

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>CIRCUIT COURT</u>				
Linda Lea Kennedy	Portsmouth	Revocation	August 12, 2002	1
Harrison Benjamin Wilson III	Norfolk	2 Year Suspension	May 31, 2002	2
<u>DISCIPLINARY BOARD</u>				
Charles William Austin	Richmond	Public Reprimand	September 16, 2002	9
Robert Michael Abrams	Falls Church	Revocation	September 24, 2002	n/a
Andrea Kimberly Amy-Pressey	Williamsburg	Revocation	August 23, 2002	10
Alan Jay Cilman*	Vienna	2 Year Suspension	June 28, 2002	13
Corizzi, Anthony J.	Key West, FL	Show Cause Suspension	August 29, 2002	n/a
Chris McKinney Evans	Annandale	Revocation	August 23, 2002	14
Arthur C. Ermlich	Virginia Beach	3 Year Suspension	September 27, 2002	15
Caroline Patricia Ayers-Fountain	Hockessin, DE	3 Year Suspension	July 8, 2002	17
Charles Daugherty Fugate II*	Jonesville	Revocation	May 17, 2002	18
James Daniel Kilgore	Wise	Revocation	April 26, 2002	19
Robert Edmund La Serte*	Clifton	3 Year Suspension	July 26, 2002	19
David Nicholls Montague	Hampton	90 Day Suspension	June 28, 2002	21
Lawrence Raymond Morton	Woodbridge	60 Day Suspension	August 1, 2002	22
Robert Louis Petersen, Jr.	Williamsburg	Revocation	July 26, 2002	23
Thomas Edward Smolka	Cambria, CA	Revocation	July 27, 2002	26
Terry Lee Van Horn	Richmond	Revocation	September 27, 2002	31
Paul Charles Walsh	Falls Church	Revocation	August 23, 2002	32
Paul Dennis Ziegler, Jr.	Chesapeake	Public Reprimand	June 21, 2002	33

DISTRICT SUBCOMMITTEES

Henry Otis Brown	Petersburg	Public Reprimand	September 18, 2002	34
------------------	------------	------------------	--------------------	----

(*Respondent has filed an appeal in the Virginia Supreme Court.)

CIRCUIT COURT

IN THE CIRCUIT COURT FOR THE CITY OF PORTSMOUTH

VIRGINIA STATE BAR, EX REL
SECOND DISTRICT—SECTION I SUBCOMMITTEE
Complainant,

v.

LINDA LEA KENNEDY

Respondent.
Chancery No. 02-48

ORDER

Having been certified for hearing by the Second District Committee—Section I, and the Respondent, Linda Lea Kennedy, having requested a hearing before a three-judge panel pursuant to Virginia Code § 54.1-3935, this matter came on for hearing on July 15 and July 16, 2002, before a three-judge panel consisting of the Honorable John E. Clarkson, William L. Winston and Glen A. Tyler, Chief Judge. The Virginia State Bar appeared through its Assistant Bar Counsel Paul D. Georgiadis. The Respondent attorney appeared *pro se*.

Upon due consideration of the testimony and documentary

evidence, the Court finds by clear and convincing evidence that material facts in dispute, including issues of credibility, are resolved in favor of the Virginia State Bar. The Court finds that Respondent's evidence and testimony on disputed facts are not credible in view of the documentary evidence presented, much of which consists of Respondent's own documents.

The Court finds by clear and convincing evidence that Respondent has violated DR 2-105(A) by charging her client for admission to the U.S. District Court and for a copy of the court rules, which are overhead items not billable to a client. The Court also finds that Respondent failed to adequately explain to her client the co-counsel fee of \$18,750 paid to Lanis Karnes on April 19, 1999, and failed to obtain client's consent to such. The Court finds by clear and convincing evidence that the Respondent and her client agreed that Karnes' co-counsel fees would be paid by the Respondent from any contingency fee due to the Respondent, not money due to the client.

The Court finds by clear and convincing evidence that Respondent has violated DR 7-102 (A)(1) and DR 7-102 (A)(2). On January 19, 1999, Respondent was found by the U.S. District Court magistrate to have made an argument in *Sherry M. Grayson v. Milcom Systems Corporation* for an improper purpose and without merit. Respondent not only failed to challenge that finding in subsequent proceedings before the U.S.

District Court but sought to have the finding upheld in the settlement of the case. The evidence is clear and convincing that the U.S. magistrate had a basis in fact for the finding.

The Court further finds by clear and convincing evidence that the Respondent has violated DR 9-102(A)(2) by disbursing funds from her trust account to herself and others, the entitlement to which was the subject of disputes between Respondent and her client. Respondent disbursed such disputed funds to herself and others to the extent that she appropriated to herself and others all of the money recovered in the settlement, including that money due her client.

WHEREFORE, it is ORDERED that:

Respondent is hereby REPRIMANDED for her violations of DR 2-105(A) arising from billing her client for office overhead;

Respondent's license to practice law is hereby SUSPENDED for a period of one year from the date of this order for her violations of DR 2-105(A) for her payment of co-counsel fees without adequate explanation or agreement;

Respondent is hereby REPRIMANDED for her violations of DR 7-102 (A)(1) and DR 7-102 (A)(2); and

Respondent's license to practice law in the Commonwealth of Virginia is hereby REVOKED for her violations of DR 9-102(A)(2).

It is further ORDERED that:

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

Pursuant to Rule 1:13, Respondent's endorsement is dispensed with.

The court reporter for the hearing was Stefania Smith at Ronald Graham and Associates, Inc., Court Reporters, 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 [telephone - (757) 490-1100].

ENTER: August 12, 2002
Glen A. Tyler
Chief Judge Designate

John E. Clarkson
Judge Designate

William L. Winston
Judge Designate

NOTE: Linda Lea Kennedy was notified pursuant to Rule 1:13 regarding the presentation of this Order, and actually received the notice but did not attend the hearing on the notice.

Glen A. Tyler



**IN THE CIRCUIT COURT
OF HENRICO COUNTY**

VIRGINIA STATE BAR ex rel
THIRD DISTRICT SUBCOMMITTEE, SECTION TWO
v.
HARRISON BENJAMIN WILSON III
Case No. CL 02375

ORDER OF SUSPENSION

CAME ON THIS MATTER FOR TRIAL on May 29, 30 and 31, 2002, pursuant to Va. Code Section 54.1-3935, as amended, before a Three Judge panel consisting of The Honorable Benjamin A. Williams, Jr., The Honorable Williams L. Winston, and The Honorable James W. Haley, Jr., 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 eight Virginia State Bar complaints which were incorporated into this proceeding:

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.

VS B Docket No. 01-032-1238 [Whitlow]

At the end of the presentation of the bar's case the Respondent moved to strike the evidence in VS B Docket No. 01-032-1238 [Whitlow]. The Court granted the motion to strike and dismissed the Whitlow complaint.

VS B Docket No. 01-032-0643 [Kintigos]

At the end of the presentation of the bar's case the Respondent moved to strike the evidence in VS B Docket No. 01-032-0643 [Kintigos]. The Court denied the motion to strike.

At the end of the bar's case and the Respondent's case, 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 Code of Professional Responsibility and the Virginia Rules of Professional Conduct, and the Court dismissed the Kintigos complaint.

VS B Docket No. 00-032-1980 [Carr]

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

I. Findings of Fact:

- 1. Wilson was first called by complainant Inetha M. Carr [Carr] on a Sunday afternoon for a case scheduled for

hearing the next day in federal court in Charlottesville; Wilson met Carr at her home near Farmville, Virginia that Sunday afternoon when he agreed to assume the representation and Carr gave him two trash bags filled with documents related to the pending case. The next day, on or about August 5, 1999, Wilson entered his appearance in the case of Inetha M. Carr v. Central Piedmont Action Council [CPAC], Civil Action No. 98-0056-L which was pending in the U.S. District Court for the Western District of Virginia [case]. Carr had filed the case in August of 1998, pro se, alleging discrimination based upon sex and race regarding two incidents that allegedly occurred with a co-worker when he allegedly hit her on her back and for retaliation as a result of CPAC suspending Carr from employment a year after the incidents. At the time Wilson entered the case there were motions by CPAC set for hearing on August 6, 1999, to compel Carr to turn over medical records and to dismiss the case for failure to comply with discovery requests. On August 6, 1999, the court dismissed any matter pertaining to Carr's medical claims leaving only the claim for retaliation discharge and associated damages and the court assessed costs to Carr.

2. On or about August 16, 1999, a pre-trial order was entered which, inter alia, set a discovery deadline at 45 days before the rescheduled trial date of February 16, 2000, i.e., December 26, 1999.
3. On or about November 3, 1999, CPAC moved to dismiss the case for failure of Carr to comply with discovery and for sanctions and noticed the deposition of Carr.
4. On or about November 17, 1999, Wilson filed a motion to deny CPAC's motions to dismiss and for sanctions. In his motion, Wilson acknowledged that the court previously had made it clear that no more discovery delays would be tolerated, that he had not responded to pending discovery propounded by CPAC because he believed the case would be settled, that if the court wished to impose sanctions it should do so against Wilson and not Carr and Wilson asked for more time to respond to discovery.
5. On or about November 19, 1999, Carlene Booth Johnson, Esq. [Johnson], counsel for CPAC then filed a reply memorandum and reply declaration in which she stated, inter alia, that the court had already made three sanctions awards against the plaintiff, all of which had been paid; and further stated:

Having failed to produce one single document or provide one single response to the discovery requests served by [CPAC] almost six months ago, plaintiff has the insolence to respond to [CPAC's] second motion to dismiss for failure to comply with discovery obligations by asking for more time.[CPAC] respectfully submits that enough is enough.
6. By letter dated December 1, 1999, Wilson filed the first response to CPAC's First Set of Interrogatories and Request for Production of Documents. In response to question 8 seeking the identity of all expert witnesses the plaintiff intended to call as witnesses at trial, Wilson answered:

We have not selected an expert at this time. We reserve the right to update this response; however, we do not intend to use an expert at this time. We may use Dr. Merkel to show extent of retaliation.

7. On or about December 6, 1999, Wilson filed a supplemental memorandum in opposition to the defendant's motion to dismiss and motion for sanctions citing his extreme workload as a solo practitioner as a reason for the lack of discovery response.
8. On December 9, 1999, the court issued an order and memorandum opinion denying the pending motion to dismiss; setting a January 26, 2000, hearing date for a summary judgment motion and ordering the plaintiff to pay the defendant's attorney's fees which were incurred in bringing the motion to dismiss and fees for any additional discovery required as a result of the plaintiff's late discovery compliance. In the memorandum opinion, the court found that the plaintiff had not acted in good faith and that the defendant was, at least in theory, prejudiced by the delay in complying with discovery requests. The court also gave the plaintiff ten days to respond to a motion for summary judgment and ordered the plaintiff to pay the defendant's attorney's fees within two weeks of the defendant's affidavit detailing the fees incurred.
9. On or about January 4, 2000, CPAC filed a motion for summary judgment and a memorandum in support of the motion.
10. On or about January 5, 2000, and in accordance with the December 9, 1999, order, Johnson filed a supplemental declaration of attorney's fees, in the amount of \$541.08 incurred by CPAC as a result of a hearing requested by Wilson on CPAC's second motion to dismiss. On or about January 14, 2000, Wilson filed a motion regarding whether the plaintiff had to pay the \$541.08 as a result of requesting a hearing on the motion to dismiss. Johnson filed a reply on January 19, 2000, to Wilson's motion in which she observed that the two week deadline for payment of the \$541.08 attorney's fee's had passed without payment having been made.
11. On or about January 19, 2000, Johnson filed a motion for entry of summary judgment on default based upon the fact that the plaintiff had filed no response to the previously filed summary judgment motion within the required ten day time frame set forth in the court's December 9, 1999, order.
12. On or about January 21, 2000, Wilson filed a motion to deny defendant's motion for summary judgment and memorandum in support thereof, stating essentially that there are genuine issues of fact concerning whether there was retaliation. However, as stated in Johnson's reply memorandum filed on or about January 24, 2000, Wilson offered no evidence in support of the plaintiff's claim.
13. On January 27, 2000, the court issued its order and memorandum opinion granting the summary judgment motion filed on January 4, 2000. The court noted that the plaintiff had not presented specific facts or arguments to refute the

assertions of the defendant which were supported by affidavits and references to depositions; instead, the plaintiff had stated only general conclusive statements which did not set forth specific facts showing that there was a genuine issue for trial as required by the provisions of Rule 56(e) of the Federal Rules of Civil Procedure.

14. Wilson failed to keep Carr reasonably informed about the representation.

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 Code of Professional Responsibility: DR 2-108(A)(1), DR 6-101(A)(1) and (2), DR 6-101(B), DR 6-101(C), DR 7-105(C)(5).

The Court found that the bar had failed to prove by clear and convincing evidence violations of the following provisions of the Virginia Code of Professional Responsibility: DR 7-101(A)(3), DR 7-105(A).

VSB Docket No. 01-032-1072 [Marcelin]

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

I. Findings of Fact:

15. On or about August 12, 1999, Complainant Leila Marcelin [Marcelin] was issued a right to sue letter regarding alleged discrimination involving Sentara Healthcare [Sentara]. Subsequently, Marcelin met with Wilson in the Norfolk federal courthouse about possible representation. Wilson agreed to represent Marcelin for an attorney's fee of \$3,000.00 of which \$750.00 was required to be paid immediately in order for Wilson to begin working on the case. No written fee agreement was entered into. Wilson asked Marcelin to provide to him a written condensed version of the facts underlying her allegations against Sentara.
16. Marcelin sent Wilson a letter dated on or about November 6, 1999, giving him her condensed version of the facts underlying her allegations.
17. On or about November 10, 1999, Wilson filed a complaint against Sentara in the U.S. District Court, Eastern District of Virginia, Richmond Division, although the defendant, Marcelin's applicable Sentara employment and the witnesses were located in Norfolk, Virginia. The complaint included allegations of constructive discharge based on race and unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964.
18. On or about December 13, 1999, Sentara filed a motion to dismiss asserting improper venue because the complaint should have been filed in the Norfolk Division of the U.S. District Court, Eastern District of Virginia. Wilson filed a Plaintiff's Motion to Deny Defendant's Motion to Dismiss on or about December 27, 1999. On January 27, 2000, upon the joint motion of the parties, the case was trans-

ferred to the Norfolk Division of the U.S. District Court for the Eastern District of Virginia.

19. Sentara filed an answer to the suit asserting, *inter alia*, denial of any discrimination, the running of the applicable statute of limitations, the failure to state a claim upon which relief may be granted, and the failure to meet jurisdictional and administrative prerequisites.
20. An order was entered on or about March 2, 2000, resulting from the initial pretrial conference. The order set, *inter alia*, a discovery deadline for plaintiff's discovery of June 14, 2000 and a trial date of September 7, 2000.
21. Sentara took the deposition of Marcelin on May 19, 2000.
22. Wilson had propounded no discovery on behalf of Marcelin by the cutoff date for plaintiff's discovery of June 14, 2000.
23. On or about July 17, 2000, Sentara filed a motion for summary judgment asserting that there was no genuine issue of material fact necessitating a trial in the case and therefore Sentara was entitled to judgment as a matter of law in accordance with Rule 56 of the Federal Rules of Civil Procedure.
24. On or about July 18, 2000, Marcelin made an unannounced visit to Wilson's office from her home in New York. Wilson asked Marcelin to return to his office later in the day. Before Marcelin met again with Wilson that day, she sought the advice of Lisa Lawrence, Esq. about her case and learned of the existence of problems with her case including the fact that Wilson had propounded no discovery on her behalf.
25. The next day, Wilson and Marcelin went to Norfolk to find witnesses and obtain their affidavits, all without having made any contacts with the subject individuals prior to that date.
26. On or about July 28, 2000, Wilson submitted to the clerk's office in the Richmond Division of the U.S. District Court, Eastern District of Virginia a motion for an extension of time to respond to the summary judgment motion. The motion was noted as filed on the docket of the case as of August 2, 2000. In his cover letter, Wilson stated, *inter alia*:

Today is my last day to respond to the defendant's Motion to Dismiss in Federal court in Norfolk. I would like to take advantage of the courtesy filing an attorney in Virginia has in your Federal Court. Please file the enclosed Motion and sketch order.
27. On or about July 31, 2000, Wilson submitted to the clerk's office in the Richmond Division of the U.S. District Court, Eastern District of Virginia a memorandum in opposition to the summary judgment motion.
28. On or about August 11, 2000, Wilson consented to a trial in the case by a magistrate judge.

