndon	Public Reprimand	March 28, 2002	47
Wesley Lee Pendergrass	Hampton	Public Reprimand w/Terms	February 21, 2002	48
William P. Robinson, Jr.	Norfolk	Public Reprimand	April 9, 2002	49

Surrenders with Disciplinary Charges Pending

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

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date
Martin William Boelens, Jr.	Orlando, FL	Disciplinary Board	March 12, 2002
Michael Andrew Burchett	Franklin, TN	Disciplinary Board	February 20, 2002
Sa'ad El-Amin	Richmond	Disciplinary Board	February 21, 2002
Robert Brown Patterson	Middleburg	Disciplinary Board	February 25, 2002

Supreme Court

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 1st day of March, 2002.

In the Matter of
EDWARD DELK

On September 14, 2000 came Edward Delk and filed a petition for reinstatement of his license to practice law in this Commonwealth.

Upon request of this Court, the Virginia State Bar Disciplinary Board held a hearing on the matter and has returned to the Court its recommendation that the license of Edward Delk not be reinstated. Thereafter the petitioner filed a response to the order of recommendation.

The Court having considered the record of the hearing, the recommendation of the said Disciplinary Board and the petitioner's response, it is ordered that the petition for reinstatement be and it hereby is denied.

JUSTICES HASSEL, KINSER and LEMONS dissent.

A Copy,
Teste:
David B. Beach
Clerk

Disciplinary Board

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
EDWARD DELK,
PETITIONER
VSB DOCKET NO. 01-000-0920

ORDER OF RECOMMENDATION

On November 16, 2001, this matter came before the Disciplinary Board, consisting of William C. Boyce, Jr., Chester J. Cahoon, Jr., Karen A. Gould, Roscoe B. Stephenson, III and John A. Dezio, Chairman, on the Petition for Reinstatement by Edward Delk to reinstate his license to practice law in the Commonwealth of Virginia. Mr. Delk surrendered his license to practice law on December 15, 1989, while facing disciplinary charges.

The petitioner, Edward Delk, was represented by Rhetta M. Daniel, Esq. Richard E. Slaney, Assistant Bar Counsel, appeared for the Virginia State Bar. The hearing was transcribed by Donna T. Chandler, Court Reporter, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, telephone (804)730-1222.

This matter is governed by Rule 13(J) of the Rules of Court, Part Six, Section IV. Pursuant to that provision, it is the petitioner's burden to show by clear and convincing evidence that he is a person of honest demeanor and good moral character and that he possesses the requisite fitness to practice law.

In addition to the testimony of the petitioner, the Board heard and considered the testimony of three witnesses who appeared on the petitioner's behalf: John H. Foster, D. Min, pastor of Shiloh Baptist Church; Larry Wayne Shelton, Esq., an attorney from the Tidewater area with the law firm of Shelton & Malone, P.C.; and Mr. Thomas G. Johnson, Jr., from the law firm of Wilcox & Savage. The Bar opposed the Petition for Reinstatement and submitted exhibits evidencing Mr. Delk's prior disciplinary record and charges that were pending at the time of his surrender.

The Board also reviewed the petition filed by the petitioner, the affidavit of the petitioner, the testimony and documentary exhibits presented, and letters from the community in response to the Bar's publication of the public hearing on Mr. Delk's Petition for Reinstatement. The Board considered the following factors in reaching its conclusion and recommendation to the Supreme Court as outlined by this Board *In the Matter of Alfred L. Hiss*, Docket No. 83-26, opinion dated May 24, 1984:

1. The severity of the petitioner's misconduct including but not limited to the nature and circumstances of the misconduct.
2. The petitioner's character, maturity and experience at the time of his disbarment.
3. The time elapsed since the petitioner's disbarment.
4. Restitution to clients and/or the Bar.
5. The petitioner's activities since disbarment including but not limited to his conduct and attitude during that period of time.
6. The petitioner's present reputation and standing in the community.
7. The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the petitioner.
9. The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.
10. The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.

In order to assess factors 1 through 10 above, it is necessary to review the circumstances that gave rise to Mr. Delk's surrendering his license in 1989, as well as other disciplinary violations of which Mr. Delk had been found guilty. Mr. Delk had his license suspended in 1985 for three years for failure to disburse properly settlement proceeds from a 1981 real estate settlement. This suspension was stayed while Mr. Delk appealed the suspension to the Virginia Supreme Court. The Supreme Court upheld the suspension, and it became effective July 1, 1987. At the time of his surrender in December of 1989, Mr. Delk was facing additional charges concerning trust violations arising from two separate real estate closings (Lindsey and Jackson) occurring in the Spring of 1987, which were scheduled to be heard by a three-judge panel. In 1989, Mr. Delk was indicted on charges that he had willfully misapplied funds in settlement of the Lindsey real estate transaction in the Spring of 1987. He pled guilty to those charges in January of 1990.

The Board makes the following findings with respect to the *Hiss* factors enumerated as 1 through 10 above:

1. **The severity of the petitioner's misconduct including but not limited to the nature and circumstances of the misconduct.** The Board finds the charges pending at the time Mr. Delk surrendered his license to have been serious. Mr. Delk made multiple serious errors in judgment. He had a history of trust account violations and of being out of trust. Mr. Delk attributed being out of trust to his failure to reconcile the bank statements, despite having received his undergraduate degree in accounting. He recognized in 1982 that he had a problem with his trust account, yet the problems continued through 1987. Mr. Delk maintained, however, that he did not use the trust proceeds for his own benefit, however, he could not explain what happened to the missing funds. The Virginia Supreme Court in Mr. Delk's appeal of the three-year suspension found that he had, in fact, used funds from the account for payment of non-trust account matters for his benefit and not for the benefit of his clients. Mr. Johnson spoke eloquently in Mr. Delk's behalf and expressed his feeling that Mr. Delk had received onerous punishment for what was an accounting problem with no evidence of criminal intent. The Board was bothered by Mr. Delk's statement that he did not know what happened to the large amount that he was out of trust, considering that statement to be simply incredible.
2. **The petitioner's character, maturity and experience at the time of his disbarment.** Mr. Delk was 59-years old at the time of his disbarment. He had been practicing law since 1962. Based upon the evidence adduced at the hearing, Mr. Delk had a good reputation in his community at the time of surrender of his license.
3. **The time elapsed since the petitioner's disbarment.** The date of the Order accepting the surrender of Mr. Delk's license is December 20, 1989. Therefore, approximately twelve years has elapsed since Mr. Delk's license revocation. Mr. Delk is now 71-years old.
4. **Restitution to clients and/or the Bar.** Mr. Delk has made restitution to all clients and financial institutions

effected by his actions, albeit part of the restitution was achieved after the Bank of the Commonwealth obtained a judgment against Mr. Delk in 1988.

5. **The petitioner's activities since disbarment including but not limited to his conduct and attitude during that period of time.** According to the testimony presented by the petitioner, Mr. Delk has been a responsible member of society since being disbarred. From December 1989 to December 1992, Mr. Delk served as a part-time consultant and developer of housing for the elderly and for low- and moderate- income families. During that time, he also served as a part-time independent contractor selling water filters. From December 1992 to March 1995, Mr. Delk was employed as a part-time instructor at Commonwealth College. From January 1994 to March 1995, Mr. Delk was employed as a paralegal by Holmes & Associates, P.C. Since then, Attorney James Winstead has employed Mr. Delk as a paralegal. He is also presently teaching paralegal courses part-time for Bryant & Stratton College (formerly known as Commonwealth College). Mr. Delk has not sought the restoration of his civil liberties.
6. **The petitioner's present reputation and standing in the community.** In addition to the three witnesses who testified on his behalf, Mr. Delk had numerous letters submitted on his behalf supporting his petition for reinstatement and speaking to his reputation and standing in the community. Mr. Delk is active in his church. He has stayed in the community in which he practiced law. By all accounts, he has a good reputation in his community. The witnesses who testified on behalf of Mr. Delk were uniform in their testimony regarding Mr. Delk's stellar reputation for truthfulness and veracity.
7. **The petitioner's familiarity with the Virginia Rules of Professional Conduct and his current proficiency in the law.** Mr. Delk has taken continuing legal education courses on Virginia law since being disbarred in 1989. The Board is satisfied that the petitioner established by clear and convincing evidence familiarity with the current Virginia Rules of Professional Conduct, and that he has maintained his knowledge of Virginia law.
8. **The sufficiency of the punishment undergone by the petitioner.** The Board considers the loss of Mr. Delk's license since 1989 not to be sufficient punishment for the specific misconduct that was pending at the time of his license surrender. The pattern and practice of his misconduct and the fact that he continued to commit trust account violations after being suspended in 1985 merited the loss of his license. The Board does not feel that the length of license revocation necessarily means that Mr. Delk has been rehabilitated and will practice as an ethical member of the Virginia State Bar. Mr. Delk had a reputation for honesty and truthfulness at the time that he committed these ethical violations.
9. **The petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his disbarment and reinstatement.** The Board found Mr. Delk to be sincere and frank in some of his testimony to