29. A hearing was held on defendant's summary judgment motion on August 16, 2000, and the court granted the motion and taxed costs against the plaintiff.
30. Marcelin wrote Wilson a letter dated August 24, 2000, in which, inter alia, she recited that Wilson had informed her he would appeal the case if the hearing on summary judgment was lost; accordingly, she expected Wilson to appeal her case, inform her of his progress and send her copies of everything Wilson submitted or was submitted to him in the appeal.
31. Wilson filed a notice of appeal on or about September 15, 2000, for an appeal from a decision rendered on August 14, 2000. The hearing and order of the court granting summary judgment occurred on August 16, 2000 not August 14, 2000.
32. Wilson told VSB Investigator Cam Moffatt that he filed the notice of appeal in order to protect himself.
33. Wilson filed a docketing statement in the appeal but failed to attach the required copy of the order from which the appeal was taken; he also indicated incorrectly that the order appealed from was not a final decision on the merits.
34. The appeal was dismissed for failure to prosecute the appeal.
35. Sentara submitted a bill of costs of \$922.50 which were the costs associated with the deposition of Marcelin.
36. The \$750.00 payment and any other fees received from Marcelin by Wilson in this case were deposited into his operating account upon receipt. Wilson did not keep subsidiary ledger records for his trust account.
37. Wilson failed to communicate with Marcelin and keep her informed about her case at either the district court or appellate levels. After August 16, 2000, Marcelin never heard from Wilson again until she received copies of his correspondence with the bar.
- 16, 1999. On December 8, 1999, Laguerre hired Wilson for a discrimination case against ODU and \$3,000.00 was paid to Wilson for the representation [ODU case]. On January 12, 2000, Laguerre signed a retainer agreement for the ODU case which called for attorneys fees including the \$3,000.00 payment plus one-fourth of any recovery.
40. In or about February 2000, Wilson agreed to also represent Laguerre in a disability case against the Virginia Retirement System for a fee of \$1,500.00 [VRS case]. Wilson was paid the \$1,500.00 in payments made on February 4, 2000, February 16, 2000, April 19, 2000 and May 23, 2000.
41. On or about February 15, 2000, Wilson filed a federal complaint in the ODU case in the U.S. District Court, Eastern District of Virginia, Norfolk Division. On March 3, 2000, ODU filed a motion to dismiss and motion of collateral estoppel. On April 3, 2000, Wilson filed a late response to the motions on behalf of Laguerre by agreement of counsel.
42. On April 20, 2000, Wilson called Laguerre and told him that there would be a hearing in the VRS case the next day and that he needed to meet Laguerre in Norfolk on the date of the call. At the meeting the day before the hearing, for the first time Wilson asked Laguerre for a doctor's report stating that Laguerre was disabled. Since Laguerre had not obtained such a statement, Wilson attempted unsuccessfully to contact Laguerre's medical care providers by phone to obtain such a statement for the hearing the next day. At the April 21, 2000, hearing Wilson asked for a continuance and had a meeting with the hearing officer.
43. In the ODU case, on May 18, 2000, a hearing was held on ODU's motions to dismiss and collateral estoppel. The motion of collateral estoppel was denied. The motion to dismiss was denied on the issue of sovereign immunity; however, dismissal was granted on the issues of a failure to allege having met state exhaustion requirements and a failure to specifically allege a claim. Wilson was allowed to file an amended complaint which he did on May 30, 2000.

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 Code of Professional Responsibility and the Virginia Rules of Professional Conduct: DR 2-108(A)(1), DR 6-101(A)(1) and (2), DR 6-101(B), DR 6-101(C), DR 9-102(A)(1) and (2), DR 9-103(A)(3), Rule 1.1, Rule 1.3(a), Rule 1.4(a), Rule 1.16(a)(1).

VSB Docket No. 01-032-0885 [Laguerre]

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

I. Findings of Fact:

38. Sometime prior to November 1999, Complainant Lamerique Laguerre [Laguerre] was injured while working at Old Dominion University [ODU].
39. Laguerre was issued a Notice of Right To Sue Within 90 Days by the U.S. Department of Justice dated November
44. Beginning in or about May 2000, Laguerre [and/or his wife who acted on behalf of Laguerre throughout these facts when better language skills were required] a series of telephone calls started in which Laguerre tried unsuccessfully to determine whether a new hearing date had been set in the VRS case. When Laguerre reached Wilson, he was given numerous reasons why no date had been set.
45. In August 2000, when Laguerre reached Wilson and asked about a VRS case hearing date, Wilson stated he would call the hearing officer immediately but asked Laguerre to provide the telephone number. Laguerre obtained the telephone number of the hearing officer, called Wilson back and left the number with a secretary as well as on voice mail. After a week had passed without hearing from Wilson, Laguerre called Wilson and left a voice mail message demanding a refund of the fees paid on the VRS case. About a week later, Laguerre again called Wilson and reached him. Wilson stated that he had unsuccessfully been trying to reach Laguerre; Laguerre again asked for a refund of the VRS case fees. Laguerre later checked his

- caller identification device and found no indication that Wilson had tried to call him.
46. On August 28, 2000, Laguerre wrote Wilson and, *inter alia*, asked for a refund of the VRS case fees.
 47. On August 30, 2000, Wilson wrote Laguerre, enclosing an August 15, 2000 hearing notice in the VRS case for September 20, 2000, and asking Laguerre not to retain another attorney in the case.
 48. On September 1, 2000, Laguerre wrote Wilson stating, *inter alia*, that he was going to retain Sue Anne Bryant, Esq. to represent him in the VRS case but wanted Wilson to remain as counsel in the ODU case; Laguerre asked Wilson to forward his VRS file to Bryant and refund \$1,000.00. Wilson forwarded his VRS case file to Bryant on or about September 6, 2000.
 49. Laguerre wrote Wilson on September 12, 2000, stating, *inter alia*, that no refund had been received and no telephone calls had been returned by Wilson; and he demanded a refund of \$1,000.00 in the VRS case by September 22, 2000.
 50. In the ODU case the plaintiff's discovery cut-off deadline was September 13, 2000; the plaintiff's mandatory disclosure of expert testimony cut-off date was September 18, 2000 and the trial date was December 13, 2000.
 51. As of September 13, 2000, Wilson had filed no discovery in the ODU case.
 52. On September 16, 2000, Laguerre met with Wilson and Wilson told Laguerre that he had an additional thirty days to make discovery filings and that the case was under control.
 53. Laguerre wrote letters to Wilson and attempted calling him in order to find out what was going on in the ODU case. In his October 11, 2000, letter to Wilson, Laguerre asked Wilson, "Have you abandoned my case?"
 54. Laguerre wrote letters to the Clerk of the U.S. District Court, Eastern District of Virginia, Norfolk Division about the communication problem he had with Wilson. By order entered October 11, 2000, the court directed the clerk to mail a copy of one of Laguerre's letters to counsel of record, ordered Wilson and Laguerre to confer and, if either Wilson or Laguerre wished to do so, to contact the calendar clerk to set up a hearing on the issue of representation.
 55. Laguerre continued to try to reach Wilson unsuccessfully. In the last week of October 2000, Laguerre contacted the calendar clerk and asked that a hearing be set concerning Wilson's representation.
 56. Wilson contacted Laguerre on November 1, 2000 indicating that a hearing on the representation was unnecessary. Laguerre wrote a letter dated November 1, 2000, to the clerk describing Wilson's call to him.
 57. On November 9, 2000, ODU filed a motion to compel Laguerre to answer defendant's first set of interrogatories.
 58. On November 14, 2000, a hearing was held before the Honorable Tommy E. Miller on the issue of Wilson's representation of Laguerre in the ODU case. ODU's counsel was present. Wilson, *inter alia*, asked that he be allowed to remain in the representation, admitted a lapse in his efforts, told Laguerre that he would keep him better informed, tried unsuccessfully to continue the upcoming November 17, 2000 final pretrial conference and December 13, 2000, trial date. The court asked Wilson whether he was prepared for the final pretrial conference and whether he had attended an attorneys' conference with ODU counsel. Wilson stated that he had not attended the attorneys' conference, but ". . . would be prepared for the final pretrial." Counsel for ODU indicated to the court that he still had not received an answer to the first set of interrogatories and Wilson had not yet listed any exhibits for the case.
 59. The ODU case was settled in the amount of \$5,000.00.
 60. In a November 24, 2000, letter to Wilson, Laguerre recounted much of his experience as a client of Wilson and stated that he never would have settled the case but for the fact that Wilson was unprepared to proceed with the case.
 61. 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 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 Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 9-102(A)(1) and (2), DR 9-103(A)(3), Rule 1.1, Rule 1.3(a), Rule 1.3(b), Rule 1.3(c), Rule 1.4(a), Rule 1.15(a)(1) and (2), Rule 1.15(e)(1)(iii), Rule 1.16(a)(1).

The Court determined that the bar failed to prove by clear and convincing evidence a violation of Rule 3.4(e).

VS B Docket No. 01-032-1755 [Goodman]

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

I. Findings of Fact:

62. On or about July 17, 1998, Complainant Mrs. Earmon Goodman [Goodman] retained Wilson to represent her son, Edward, in a lawsuit against Food Lion. Wilson agreed to handle the matter for \$1,500.00 plus one-fourth of any recovery. The retainer agreement recites that the representation concerns "Violation of ADA. Wrongful termination." Goodman paid Wilson \$750.00 on or about July 27, 1998, and another \$750.00 on or about August 24, 1998.
63. Edward had been fired from his Food Lion job on or about February 18, 1998, for allegedly stealing a Valentine card.

64. On December 22, 1998, Wilson wrote a letter to Bryant Young, whom Wilson assumed was the manager of the Food Lion store where Edward had been employed, indicating that Wilson had been hired regarding Edward's wrongful termination; that Edward "had no intention of taking a Valentine card without paying for it"; that Edward "suffers from Multiple Sclerosis . . . and believes that he was terminated due to the debilitating nature of this insidious disease and its effects on his memory, sight, balance, and overall outlook"; that Wilson wished to resolve the case out of court; and Wilson asked that the letter be forwarded to the appropriate management. The letter was returned to sender for an insufficient address. The street address on the letter was "South Military Highway."
65. On January 29, 1999, Wilson sent the December 22, 1998, letter to Bryant Young at Food Lion using a more specific street address. That letter was also returned to Wilson. Then Wilson contacted the store to get a better address and learned that Bryant Young was no longer employed at the store.
66. On May 31, 1999, Wilson sent the December 22, 1998, letter to the current store manager at the same store. That manager then contacted Wilson indicating he had no knowledge about the matter involving Edward.
67. On February 1, 2001, Goodman filed a complaint about the matter with the Virginia State Bar.
68. On February 12, 2001, Wilson sent a letter addressed to the Legal Department, Food Lion Headquarters in Salisbury, North Carolina, again indicating his representation of Edward and a desire to resolve the matter out of court. In the letter Wilson also stated, "Mr. Goodman had no intention of taking a Valentine card without paying for it."
69. On February 19, 2001, Wilson wrote to Goodman confirming Goodman's telephone conversation with his secretary.
70. On February 19, 2001, Janis Johnson [Johnson], a senior attorney with Food Lion, wrote Wilson a letter by facsimile transmission indicating she was in the process of reviewing the matter.
71. On March 14, 2001, Johnson wrote to Wilson in response to the February 12, 2001, letter from Wilson indicating that Edward had been discharged " . . . for his failure to properly purchase merchandise, conduct which he openly admitted and to which you refer in your letter." Johnson stated that she saw no plausible claims that Edward could bring against the company in good faith. Johnson also noted in her letter that Edward had waited three years to assert the wrongful termination claim.
72. By his letter to the bar dated March 19, 2001, Wilson stated that, "I hope my summary letter, with attachments, demonstrates that I have been doing an exemplary job for Edward Goodman and his mother, Mrs. Earmon Goodman."
73. Wilson told Investigator Cam Moffatt that he did not feel Edward's case had been dormant for any extended periods of time and that he wanted a medal for the work which he did on Edward's behalf.
74. During the first year of the representation, Goodman did talk with Wilson about the case by telephone. Wilson always indicated that he was working on the case. After receiving a copy of Wilson's May 31, 1999 letter to the then current manager of the Food Lion store, Goodman attempted to contact Wilson but Wilson failed to return her telephone calls.
75. Goodman met with Wilson on three occasions during the representation. In December 1999, Goodman reached Wilson and arranged a meeting with him to discuss the case; Wilson failed to appear for the meeting and did not call Goodman to inform her he would not attend.
76. On October 5, 2000, Goodman asked for the return of the funds she had paid Wilson. Wilson stated to her that there were no funds to refund to her because he had earned the fees.
77. Beginning in August of 1999, Goodman began keeping a log of her telephone calls to Wilson. The log indicates that Wilson failed to return her phone calls on numerous occasions over an extended period of time.
78. On August 14, 2001, Wilson wrote another letter addressed to the legal department at Food Lion Headquarters in Salisbury, North Carolina. In the letter Wilson asked for a meeting to discuss the possibility of Edward returning to work for Food Lion as a grocery bagger.
79. Wilson failed to pursue Edward's claim against Food Lion in a timely manner.
80. Wilson failed to deposit the funds paid to him by Goodman into a trust account; said funds were deposited into an operating account. Wilson does not maintain subsidiary ledger records for his trust account.

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 Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 2-108(A)(1), DR 6-101(A)(1) and (2), DR 6-101(B), DR 6-101(C), DR 9-102(A)(1) and (2), DR 9-103(A)(3), Rule 1.1, Rule 1.3(a), Rule 1.4(a), Rule 1.15(a)(1) and (2), Rule 1.15(e)(1)(iii).

VSb Docket No. 01-032-1798 [Brent]

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

81. On or about September 27, 1998, Complainant Veronica D. Brent [Brent], her child and her neighbor's child had an experience at a Wal-Mart store checkout counter about which they sought the legal services of Wilson to pursue a discrimination claim against Wal-Mart. Wilson agreed to

represent Brent and the child in the discrimination claims for a one-third contingency fee.

82. In or about June of 2000, Brent submitted a complaint to the Virginia State Bar [bar] alleging that Wilson would not return her telephone calls, that she had received a letter from Wilson eight months prior to the complaint, that Wilson told her he would file her case in court. Wilson had written two letters to Jeff Krause, district manager of Wal-Mart, dated November 16, 1998, and December 14, 1999; both letters were copied to Brent.
83. The bar sent Wilson a letter dated June 14, 2000, asking Wilson to respond to the complaint by communicating with Brent within ten days and copying the bar on the written communication or sending the bar a summary of a telephonic communication with Brent. When the bar did not receive anything from Wilson, the bar sent Wilson a second letter dated July 5, 2000, asking him again to communicate with Brent.
84. Wilson sent the bar a letter dated July 12, 2000, indicating that he had spoken to Brent about the case. The complaint was closed.
85. On or about January 16, 2001, Brent submitted the instant complaint to the bar alleging that Wilson had failed to communicate with her and had done nothing in her case.
86. Wilson informed Investigator Cam Moffatt that as of the date of the interview in April of 2001, the insurance adjuster in the case was seeking additional information in the matter. Wilson stated to the investigator that he had not worked this case as quickly as other cases because there were no set deadlines in this case and he was working other cases with set deadlines first.
87. Wilson sent the bar a copy of a letter dated June 29, 2001, addressed to Jim Ketterman, Case Manager, in which Wilson stated, inter alia:

When I last spoke to an adjuster from your Company, he mentioned a statute of limitations issue. We are not looking to litigate this matter, but feel that Wal-Mart should want to resolve this incident on a "goodwill basis . . ."

We are anxious to resolve this matter short of lengthy and expensive litigation. I am hopeful that your Company can see the business reasons for resolving this matter. I would like to amicably close this case before August 28, 2001.

88. Wilson has not filed suit on behalf of Brent, has taken little or no action in pursuit of Brent's discrimination claim and the case remains unresolved.

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 Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 2-108(A)(1), DR 6-101(A)(1) and (2), DR 6-101(B), DR 6-101(C), Rule 1.1, Rule 1.3(a), Rule 1.4(a), Rule 1.16(a)(1).

VSB Docket No. 01-032-1891 [Clarke]

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

89. In or about November of 1997, Complainant Gary Clarke [Clarke] was discharged from his employment as a bus driver by Greyhound for a number of violations of company policy. Clarke sought the services of Wilson regarding that discharge and paid Wilson \$1,500.00 on June 7, 1999. A retainer agreement was signed by Wilson dated June 15, 1999 in which the major objective of the representation was stated as "return of job." The agreement called for additional attorneys fees of one-fourth of any recovery.
90. Clarke was issued a Notice of Right to Sue dated July 22, 1999, by the U.S. Equal Employment Opportunity Commission.
91. On October 22, 1999, Wilson filed a Complaint For Relief For Discrimination In Employment against Greyhound, et al, in the U.S. District Court, Eastern District of Virginia, Richmond Division. The complaint recited as the nature of the action the violation of Title VII of the Civil Rights Act of 1964. In the complaint Wilson alleged, inter alia, in paragraph 13 that "Mr. Clarke's record with Carolina Trailways has been outstanding. Perhaps a two or three day suspension would have been warranted, not termination." Wilson also alleged disparate treatment in the termination of Clarke based upon race.
92. Discovery was propounded by the defendants. The answers which Wilson filed in response to the defendants' interrogatories provided little if any substantiation for the allegations made in the federal complaint and little if any substantiation of the alleged damages for which a monetary award was sought.
93. On May 9, 2000, the deposition of Clarke was taken. During the deposition Clarke admitted he lacked any evidence of disparate treatment by the defendants.
94. By letter dated June 2, 2000, counsel for the defendant made a settlement offer in the amount of \$3,000.00 including that Clarke could resign rather than be fired, be given a neutral reference, and could reapply for a job with the company in three years. In the letter the attorney stated that he had tried to contact Wilson telephonically on approximately eight occasions over the last three weeks and had not had a response.
95. On June 23, 2000, the defendant filed a motion for summary judgment. Wilson failed to respond to the motion and therefore there were no material facts placed in dispute between the parties that would prevent the court from ruling on the motion. The court found that there was no evidence of any disparate treatment of Clarke by the defendants noting that Clarke had testified in his deposition that he had no witnesses or documents to support his disparate treatment or names of employees or situations where he was treated differently; that Clarke had failed to

offer any evidence of discriminatory conduct by the defendants. In accordance with Federal Rule of Civil Procedure 56(c) the motion was granted and the case was dismissed by order entered July 13, 2000.

96. On June 30, 2000, Wilson wrote a letter to Clarke noting, *inter alia*, that “a summary judgment hearing will be held very soon.”
97. In the notice of appeal Wilson asserted, *inter alia*, that there were genuine issues of material fact which were in dispute; that Clarke “would have liked to have had a hearing before a decision was made to summarily dismiss” his case; that Clarke would accept the last settlement offer which “was on the table as of July 12, 2000.”
98. By letter dated August 30, 2000, the clerk’s office of the United States Court of Appeals for the Fourth Circuit informed Wilson that he needed to file a docketing statement and other forms by September 8, 2000, and failure to do so might cause dismissal of the appeal.
99. By letter dated September 14, 2000, the clerk’s office informed Wilson that the case would be dismissed for want of prosecution on September 29, 2000, unless prior to that date Wilson filed a docketing statement and other required forms, noting that he had failed to comply with the previous notice.
100. On October 3, 2000, Wilson filed a docketing statement in the United States Court of Appeals for the Fourth Circuit in which he stated in the section entitled “Issues to be raised on appeal” the following:

The parties were very close to an accord and satisfaction of this case. In lieu of a settlement plaintiff’s counsel was seeking a continuance. There were material issues of fact that plaintiff wanted to present in oral argument.
101. On October 13, 2000, the appellee filed a motion to dismiss for want of prosecution and for costs expended based upon Clarke’s default in filing the docketing statement, his failure to file an appellant’s brief, and the lack of any non-frivolous grounds for the appeal. Appellee asserted in the motion that “appellant merely wishes to have another chance to reach a settlement with” appellee.
102. The appeal was dismissed upon a consent motion to dismiss in accordance with Rule 42(b) of the Federal Rules of Appellate Procedure.
103. The funds paid by Clarke to Wilson were not deposited into a trust account. Said funds were deposited into an operating account. Wilson does not maintain subsidiary ledger records for his trust account.
104. Wilson failed to reasonably communicate with Clarke about the representation.

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 Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 2-108(A)(1), DR 6-101(A)(1) and (2), DR 6-101(B), DR 6-101(C), DR 9-102(A)(1) and (2), DR 9-103(A)(3), Rule 1.1, Rule 1.3(a), Rule 1.4(a), Rule 1.5(a)(1) and (2), Rule 1.15(e)(1)(iii), Rule 1.16(a)(1).

The evidence of the Respondent included the testimony of Dr. Michael Vranian that Mr. Wilson suffers from Type I diabetes and during the time period in question in said cases he was hospitalized on at least four occasions.

Suspension of License

The Court heard evidence and arguments of counsel regarding the appropriate sanction which should be imposed. Upon consideration of the misconduct proven, the evidence and arguments of counsel in aggravation and mitigation,

IT IS ORDERED that EFFECTIVE FRIDAY, MAY 31, 2002, the license of Harrison Benjamin Wilson, III, to practice law in the Commonwealth of Virginia is SUSPENDED for a period of TWO YEARS.

IT IS FURTHER ORDERED that the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs against Harrison Benjamin Wilson, III, in accordance with Rules of Court, Part Six, Section IV, Paragraph 13.K.(10).

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall place this matter among the Court’s ended cases.

ENTERED THIS 23RD DAY OF AUGUST, 2002.
James W. Haley, Jr. designated Chief Judge
Benjamin A. Williams, Jr., Judge
William L. Winston, Judge



DISCIPLINARY BOARD

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
CHARLES WILLIAM AUSTIN, JR.
VSB DOCKET NO. 98-031-0127

ORDER OF PUBLIC REPRIMAND

This matter came to be heard on September 12, 2002, upon an Agreed Disposition between the Virginia State Bar, the Respondent, Charles William Austin, Jr., and the Respondent’s Counsel, Craig S. Cooley, Esq.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Bruce T. Clark, Esq., Janipher Winkfield Robinson, Esq., Roscoe B. Stephenson, III, Esq., Thaddeus T. Crump, Lay Member, and Karen A. Gould, Esq., 2nd Vice Chair, presiding, considered the matter by telephone conference. The Respondent, Charles William Austin, Jr.,

appeared with his counsel, Craig S. Cooley, Esq. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

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

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Charles William Austin, Jr., was an attorney licensed to practice law in the Commonwealth of Virginia.
2. For most of his career, Mr. Austin's law practice focused on the representation of investors in claims against broker-dealers and investment advisors. During 1996, another attorney referred a client to Mr. Austin who lost a substantial investment in a mutual fund known as the Pilgrim Adjustable Rate Securities Trust, later renamed the Astra Fund. Based on his experience, Mr. Austin saw the Astra Fund as a potential defendant in an investment fraud lawsuit, and in an attempt to develop potential clients, commenced efforts to obtain a list of investors in the failed fund.
3. Toward this end, Mr. Austin worked with two attorneys, one in Florida and the other in Atlanta, who were well experienced in this kind of litigation. In an attempt to obtain a list of investors, he utilized the same means that he had used in prior cases. Wanting to obtain a list as soon as possible, however, he also responded to an advertisement in the August/September 1996 issue of the *Virginia Lawyer*. The advertisement was for a purported information gathering service that offered to locate stocks, bonds and mutual fund portfolios on anyone in the United States, including accounts and balances. Mr. Austin contacted the service, which offered to obtain the list of investors in the Astra Fund for a fee of \$25,000 (twenty five-thousand dollars).
4. Unbeknownst to Mr. Austin, his contact at the purported information gathering service was a convicted felon with a lengthy history of property crime and fraud convictions. This contact, a private investigator, planned to obtain the list through an illegal means, by purchasing it from an employee at the Internal Revenue Service who had access to the information on a computer data base. During 1997, this contact took substantial steps toward completing the crime, but the IRS employee informed federal agents about the scheme, and they arrested Mr. Austin's contact.
5. At the time, Mr. Austin worked in an "of counsel" position with a law firm in Richmond, Virginia. He sought half of the \$25,000 needed to purchase the list from the law firm where he worked, and the other half from his attorney friend in Atlanta. Each provided \$12,500, which Mr. Austin paid to his contact as agreed. Following his arrest, the contact pled guilty to federal criminal charges relating to the IRS scheme. The Government, however, failed to prove any criminal conduct by Mr. Austin.

6. In obtaining the funds for the list, Mr. Austin was not forthright with the attorneys in Richmond or Atlanta about the source of the list. For example, the Richmond attorneys would say that Mr. Austin told them that the source of the list was a proxy solicitation firm, when it was not. Mr. Austin would say that, to his memory, he told them that it was a proxy solicitation effort as opposed to a firm. Regardless, Mr. Austin testified during his trial that he did not know the source of the list, but that he told the Richmond attorneys that it was a proxy solicitation effort because they would be more likely to contribute the money to purchase the list than if he told them that he did not know where the list came from.
7. With respect to the Atlanta attorney, Mr. Austin informed him about a prior offer by the contact to obtain the list through an improper means, which Mr. Austin refused. Upon informing the Atlanta attorney about that suggested scheme, the Atlanta attorney told Mr. Austin that they should not use this contact again. Regardless, when Mr. Austin later sought \$12,500 from the Atlanta attorney, it was to pay the same source that they had previously discussed. When the Atlanta attorney asked Mr. Austin if it was the same source, Mr. Austin falsely told him that it was not. He also told him that the list was the result of a process of elimination, starting with a larger list being narrowed to a smaller list. Mr. Austin acknowledged during his trial that this was not a true statement.
8. The Richmond lawyers would say that, to their memory, they recovered most of the money paid to Mr. Austin by setting it off against attorneys fees owed to Mr. Austin, and that they are satisfied with the way that this matter was concluded. (The Atlanta attorney does not want to be involved any further.) Other mitigating factors recognized by the American Bar Association are the Respondent's lack of a prior disciplinary record, and cooperation during the investigations of this matter.

II. DISCIPLINARY RULE VIOLATIONS

The parties agree that the aforementioned facts give rise to a violation of the following Disciplinary Rule:

DR 1-102. Maintaining Integrity and Competence of the Legal Profession.

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

ENTERED THIS 16TH DAY OF SEPTEMBER, 2002
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
BY KAREN A. GOULD, SECOND VICE CHAIR



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

In the Matter of
ANDREA KIMBERLY AMY-PRESSEY
VSB Docket Nos: 00-061-3285

00-061-2787
00-061-2636
00-061-2099

ORDER OF SUSPENSION AND REVOCATION

THIS MATTER came before the Virginia State Bar Disciplinary Board (hereinafter referred to as the "Board"), sitting at the State Corporation Commission, Courtroom C, Tyler Building, in Richmond, Virginia, on August 23, 2002, for hearing before a duly convened panel consisting of John A. Dezio, Chair, presiding, and Thaddeus T. Crump, Lay Member Peter A. Dingman, Larry B. Kirksey and Roscoe B. Stephenson, III. The Virginia State Bar (hereinafter referred to as the "Bar") was represented by Richard E. Slaney, Esquire. The Respondent, Andrea Kimberly Amy-Pressey (hereinafter referred to as the "Respondent") did not initially appear at the outset of the hearing and arrived after the panel had begun its deliberations as to whether misconduct had taken place and, thereafter, remained present, *pro se*, until the conclusion of the hearing. Tracy J. Stroh, Chandler & Halasz, Registered Professional Reporters, P. O. Box 9349, Richmond, Virginia 23227 (phone number 804-730-1222), recorded the hearing after being duly sworn by the Chair. The panel was polled to determine whether any member had any business or financial interest or bias that would impair his ability to hear this matter fairly and impartially. Each member, including the Chair, responded in the negative.

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

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.

**VSb DOCKET #00-061-3285 (MARY GAINES)
AND #00-061-2787 (TROY BURRELL)**

2. Respondent represented Complainant Troy Burrell (hereinafter referred to as "Burrell") on criminal charges on September 20, 1999, in the Circuit Court for the City of Richmond, at which time Burrell was sentenced to a total of fifteen (15) years in the penitentiary.
3. Subsequent to sentencing, Burrell requested in November of 1999 that Respondent seek a reduction of his sentence. Respondent advised Burrell that she would do so.
4. In addition, Respondent represented Burrell on an appeal from the trial court to the Court of Appeals. Respondent filed on November 17, 1999, a Notice of Appeal with the trial court and forwarded a copy of said Notice to the Court of Appeals.
5. In connection with the appeal, Respondent failed to confirm that the transcript of the proceedings in the trial court had been ordered for filing.
6. On February 9, 2000, the Court of Appeals sent Respondent a Show Cause Order requesting that she show cause by February 24, 2000, why the appeal should not be dismissed for failure to timely file the transcript of the proceedings or, in the alternative, a statement of facts. Respondent did not respond to the Show Cause Order and Burrell's appeal was dismissed on Friday, March 3, 2000.
7. Respondent did not inform Burrell that the appeal had been dismissed.