the Board in discussing the factors relating to his license surrender and conviction on federal charges. There was a conflict between Mr. Delk's testimony and that of the persons involved in one of the real estate settlements in which disciplinary charges were pending at the time of his surrender. Mr. Delk testified that he had the Jacksons' permission to endorse their names to the settlement check. The Jacksons executed an affidavit in 1988 that they had not authorized anyone to endorse the checks. As mentioned above with regard to the first factor, the Board was bothered by Mr. Delk's statement that he did not know what happened to the large amount that he was out of trust, considering that statement to be simply incredible. With the exception of the Jackson real estate closing, Mr. Delk was remorseful about what he had done. Mr. Delk explained that he wanted his license reinstated so that he could return to the practice of law. He promised to scrutinize carefully his trust accounting and to never permit his accounts to go out of trust.

10. **The impact upon public confidence in the administration of justice if the petitioner's license to practice law was restored.** Letters received from citizens in the Tidewater area in response to the Bar's notification of the public hearing asked that Mr. Delk's law license be restored to him. Letters received from lawyers in the Tidewater were largely supportive of his reinstatement, with two exceptions from attorneys who felt that revocation due to trust account violations should never be the subject of reinstatement.

The Board recommends that Mr. Delk's license not be reinstated. The Board's opinion is that Mr. Delk's misconduct resulting in the surrender of his license was of a serious nature arising out of several separate incidents that occurred over a several-year period. His misconduct occurred several times, despite his prior involvement in the disciplinary process and having been suspended for trust account violations. Despite the argument of petitioner and his counsel that Mr. Delk has rehabilitated himself and will not commit any further transgressions, the Board is concerned that Mr. Delk's ethical violations would be repeated. The fact that Mr. Delk was unable to say what had happened to the missing escrow funds, leads the Board to question his candor. The Board is also concerned about the message that will be conveyed to the public and the Bar if a lawyer revoked for trust account violations were to be reinstated. Accordingly, the Board recommends that Mr. Delk's license not be reinstated.

It is ORDERED that the Clerk of the Disciplinary System forward this Order of Recommendation and the record to the Virginia Supreme Court for its consideration and disposition.

ENTERED this 30th day of January, 2002.

Virginia State Bar Disciplinary Board
John A. Dezio, First Vice Chairman



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
ROBERT EDWARD HOWARD
VSB Docket Nos. 99-042-2586
 00-042-0234
 00-042-1889

ORDER OF SUSPENSION

On March 22, 2002 this matter came on for hearing upon certification by the Fourth District Committee, Section II, of the Virginia State Bar dated August 16, 2001. The hearing was held before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of William M. Moffet, Chair, presiding, and James L. Banks, Jr., Thaddeus T. Crump, Karen A. Gould, and Roscoe B. Stephenson, III.

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

The Respondent appeared in person, *pro se*.

Seth M. Guggenheim, Esquire appeared as counsel 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 five exhibits which were received and accepted into the record without objection. They consist of: the Certification dated August 16, 2001 (VSB #1), the Answer to Certification filed by Respondent September 21, 2001 (VSB #2), a Stipulation (VSB #3), the Respondent's prior disciplinary record (VSB #4), and the advertisement at issue in these cases (VSB #5). The Respondent did not file any exhibits.

The facts and misconduct of the case were presented by way of a stipulation, VSB #4. In addition, the Respondent made a statement to the Board and answered questions. The Board also directed brief questions to the Virginia State Bar investigator. The Board adopted the stipulation of facts, as expanded by the Respondent's and the investigator's testimony, as its findings of fact, by clear and convincing evidence, and the Board adopted the stipulation of misconduct as its findings of misconduct. The stipulation is now set out verbatim and incorporated into this order:

STIPULATION

On this 14th day of February, 2002, come Seth M. Guggenheim, Esquire, counsel for the Virginia State Bar, and Respondent Robert Edward Howard, Esquire, and tender the following Stipulation:

A. STIPULATION OF FACTS

The parties stipulate that the following constitute facts which the Virginia State Bar shall be deemed to have proven in the referenced matters by clear and convincing evidence:

1. Beginning April 20, 1995, Robert Edward Howard, Esquire (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 99-042-2586:

2. At the time of the events referred to in Paragraphs 2 through 11, inclusive, hereof, Respondent's law firm of "Howard & Howard" was running an advertisement in the Vietnamese language in one or more Northern Virginia newspapers having circulation within the Vietnamese community. The advertisement depicted by photograph Respondent, Ms. Janice L. Howard, and one Larry Nguyen, who was identified in Vietnamese as a legal assistant.
3. The advertisement referred to in Paragraph 2 stated that Howard & Howard "specialize[d]" in certain identified practice areas, among which was "Immigration, Sponsorship, Visitor's and Student's Visas."
4. At all times pertinent to the allegations contained in Paragraphs 2 through 11, inclusive, hereof, neither Respondent nor any other attorney employed by Respondent and/or his law firm either "specialized in" or even handled immigration matters, although Respondent had an attorney available to whom such matters might be referred.
5. In response to the advertisement referred to above, Tri Minh Nguyen (hereafter "Complainant No. 1") went to Respondent's office on or about March 29, 1995, and met with the legal assistant, Larry Nguyen, concerning Complainant No. 1's need to obtain immigration status adjustments on behalf of members of his family from "public interest parolees" to legal permanent residents. Complainant No. 1 was charged fees in the sum of \$1,520.00. He paid the sum of \$1,020.00 on the occasion of his visit, and returned to Respondent's office a few days thereafter and paid the remaining balance due.
6. The legal assistant, Larry Nguyen, thereafter informed Complainant No. 1 that he had to undergo an expensive application process. Complainant No. 1 spent additional sums totaling almost \$1,500.00 in medical and application fees. Following his numerous calls made to Respondent's office, the legal assistant took Complainant No. 1 in December, 1996, to a lawyer in Washington, D.C., who charged Complainant No. 1 an additional \$1,000.00. The legal assistant explained to Complainant No. 1 that the lawyer in charge of immigration in Respondent's office was "too slow" and the Washington, D.C., lawyer's involvement would expedite the processing of the immigration matters.
7. Approximately two more years elapsed following Complainant No. 1's payment to the Washington, D.C., lawyer, with no results. Then, Complainant No. 1 discovered via a Vietnamese-language article that the procedures that had been identified to him as necessary to effect his family's objectives were not the correct ones. Complainant No. 1 thereafter determined that his family members were not yet even eligible for the status adjustments for which he had paid Larry Nguyen. When Complainant No. 1 brought this to the attention of the Washington, D.C., attorney, the

attorney made a full refund of the sums that had been paid to him.

8. Complainant No. 1 wrote a letter to Respondent on March 15, 1999, expressing specific areas of dissatisfaction with the legal services of Respondent's office, and requesting, among other things, case files and an accounting of the services that had allegedly been performed.
9. Respondent never replied directly to Complainant No. 1 in response to Complainant No. 1's letter of March 15, 1999. Instead, Respondent referred the matter to Larry Nguyen. Thereafter, Complainant No. 1 received a letter from "American International Consulting Group, Inc.," advising Complainant No. 1, among other things, that Respondent's law firm "was never retained for this particular case."
10. During the investigation of this matter conducted by the Virginia State Bar Respondent stated that he had no knowledge of Complainant No. 1's legal matters, and stated to the Virginia State Bar that inasmuch as Howard & Howard "did not have anyone on staff who specialized in handling immigration matters" it was the firm's policy "to refer such cases to other attorneys who did specialize in such matters." The investigation conducted by the Virginia State Bar elicited no evidence which suggests that Respondent had actual knowledge of the transactions occurring between Larry Nguyen and Complainant No. 1 at the time such transactions were occurring.
11. As of the time Complainant No. 1 filed a Complaint with the Virginia State Bar, Respondent had not been able to account to Complainant No. 1 as requested by Complainant No. 1, had made no refund of sums paid by Complainant No. 1 to Respondent's legal assistant, and had not indemnified Complainant No. 1 for sums expended by Complainant No. 1 in furtherance of the legal assistant's instructions that expensive, inappropriate, and inapplicable immigration procedures be followed.