8. Following the denial of the appeal, Burrell's mother, Mary Burrell (hereinafter referred to as "Ms. Burrell"), spoke with Respondent, who falsely informed Ms. Burrell of a hearing on the Motion to Reduce Sentence scheduled for March 9, 2000, in the Circuit Court for the City of Richmond. Respondent did not advise Ms. Burrell at that time that the appeal had been dismissed.
9. On March 9, 2000, Ms. Burrell and several family members went to the Richmond Circuit Court, only to discover no hearing was scheduled for Burrell. Respondent arrived on that date at the courthouse only after the Burrell family had left messages at her law office questioning her absence and the lack of a scheduled hearing.
10. No hearing had been scheduled and no Motion had been filed by Respondent. Respondent did not inform either Burrell or Ms. Burrell of her failure to file the Motion, but simply advised Ms. Burrell that she was unaware of why the hearing was not properly scheduled.
11. Respondent failed to communicate with Burrell about the status of his appeal and did not advise him of his right to appeal to the Supreme Court or to file a habeas corpus petition. Burrell, Ms. Burrell and several of the Burrell family members attempted to reach Respondent about the appeal and sentence reduction Motion. Respondent was aware that Burrell wanted her to communicate the status of his case with his mother. They were unsuccessful in speaking with her. Respondent did not return their calls or respond to Burrell's letters.
12. Respondent indicated she anticipated filing a habeas corpus on behalf of Burrell, although she had never done one before and did not know what she was doing. Respondent did not file a writ of habeas corpus on behalf of Burrell, although she advised his sister, Complainant Mary Gaines, in May, 2000, that she had done so and would forward her or Burrell a copy of the writ.
13. Respondent did not attempt to file an appeal on behalf of Burrell to the Supreme Court of Virginia.
14. Despite the denial of the appeal because of Respondent's failure to properly perfect it, she continued to request and accept money from the Burrell family. In April of 2000, Respondent advised Ms. Burrell she would challenge Burrell's sentencing hearing, but she would need to get a copy of the transcript and he would have to pay for it. On April 10, 2000, Ms. Burrell sent Respondent a cashier's check in the amount of \$175.00 for the transcript.
15. Respondent did not place this money in a trust account. She never ordered the transcript and did not return the money to Ms. Burrell until sometime after August, 2000.

Based upon the evidence presented, the Board finds by clear and convincing evidence that Andrea Kimberly Amy-Pressey violated in matters #00-061-3285 and 00-061-2787 the following Disciplinary Rules of the Code of Professional Responsibility:

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

DR 6-101. Competence and Promptness.
(A)(1), (B), (C) * * *

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

Based upon the evidence presented, the Board finds that the allegation that Respondent violated DR 7-101(A)(3) (Representing a Client Zealously) was not proven by clear and convincing evidence.

VSB DOCKET #00-061-2636 (RUTH M. DUNCAN)

16. In May, 1996, Complainant Ruth Duncan (hereinafter referred to as "Duncan") retained the law firm of Stone and Associates to represent her in a personal injury matter. The cause of action arose from injury received on May 21, 1996.
17. At the time Duncan hired Stone and Associates, Respondent was an associate of the law firm. Initially, another attorney at the firm, William Stone, principally worked Duncan's matter until he became disbarred. Thereafter, the Duncan file became the responsibility of Respondent, who was primarily responsible for all such personal injury matters.
18. On May 13, 1998, Respondent filed a Motion for Judgment against a sole defendant on Duncan's personal injury matter in the Circuit Court for the City of Newport News. On June 8, 1998, the incorrectly named defendant filed responsive pleadings, including an affidavit denying ownership, operation, control and agency. On January 5, 1999, the correct defendant was served with an Amended Motion for Judgment through its Registered Agent. On November 4, 1999, Judge Edward L. Hubbard, sustained the correct defendant's plea of the statute of limitations as a defense and the case was dismissed with prejudice.
19. Prior to filing of the Motion for Judgment, Respondent did not determine if the proper defendants were identified and were named in the lawsuit. Instead, she delegated the task to her paralegal, who herself made the determination.

Based upon the evidence presented, the Board finds by clear and convincing evidence that Andrea Kimberly Amy-Pressey violated in matter #00-061-2636 the following Disciplinary Rule of the Code of Professional Responsibility:

DR 3-104. Nonlawyer Personnel.
D. * * *

VSB DOCKET #00-061-2099 (VSB/ANONYMOUS)

20. In late 1997, Respondent agreed to represent Georgina and Nefteli Irizarry (hereinafter referred to as "Mrs. Irizarry", "Mr. Irizarry" or "the Irizarrys") in the adoption of their baby granddaughter. The Irizarrys were neighbors of Respondent. Therefore, she did not charge them for her services.
21. Prior to her agreeing to handle this adoption matter, Respondent had handled only two other adoption matters. Respondent believed the Juvenile and Domestic Relations District Court had jurisdiction over the matter and filed a

Petition in the Williamsburg/James City County Juvenile and Domestic Relations District Court.

22. During testimony at a hearing in the adoption, it was revealed, contrary to the earlier assertions by the birth mother of the child, that the true identity of the child's father was known to the child's mother. The child's mother likewise had information of his whereabouts. The presiding judge directed Respondent to investigate properly terminating a father's parental rights. Respondent was unsure how to proceed and, thereafter, did very little to investigate the correct procedure and did not conclude the adoption.
23. Mr. Irizarry attempted to contact Respondent on many occasions, requesting her to conclude the adoption.
24. In October 1998, Mr. Irizarry went to Respondent's office where she personally gave him what was purportedly a copy of the Final Order of Adoption, as entered by the court. (Bar Exhibit #19).
25. On October 23, 1998, Mr. Irizarry presented the document (Bar Exhibit #19) to the Bureau of Vital Statistics to get a revised birth certificate for the child in question. At that time, he was told the document needed the court's certification.
26. Mr. Irizarry advised Respondent of the response by the Bureau of Vital Statistics. Respondent assured him that she would correct it. A couple of days later, an allegedly certified version of the forged Final Order was left at the front door of the Irizarry home. (Bar Exhibit #20).
27. Mrs. Irizarry took the second version of the document (Bar Exhibit #20) back to the Bureau of Vital Statistics, where it was once again rejected. She was advised by the Bureau of Vital Statistics to go back to the court where the document was purportedly on file.
28. Mrs. Irizarry took the document (Bar Exhibit #20) to the Williamsburg/James City County Juvenile and Domestic Relations District Court, where Clerk Betty Miller determined the document had several problems, one of which was that it bore the forged signature of the presiding judge. In addition, it was determined that the entire document was a forgery as the Juvenile and Domestic Relations District Court does not issue final adoption orders, that the purported court stamp was not authentic and that the presiding judge was not sitting in Williamsburg on the day the document was supposedly signed. The presiding judge also confirmed that the signature on the Final Order was not his signature.
29. A criminal investigation was begun. Upon execution of a search warrant, the office file of Respondent contained a proposed Final Order of Adoption, bearing only the signature of Respondent (Bar Exhibit #18).
30. The forged document (Bar Exhibits #19 and #20), bearing the forged signature of the presiding judge, was produced by Respondent and was supplied by Respondent to the Irizarrys in response to their requests for a copy of the Final Order of Adoption, as entered. Respondent falsely contends that she only once signed the document. (Trial Transcript, *Commonwealth v. Amy-Pressey*, p. 207, l. 17; p. 210, l. 6 through page 212, l. 13). Contrary to her testi-

mony, it is clearly apparent even from a casual, lay examination that Respondent's signature had occurred on more than one version of the document. (Bar Exhibits #19 and #20). Such false testimony by Respondent and other inconsistencies in her testimony lead the Board to the clear conclusion that the forged document was generated by Respondent in response to her clients' concern for the delay in completing the adoption proceeding.

31. As admitted by Respondent, no one else aside from herself had any interest in the matter and no one else felt the pressure from the Irizarrys to complete the matter.
32. A polygraph examination of Respondent confirmed Respondent's attempted deception on the forgery questions.

Based upon the evidence presented, the Board finds by clear and convincing evidence that Andrea Kimberly Amy-Pressey violated in matter #00-061-2099 the following Disciplinary Rules of the Code of Professional Responsibility:

DR 1-102. Misconduct.
(A)(3), (4) * * *

DR 6-101. Competence and Promptness.
(A)(1) and (2), (B) and (C)

Based upon the evidence presented, the Board finds that the allegations that Respondent violated DR 1-102(A)(1) (Misconduct), DR 1-102(A)(2) (Misconduct), and DR 7-101(A)(3) (Representing a Client Zealously) were not proven by clear and convincing evidence.

IMPOSITION OF SANCTIONS

The Board, having taken into consideration all of the evidence, found by clear and convincing evidence that the above-referenced violations have been committed by Respondent. Accordingly, it is ORDERED that, as a result of the violation in matters #00-061-3285 and #00-061-2787, Andrea Kimberly Amy-Pressey's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of three (3) years and further ORDERED that, as a result of the violation in matter #00-061-2636, Andrea Kimberly Amy-Pressey's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of one (1) year and one (1) day, and further ORDERED that, as a result of the violation in matter #00-061-2099, Andrea Kimberly Amy-Pressey's license be and hereby is REVOKED, all effective August 23, 2002.

It is further ORDERED that, as directed in the Board's August 23, 2002, Summary Order in this matter, Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13.K(1), of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from the effective date of the Summary Order. All issues concerning the adequacy of the notice and arrangements required by the Summary Order shall be determined by the Board.

* * *

ENTERED this 10th day of October, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: John A. Dezio, Chair



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

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
ALAN JAY CILMAN
VSB DOCKET: 02-000-2325

ORDER

This matter came to be heard by the Virginia State Bar Disciplinary Board on June 28, 2002, pursuant to a rule requiring the Respondent, Alan Jay Cilman, to show cause as to why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked for failure to comply with the notice provisions of Paragraph 13 K(1) of the Rules of the Supreme Court of Virginia, Part 6, Section IV.

The Board consisted of John A. Dezio, Chairman, William C. Boyce, Jr., Richard J. Colten, Lay Member Thaddeus T. Crump, and Peter A. Dingman. The Respondent, Alan Jay Cilman, appeared without counsel. Seth M. Guggenheim, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar. The proceedings were transcribed by Tracy J. Stroh of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

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

On May 20, 2002, the Respondent requested that the matter be heard by a three judge panel. The request was denied by William M. Moffet, Chairman of the Disciplinary Board, on May 24, 2002, citing the provisions of Paragraph 13 K(1), which provide in pertinent part:

"All issues concerning adequacy of the notices and arrangements required herein shall be determined by the Disciplinary Board."

On June 27, 2002, Respondent requested that the hearing be continued. Respondent's motion was denied by John A. Dezio, First Vice-Chairman of the Disciplinary Board.

At the hearing, Respondent renewed his motions for a three judge panel and continuance, and the Board ruled that it was without authority to alter the previous rulings of the Board's officers. Nevertheless, the Board stated that if it had authority, it would deny both motions.

The Chair polled the panel to determine whether any member would be prevented from hearing the matter because of a conflict, actual or perceived. Each member, including the Chair, responded in the negative.

In support of the rule, the Bar alleges that Respondent has failed to give the notice and proof thereof required by Paragraph 13 K(1), in relation to several instances of discipline. Paragraph 13 K(1) provides in the case of a suspension or revocation that the Respondent shall give notice, by certified mail, of his suspension or revocation to all clients, opposing counsel, and judges presiding over pending cases within 14

days. Arrangements for the disposition of matters then within his care shall be made within 45 days, and proof of such notice and arrangements shall be given to the Bar within 60 days.

After hearing testimony, viewing evidence, and hearing argument of counsel, the Board finds as follows:

- (1) At all times relevant to this proceeding, the Respondent, Alan Jay Cilman, has been a suspended member of the Virginia State Bar.
- (2) On July 23, 1998, Respondent was suspended from the practice of law for two years by the Virginia State Bar Disciplinary Board, as an alternative sanction, for failing to comply with terms relating to earlier discipline. Respondent was required to comply with the provisions of Paragraph 13 K(1). Respondent was properly notified by the Bar.
- (3) Although Respondent appealed the Board's decision, the requirements of Paragraph 13 K(1) were not stayed, and remained in full force. Respondent's appeal was dismissed for lack of prosecution.
- (4) On August 25, 1998, Respondent was once again disciplined pursuant to an agreed disposition which imposed a letter of reprimand and required the Respondent to pay costs.
- (5) Respondent failed to pay costs and, as a result, Respondent's license was administratively suspended on October 15, 1999. Respondent was once again ordered to comply with Paragraph 13 K(1). The Bar properly notified Respondent of these requirements.
- (6) On August 24, 1998, Respondent was tried by a three judge panel for ethical misconduct. Respondent was suspended for one year and, once again, required to comply with Paragraph 13 K(1). The Bar properly notified Respondent of these requirements.
- (7) On November 19, 1999, Respondent was administratively suspended for failing to pay the costs associated with the three judge hearing. Once again, Paragraph 13 K(1) requirements were imposed, and Respondent was notified by the Bar.
- (8) On August 10, 2001, Respondent was administratively suspended for failing to pay the supplemental costs associated with the suspension of July 23, 1998.
- (9) Although Respondent notified some clients of his various suspensions, there is no evidence that all were notified. In any case, no judges or opposing counsel were notified, and no proof of any required notifications was ever received by the Bar.
- (10) The Board finds, by clear and convincing evidence, that Respondent has failed to show cause why his license to practice law should not be suspended or revoked.

Sanction

Alan Jay Cilman's license to practice law in the Commonwealth of Virginia is hereby suspended for two (2) years effective June 28, 2002.

ENTERED this 9th day of August, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: John A. Dezio, Chairman



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
CHRIS MCKINNEY EVANS
VSB Docket No. 03-000-0150

ORDER OF REVOCATION

On August 23, 2002, this matter came on for hearing on a Rule to Show Cause and Order of Suspension and Hearing ("Rule to Show Cause") entered by the Board on July 25, 2002. The hearing was held this day before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Karen A. Gould, 2nd Vice-Chair, presiding, and James L. Banks, Jr., Bruce T. Clark, Theophilise L. Twitty, and V. Max Beard, Lay Member.

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

The Respondent, Chris McKinney Evans ("Respondent" or "Mr. Evans") failed to appear, having been given due notice of the time and place of the hearing.

Noel D. Sengel, Esquire, Senior Assistant Bar Counsel, appeared for the Virginia State Bar. Donna T. Chandler, P.O. Box 9349, Richmond, VA 23227, 804-730-1222, was the reporter for the hearing and having been duly sworn, transcribed the proceedings.

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.

This proceeding arises under Part 6, Section IV, paragraph 13(E) of the Rules of the Supreme Court of Virginia, and its purpose is for the Board to determine whether to further suspend or revoke the Respondent's license as a result of Respondent's felony conviction entered by the United States District Court for the District of Maryland.

The Virginia State Bar filed two exhibits that were received and accepted into the record without objection. The Bar presented other evidence by a witness testifying ore tenus.

FINDINGS OF FACT

The Board unanimously finds, by clear and convincing evidence the following facts: At all times relevant to this matter Respondent, Chris McKinney Evans, Esquire has been an attorney licensed to practice law in the Commonwealth of Virginia. By a Plea Agreement filed in the United States District Court for the District of Maryland, Northern Division, the Respondent pleaded guilty to one count of money laundering, in violation of 18 U.S.C. §1956(a)(3)(B). Respondent's guilty plea was accepted and judgment was entered against him on the above-mentioned count on February 8, 2002. Respondent has been released on bond and currently awaits sentencing. There are other criminal charges pending against Respondent in the United States District Court for the Eastern District of California and a warrant has been issued for his arrest on those indictments.

Upon entry of the guilty plea Respondent was convicted of a felony involving money laundering. Said felony is a crime as defined by the Rules of Court, Part 6, Section IV, Paragraph 13(A).

IMPOSITION OF SANCTIONS

After the Board made its findings on the above matter, the Bar presented evidence of Respondent's previous disciplinary record and made further argument for sanctions. After reviewing all of the exhibits and evidence presented, the Board finds that Respondent's felony conviction represents the commission of criminal acts that reflect adversely on his fitness to practice law. Therefore, the Board has before it Respondent's admission to and subsequent conviction on a serious federal felony criminal matter involving money laundering. The Board concludes that revocation of Respondent's license to practice law is the appropriate sanction under the circumstances.

Accordingly, it is ORDERED that the license to practice law in the Courts of this Commonwealth heretofore issued to CHRIS MCKINNEY EVANS, Esquire, be and the same is hereby REVOKED, effective August 23, 2002.