As to VSB Docket No. 00-042-0234:

12. On or about March 18, 1996, Binh Trung Nguyen (hereafter "Complainant No. 2") went to Respondent's law offices to seek assistance in the application of a student visa for his niece in Vietnam. Complainant No. 2 was on that occasion greeted by legal assistant Larry Nguyen, who had a plaque on his desk containing the title "Manager." At the time of Complainant No. 2's visit, and at all pertinent times thereafter, neither Respondent nor any other attorney employed by Respondent and/or his law firm handled immigration matters, although Respondent had an attorney available to accept referrals of such matters.
13. On the occasion of the March 18, 1996, visit Complainant No. 2 paid the legal assistant a fee in the sum of \$2,000.00. Complainant No. 2 understood from the legal assistant that Complainant No. 2 would be assisted in the procurement of a "Form I-20" and the filing of an "Affidavit of Support" on behalf of his niece.
14. In or around August, 1996, the legal assistant in Respondent's law office called Complainant No. 2 to the Respon-

dent's law office, and asked for three checks totaling \$10,250.00. Complainant No. 2 complied with the legal assistant's request, and delivered such checks, which were allegedly to defray college tuition and English as a Second Language classes for the niece in connection with the immigration matter.

15. Despite the Respondent's legal assistant's/"manager's" collection in Respondent's law office of sums aggregating \$12,250.00 in connection with Complainant No. 2's niece's immigration matter, no positive results were achieved on behalf of the niece. In fact, Complainant No. 2 eventually determined that the processes identified to him by Respondent's legal assistant were inapplicable to and wholly inappropriate for an individual in the niece's circumstances.
16. Complainant No. 2 received a refund directly from the college in question of the college tuition that he had paid, but he has never received a promised refund from Respondent's legal assistant, who had converted to his own use \$4,000.00 of Complainant No. 2's funds. To date, Complainant No. 2 has sustained unrecovered losses in this matter in the principal sum of \$6,000.00, exclusive of interest and other substantial sums paid directly to third parties in furtherance of the niece's immigration matter.
17. On or about June 14, 1999, Complainant No. 2 sent Respondent a detailed letter explaining the unsatisfactory circumstances stemming from the engagement of Respondent's law office, through its legal assistant, to handle the immigration matter in question. Among other things, the letter requested an explanation as to certain fees paid by Complainant No. 2. Respondent never replied directly to Complainant No. 2's written inquiry. The investigation conducted by the Virginia State Bar elicited no evidence which suggests that Respondent had actual knowledge of the transactions occurring between Larry Nguyen and Complainant No. 2 at the time such transactions were occurring.
18. As of the time Complainant No. 2 filed a Complaint with the Virginia State Bar, Respondent had not been able to account to Complainant No. 2 as requested by Complainant No. 2, had made no refund of sums paid by Complainant No. 2 to Respondent's legal assistant, and had not indemnified Complainant No. 2 for sums expended by Complainant No. 2 in furtherance of the legal assistant's instructions that expensive, inappropriate, and inapplicable immigration procedures be followed.

As to VSB Docket No. 00-042-1889

19. In or around January, 1999, Michael Zogby, trading as MZ Translating & Interpreting Services, was engaged by Respondent to perform translation services during a trial in Arlington County, Virginia, in which Respondent participated.
20. Mr. Zogby rendered an invoice to Respondent in the sum of \$245.00 for the services performed.
21. After the invoice remained unpaid by Respondent for approximately one year, Mr. Zogby filed suit and obtained a judgment against Respondent.

22. Thereafter, Respondent advised Mr. Zogby that if Mr. Zogby released the judgment Respondent would pay him immediately. Accordingly, Mr. Zogby advised the court that the judgment was satisfied, and Respondent mailed Mr. Zogby a check, dated December 6, 1999, signed by Respondent, and drawn on an account in the name of Howard & Howard, Attorneys at Law, in the sum of \$245.00.
23. Respondent's check was subsequently returned to Mr. Zogby by reason of "insufficient funds." On or about December 21, 1999, Mr. Zogby's firm sent a certified letter to Respondent demanding that within five days following Respondent's receipt of the letter Respondent pay the principal amount of the check, together with a \$5.00 returned check charge.
24. Notwithstanding Respondent's receipt of the certified letter, and telephone calls placed by or on behalf of Mr. Zogby to Respondent respecting the matter, Respondent did not make response.
25. Mr. Zogby reported the matter to the Fairfax County, Virginia, Police Department, which obtained authorization from the Commonwealth's Attorney's Office to procure a criminal warrant against Respondent charging him with issuing a worthless check.
26. After the warrant had been authorized, but before it had been procured, a Police Department detective contacted Respondent, who finally paid the debt due Mr. Zogby's firm.

B. STIPULATION OF MISCONDUCT

The parties stipulate that the aforementioned conduct on the part of the Respondent constitutes a violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

- DR 1-102. (A)(3) * * *
- DR 2-101. (A) * * *
- DR 3-101. (A) * * *
- DR 3-104. (A)(1), (C) and (D) * * *

C. STIPULATION REGARDING DISCIPLINE TO BE IMPOSED

Recognizing that the Virginia State Bar Disciplinary Board is not bound by a stipulation between the parties regarding any discipline to be imposed by the Board, the Virginia State Bar asserts that the following terms of discipline are appropriate under the circumstances, and the Respondent hereby agrees that, if such discipline is imposed, he consents to the imposition of the following terms, and waives any right to appeal he might otherwise have. The Respondent, however, reserves the right to appeal the imposition of discipline more severe than is set forth below.

1. Subject to the provisions of Paragraph 5 set forth below, the Respondent shall receive a suspension of his license to

practice law in the Commonwealth of Virginia, for a term not to exceed sixty (60) days, with any such suspension to commence no earlier than April 1, 2002.

2. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Tri Minh Nguyen, the principal sum of \$3,020.00, with interest thereon at the rate of 9.0% per annum, from March 29, 1995, until paid. Such payment, inclusive of principal and all interest, shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than April 1, 2002.
3. Respondent shall pay by certified, cashier's, or treasurer's check, made payable to the order of Binh Trung Nguyen, the principal sum of \$6,000.00, with interest thereon at the rate of 9.0% per annum, from August 13, 1996, until paid. Such payment, inclusive of principal and all interest, shall be made by delivery of a check, as aforesaid, to Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133 no later than April 1, 2002.
4. Respondent shall accrue at least twelve (12) ethics credit hours by enrolling in and attending Virginia State Bar approved Continuing Legal Education program(s) in ethics prior to December 31, 2002; Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward Respondent's Mandatory Continuing Legal Education requirement in Virginia and any other jurisdictions in which he may be licensed to practice law. Respondent shall certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form (Form 2) to Seth M. Guggenheim, Assistant Bar Counsel, at 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, promptly following his attendance of such CLE program(s).
5. If the Respondent fails to comply with any of the terms set forth in the preceding Paragraphs 1 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 any discipline otherwise imposed by the Board, REVOKE the Respondent's license to practice law in the Commonwealth of Virginia.

D. STIPULATION REGARDING CONDUCT OF HEARING

The parties further stipulate that:

1. The Virginia State Bar shall be permitted, if it be so advised, to present documentary and/or testimonial evidence, without objection by the Respondent on hearsay grounds, relevant to the matters set forth in this Stipulation, including the presentation of Respondent's disciplinary record.
2. The Respondent shall be permitted to present such evidence as he may desire in support of the imposition of the proposed discipline set forth in this Stipulation, and/or in

opposition to the imposition of discipline more severe than as proposed by the parties.