ENTER THIS ORDER THIS 27TH DAY OF AUGUST, 2002
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Karen A. Gould, 2nd Vice-Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
ARTHUR C. ERMILICH
VSB Docket No. 01-021-0178

ORDER OF SUSPENSION

This matter was certified to the Virginia State Bar Disciplinary Board ("Board") by the Second District Committee, Section I, and was heard on September 27, 2002, by a duly convened panel consisting of John A. Dezio, chair, V. Max Beard, lay member, Joseph R. Lassiter, Jr., David R. Schultz, and

Theophlise L. Twitty. The Respondent Arthur C. Ermlich, Jr., (hereinafter "Mr. Ermlich" or "Respondent"), was present and represented by Christopher M. Malone, Esquire. The Virginia State Bar (hereinafter "the Bar") was represented by Paul Georgiadis, assistant bar counsel.

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

SUMMARY OF DECISION

Anita Dunn, a West Virginia resident, retained Mr. Ermlich to represent her in a personal injury matter. Subsequently she filed a complaint with the Bar alleging that Mr. Ermlich had failed to pay medical bills from the proceeds of her personal injury settlement, as listed on her settlement statement. Ms. Dunn stated that she was being pressed for payment of the charges by her health care providers, that she had on numerous occasions called Mr. Ermlich's office and had not been able to speak to him, nor had her calls been returned, despite promises to call her back with information concerning her questions.

A review of Mr. Ermlich's trust account statements revealed that his trust account had in effect been used as an operating account, from which non-client expenses had routinely been paid, including payroll expenses, personal property taxes on firm vehicles, condo fees, and clothing expenses. Transfers from the trust account to the firm operating account had been made in lump sums of varying amounts, often without identifying the specific case to which the transfers were related, and failing to keep any accounting of the actual sums due to be paid to Mr. Ermlich.

Mr. Ermlich's defense relied on his allegations that the improper payments from the trust account were made without his knowledge and were mistakes on the part of two longtime staff members, Carol S. Fleming, his personal secretary of 41 years, and Clifton T. Forrest, Jr., his investigator of 26 years. The personal secretary began doubling as bookkeeper in 1998 when Mr. Ermlich's longtime bookkeeper retired, and she testified that she did not know how to reconcile a bank account. Instead, the investigator reconciled the trust account. Mr. Ermlich delegated to Ms. Fleming the authority to sign checks drawn on the trust account. Ms. Fleming testified that funds were only drawn down and deposited to the operating account when she "knew" that there were funds in the trust account that had been earned by Mr. Ermlich. She testified that payroll was "occasionally" paid from the trust account when she did not have time to go to the bank to transfer funds from the trust account to the operating account. These payments were actually quite frequent (Bar Ex. 15-17), and on occasion Ms. Fleming wrote payroll checks to herself which she signed using the signature of Arthur C. Ermlich. On at least one occasion a payroll check drawn to herself was returned for nonsufficient funds, as were other checks drawn on the account. Although Ms. Fleming signed virtually all of the checks using the signature of Arthur C. Ermlich, Mr. Ermlich did sign at least two trust account checks in June 2000, one of them being a check drawn to Nordstrom's for clothing. Both Ms. Fleming and Mr.

Forrest testified that they had no training in trust account procedures and that Mr. Ermlich had never inquired about their knowledge of trust accounting.

Proceeds from Ms. Dunn's personal injury settlement were deposited to the trust account on or about November 18, 1999. On November 23, 1999, a check in the amount of \$18,314.67 was paid to Ms. Dunn, representing her net share of the personal injury proceeds. The settlement statement signed by Ms. Dunn stated that \$13,333.33 of Mr. Ermlich's one-third contingency fee was being paid to Mr. Ermlich, with no explanation as to how or when the remaining \$3,333.33 was being paid. Also listed were medical expenses totaling \$16,670.87, payable to seven health care providers. There was no identifiable check or checks in the amount of \$13,333.33 paid to Mr. Ermlich. The medical expenses were not paid until August 2000, after this bar complaint had been filed and numerous complaints had been made to Mr. Ermlich's office by Ms. Dunn and two of her health care providers. A monthly statement for the period ending November 30, 1999, was included in Bar Exhibit 14. Despite the fact that no other checks from the Dunn personal injury closing cleared the trust account in November, Mr. Ermlich's November 30 trust account statement indicated a balance of only \$12,506.69. Mr. Forrest's hand-written "reconciliation" indicated a balance of \$10,064.00 after deducting outstanding checks. There was no explanation offered as to the whereabouts of the remaining balance of the funds from the Dunn settlement which exceeded \$30,000.00. The balance in the trust account dropped to \$1,160.16 on December 31, 1999. On February 2, 2000, the Virginia Employment Commission asserted a lien against the trust account and captured \$5,193.94 from the account causing numerous checks to be returned for nonsufficient funds.

Mr. Forrest and Ms. Fleming testified that "three or four months" after the Dunn settlement occurred they discovered a \$50,000.00 shortfall in the trust account, but did not tell Mr. Ermlich because they did not wish to trouble him with that information. Ms. Fleming attributed the missing funds to the fact that she must have drawn down the Dunn fee for services twice, but had no documentation or work sheet to support her hypothesis. Forrest and Fleming anticipated that a large settlement would be received from the settlement of another matter, and stated that they planned to tell Mr. Ermlich at that time, when there were funds available to cover the shortfall. The bar complaint was received August 12, 2000, within twenty-four hours of when the settlement proceeds became available, and they were able to pay Ms. Dunn's medical bills at that time. Bar Exhibit 19, a handwritten ledger prepared by Ms. Fleming purporting to be a subsidiary account ledger for Ms. Dunn's account, indicated that an additional \$3,333.33 was drawn down at that time as fee for Mr. Ermlich's services. That would appear to conflict with Ms. Fleming's testimony and hypothesis that the Dunn fee had previously been drawn down twice. Mr. Ermlich claimed to have a complete lack of knowledge of the condition of his trust account until August 12, 2000, a position corroborated less than convincingly by his longtime employees.

The Bar took the position that the duties of being responsible for oversight of the trust account were not delegable, and that Mr. Ermlich was responsible for the errors regarding the trust account even if he had no knowledge of the violations.

The panel finds that the repeated violations of trust account requirements constitute gross violations of the stan-

dards of the profession. While it is hard to believe that Mr. Ermlich had no knowledge of the manner in which the trust account was handled, his responsibility is non-delegable. Furthermore, his total lack of oversight constitutes reckless disregard for proper trust accounting.

The panel finds the Respondent guilty by clear and convincing evidence of numerous ethics violations as set forth below, and suspends the Respondent's license to practice law in the Commonwealth of Virginia for a period of three years effective immediately.

FINDINGS OF FACT

1. During all times relevant hereto, Arthur C. Ermlich, hereinafter "Respondent", was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent represented Anita M. Dunn in a personal injury case.
3. On or about November 18, 1999, Respondent deposited a settlement check in the amount of \$50,000 into his First Union Account #2070004082573, hereinafter Escrow Account #1.
4. On or before November 29, 1999, Respondent made fee and client disbursements from Escrow Account # 1 on the Dunn matter. Respondent's disbursement or settlement statement reflected amounts still to be disbursed of \$16,670.87 owed to Dunn's health care providers and an additional fee owed to Respondent of \$3,333.33. Respondent did not make any further disbursement to the health care providers until August 11, 2000. The August 11, 2000 disbursements were made from a second Escrow Account, Escrow Account #2, established in March, 2000.
5. From November 30, 1999, to April 28, 2000, Escrow Account #1 was out of trust as the account had funds less than total disbursements owed of \$20,004.20 and less than the \$16,670.87 owed to Dunn's health care providers.
6. On February 2, 2000, the Commonwealth of Virginia placed a levy upon Escrow Account # 1 for \$5,193.94.
7. On March 1, 2000, Respondent opened a second escrow account, First Union Account # 2000004784647, hereinafter Escrow Account #2.
8. On August 11, 2000, Respondent made disbursements from Escrow Account #2 in the amount of \$16,670.87 to Dunn's healthcare providers. Escrow Account #2 had less than \$16,670.87 in the months of March, April, May, and July, 2000.
9. Respondent maintained a single subsidiary ledger for Dunn, although he made disbursements from both Escrow Account #1 and Escrow Account #2.
10. Respondent failed to keep a running balance or balance on hand for the subsidiary ledger of Dunn's escrowed funds.
11. During the relevant time periods, Respondent made disbursements from the escrow accounts that were not fee

disbursements, not client disbursements, and not case disbursements, but were personal or for Respondent's law office administration including but not limited to condominium fees, office rent, staff payroll, and clothing expenses.

12. Although Respondent represented to Dunn in November 1999 that he would shortly disburse amounts owed to Dunn's health care providers as set forth in his disbursement or settlement statement, Respondent failed to do so until August 11, 2000, in spite of the repeated requests of Dunn and of her health care providers to make such payments.
13. Although Dunn repeatedly inquired of Respondent and his office about the status of the payments owed to her healthcare providers, Respondent failed to inform Dunn of the status of payments and any problems preventing timely disbursement.

NATURE OF MISCONDUCT

The Board finds that such conduct on the part of Respondent constitutes misconduct in violation of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

RULE 1.4 Communication
(2) * * *

DR 9-102. Preserving Identity of Funds and Property of a Client.
(B)(3) and (4) * * *

DR 9-103. Record Keeping Requirements.
(A) (3) * * *
(B) (4) (a) and (b) * * *

RULE 1.15 Safekeeping Property
(a) (1) and (2) * * *
(c) (3) and (4) * * *
(e) (1) (i), (ii), (iii), (iv) * * *
(2), (3), (4) (i) and (ii) * * *
(5) (i), (ii) and (iii) * * *
(6) * * *

Additional charges under Rule 9-103(B)(1)(a) and Rule 1.15(a)(1 & 2), (b), (c)(1 & 2), (d), (h), and (i)(1) are DISMISSED for lack of clear and convincing evidence.

The panel notes the allegations that Mr. Ermlich maintained a trust account but failed to identify it as such. The testimony indicated that the trust account in question (Trust Account #1) was originally located at Signet Bank and identified as an "Escrow Account". However, when Signet Bank merged with First Union National Bank, Mr. Ermlich's office failed to notice that the new account statements and checks failed to identify the account as an attorney's fiduciary account. That error was discovered when the Virginia Employment Commission issued a lien against the account on February 2, 2000. After ascertaining that Trust Account #1 was indeed an attorney's fiduciary account, First Union restored the liened funds to the trust account and advised Ms. Fleming that it would be best to open a brand new trust account (Trust

Account #2), which was done in March, 2000. The panel elects not to find any violations resulting from what was apparently an oversight on the part of Mr. Ermlich's bank.

IMPOSITION OF MISCONDUCT

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions, and having considered the Respondent's prior disciplinary record, ORDERS pursuant to Part 6, Sec. IV, Para. 13C(3) of the Rules of the Virginia Supreme Court that the license of the Respondent, Arthur M. Ermlich, to practice law in the Commonwealth of Virginia be, and the same is hereby suspended for three years effective September 27, 2002.

* * *

Terry Griffith, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, 804/730-1222, was the reporter for the hearing and transcribed the proceedings.

ENTERED this 15th day of October, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: John A Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
CAROLINE PATRICIA AYRES-FOUNTAIN
VSB DOCKET NO. 03-000-0109

ORDER

THIS MATTER came to be heard on August 23, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Karen A. Gould, Second Vice Chair presiding, James L. Banks, Jr., Bruce T. Clark, Theophlise L. Twitty, and V. Max Beard, Lay Member. Each member of the panel stated on the record that there was no business or financial interest and no personal bias that would impair his or her ability to hear the matter fairly and impartially.

The Respondent, Caroline Patricia Ayres-Fountain, did not appear. She sent a facsimile communication to the Bar indicating that she had been notified of the time and place of the hearing, but would not be appearing. Harry M. Hirsch, Deputy Bar Counsel, appeared on behalf of the Virginia State Bar.

The Board finds, from the evidence presented, that Ms. Ayres-Fountain was licensed to practice law within the Commonwealth of Virginia on February 22, 1993. The Board also finds that Ms. Ayres-Fountain was suspended from the practice of law in Delaware for a period of three years effective July 8, 2002, by order entered by the Supreme Court of the State of Delaware. The Board finds that the Respondent admitted that she had falsely represented to the Delaware Supreme Court, in her Certificates of Compliance filed between 1996 and 2000, that she had timely filed and paid all federal, state, and local payroll, gross receipts and income taxes; concealed her failure to pay various federal, state and local taxes from the Office of Disciplinary Counsel ("ODC") and its auditor; failed to

provide to the ODC the documentation necessary for an audit required as a condition of a private admonition issued in October 2001; with respect to one client, failed to provide competent representation, failed to act with reasonable diligence and promptness, failed to keep the client reasonably informed, failed to hold unearned fees in a trust account, failed to keep the client's property separate from her property, failed to take steps to protect the client's interest, and engaged in deceit and misrepresentation; with respect to another client, failed to act with reasonable diligence and promptness and failed to protect the client's interests upon withdrawal from representation; and, with respect to two other clients, failed to act with reasonable diligence and promptness.

Based upon such findings, the Board orders pursuant to the Rules of Court, Part Six, Section IV, Paragraph 13(G), that the license of Caroline Patricia Ayers-Fountain to practice law within the Commonwealth of Virginia be, and the same is hereby suspended for a period of three years, effective July 8, 2002.

The Clerk of the Disciplinary System shall assess costs pursuant to Part Six, Section IV, paragraph 13(K)(10) of the Rules of the Supreme Court.

ENTERED this Order this 28th day of August, 2002.
VIRGINIA STATE BAR DISCIPLINARY BOARD
BY Karen A. Gould, Second Vice-Chair



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

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
CHARLES DAUGHERTY FUGATE, II
VSB Docket No. 00-000-1475

ORDER OF REVOCATION

On May 17, 2002 this matter came on for hearing on a Rule to Show Cause and Order of Suspension and Hearing entered by the Board on January 7, 2000. The hearing was originally scheduled for January 28, 2000. On Respondent's motion it was continued pending sentencing. It again was scheduled to be heard on August 25, 2000, but the Respondent moved for a general continuance, sentencing still having not occurred. The hearing was held this day before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Roscoe B. Stephenson, III, Chair, presiding, and James L. Banks, Jr., Werner H. Quasebarth, Anthony J. Trenga and H. Taylor Williams, IV.

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

The Respondent, Charles Daugherty Fugate, II ("Respondent" or "Mr. Fugate") appeared in person represented by Michael L. Rigsby, Esquire.

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

Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, was the reporter for the hearing and having been duly sworn, transcribed the proceedings.

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.

This proceeding arises under Part 6, Section IV, paragraph 13(E) of the Rules of the Supreme Court of Virginia, and its purpose is for the Board to determine whether to further suspend or revoke the Respondent's license as a result of Respondent's felony convictions entered by the United States District Court for the Western District of Virginia.

The Virginia State Bar filed five exhibits that were received and accepted into the record without objection.

The Respondent filed one exhibit that was received and accepted into the record without objection. Respondent presented other evidence by witnesses testifying ore tenus.

Findings of Fact

The Board unanimously finds, by clear and convincing evidence the following facts:

1. At all times relevant to this matter Respondent, Charles Daugherty Fugate, II, Esquire has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. By a Plea Agreement filed in the United States District Court for the Western District of Virginia, Abingdon Division, the Respondent pleaded guilty to two counts of mail fraud, in violation of 18 U.S.C. §§ 1341 & 1346.
3. Respondent's guilty pleas were accepted and judgment was entered against him on the two above-mentioned counts on November 21, 2000. Respondent was sentenced to 15 months in prison, followed by three years of supervised probation, and ordered to pay restitution in the amount of \$33,984.17. He reported to the federal penitentiary on January 22, 2001 and remained incarcerated there until he was released to a halfway house in Lebanon, Virginia in November, 2001. He was released from the halfway house in due course and remains on supervised probation.
4. Upon entry of the guilty plea Respondent was convicted of two felonies involving fraud. Said felonies are crimes as defined by the Rules of Court, Part 6, Section IV, Paragraph 13(A).

Imposition of Sanctions

After the Board made its findings on the above matter, the Bar presented evidence that Respondent had no previous disciplinary record and made further argument for sanctions. Respondent also presented evidence ore tenus and made argument for purposes of the Board's consideration of sanctions. After reviewing all of the exhibits and evidence presented, the Board finds that Respondent's felony convictions represent the

commission of criminal acts that reflect adversely on his fitness to practice law. The Board notes that Respondent presented compelling evidence about the circumstances of his criminal convictions, his past and present integrity and his commitment to the ethical practice of the law. The Board concluded, however, that it could not reexamine the appropriateness of the criminal convictions themselves. Therefore, the Board has before it Respondent's admission to and subsequent conviction on two serious federal felony criminal matters involving fraudulent misconduct. Despite Respondent's compelling evidence, the Board concludes that revocation of Respondent's license to practice law is the appropriate sanction under the circumstances.

Accordingly, it is **ORDERED** that the license to practice law in the Courts of this Commonwealth heretofore issued to **CHARLES DAUGHERTY FUGATE, II**, Esquire, be and the same is hereby **REVOKED**, effective May 17, 2002.

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

ENTER THIS ORDER THIS 16TH DAY OF JULY, 2002
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Roscoe B. Stephenson, III, Chair Designate



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
JAMES DANIEL KILGORE
 VSB Docket No: 02-000-2781

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board for hearing on April 26, 2002, upon a Rule to Show Cause and Order of Suspension and Hearing entered on March 29, 2002. A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Robert L. Freed, James R. Austin, Joseph R. Lassiter, Jr., Thaddeus T. Crump, Lay Member, and William M. Moffet, presiding, heard the matter. Richard E. Slaney, Assistant Bar Counsel, appeared as Counsel to the Virginia State Bar ("VSB"). James Daniel Kilgore ("Respondent") did not appear.

The court reporter for the proceeding, Valerie L. Schmit, Post Office Box 9349, Richmond, Virginia, 23227, telephone (804) 730-1222, was duly sworn by Mr. Moffet.

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 another 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 dated April 1, 2002 to Respondent's address of record with the Virginia State Bar enclosing the required documentation.

The case was thrice called by the clerk, and the Respondent neither answered the docket call nor appeared to defend his interests. Respondent did not file a response to the Rule to Show Cause and Order of Suspension and Hearing, as required by ¶13.G. The Chair opened the hearing by polling the Board members to ascertain whether any member had a conflict of interest which would preclude any of them from serving. There were no conflicts and the hearing proceeded as scheduled.

The Virginia State Bar's sole exhibit was admitted into evidence as Exhibit 1, without objection. Exhibit 1 includes an order entered on March 4, 2002, by the United States Bankruptcy Court for the Western District of Virginia disbarring the Respondent from the practice of law before that Court.

The Respondent has failed to assert 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 United States Bankruptcy Court for the Western District of Virginia, to-wit: revocation of Respondent's license to practice law.

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, James Daniel Kilgore, to practice law in the Commonwealth of Virginia shall be, and is hereby, **REVOKED** effective April 26, 2002.

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

SO ORDERED, this 15th day of May, 2002.
 By: William M. Moffet, Chair



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

**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
ROBERT EDMUND LA SERTE
 VSB DOCKET: 00-053-2018

ORDER

This matter was certified to the Virginia State Bar Disciplinary Board by the Fifth District Committee, Section III, and was heard on July 26, 2002, by a duly convened panel of the Disciplinary Board consisting of Karen Gould, presiding chair, Robert L. Freed, Theophlise L. Twitty, H. Taylor Williams, IV, and V. Max Beard, lay member. The Respondent, Robert Edmund La Serte, was present and represented by Rajeev

Khanna, Esquire. The Virginia State Bar (hereinafter referred to as the "Bar") was represented by Seth M. Guggenheim, Assistant Bar Counsel. The proceedings were transcribed by Valarie L. Schmit of Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222. This matter was also heard together with the consent of the parties with VSB Docket #00-053-0760.

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

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, responded in the negative.

FINDINGS OF FACT

Upon consideration of the testimony presented and exhibits received, the Board makes the following findings of fact:

- (1) At all times relevant to this proceeding, the Respondent, Robert Edmund La Serte has been an attorney licensed to practice law in the Commonwealth of Virginia.
- (2) In July 1999, the Respondent maintained an attorney trust account, Account Number 202756629, for his law practice, Robert E. La Serte & Assoc, LLC, at Crestar Bank, now doing business as Sun Trust Bank. On July 1, 1999, a check (check #1029) in the amount of Three Thousand Four Hundred Fifty Three Dollars (\$3453.00) was written from this account to St. Paul Medical & Rehab on behalf of client Pham Diep (hereinafter known as the 'St. Paul check'). (VSB Exhibit #9 and #12.)
- (3) On August 19, 1999, the Respondent closed the aforementioned account and withdrew the remaining funds, in the amount of One Thousand Seven Hundred Twenty Dollars and Forty-One cents (\$1720.41) (VSB Exhibit #10), leaving a zero balance. The Respondent testified that he deposited the \$1720.41 in another account in his new law firm, but could not prove that he deposited the money in a trust account. The Board finds that even if he had properly closed the Crestar account, he did not have sufficient funds to cover the St. Paul Medical & Rehab check when it was presented to the Bank. Unbeknownst to the Respondent, an additional amount of interest was paid on the Lawyer's Trust Account (IOLTA). This caused the account to remain open and the account was not actually closed until October of 1999, the end of the next billing cycle. On September 1, 1999, the Respondent's check #1029, drawn on this account in the amount of \$3453.00, dated July 1, 1999, and payable to St. Paul Medical & Rehab, was honored by the Bank, creating an overdraft in the trust account in the amount of the check.
- (4) From September 1, 1999, Crestar Bank made repeated attempts to contact the Respondent regarding the payment of the overdraft of his trust account with the bank. On December 8, 1999, Crestar Bank sent the Respondent a certified letter return receipt requested again demanding payment of the overdraft. (VSB Exhibit #8.) The letter was received and signed for by J. Daniel Reaves, an associate

attorney in the Respondent's law office. When the Respondent did not respond to Crestar Bank's letter, it filed a complaint with the Virginia State Bar in January 2000. During the course of the hearing on July 26, 2002, the Respondent admitted that he still had not paid Crestar Bank. The Respondent also admitted to Virginia State Bar Investigator, James Dooley, Jr., that he failed to reconcile his trust account ledger with the monthly bank statements for the trust account and instead just called the bank periodically to determine the balance in the trust account. The Respondent also failed to reconcile the trust account ledger with the individual client ledger cards.

DECISION OF THE BOARD

Based upon the foregoing, the Board finds by clear and convincing evidence that Respondent had opened the trust account at Crestar Bank, that he had used the account, that he failed to keep accurate records, and that he failed to reconcile his account to insure that his trust account was in balance. The Board finds by clear and convincing evidence that check #1029 was signed by the Respondent and that he was responsible for the trust account being out of balance. The Board further finds by clear and convincing evidence that the Respondent failed to reimburse Crestar for the overpayment on the overdraft and that he repeatedly failed to respond to their demands for payment. We find the Respondent's position that he was not responsible for his trust account being out of balance and for the Crestar situation with the St. Paul check to be disingenuous. The Board felt that the manner in which the Respondent dealt with his trust account and denied any accountability for it, in addition to his failure to respond to requests for payment from Crestar for the St. Paul check, to be egregious and reprehensible.

Accordingly, the Board finds that these actions violated DR 9-103(A)(1), (2) and (3) and DR 9-103 (B)(5) and (6) of the Virginia Code of Professional Responsibility:

DR 9-103, Record Keeping Requirements

- (A)(1), (2) and (3) ***
(B) (5) (b) and (c) ***
(6) ***

The Board further finds that the other charges of misconduct in VSB Docket No. 00-053-2018 have not been proven by clear and convincing evidence, and the Board dismisses all other charges under this Docket Number.

SANCTION

Following the Board's announcement of its findings of misconduct, Assistant Bar Counsel and Respondent were permitted to offer evidence in aggravation or in mitigation of such misconduct and to present argument. Because of the Respondent's prior disciplinary offense and the Board's finding in Case No. #00-053-2018 (decided today), his refusal to make restitution to Crestar, his attitude about the trust account and his indifference to the situation, the Board has concluded that these violations merit suspension of the Respondent's license. Upon consideration whereof, it is ORDERED that Respondent's license to practice law in the Commonwealth of Virginia be, and hereby is, suspended for three (3) years, effective July 26, 2002.

It is further ORDERED that, pursuant to Part Six, Section IV, Paragraph 13 (k)(10) of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

ENTER: this 12th day of August, 2002
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Karen A. Gould, Second Vice Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF:
DAVID NICHOLLS MONTAGUE
 VSB Docket No. 99-010-2127

ORDER OF SUSPENSION

THIS MATTER came on June 28, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board (the "Board"), comprised of John A. Dezio (the "Chair"), William C. Boyce, Jr., Richard J. Colten, Thaddeus T. Crump (Lay Member), and Peter A. Dingman, pursuant to a Subcommittee Determination and Certification from the Virginia State Bar First District Committee. David Nicholls Montague ("Respondent" or "Montague") appeared in person and was represented by counsel, Michael L. Rigsby. The Virginia State Bar (the "Bar") appeared by its counsel, Edward L. Davis. Proceedings in this matter were transcribed by Tracy J. Stroh, of Chandler & Halasz, Registered Professional Reports, P.O. Box 9349, Richmond, Virginia, 23227, telephone no. 804-730-1222.

After the Board disposed of an unrelated matter, this matter was called at 1:00 o'clock p.m. in the Tweed Courtroom of the United States Fourth Circuit Court of Appeals, Richmond, Virginia. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether any member had any personal or financial interest which would interfere with or influence that member's unbiased determination of this matter. Each member, including the Chair, answering in the negative, the matter proceeded. The Bar and Respondent, by counsel, stipulated that there was no dispute between the parties as to the facts set forth in the Certification. The Chair then recited in summary fashion the procedure to be followed in this hearing and the Rule on Witnesses was imposed.

The Certification charged that Respondent had violated the following Disciplinary Rules: DR1-102(A)(3) (prohibiting criminal acts or wrongful conduct which reflect adversely on a lawyer's fitness to practice law); DR9-103(A)(1), (2), (3), (4); and DR9-104(B)(2), (3), (4), (5) and (6) (setting trust account requirements). The Certification also charged violations under the Rules of Professional Conduct relating to misconduct alleged to have occurred after January 1, 2000, as follows: Rule 8.4(b) (criminal or wrongful conduct); and Rule 1.15(e)(1), (f)(4), (5) and (6) (trust account requirements).

The Bar then presented its evidence. Kimberly Ashe, a paralegal who worked for Respondent during the year 1993 through 1996 and 1998 to January of 1999, testified that Montague employed a certified public accountant, Charles David Hersh, who prepared federal and state employer's quarterly federal tax returns which were delivered to Respondent, but not filed by him. Ms. Ashe testified that, when she raised a question about this with Montague, he informed her that he was purposely not filing the required forms out of fear that filing would instigate an investigation of his failure to pay payroll taxes. Ms. Ashe also testified that she warned Respondent, based on courses she had taken, that his trust accounting procedures were inadequate as mandated by the then-applicable Code of Professional Responsibility. She stated that, during the term of her employment, she always ultimately received her paycheck, net of payroll withholding tax amounts, although her check was sometimes late.

The Bar also submitted an affidavit by Mr. Hersh affirming that he did prepare federal 941 tax forms (Employer's Quarterly Federal Tax Reports) for the years 1997, 1998, 1999 and 2000. The affidavit affirmed that, for each year, state and federal income tax was withheld from employee paychecks and the employer's portion of federal social security and Medicare taxes also accrued.

The Bar called Peter A. Kepler, a Bar staff investigator. Mr. Kepler reported that, in an interview with Montague, Respondent conceded that he did not maintain subsidiary ledgers as required by the applicable Rules of Professional Conduct and/or the Code of Professional Responsibility. Further, Respondent conceded that, while he paid Ms. Ashe on checks showing federal income tax and social security withholding, he did not actually withhold such money or pay it over to federal or state authorities. Rather, the withheld money was "absorbed" into the general cost of operating Respondent's practice.

Tony Ledford, an official with the Commonwealth of Virginia Department of Taxation, testified that Respondent did not properly file employer's tax returns and accumulated a debt for such taxes with the Commonwealth which was ultimately satisfied by the state withholding monies otherwise owed by the Commonwealth to Montague for his service in court appointed cases. Edwin R. Ward, Jr., an official of the Internal Revenue Service based in Richmond, Virginia, was called by the Bar and testified that Respondent still has not filed the 941 quarterly tax forms prepared by Mr. Hersh and that such failure to file and failure to payover taxes withheld caused damage to the United States Treasury in that the employee has credit in the social security system and for tax withholdings which are otherwise satisfied out of the general funds of the United States. The Bar introduced eight other exhibits (Mr. Hersh's affidavit was admitted as Exhibit 9) which included trust account records maintained by Respondent and evidence of a judgment for unpaid taxes taken against him by the Internal Revenue Service.

On his own behalf, Respondent called Patrick Yockey, a CPA employed by Respondent to compute the tax liabilities Respondent owed as a result of his failure to withhold, report and payover taxes. Mr. Yockey was also employed by

Respondent to attempt to negotiate a compromise settlement with the government. Mr. Yockey testified that Respondent's business was not very profitable during the years 1997 through 2000. Mr. Yockey testified that a compromise has not yet been negotiated with the Internal Revenue Service.

Respondent testified in his own defense, saying that he may have kept additional trust account records, but could not find ledger cards for cases prior to 1998. He testified that the withholding obligation for taxes is essentially a "fiction" and that, in some case, it became necessary for him to prioritize obligations owed. Employee tax withholding amounts were not in a separate account and, where more pressing obligations, e.g. his home mortgage, business expenses and salaries, asserted themselves, money was applied to such obligations rather than to payment of taxes. On cross-examination, Respondent testified that he filed Employer Quarterly Tax Returns and state forms during the early 1990s and only stopped in the late 1990s because the gross receipts of his practice fell off.

After each side was afforded an opportunity to argue the inferences to be drawn from the foregoing evidence, the Board retired to consider its verdict. After deliberation, the Board determined that the Bar had, by clear and convincing evidence, proved violations of the following Disciplinary Rules: DR1-102(A)(3); and DR9-103(A)(1), (2), (3) and (4), (B)(2), (4), (5) and (6). The Board made the same finding as to a violation of Rule 8.4(B). The Board did not find that the Bar had sustained its burden as to a violation of DR9-103(B)(3) and the Bar withdrew the charge of a violation of Rule 1.15.