E. RESPONDENT'S ACKNOWLEDGMENT REGARDING ENTRY OF AN ORDER

The Respondent acknowledges that the Board shall enter an Order consistent with its determination made at the time of the hearing in these cases, and that such Order shall include provisions set forth in Part Six, § IV, ¶ 13(K)(1) and (10) of the Rules of the Supreme Court of Virginia.

SEEN AND AGREED:
THE VIRGINIA STATE BAR
Seth M. Guggenheim, Esquire
Assistant Bar Counsel
Robert Edward Howard, Esquire
Respondent

Thereupon, the Board proceeded to consider disposition of the stipulated ethical violations. The Virginia State Bar made it known that the Respondent had a prior record of a private reprimand with terms issued September 3, 1997 arising from a yellow page advertisement found to be misleading. The Respondent complied with all terms of that order. Bar Counsel did note the Respondent's cooperation in disposition of the present cases. The Board then heard argument from both parties on the matter of disposition.

To properly place in perspective the disposition of the first two cases (VSB Docket No. 99-042-2586 and No. 00-042-0234) it is appropriate to discuss the conclusions the Board drew from the stipulated facts and brief testimony it received. At first blush the stipulation gives the impression of a conspiracy between the Respondent and his assistant, Larry Nguyen, whereby they would prey upon a class of potential clients, Vietnamese immigrants (presumably an isolated and somewhat vulnerable class), using the fraudulent advertisement that offered non-existent immigration services. To the degree that we should adopt the view just stated, the misconduct would also include rather serious Canon 9 violations. Had the Board found an active conspiracy of that nature disbarment would have been the disposition. As it was, Bar Counsel was convinced, and we in turn became convinced that nothing of that sort had happened.

The nature of the offending advertisement has some bearing. The stipulation describes it as fraudulently seeking clients for immigration services not offered by the Respondent. The full breadth of the advertisement is not set out in the stipulation. The actual advertisement, VSB #5, offered services in many facets of legal practice:

. . . accidents, especially those involving injuries and death; bankruptcy proceedings; family law—separation, divorce, child-support; traffic offenses—drunk driving, driving without a license; immigration, sponsorship, visitor and student visas; business contracts; wills, trust letters; and other matters relating to law.

The only category of service not handled directly by the Respondent was immigration services. We believe the Respondent did have an ongoing arrangement with another attorney

to handle immigration matters. Viewed in its entirety, we think the advertisement is less offending than it would be had it only offered immigration services.

We are persuaded that the problems with the first two complainants arose because Larry Nguyen willfully embezzled the fees they paid and concealed his wrongdoing from the Respondent. The Respondent knew nothing of an attorney-client relationship with these two clients until he received the letters mentioned in paragraphs 8 and 17 of the stipulation. The Respondent first learned that fees had been collected by Larry Nguyen, and evidently embezzled, when the investigator for the Virginia State Bar so advised on March 30, 2000. By that time Larry Nguyen was no longer employed by the Respondent. The Respondent was not an active participant in Larry Nguyen's wrongful acts. Because of the embezzlement he never received the client funds, and therefore committed no Canon 9 violations. Nonetheless, we find that he wholly failed to, "exercise a high standard of care to assure compliance by the nonlawyer [his employee-Nguyen] personnel with the applicable provisions of the Code of Professional Responsibility," as required by DR 3-104.(C).

We also find fault with the way the Respondent handled these client problems once they came to light. Certainly he should have tried to identify and correct the problems by contacting these complainants directly. It was irresponsible to refer these problems to Larry Nguyen for correction. The Respondent knew from March 30, 2000 that fees were collected from these clients and embezzled, yet as of the date of this hearing he had taken no action to refund these fees or otherwise make restitution. On that point, Respondent testified he was told by Bar Counsel to wait until resolution of the Bar complaints. We think the better course would have been to correct the wrongdoing promptly upon discovery.

Having received and adopted the stipulation, and having heard all the evidence and arguments of counsel, the Board finds that the stipulated disposition is appropriate with a 60 day suspension.

ACCORDINGLY IT IS ORDERED that the license of Robert Edward Howard be, and the same is hereby SUSPENDED for a period of 60 days, effective April 1, 2002, and he is directed to comply with the terms and conditions set out in the stipulation set out above. It is FURTHER ORDERED that if he does not comply with the terms set out above in the manner and within the time specified above, then this Board shall impose an alternative disposition of revocation of his license. While the Board does not have the authority to impose a suspension with terms and an alternative disposition absent agreement of both parties, in this case both parties have agreed and, therefore, this suspension with the terms and alternative disposition specified above are hereby imposed.

ENTERED this 1st day of April, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By:
WILLIAM M. MOFFET, Chair



VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
RAYMOND WILLIAM KONAN, ESQUIRE
VSB Docket # 98-052-2517

ORDER

This matter came on the 5th day of February, 2002 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 II. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, Esquire, Karen A. Gould, Esquire, Roscoe B. Stephenson, III, Esquire, James A. Banks, Jr., Esquire and John A. Dezio, Esquire, presiding.

Noel D. Sengel, Esquire, representing the Bar, and the Respondent, Raymond William Konan, Esquire, by his counsel, Timothy A. Battle, Esquire, presented an endorsed Agreed Disposition.

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

1. At all times relevant hereto, the Respondent, Raymond William Konan, Esquire (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In June of 1991, Paula Savage, the Complainant in this matter, purchased a home at 8522 Cottage Street, Vienna, VA, in Fairfax County, in her sole name. Ms. Savage was unmarried at the time she purchased the home. On November 28, 1992, Ms. Savage married the Respondent, and they resided together in Ms. Savage's home at 8522 Cottage Street. In July of 1996, Ms. Savage and the Respondent ceased marital cohabitation, and on November 1, 1996, the Respondent moved from the Cottage Street address.
3. During 1992 and 1993, Ms. Savage and the Respondent hired contractors to remodel the basement of the Cottage Street house. The contractors terminated their work on the basement remodeling of 8522 Cottage Street in late 1993.
4. In January of 1997, Ms. Savage hired Denman A. Rucker, Esquire to represent her in obtaining a divorce from the Respondent. Mr. Rucker contacted the Respondent in January of 1997 regarding the divorce. Mr. Rucker and the Respondent did not reach an agreement as to a property settlement.
5. On July 18, 1997, the Respondent filed a mechanic's lien in the land records of Fairfax County against the property located at 8522 Cottage Street, Vienna, VA. Pursuant to Virginia Code § 43-1, *et seq.*, the Fairfax County Circuit Court ruled that the Respondent was not entitled to file a mechanic's lien against the property, and failed to file the mechanic's lien in a timely manner.
6. In September of 1997, Mr. Rucker filed a bill of complaint for divorce on Ms. Savage's behalf in Arlington County. The Respondent filed an answer and a cross-complaint, though not so named.
7. On November 25, 1997, Mr. Rucker filed a petition to have the mechanic's lien filed by the Respondent declared invalid, and noticed the matter for hearing on December 19, 1997, a regularly-scheduled civil motions day in Fairfax County Circuit Court. On December 19, 1997, Judge Dennis Smith continued the case, over Mr. Rucker's objection, upon the Respondent's claim that it would require three hours to hear the matter. The case was continued until April 6, 1998, for a full three-hour hearing. The Court suggested that the Respondent review the facts of the matter thoroughly before proceeding to hearing on April 6, 1998, because the matter on its face indicated sanctions might be appropriate against the Respondent.
8. The matter was heard on April 6, 1998 by Judge William Plummer, and the Court declared the mechanic's lien invalid. Mr. Rucker asked for sanctions at that time. Judge Plummer ruled that the Respondent had not been given adequate notice of the sanctions motion because no sanctions had been requested in the original petition.
9. On April 10, 1998, after the mechanic's lien had been declared invalid, the Respondent filed a motion in Fairfax County Circuit Court for a Declaratory Judgment of Constructive Trust on the property located at 8522 Cottage Street.
10. On April 13, 1998, Mr. Rucker filed a motion for sanctions against the Respondent in the matter of the mechanic's lien and noticed the motion for April 17, 1998. On April 17, 1998, the sanctions motion was heard by Judge Dennis Smith. Judge Smith determined that the Respondent had not been given the requisite one week notice of the motion required by the local rules and continued the sanctions motion over until May 8, 1998, so that the Respondent could be given a proper notice. In order to prevent the twenty-one day period in which the court could amend its order from expiring, Judge Smith suspended Judge Plummer's order of April 6, 1998, until May 8, 1998, solely for the purpose of a hearing on the sanctions motion.
11. On April 17, 1998, the Respondent's motion for a Resulting or Constructive Trust on Paula Savage's home was heard by Judge Jane Roush, with only the Respondent appearing. Mr. Rucker did not appear and states he did not do so because he was unaware the matter was on the docket. In any event, Judge Roush denied the Respondent's motion without prejudice for the Respondent to address the matter in the context of an equitable distribution hearing in the pending Arlington divorce matter.
12. Ms. Savage had a contract for the sale of her house at 8522 Cottage Street which was scheduled to go to settlement on April 21, 1998. The Respondent knew of the

scheduled settlement and of Ms. Savage's plans to move to upstate New York. On April 20, 1998, the day before the scheduled settlement and after the Respondent's mechanic's lien had been declared invalid, the Respondent faxed a misleading letter to Ms. Savage's real estate agent to stop the sale of the house. The settlement did not occur on April 21, 1998. It did occur several days later, but only after Ms. Savage incurred additional legal fees, agreed to escrow her funds from the sale of the house until the expiration of the appeal period for the various court orders issued in the matter, and to pay the costs of any defense required during the period of appeal.