The Board reconvened and announced its findings as set forth above. The parties then introduced evidence relevant to the appropriate discipline to be imposed. The evidence produced showed that Respondent, a member of the Virginia State Bar for 41 years, with a distinguished record of community service, including service as the former Chair of the First District Committee of the Virginia State Bar, membership on the Client's Security Commission of the Virginia State Bar, service as President of the Hampton Bar Association, election to the City Council and as Mayor of the City of Hampton and membership on the Board of Visitors of the University of Virginia, has a prior record of discipline showing three charges recently dismissed, with terms, by the First District Subcommittee. These cases were recently decided and Respondent has begun efforts to comply with the terms imposed. No evidence was introduced at any time during the hearing that any client of Montague had sustained any loss as a consequence of his actions and trust account deficiencies. Mr. Yockey also testified that Respondent had made a decision not to pursue a personal bankruptcy to avoid his debts and had made an affirmative decision to collect social security payments to obtain funds to meet his obligations, despite advice that an early election to receive such payments would compromise Montague's position in negotiations with the Internal Revenue Service (apparently by creating another source of income to be tapped for payment of his obligations).

The Board, having considered the foregoing, determined to impose the following discipline:

1. ORDERED that Respondent be, and he hereby is, suspended from the Bar of the Supreme Court of Virginia for

a period of ninety (90) days commencing on June 28, 2002; and

So ordered this 9th day of August, 2002.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: John A. Dezio, Chair



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
LAWRENCE RAYMOND MORTON, ESQUIRE
 VSB Docket No. 00-053-2891

ORDER

This matter came on to be heard on June 25, 2002, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District-Section III Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Joseph Roy Lassiter, Jr., Esquire, Roscoe Bolar Stephenson III, Esquire, Herbert Taylor Williams IV, Esquire, Chester J. Cahoon, Jr., Lay Member and Randy Ira Bellows, Esquire, presiding.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Lawrence Raymond Morton, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated June 24, 2002, reflecting the terms of the Agreed Disposition. The court reporter in these proceedings was Donna T. Chandler, Chandler and 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, Lawrence Raymond Morton, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Respondent was appointed by the court to represent the Complainant, James L. Jack, on charges of felony assault. The case went to trial on March 10, 1998, and the Complainant was found guilty of attempted unlawful wounding. On May 15, 1998, the Complainant was sentenced to five years in prison.
3. The Respondent timely filed a petition for appeal with the Virginia Court of Appeals. On October 20, 1998, the Court of Appeals denied the petition for appeal.
4. The Respondent did not inform the Complainant of the denial of his petition for appeal until August 16, 1999, long after the time for filing a notice of appeal with the Virginia Supreme Court had run. The Respondent did not advise the Complainant of his right to an appeal to the Virginia Supreme Court.

5. By letters dated May 14, 1998, June 3, 1998, July 16, 1998, August 11, 1998, and January 4, 1999, the Complainant wrote to the Respondent requesting information regarding the status of his case and/or requesting the transcripts in his case. The Respondent did not reply to any of these letters or send the requested transcripts. Finally, by letter dated August 16, 1999, after the Complainant had written to the Clerk of the Court asking the Court to intercede, the Respondent provided the Complainant with the transcripts.
6. An aggravating factor recognized by the ABA is Respondent's record of prior disciplinary offenses.

The Board finds by clear and convincing evidence that such conduct on the part of Lawrence Raymond Morton, Esquire, constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

DR 6-101. Competence and Promptness.
(B), (C) and (D) ***

Upon consideration whereof, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of sixty (60) days, commencing on the 1st day of August, 2002.

ENTERED this 26th day of June, 2002.
Randy Ira Bellows, 2nd Vice Chair
Virginia State Bar Disciplinary Board



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

In the Matter of
ROBERT LOUIS PETERSEN, JR.
VSB Docket No.: 00-061-2418

ORDER OF REVOCATION

THIS MATTER came before the Virginia State Bar Disciplinary Board (hereinafter referred to as the "Board"), sitting at the United States Court of Appeals in Richmond, Virginia, on July 26, 2002, for hearing before a duly convened panel consisting of Randy Ira Bellows, Chair, presiding, and Richard J. Colten, Peter A. Dingman, Larry D. Kirksey, and W. Jefferson O'Flaherty. The Virginia State Bar (hereinafter referred to as the "Bar") was represented by Charlotte P. Hodges, Esquire, and the Respondent, Robert Louis Petersen, Jr., who was present throughout the proceedings, appeared *pro se*. Tracy J. Stroh, Chandler & Halasz, Registered Professional Reporters, P.O. Box 9439, Richmond, Virginia 23227 (phone number 804/730-1222), recorded the hearing after being duly sworn by the Chair. The panel was polled to determine whether any member had any business or financial interest or bias that would impair, or could be perceived to impair, his ability to hear this matter fairly and impartially. Each member, including the Chair, responded in the negative.

FINDINGS

The Respondent appeared before the Disciplinary Board in response to certification of the matter by the Sixth District

Subcommittee-Section I of the Virginia State Bar. The allegations of fact submitted to the Board by the District Subcommittee's certification are as follows:

1. At all times relevant hereto, the Respondent, Robert L. Peterson (*sic*) (hereinafter Peterson (*sic*) or Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Petersen was employed as senior in-house counsel in AT&T's Government Markets Division between June 1, 1995, and February 3, 1999.
3. As counsel for AT&T, Petersen was privy to privileged and confidential information about the company.
4. Petersen admitted that on or about August 1998, while he was still employed with AT&T, he anonymously disclosed company secrets to the United States Department of Defense without AT&T's knowledge or consent.
5. Petersen was asked to leave AT&T around or about December 1998.
6. On February 3, 1999, Petersen and AT&T executed a Separation Agreement which terminated Peterson's (*sic*) employment with AT&T.
7. The Agreement required Petersen to return all company documents to AT&T and to keep confidential all proprietary company information. The Agreement further provided that any breach by Petersen would require him to return all monies paid under the Agreement minus \$1,000. In addition, AT&T reserved the right to sue Petersen for damages for breach of the Agreement.
8. Despite the Agreement, Petersen retained copies of various documents which contained and/or referred to a variety of company secrets and confidential information of AT&T's, including information relating to the fraud Petersen alleged AT&T perpetrated upon the United States Government.
9. Following his separation from AT&T, Petersen was unable to secure other employment.
10. On October 5, 1999, Petersen began a series of communications with AT&T executives threatening to reveal the confidential information contained in the documents, as well as copies of the documents themselves, which he retained in violation of the Separation Agreement, if the individuals did not help him find other employment.
11. On October 5, 1999, a letter was sent to AT&T Chief Executive Officer C. Michael Armstrong (hereinafter Armstrong). In the letter, Respondent wrote, "*This is a request for your help in obtaining another job because, I believe, AT&T unfairly and wrongfully forced my resignation in February. To support the reasonableness of this request I have enclosed several documents. I must point out that these documents, less my resume, were sent to me this summer by AT&T's Legal Department in Washington. Therefore, it is my belief that I may do with them anything I see fit.*"

12. In addition, on the evening of October 5, 1999, Petersen left a voice mail message for AT&T Vice President, Daniel Stark (hereinafter Stark). In the message, Petersen indicated that Stark should urge Armstrong to help him (Petersen) find other employment. In his message, Petersen advised, *"It simply stands to reason that a few phone calls will be a lot less costly than defending against any actions I could take . . . Finally, the fact that I do not intend to bring any legal action against AT&T does not mean that I may not become a witness for a third party."*
13. On October 15, 1999, Petersen left a second voice mail message for Stark in which he advised that Armstrong and Stark had been given enough time to *"decide to do what is right in this matter."* Petersen indicated that since they had not, he had released the documents containing confidential AT&T information to his parents, his in-laws, two attorney friends and to the CEO, General Counsel and Director of Contracts of a former employer of his. Petersen advised that if he did not hear from Starks (*sic*) by Monday, he would *"contact DOD and make arrangements to get them a copy."* If he had (*sic*) heard from them by Tuesday, he would contact Bob Bass at *Federal Computer Weekly*. He further indicated that he would contact two *New York Times* reporters and the *Washington Post*.
14. On October 17, 1999, Petersen left a third voice mail message for Stark, in which Petersen indicated he was being considered for a job with Newport News Ship Building. Petersen wanted Armstrong to call Bill Fricks, Chairman and CEO of Newport News Ship Building, and support him *"in some form or fashion."* In the message, Petersen indicated that he had already sent copies of the confidential documents to Fricks.
15. On October 20, 1999, Petersen left Stark a fourth voice mail message, in which he stated that because AT&T officials failed to respond to his earlier messages, he would be meeting with the Department of Defense, the press and "Justice."
16. In or around December 1999, AT&T sued Respondent, alleging numerous breaches of the February 1999 Settlement Agreement.
17. On January 11, 2000, Judge Ricardo M. Urbina, United States District Judge for the District of Columbia, entered a Consent Decree of Permanent Injunction, requiring, among other things, that Petersen 1) abide by the Separation Agreement; 2) that he return all property owned by AT&T in his possession by January 14, 2000, and; 3) that he keep confidential all information he learned of or became aware of in connection with his employment by AT&T. Petersen, who represented himself in the matter signed the Consent Decree.
18. In a January 3, 2001, hearing before Magistrate Judge Alan Kay, Petersen misrepresented that following his signature on the Consent Decree he returned all documents to AT&T by January 14, 2000, and did not distribute any additional copies.
19. However, it was discovered that following January 14, 2000, Petersen still had AT&T documents in his possession, and he had, on at least two occasions following the sign-

ing of the Consent Decree, sent confidential AT&T information to third parties.

20. On one occasion subsequent to the execution of the Consent Decree, Peterson (*sic*) wrote a letter to a third party, and sent copies of the letter to two other third parties, in which he discussed information concerning AT&T's internal audits of its government billings operations. In that letter, Petersen disclosed information contained in at least two internal AT&T documents. In addition, Petersen again left phone messages with AT&T employees indicating he had again released confidential information to third parties.
21. On January 31, 2001, Judge Urbina found that Petersen's actions clearly violated the Court's Consent Decree, and found him in civil contempt of the Court's January 11, 2000, Consent Decree of Permanent Injunction.

The Board finds, by clear and convincing evidence, that the Bar established the facts alleged in the certification by the District Subcommittee. On at least six occasions, specifically in July 1998, August 1998, October 1999, December 1999, January 2000 and May 2000, the Respondent revealed a confidence or secret of his client, AT&T. In total, these confidences or secrets were revealed to as many as 35 different entities or individuals.

Further, on January 11, 2000, the Respondent and his employer entered into a Consent Decree of Permanent Injunction, in the United States District Court for the District of Columbia, which provided, *inter alia*, that the Respondent return to AT&T all property and documents owned by AT&T, or in which AT&T has any direct or indirect beneficial or ownership interest in any form, including, but not limited to, files, records, memoranda, letters, computer access codes, computer programs, keys, card key passes, instruction manuals, documents, business plans and other property which he received or prepared or helped to prepare in connection with his employment at AT&T, including all replicas, duplicates, extracts, and copies thereof in his possession. Further included in the Consent Decree was the requirement that Respondent also keep secret proprietary and confidential information that he learned or became aware of in connection with his employment by AT&T, including, without limitation, (a) all technical, legal, regulatory, administrative, management, marketing, business or financial information, (b) all attorney work product and communications subject to the attorney/client or similar privilege, (c) all trade secret information, (d) all other confidential information not available to persons other than management of AT&T, and (e) any other information, the use or disclosure of which might reasonably be construed to be contrary to the interests of AT&T. Subsequently, Respondent was found to have violated the Consent Decree. By Memorandum Order of the United States District Court for the District of Columbia dated July 31, 2001, it was found, by clear and convincing evidence, that the Respondent had violated the Consent Decree by writing a letter to a third party and sending copies of AT&T confidential documents to two other third parties in which he discussed AT&T's internal audits of its government billing operations and disclosed information contained in at least two internal AT&T documents. These were found by the Court to be "in clear violation" of the Consent Decree. The Respondent was held in civil contempt of the Consent Decree and was sanctioned accordingly.

The Board also takes note of the fact that the Respondent has acknowledged under oath his misconduct. On November 15, 2000, the Respondent appeared before the Grievance Committee for the State Bar District No. 09A, State Bar of Texas and entered into an Agreed Judgment of Public Reprimand. This Judgment contained an admission by the Respondent that he knowingly revealed confidential information of a former client to persons other than the client, the client's representatives, or the members, associates, or employees of the Respondent's law firm. The Respondent acknowledged under oath that the finding of misconduct was "... true in every respect."

The evidence before this panel revealed that on numerous occasions, Petersen used his client's privileged and secret documents for his own self-serving motives and personal gain. See the following examples:

VS B Exhibit 2B (Letter from Respondent to C. Michael Armstrong, Chairman and CEO of AT&T):

This is a request for your help in obtaining another job because, I believe, AT&T unfairly and wrongfully forced my resignation in February.

To support the reasonableness of this request I have enclosed several documents. I must point out that these documents, less my resume, were sent to me this summer by AT&T's Legal Department in Washington. Therefore, it is my belief that I may do with them anything I see fit.

VS B Exhibit 2D (Voice Mail Message to AT&T manager from Respondent):

*** I just returned from my mailbox and found nothing from you, Mr. Armstrong, AT&T, or some high-priced AT&T outside counsel. I was expecting at least a letter from counsel demanding return of the documents someone so stupidly sent to me this summer. I am positive that, if paid enough, counsel can some how come up with an argument that the privileges once attached to the document have not been waived. In any event, you all have had 10 days and 8 work days to decide to do what is right in this matter. And I believe that's long enough. Therefore, I have made limited distribution of the package I sent to Mr. Armstrong. One each has gone to [family members, attorney friends, and executives of a former employer.] If I do not hear from you on Monday, I will contact DOD and make arrangements to get them a copy. ***

VS B Exhibit 2E (Voice Mail Message to AT&T manager from Respondent):

*** I can tonight suggest a possible win-win solution for everyone. As you know, all I want, and need, is a job. *** I believe my chances [of getting a particular job] would be enhanced if Mr. Armstrong would give Bill a call and support me in some form or fashion, even if it's just to ask for a favor. If I get rehired, of course, there will be no need for Mr. Armstrong to concern himself with my request of October 5 and its attending documents. He could just throw them in the

trash can as far as I would be concerned — as far as I would care. ***

As recently as May 27, 2002, Petersen continued to harass, threaten and attempt to intimidate his prior client and AT&T's employees.

Respondent testified several times during the course of proceedings before this Panel and showed no genuine appreciation for his wrongdoing, nor any contrition or remorse for his misconduct. When the Board inquired as to whether he thought he demonstrated any lapse in judgment, the Respondent replied in the negative—even though he admitted in the Texas judgment to having revealed the confidences of his client.

Respondent's position, in essence, is that the confidential documents came into his possession when he was no longer employed by AT&T, and any privilege that may have attached to the documents was nullified because they were transmitted to him by agents of AT&T without qualification, reservation or restriction.¹ We need not resolve the question as to whether the Respondent did in fact receive copies of these documents after his employment was terminated; however the Respondent came into possession of these documents, the Respondent was obligated to protect the confidences and secrets of his client and this obligation was not extinguished by the termination of his employment. What is clear is that the Respondent violated one of the most serious and significant concepts of an attorney-client relationship.

After reviewing the exhibits, the deposition of Nathaniel Friends (an AT&T attorney), and the testimony presented by both the Bar and the Respondent, the Board finds by clear and convincing evidence that Robert Louis Petersen, Jr. violated the following provisions:

VIOLATIONS

DR 1-102.
(A) (1), (2) and (4) ***

DR 4-101.
(B) (1), (2) and (3) ***

DR 7-104.
(A) ***

Rule 1.6.
(a) ***

RULE 1.8.
(b) ***

RULE 1.9
(b) (1) and (2) ***.

RULE 3.4.
(d) ***

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

The Board further found that the Bar had not carried its burden of proving violations of DR 7-105 (A) and DR 7-105 (C)(5) and (C)(6), Rule 1.15 (c)(1), (2), and (4), Rule 1.16(d)

and (e), Rule 2.3(b)(1) and (2) and Rule 2.3(c), Rule 3.3(d)(1) and (4), and Rule 3.4(i).