- 13. On May 8, 1998, the Fairfax County Circuit Court sanctioned the Respondent \$2,500.00, pursuant to Virginia Code § 8.01-271.1, for his actions regarding the mechanic's lien. The Respondent paid the \$2,500.00

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

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

DR 7-102 (A)(1) and (2) * * *

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 June 1, 2003 are as follows:

- 1. The Respondent shall become a member of and maintain his membership in the Fairfax Bar Association for the 2002 and 2003 membership years and shall establish a mentor relationship with an active member of the Fairfax Bar Association through the Fairfax Bar Association's mentor program. Such mentor shall be experienced in the area of civil litigation in state court and shall be approved by the Assistant Bar Counsel handling this case prior to the establishment of the mentor relationship. The mentor shall meet with the Respondent at least monthly for a period of one year after establishment of the relationship, and monitor whether the Respondent's practice complies with the Rules of Professional Conduct and the Legal Ethics Opinions of the Virginia State Bar and provide support and advice to the Respondent in the area of civil litigation. The Respondent shall be candid with the mentor regarding the facts of the matters being discussed and use the mentor as a sounding board before filing matters in court. The Respondent shall provide satisfactory evidence of his membership in the Fairfax Bar Association and the name of his proposed mentor to the Assistant Bar Counsel handling this case by April 30, 2002. The mentor shall report to the Assistant Bar Counsel handling this case on a monthly basis as to whether or not the Respondent has cooperated fully with the mentor in ensuring the Respondent's compliance with the Rules of Professional Conduct and Legal Ethics Opinions of the Virginia State Bar.
- 2. The Respondent shall complete 12 hours of continuing legal education in the area of civil litigation, approved by Virginia MCLE, in addition to the mandatory continuing

legal education hours required to maintain his license to practice law in the Commonwealth of Virginia. Upon completion of such term, the Respondent shall provide the the Assistant Bar Counsel assigned to this case a copy of the MCLE form for each such course showing the course name, the number of hours of the course attended, and the date and location of the course.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed, and this matter shall be closed. If, however, the terms and conditions have not been met by June 1, 2003, the alternative sanction of a three-month suspension of the Respondent's license to practice law in the Commonwealth of Virginia shall be imposed.

* * *
* * *
* * *

Enter this Order this 19th day of February, 2002
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: John A. Dezio
Chairman



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
GAY LYNN TONELLI;
VSB DOCKET No. 00-090-2323 (Patricia Davis)

ORDER

On February 13, 2002, came the Virginia State Bar, by its Assistant Bar Counsel, Paul D. Georgiadis, and came respondent Gay Lynn Tonelli, pro se, to be heard on the Virginia State Bar's motion to dismiss this appeal of a public reprimand issued by the Ninth District Committee on November 28, 2001. Whereupon, Ms. Tonelli announced that she was withdrawing her appeal.

It is accordingly ORDERED that the appeal be, and hereby is, withdrawn and the public reprimand imposed by the Ninth District Committee is hereby AFFIRMED.

* * *

ENTERED this 15th day of February, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: William M. Moffet, Chairman



BEFORE THE NINTH DISTRICT COMMITTEE OF
THE VIRGINIA STATE BAR

IN THE MATTER OF
GAY LYNN TONELLI
VSB Docket No. 00-090-2323 (Patricia Davis)

**DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)**

On November 16, 2001, a hearing in this matter was held before a duly convened panel from the Virginia State Bar Ninth District Committee consisting of Phillip Dandridge Payne, IV, Esquire, Kimberley Slayton White, Attorney at Law, Paul Joseph Feinman, Esquire, Ms. Langhorne S. Mauck, lay member, Mr. Theodore Bruning, lay member, and Charles Glasgow Butts, Jr., Chair presiding. The bar appeared by its Assistant Bar Counsel Paul D. Georgiadis.

Despite being given due notice, having actual notice, and being under subpoena to appear, the Respondent failed to appear. Pursuant to the Rules of Court, Part 6, § IV: ¶13(B)(6)(a), Respondent was sent the Notice of Hearing to her last reported address of record on or about September 18, 2001. Actual notice was confirmed by Respondent's counsel L.F. Tyler, III, who contacted the bar in this matter on November 7, 2001. By posted service on October 24, 2001, Respondent received a Summons to Appear at the hearing.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(7) and Council Rule of Disciplinary Procedure V, the Ninth District Committee of the Virginia State Bar hereby serves upon the Respondent, Gay Lynn Tonelli, the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, Gay Lynn Tonelli, hereinafter "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about April 28, 1998, Respondent entered into an *Agreement To Provide Legal Services* in which she agreed to represent the Complainant Patricia L. Davis, ("Davis") in "Negotiation of Separation, Settlement and Custody Agreement, Contested Action for Divorce." The Agreement provided for an initial payment of \$500.00 to be billed against at \$95.00 per hour for attorney services and \$30.00 per hour for paralegal services. It further provided that Respondent would notify Davis when the retainer fell below \$500.00 to request replenishment and that Respondent would send itemized bills "from time to time." Finally, it provided that representation would commence upon initial payment of the \$500.00.
3. On or about April 28, 1998, Davis paid Respondent the requested initial advance payment of \$500.00.
4. From April 28, 1998, to the Spring of 2000 when she was discharged, Respondent failed to prepare a property settlement agreement and failed to reasonably advise Davis of the status thereof. In the Fall of 1998, Respondent presented to Davis a template of a property agreement for review. Davis inserted the changes so that the template document applied to her facts and circumstances. Within days of receipt, Davis returned the agreement by hand to Respondent. Despite making repeated telephone calls to Respondent's office to inquire about the status of the separation agreement, Davis did not receive any further information until the Summer of 1999 when she picked up the separation agreement from Respondent's office for further review and revision. Davis made revisions and returned the separation agreement the next day. Thereafter, Respondent failed to finalized the property settlement agreement to present to Davis' spouse for consideration.

5. During the fall of 1999, Davis made weekly and then nearly daily telephone calls to inquire about her case status. Respondent failed to respond to said telephone calls.
6. In the absence of a finalized property settlement agreement to present for consideration and negotiation, Davis' marital home and household property therein were lost to foreclosure in late 1999.
7. In late 1999, Respondent advised Davis that prior to hiring a new attorney Davis had to obtain from Respondent a release from the engagement agreement. At that time, Davis requested such release and Respondent refused to give the release pending payment of unspecified legal fees.
8. Notwithstanding the terms of the *Agreement To Provide Legal Services*, not withstanding Respondent's claims of unpaid legal fees, and notwithstanding Davis' requests for a statement, Respondent failed to provide any itemized statements at any time during the representation.
9. During the investigation of the aforesaid matters from January 2001 to March 2001, the bar's investigator has repeatedly attempted to contact Respondent by telephone and by a letter. To the numerous requests for an interview, Respondent replied only once by telephone and promised to send the bar investigator a copy of her file and then to arrange an appointment to meet the investigator for an interview. Respondent has done neither, in spite of repeated further contacts by the bar.

II. NATURE OF MISCONDUCT

Such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

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

RULE 8.1 (c) ***

The Committee found a partial violation of Disciplinary Rule 2-105 (A) as follows:

DR 2-105. (A) ***

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Committee to impose a Public Reprimand on Respondent, Gay Lynn Tonelli, and she is so reprimanded.

Ninth District Committee
Of the Virginia State Bar
By Charles Glasgow Butts, Jr.
Chair Presiding



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
JEAN VENESS
VSB Docket No: 02-000-1795

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board for hearing on February 22, 2002, upon a Show Cause Order and Order of Suspension and Hearing entered on January 25, 2002. A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Bruce T. Clark, Peter A. Dingman, Joseph R. Lassiter, Jr., Chester J. Cahoon, Jr., Lay Member, and William M. Moffet, presiding, heard the matter. Claude V. Worrell, II, ("Assistant Bar Counsel") appeared as Counsel to the Virginia State Bar ("VSB"). Jean Veness ("Respondent") did not appear.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System, in the manner prescribed by law. Part Six, §IV, ¶13.G of the Rules of the Supreme Court, *Disbarment or Suspension in Another Jurisdiction*, provides in relevant part that, following the issuance of a show cause order and order of suspension, "the Board shall forthwith serve upon Respondent by certified mail (a) a copy of such certificate [establishing the suspension or disbarment of Respondent in a foreign jurisdiction], (b) a copy of such order, and (c) a notice fixing the time and place of a hearing to determine what action should be taken by the Board." The Board finds that the Bar has complied with these requirements by forwarding a certified letter containing the required documentation to Respondent dated January 25, 2002.

The case was called three times: Respondent neither answered the docket call nor appeared to defend her interests. Respondent did file a response to the Show Cause Order and Order of Suspension and Hearing, as required by ¶13.G, which was admitted as Exhibit 4. The Chair opened the hearing by polling the Board members to ascertain whether any member had a conflict of interest which would preclude him or her from serving. There were no conflicts and the hearing proceeded as scheduled.

The Virginia State Bar exhibits were admitted into evidence as Exhibits 1, 2, and 3, without objection. Respondent's answer and transmittal letter were introduced as Exhibit 4. The evidence adduced at the hearing was that Respondent had been suspended for a period of one year from the practice of law by the Supreme Court of New York by order issued

November 13, 2001. Respondent had been charged with three (3) violations of professional misconduct, to-wit: failing to register with the Office of Court Administration ("OCA"), failing to notify the OCA of numerous changes of address, and failing to cooperate with the investigation. She was found guilty of all charges and suspended for one year. *See*, Supreme Court of the State of New York Order 2000-06154. (Exhibit 1).

The Respondent has failed to establish a defense as provided in Part 6, §IV, ¶13.G of the Rules of the Supreme Court. Accordingly, the Board must impose the same discipline imposed by the State of New York, to-wit: suspension of Respondent's license to practice law for one year.

Upon consideration of the matters before this panel of the Disciplinary Board, it is hereby ORDERED that, pursuant to Part 6, §IV, ¶13.G of the Rules of the Supreme Court, the license of Respondent, Jean Veness, to practice law in the Commonwealth of Virginia shall be, and is hereby, SUSPENDED for a period of one year, effective January 25, 2002. The Board's Summary Order entered on February 22, 2002, at the conclusion of the hearing reciting the effective date of the suspension as February 22, 2002 is hereby amended to reflect that the suspension shall run from January 25, 2002, the date Respondent's license to practice law in Virginia was first suspended by this Board pursuant to the Show Cause Order and Order of Suspension and Hearing.

SO ORDERED, this 13th day of March, 2002.
By: William M. Moffett, Chairman



BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF:
MALCOLM BRUCE WITTENBERG
VSB Docket No. 02-000-2065

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board for hearing pursuant to a Rule to Show Cause and Order of Suspension and Hearing entered January 25, 2002 (the "Order of Suspension"), requiring that Malcolm Bruce Wittenberg ("Respondent") appear before the Virginia State Bar Disciplinary Board (the "Board") in Hearing Room A at the Virginia Supreme Court, 1st Floor, 100 Ninth Street, Richmond, Virginia, 23219, at 9:00 o'clock a.m., on February 22, 2002, to show cause why his license to practice law within the Commonwealth of Virginia should not be suspended or revoked based upon conviction of a "Crime," as defined by the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.A. The official file in the Office of the Clerk of the Disciplinary System documents that the order of suspension, notice of the hearing and a copy of the criminal conviction order from the court entering same was served on Respondent at his address

of record with the Virginia State Bar as required by Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.E(1) on January 25, 2002.

At 9:00 o'clock a.m., on February 22, 2002, a panel of the Board, consisting of William M. Moffet, Chair, Chester J. Cahoon, Jr., lay member, Bruce T. Clark, Joseph R. Lassiter, Jr. and Peter A. Dingman, was duly convened and, after other preliminary business, at 9:10 o'clock a.m., this case was called and each member of the panel was requested by the Chair to state whether he was aware of any personal or financial interest which would affect or reasonably be perceived to affect his ability to be impartial in this case. Each member of the panel, including the Chair, responded in the negative. Respondent not being present, the Clerk called his name three times in the hallway adjacent to the Courtroom. Respondent failed to respond or to appear. The Virginia State Bar (the "Bar") appeared and was represented by Charlotte P. Hodges, Assistant Bar Counsel. The Bar then moved into evidence three exhibits consisting of an indictment of Respondent for insider trading violations, a sentencing memorandum and a judgment of conviction (the "Judgment"), all filed in the United States District Court for the Northern District of California, San Francisco Division (the "Court"), in a case styled United States of America v. Malcolm B. Wittenberg, Case No. CR01-0157 WHA. These three exhibits were admitted without objection. The Judgment shows that Respondent pled guilty and was found guilty of violating Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5.

Upon this record, the Board finds that the Bar has proven by clear and convincing evidence that Respondent has been convicted of a "Crime" as defined by Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.A.

It is accordingly, ORDERED that, pursuant to Part 6, Section IV, Paragraph 13.E(2) of the Rules of the Supreme Court of Virginia, the license of Malcolm Bruce Wittenberg to practice law in the Commonwealth of Virginia be, and the same hereby is, REVOKED effective February 22, 2002.

So ordered this 13th day of March, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: William M. Moffet, Chair.



District Committees

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

IN THE MATTER OF
GARY M. BRENEMAN, ESQUIRE
VSB Docket No. 00-051-0899

SUBCOMMITTEE DETERMINATION PUBLIC REPRIMAND

On the 7th day of March, 2002, a meeting in this matter was held before a duly convened Fifth District Section I subcommittee consisting of Susan R. Salen, Esq., Stephen A. Wannall, and Sean P. Kelly, Esq., presiding.

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

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Gary M. Breneman, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On June 3, 1999, the Complainant, Diana S. Shepherd, hired the Respondent to produce a last will and testament, health care declaration, medical power of attorney and durable power of attorney for her. On that day, the Complainant paid the Respondent \$150.00 in advanced fees, which was half of the Respondent's \$300.00 fee. The check cleared the Complainant's bank account on June 7, 1999. The Respondent informed the Complainant that he would mail to her drafts of her documents within approximately a week. The Respondent made a tentative appointment for June 17, 1999, for the Complainant to come back to his office to sign the documents. In the interim, they would discuss any necessary changes to the document.
3. By June 17, 1999, the date of her next appointment with the Respondent, the Complainant still had not received the drafts of her documents from the Respondent. On June 17, 1999, the Complainant called the Respondent to ask him whether or not she should still come to his office for their appointment. She left a voice mail message for him; he did not respond. She went to his office for her appointment but the Respondent never arrived. The next day, the Respondent left a message on the Complainant's voice mail apologizing for missing their appointment. She, in turn, called the Respondent but could never get in touch with him. On July 13, 1999, the Complainant wrote the Respondent a letter, reiterating the fact that she had not received her draft documents, nor had she been able to contact him. She fired the Respondent and requested that he return to her any unearned portion of the advanced fee.
4. After receiving no response from the Respondent, the Complainant filed her complaint with the Virginia State Bar on October 1, 1999. On October 20, 1999, the Bar sent its opening letter to the Respondent, providing the usual twenty-one days from the date of the opening letter for the Respondent to answer the complaint. On November 29, 1999, forty days after the date of the opening letter to the Respondent, the Bar received the Respondent's answer, stating that he had returned the Complainant's full advanced fee of \$150.00 and provided her with the draft

of documents which had been completed before his termination. The Respondent stated that he had earned the entire advanced fee.

5. The Bar referred the case to the Fifth District Committee Section I and for further investigation. In August of 2001, Bar investigator R. Kenneth Smith spoke with the Complainant in regards to his investigation of her complaint against the Respondent. The Complainant confirmed that the Respondent had returned her advanced fee of \$150.00 and provided her with draft documents. Investigator Smith also attempted to contact the Respondent to question him about the complaint. The Respondent did not respond to the messages that Investigator Smith left on his voice mail. On September 13, 2001, Investigator Smith sent a letter to the Respondent requesting that the Respondent contact him.
6. On September 19 and 21, 2001, the Respondent left telephone messages for Investigator Smith in response to Investigator Smith's letter of September 13, 1999. In turn, Investigator Smith made several phone calls to the Respondent, but the Respondent's voice mail was full and would not allow him to leave a message. Investigator Smith then faxed a message to the Respondent requesting that the Respondent call him. The Respondent called Mr. Smith and left a message, indicating that he would call again with a date and time when they could discuss Ms. Shepherd's case. As of October 3, 2001, the Respondent had not called again, and his voice mail was still full.

II. NATURE OF MISCONDUCT

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

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

DR 9-102. (B)(4)***

Maintaining the Integrity of the Profession

RULE 8.1 (c) ***

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee that a Public Reprimand shall be imposed, and this matter shall be closed.

FIFTH DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By Sean P. Kelly
Chair/Chair Designate



BEFORE THE SEVENTH DISTRICT
COMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
WALTER FRANKLIN GREEN, IV, ESQUIRE
VSB Docket No. 97-070-0897

**COMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS**

On February 20, 2002, a hearing in this matter was held before the duly convened Seventh District Committee, consisting of Ann K. Crenshaw, Esq., Frederick Warren Payne, Esq., Douglas K. Baumgardner, Esq., Steven H. Gordon, Ann C. Hall, and John G. Berry, Esq., presiding.

The Respondent, Walter Franklin Green, IV, Esquire, appeared in person with his counsel, Bruce P. Ganey, Esquire. Claude V. Worrell, II, Esq., Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

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

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Walter Franklin Green, IV, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In the summer of 1995, Michael Scott Summers (hereinafter the Complainant) retained the Respondent to represent him on criminal charges in Rockingham County Circuit Court. The matter went to trial on August 31, 1995, and the Complainant was convicted. On December 7, 1995, the Complainant was sentenced to a period of incarceration. The Complainant wanted to appeal the conviction and the Respondent was appointed to represent him on appeal. The Respondent noted the appeal that same day.
3. On December 11, 1995, the Respondent filed a Notice of Appeal with the Virginia Court of Appeals. The Court of Appeals received the record on April 15, 1996. The Respondent filed a Brief in Support of Petition for Appeal on May 28, 1996. The Office of the Commonwealth's Attorney for the County of Rockingham filed a Brief in Opposition on June 17, 1996.
4. On June 17, 1996, the Respondent wrote the Complainant, advising him that he, the Respondent, had filed the Complainant's appeal with the Court of Appeals and would no longer represent him. The Respondent did not petition any Court for leave to withdraw from the Complainant's case and did not inform the Complainant about his possible remedies beyond the Virginia Court of Appeals.
5. On August 30, 1996, the Court of Appeals denied the Complainant's appeal.
6. The Respondent took no other action on behalf of the Complainant.

II. NATURE OF MISCONDUCT

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

DR 2-108. (C) and (D) ***

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the Committee to impose a Public Reprimand with Terms, compliance with which by April 15, 2003, shall be a predicate for the disposition of this complaint by imposition of a Public Reprimand with Terms. The terms and conditions which shall be met by April 15, 2003 are:

- 1. You shall, on or before March 30, 2002, 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 recommendations concerning your law practice policies, methods, systems, and procedures. You shall institute and thereafter follow with consistency any and all recommendations made to you by Ms. Johnston following her evaluation of your practice. You shall grant Ms. Johnston access to your law practice from time to time, at her request, for purposes of ensuring that you have instituted and are complying with her 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 your level of compliance with her recommendations. You shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter) in a maximum aggregate amount of \$1,600.00. You will have discharged your obligations respecting the terms contained in this Paragraph 2 if you have fulfilled and remained in compliance with all of the terms contained in herein through April 15, 2003.

Upon satisfactory proof that the above noted terms and conditions have been met, a Public Reprimand with Terms shall then be imposed, and this matter shall be closed. If, however, the terms and conditions have not been met by April 15, 2003, this matter will be sent to the Virginia State Bar's Disciplinary Board.

SEVENTH DISTRICT SECTION COMMITTEE OF THE VIRGINIA STATE BAR By John G. Berry, Chair



BEFORE THE FIFTH DISTRICT COMMITTEE SECTION III OF THE VIRGINIA STATE BAR

IN THE MATTER OF JOHN HENRY PARTRIDGE, ESQUIRE VSB Docket # 00-053-0374

DISTRICT COMMITTEE DETERMINATION (PUBLIC REPRIMAND)

On March 26, 2002, a hearing in this matter was held before a duly convened Fifth District Committee, Section III,

panel consisting of Gregory Allen Porter, Esquire, H. Jan Roltsch-Anoll, Esquire, E. Allen Newcomb, Esquire, the Reverend Theodore Smith, C. Michael Hunter, and Joyce Ann N. Massey, Esquire, presiding. The Respondent, John Henry Partridge, Esquire, appeared and was represented by Pamela Bethel, Esquire. Seth M. Guggenheim, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Previously, on November 20, 2000, a subcommittee imposed a Private Reprimand with Terms, in accordance with an agreement between Respondent and Bar Counsel. Pursuant to Council Rule of Disciplinary Procedure IV (C), this hearing was held to require the Respondent to show cause why the alternative disposition should not be imposed for failure to comply with the terms imposed by the aforesaid disposition. Upon evidence and argument presented, the Fifth District Committee, Section III, finds that the Respondent was duly notified of this hearing by a certified mailing, return receipt requested, to his last address of record with the Virginia State Bar, and that the terms were not fulfilled. Accordingly, the Committee hereby issues the following Public Reprimand:

I. FINDINGS OF FACT

- 1. At all times relevant hereto, the Respondent, John Henry Partridge, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about September 17, 1997, Sabbir and Rumana Ahmed (hereafter "Complainants") engaged Respondent to represent them in immigration matters.
3. Notwithstanding Respondent's obligation to handle competently Complainants' case, he failed to properly monitor the progress of the case and failed to properly present a Motion asserting lack of notice of a deportation hearing.

II. NATURE OF MISCONDUCT

Such conduct by the Respondent, as set forth above, constitutes Misconduct in violation of the following Disciplinary Rules of the Revised Virginia Code of Professional Responsibility:

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

III. PUBLIC REPRIMAND

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

FIFTH DISTRICT COMMITTEE SECTION III OF THE VIRGINIA STATE BAR By: Joyce Ann N. Massey



BEFORE THE FIRST DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
WESLEY LEE PENDERGRASS
VSB Docket No. 00-010-3192

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On February 7, 2002, a hearing in this matter was held before a duly convened First District Committee panel consisting of J. Wayne Sprinkle, Esquire, Eugene M. Jordan, II, Esquire, Damian P. Dwyer, Esquire, Robert W. Jones, Jr., Esquire and John D. Eure, Jr., Esquire, Chair, presiding.

The Respondent appeared in person pro se and Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The lay member designated for the hearing had taken ill and could not appear, and no other lay member was available to appear in his stead. A quorum otherwise being present, and there being no objection from the Respondent, the Committee proceeded without a lay member.

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

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Wesley Lee Pendergrass, (hereinafter Respondent or Mr. Pendergrass) was an attorney licensed to practice law in the Commonwealth of Virginia.
2. On April 6, 2000, the Circuit Court for the City of Newport News sentenced the Complainant, Jason A. Brown, to a net sentence of five years to serve in the Virginia Department of Corrections on his convictions of armed robbery and use of a firearm in the commission of a felony. Mr. Pendergrass was Mr. Brown's court-appointed defense counsel.
3. Mr. Brown advised Mr. Pendergrass that he desired to appeal his convictions, and Mr. Pendergrass noted an appeal to the Court of Appeals of Virginia on April 26, 2000. Thereafter, Mr. Pendergrass took no further action with respect to the appeal, and the Court of Appeals dismissed it accordingly on September 20, 2000.
4. The following year, on January 16, 2001, Mr. Pendergrass filed a Motion for Reconsideration of Sentence on behalf of Mr. Brown in the Circuit Court for the City of Newport News. The motion was based upon Mr. Brown's cooperation with police in other unrelated matters. At the time, the Hampton Circuit Court had already reduced a felony to a misdemeanor in consideration of Mr. Brown's cooperation with the authorities. The Newport News Circuit Court, in its discretion, chose not to hear the motion.

5. Evidence adduced at the hearing indicated that Mr. Brown repeatedly wrote to his attorney throughout the matter asking him to communicate with him. Unable to verify whether Mr. Pendergrass had noted his appeal, he complained to the Virginia State Bar in June 2000. Mr. Pendergrass responded to the complaint and visited Mr. Brown at the jail on July 18, 2000 to discuss his appeal.
6. In his response to the bar complaint, dated July 17, 2000, Mr. Pendergrass said that Mr. Brown desired an appeal, and that Mr. Pendergrass would meet all deadlines and protect all of his rights accordingly. Mr. Pendergrass took the initial steps to perfect the appeal, and ordered the trial transcript, which became part of the record. He did not know he was required to notify the Commonwealth's Attorney about the receipt of the transcript, in accordance with Supreme Court Rule 5A:18, and did not do so.
7. Mr. Pendergrass testified that when he met with Mr. Brown at the jail following the bar complaint, he advised Mr. Brown not to pursue the appeal because the sentence modification motion was the only viable option. He said that in response, Mr. Brown told him to do what he thought was best, and that Mr. Pendergrass allowed the appeal to lapse accordingly. Mr. Pendergrass acknowledged that Mr. Brown never expressly authorized him to forego the appeal, and that he never sought a written waiver of the appeal from Mr. Brown.
8. Mr. Brown testified that he never wanted his attorney to forego the appeal, and that he never agreed to a sentence modification motion in lieu of an appeal. A significant piece of evidence was a letter from Mr. Brown to the Virginia State Bar, written immediately after the July 18, 2000 meeting. In the letter, Mr. Brown complained about how Mr. Pendergrass urged him to drop his appeal when he wanted Mr. Pendergrass to pursue his appeal. He said further that he told Mr. Pendergrass during the meeting not to drop his appeal. At the time, the appeal was still pending.

II. MISCONDUCT

By unanimous decision, the Committee finds that Virginia State Bar has proven violations of the following Rules of Professional Conduct by clear and convincing evidence:

RULE 1.1 * * *

RULE 1.3 (a) * * *

RULE 1.4 (a) * * *

The Committee finds that the bar did not prove violations of the following Rules of Professional Conduct, and they are dismissed accordingly: Rule 1.4 (b) and (c).

III. PUBLIC REPRIMAND WITH TERMS

Upon consideration of the evidence and the Respondent's prior disciplinary record, which includes two instances of similar misconduct, it is the unanimous decision of the Committee to offer the Respondent an opportunity to comply with certain

terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this Complaint. The terms and conditions shall be met by the times set forth below:

1. Within six months of this hearing, or by August 7, 2002, the Respondent shall attend an approved Continuing Legal Education (CLE) course that includes the subject of Appellate Criminal Practice for no annual CLE credit. The Respondent may call the Virginia State Bar Department of Continuing Legal Education at (804) 775-0577 for information on available courses. The Respondent shall seek approval of the course from Assistant Bar Counsel Edward L. Davis before attending. The Respondent shall certify his attendance at the course to Assistant Bar Counsel Edward L. Davis.
2. Within six months of this hearing, or by August 7, 2002, the Respondent shall attend a CLE Course on the subject of law office management or risk management for no annual CLE credit, subject to the same conditions mentioned above in term (1).
3. Within thirty (30) days of completing the CLE course on law office management or risk management, or by September 7, 2002, the Respondent shall write to the Virginia State Bar, in care of Edward L. Davis, Assistant Bar Counsel, a detailed letter about how he has changed or modified his docket control system.

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

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



BEFORE THE SECOND, SECTION II
DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
WILLIAM P. ROBINSON, JR.
VSB Docket No. 00-022-1581

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On April 3, 2002, a meeting in this matter was held before a duly convened Second, Section II District Subcommittee consisting of Jon F. Sedel, Kevin E. Martingayle, Esq., and Michael A. Robusto, Esq., Chair presiding.

Pursuant to Virginia Supreme Court Rules of Court Part Six, Section IV, Paragraph 13(B)(5) and Council Rule of Disciplinary

Procedure IV(B), and by agreement of the Respondent and the Bar, the Second, Section II District Subcommittee of the Virginia State Bar hereby serves upon the Respondent, William P. Robinson, Jr., the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times material to these allegations, the Respondent, William P. Robinson, Jr. (Robinson), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In early 1993, the Complainant, Kenneth J. Mitchell (Mitchell) hired Robinson for representation at a criminal sentencing and to pursue an appeal in a case pending in the Circuit Court of the City of Portsmouth captioned *Commonwealth of Virginia v. Kenneth Jermaine Mitchell*, CR91-1469 (the Case).
3. On April 22, 1993, Mitchell was sentenced by the Honorable Norman Olitsky to twenty-two (22) years. The sentencing order was entered April 22, 1993.
4. On May 28, 1993, Robinson filed a Motion for a New Trial. On August 23, 1993, a hearing was held on that Motion. The Court denied the Motion in an order dated December 14, 1993.
5. On January 11, 1994, Robinson filed a Notice of Appeal in Mitchell's case.
6. On March 13, 1995, The Court of Appeals of Virginia entered an order denying Mitchell's appeal due to the fact the Notice of Appeal was not timely filed.
7. On April 12, 1995, Robinson filed a habeas petition seeking a delayed appeal on Mitchell's behalf (the 1995 Petition).
8. The Attorney General's Office, by counsel, agreed to the provision of a delayed appeal, which the Court of Appeals granted by order dated August 22, 1996. A \$25 filing fee was not paid, and the delayed appeal was dismissed by order of the Court of Appeals dated October 11, 1996.
9. On September 10, 1997, Robinson filed a second habeas corpus petition (the 1997 Petition). The 1997 Petition was signed by Robinson, not Mitchell, and the signature was not notarized.
10. On October 28, 1997, the Attorney General's Office, by counsel, filed a Motion to Dismiss, citing the statutory requirement that a habeas petition be sworn to under oath by the Petitioner (8.01-655). Robinson filed nothing in response to this Motion.
11. On January 8, 1999, at the request of the Court, the Attorney General's Office, by counsel, sent a dismissal order to the Court with a copy to Robinson. The Court entered the order on January 11, 1999. On that same day, Robinson sent a signature page to Mitchell, stating "I enclose herewith a signature page for your habeas corpus petition, which was apparently overlooked, this will prevent the case from being dismissed, and we will be able to proceed

as planned.” Mitchell signed the signature page on January 13, 1999, but by then the 1997 Petition was already dismissed.

12. Thereafter, Mitchell received a copy of Robinson’s cover letter to Portsmouth Circuit Court dated March 30, 1999, purporting to enclose an original and one copy of a habeas petition for filing and a filing fee check. Mitchell wrote the Court sometime in late June or early July of 1999 seeking to confirm the March filing of the third petition.
13. On July 19, 1999, a Deputy Clerk wrote back to Mitchell referencing the March 30 date and indicating “Our records do not show that a petition of this matter was filed in this court.” Robinson would offer evidence that a third petition was sent to the Court and the filing fee check was cashed, but the third petition was lost or misplaced by the Court Clerk’s Office.
14. Mitchell thereafter filed a pro se habeas petition, which was dismissed as being time-barred and a successive petition in September of 1999. Mitchell then filed his Bar complaint.

II. NATURE OF MISCONDUCT

Such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

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

III. IMPOSITION OF PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on Respondent, William P. Robinson, Jr., and he is so reprimanded.

Second, Section II District Subcommittee
Of the Virginia State Bar
By Michael A. Robusto
Chair Presiding

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