IMPOSITION OF SANCTIONS

The Board, having taken into consideration all of the evidence, testimony, exhibits and argument, found, by clear and convincing evidence, that the above-referenced violations have been committed by the Respondent, Robert Louis Petersen, Jr. Accordingly, it is ORDERED that the license to practice law in the Courts of the Commonwealth of Virginia heretofore issued to Robert Louis Petersen, Jr. be and the same is hereby REVOKED effective July 26, 2002.

ENTERED this 9th day of August, 2002.
 VIRGINIA STATE DISCIPLINARY BOARD
 By: Randy Ira Bellows, First Vice Chair

ENDNOTE _____

1 Respondent takes this position despite the fact that he conceded during his testimony that AT&T alleged conveyance of these documents to him after his employment was terminated was a "dumb mistake."



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTERS OF
THOMAS EDWARD SMOLKA
 VSB Docket Nos. 01-033-1945

01-033-2106
 02-033-0295
 02-033-0829
 02-033-0962
 02-033-1948

ORDER AND OPINION OF REVOCATION

This matter came to be heard on June 27, 2002 in the matters of Thomas Edward Smolka, VSB Docket Nos. 01-033-1945, 01-033-2106, 02-033-0292, 02-033-0829, 02-033-0962 and 02-033-1948 before a panel of the Virginia State Bar Disciplinary Board convened in the State Corporation Commission, Courtroom A, located at Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia and composed of Roscoe B. Stephenson, III, Chair, presiding, Werner H. Quasebarth, lay member, Joseph R. Lassiter, Jr., Anthony J. Trenga and Bruce T. Clark. The Virginia State Bar appeared through Bar Counsel, Barbara Ann Williams. The matter was presented to the Disciplinary Board by way of a Certification of the Third District Committee, Section III. The Respondent, Thomas Edward Smolka, did not appear, despite notice as required to his address on file with the Bar. Based on the stipulations and evidence presented, the Board revoked Respondent's license effective June 27, 2002, and in support of that revocation issues the following opinion and findings.

The Bar alleged the following general factual allegations:

1. At all times relevant to these proceedings, Mr. Smolka was an attorney licensed and in good standing to practice law in the Commonwealth of Virginia.

2. At all times relevant to these proceedings, Mr. Smolka's official address of record with the Virginia State Bar was Suite 122, 3126 West Cary Street, Richmond, Virginia 23221-3504.
3. "Suite 122" at 3126 West Cary Street in Richmond is actually a box maintained by MailBoxes, Inc.
4. On or about October 3, 2001, the Virginia State Bar mailed, by certified mail, to Mr. Smolka's address of record and to a post office box in Cambria, California, where his mail was forwarded, subpoenas for production of trust account records relevant to these proceedings with a request that he accept service of the subpoenas by executing the enclosed certificates.
5. Mr. Smolka did not execute the certificates accepting service of the subpoenas, but he did write the bar and represent that he could not produce his trust account records because they purportedly were packed in luggage allegedly lost by American Airlines on or about August 12, 2001.

In addition, the Bar alleged the following as to:

**I. VSB Docket No. 01-033-1945
 Complainant: Joseph D. Babcock**

A. Factual Allegations

1. Mr. Babcock was convicted in the Circuit Court of the City of Norfolk of first degree murder and use of a firearm in the commission of a felony, fined \$100,000 and sentenced to serve 83 years in the state correctional system on December 10, 1996; the Supreme Court of Virginia denied Mr. Babcock's petition for appeal on September 17, 1997.
2. In August or September 1999, Mr. Smolka was retained to file a habeas corpus petition on Mr. Babcock's behalf.
3. Mr. Smolka indicated that his fee would be \$2500, and had Mr. Babcock sign a blank contract but never provided Mr. Babcock a copy of the contract.
4. Mr. Babcock's family sent Mr. Smolka a \$1500 money order on or about August 10, 1999, and a \$10,000 life insurance policy naming Mr. Babcock as the beneficiary.
5. Mr. Smolka deposited the \$1500 money order in his attorney trust account #2000002974637 at First Union National Bank on August 20, 1999.
6. By August 27, 1999, the balance of Mr. Smolka's attorney trust was \$800.10.
7. Mr. Smolka visited Mr. Babcock at Buckingham Correctional Center on September 9, 1999; after that visit, Mr. Babcock heard nothing from Mr. Smolka.
8. On or about December 11, 1999, Mr. Babcock wrote the Virginia State Bar, indicating that he

was unable to have a warrant in debt personally served upon Mr. Smolka because Mr. Smolka's office at 3126 Cary Street, Suite 122, Richmond, Virginia, was a mail box.

9. On December 13, 1999, after learning the statutory deadline for filing a habeas petition had passed, Mr. Babcock wrote Mr. Smolka and requested him to return the \$1500 he had been paid, the life insurance policy, Mr. Babcock's file and trial transcript, and a copy of the contract Mr. Babcock had signed.
10. On or about June 16, 2000, Mr. Babcock wrote Mr. Smolka again, requesting return of the money, the life insurance policy, trial materials and his file.
11. On or about December 21, 2000, Mr. Smolka had Mr. Babcock execute a release stating that Mr. Smolka was paid \$1500 "for services, costs and expenses incident to meeting with [Mr. Babcock] at Buckingham Correctional Center and the review of certain materials."
12. The release further states that Mr. Smolka agreed to refund \$500 of the monies paid and Mr. Babcock acknowledged receiving the refund when in fact he had not; the release further states that the \$500 was consideration for the release of any and all claims Mr. Babcock might have against Mr. Smolka.
13. On or about January 20, 2001, Mr. Babcock filed a bar complaint against Mr. Smolka indicating that Mr. Smolka had failed to return his money, the life insurance policy or provide him a copy of the blank contract Mr. Babcock signed.
14. On or about April 12, 2001, Mr. Smolka sent Mr. Babcock \$500.

B. Charges of Misconduct

The foregoing allegations give rise to the following char Professional Responsibility and Rules of Professional Conduct; each Disciplinary Rule (DR) and Rule of Professional Conduct (RPC) allegedly violated is set out separately:

DR 1-101. Maintaining Integrity and Competence of the Legal Profession.

(B) * * *

DR-1-102. Misconduct.

(A) (4) * * *

DR 2-105. Fees.

(A) * * *

DR 6-101. Competence and Promptness.

(B) and (C) * * *

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

(A) (1) and (2) * * *

(B) (3) and (4) * * *

RULE 1.3 Diligence.

(a) and (b) * * *

RULE 1.4 Communication.

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

RULE 1.5 Fees

(a) (4), (5), (6), (7), (8), (9), (10) and (11)(b) * * *

RULE 1.8 Conflict of Interest: Prohibited Transactions

(a) (4), (5) and (6) * * *

Rule 1.15 Safekeeping Property

(a) (4) and (5) * * *

(b) and (c) (4) * * *

RULE 8.1 Bar Admission and Disciplinary Matters

* * *

(a) and (d) * * *

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) * * *

**II. VSJ Docket No. 01-033-2106
Complainant: Debbie Gaffin**

A. Factual Allegations

1. In November 2000, after seeing an advertisement in *Prison Legal News Magazine*, Debbie Gaffin retained Mr. Smolka to assist her husband, Michael Gaffin, in having his parole location transferred from San Jose, Santa Clara County, California, to Paradise, Butte County, California, where Ms. Gaffin lived.
2. The advertisement represented that Mr. Smolka was a lawyer, offered his services in parole matters and indicated he could be reached at 915 "L" St., Suite "C," Sacramento, California 95815-3705; (916) 444-1006.
3. Mr. Smolka told Ms. Gaffin that his main office was in Richmond, Virginia, and that the Sacramento office was a branch office.
4. Mr. Smolka led Ms. Gaffin to believe that he was licensed to practice law in California as well as Virginia, when in fact Mr. Smolka was not licensed to practice law in California.
5. On or about November 28, 2000, Ms. Gaffin executed a "Retainer Binder Agreement," providing that she would pay Mr. Smolka "a non-refundable flat fee of \$2500," which she did.
6. On December 17, 2000, Mr. Gaffin was paroled to Santa Clara County, California; when Mr. Gaffin was paroled, the only parole transfer request in his parole file was one Ms. Gaffin made.
7. Between December 17, 2000, and January 4, 2001, Ms. Gaffin tried to reach Mr. Smolka twice every business day to no avail.

8. On January 24, 2001, Ms. Gaffin sent Mr. Smolka a letter terminating his services and requesting an itemized statement of services rendered.
9. Mr. Smolka never responded to Ms. Gaffin's request.
10. Ms. Gaffin submitted a bar complaint against Mr. Smolka to the Virginia State Bar on or about February 27, 2001.

B. Charges of Misconduct

The foregoing allegations give rise to the following charges of misconduct under the Rules of Professional Conduct; each Rule of Professional Conduct (RPC) allegedly violated is set out separately:

Rule 1.3 Diligence

(a) and (b) ***

Rule 1.4 Communication

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

Rule 1.5 Fees

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

(b) ***

RULE 8.1 Bar Admission and Disciplinary Matters

(a) and (d) ***.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) ***

III. VSB Docket No. 02-033-0295

Trust Account Overdraft Notification

A. Factual Allegations

1. On July 10, 16 and 20, 2001, the Virginia State Bar received notices of insufficient funds from First Union National Bank with regard to Mr. Smolka's trust account #2000002974637.
2. Bank records disclose that Mr. Smolka's account was out of trust on July 5, 12 and 16, 2001.

B. Charges of Misconduct

The foregoing allegations give rise to the following charges of misconduct under the Rules of Professional Conduct; each Rule of Professional Conduct (RPC) allegedly violated is set out separately:

RULE 1.15 Safekeeping Property

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

(b) and (c) (4) ***

RULE 8.1 Bar Admission And Disciplinary Matters

(a) and (d) ***

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) ***

IV. VSB Docket No. 02-033-0829

Complainant: Delores E. Turner-Sherman

A. Factual Allegations

1. On October 18, 1999, Mr. Smolka entered into a Stipulation for Permanent Injunction in *The Florida Bar v. Thomas E. Smolka, Individually, and d/b/a Thomas E. Smolka & Associates*, Florida Bar File Nos. 19980039(02), 19980053(02), 19980084(02), 1998099(02), 19990026(02) and 19990060(02) (Supreme Court of Florida).
2. Among other things, the Stipulation for Permanent Injunction enjoins Mr. Smolka from holding himself out in Florida as an attorney, offering to provide legal advice or legal services in Florida, and establishing an office in Florida for the purpose of providing legal advice and/or legal services except as allowed by law.
3. In November 2000, Delores E. Turner-Sherman retained Mr. Smolka to represent her son, an inmate in the Florida prison system.
4. Mr. Smolka led Ms. Turner-Sherman to believe that he was an attorney licensed to practice law in Florida with an office in Tallahassee, Florida, when in fact Mr. Smolka was not licensed to practice law in Florida and had been enjoined from maintaining an office in Florida.
5. On or about November 4, 2000, Ms. Turner-Sherman signed a "Retainer Binder Agreement" describing the services Mr. Smolka agreed to provide.
6. "As compensation for the administrative services rendered," the Retainer Binder Agreement required Ms. Turner-Sherman to pay Mr. Smolka "a minimum non-refundable flat fee of \$4,000" which Ms. Sherman agreed "to deposit into Smolka's account with First Union Bank, Account #2000002974637."
7. Ms. Turner-Sherman wired the money to Mr. Smolka's account; the funds were deposited on November 7, 2000.
8. Thereafter, Ms. Turner-Sherman repeatedly tried to contact Mr. Smolka by telephone, leaving messages on his answering machine, but he did not return her calls.
9. On or about March 13, 2001, Ms. Turner-Sherman received a letter from Mr. Smolka which stated that he had completed a "sentence structure analysis" of her son's prison sentence and did not find any discrepancies in sentencing documents, calculations of sentences or gain-time forfeitures, but that he would contact the Florida Parole Commission and request a special review hearing.
10. On or about May 1, 2001, Mr. Smolka wrote Ms. Turner-Sherman and her son, informing them that he had applied for the special review.

11. After hearing nothing more from Mr. Smolka but learning that he is licensed to practice law in Virginia, Ms. Turner-Sherman drove from her home in Fruitland Park, Florida, to Richmond, Virginia, to confront Mr. Smolka.
12. Ms. Turner-Sherman discovered that Mr. Smolka's purported Virginia office address, Suite 122, 3126 West Cary Street, is a Mail Boxes, Etc. location.
13. On or about August 10, 2001, Ms. Turner-Sherman contacted the Florida Parole Commission and learned that the only correspondence the commission had received regarding her son was a facsimile message from Mr. Smolka dated July 3, 2001, to which the commission had replied by letter dated July 30, 2001.
14. Ms. Turner-Sherman submitted a complaint about Mr. Smolka to the Virginia State Bar on or about September 25, 2001.
15. There was \$16.03 in Mr. Smolka's attorney trust account #2000002974637 when the \$4,000 that Ms. Sherman-Turner paid him was deposited on November 7, 2000; by November 16, 2000, Mr. Smolka's trust account balance was \$16.03.

B. Charges of Misconduct

The foregoing allegations give rise to the following charges of misconduct under the Rules of Professional Conduct; each Rule of Professional Conduct (RPC) allegedly violated is set out separately.

RULE 1.3 Diligence

(a) and (b) * * *

RULE 1.4 Communication

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

RULE 1.5 Fees

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

Rule 1.15 Safekeeping Property

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

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:
(d) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

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

(a) and (b) * * *

RULE 8.4 Misconduct

* * *

(b) * * *

**V. YSB Docket No. 02-033-0962
Trust Account Overdraft Notice**

A. Factual Allegations

1. On September 6, 2001, the Virginia State Bar received a notice of insufficient funds from First Union National Bank with regard to Mr. Smolka's trust account #2000002974637.
2. Bank records disclose that Mr. Smolka presented check #2191 for \$1,100.00 payable to himself on September 4, 2001, when the balance of his trust account was \$685.44.

B. Charges of Misconduct

The foregoing allegations give rise to the following charges of misconduct under the Rules of Professional Conduct; each Rule of Professional Conduct (RPC) allegedly violated is set out separately.

RULE 1.15 Safekeeping Property

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

RULE 8.1 Bar Admission And Disciplinary Matters

* * *
(a) and (d) * * *

RULE 8.4 Misconduct

* * *
(b) * * *

**VI. YSB Docket No. 02-033-1948
Complainant: Catherine Green**

A. Factual Allegations

1. On August 30, 2000, Ms. Green executed a Retainer Binder Agreement and paid Mr. Smolka what the agreement characterizes as a non-refundable flat rate fee of \$1,000 for a meeting at Powhatan Correctional Center to discuss Mr. Smolka filing a petition for habeas corpus on her husband's behalf.
2. On October 23, 2000, Ms. Green executed a Retainer Binder Agreement and gave Mr. Smolka a credit check for \$3,000 and agreed to pay him an additional \$17,000.
3. It took Ms. Green a month to secure a loan for \$17,000; during that period, Mr. Smolka called her repeatedly, demanding payment in full of the balance of his fee within thirty days.
4. After Ms. Green paid the balance of Mr. Smolka's fee, he rarely responded to inquiries about the status of Mr. Green's legal matter.
5. On May 5, 2001, and again on December 18, 2001, Mr. Green wrote Mr. Smolka, complaining about his lack of responsiveness.

6. On or about January 3, 2002, Ms. Green submitted a bar complaint against Mr. Smolka to the Virginia State Bar.
7. Mr. Smolka has not petitioned for habeas relief or initiated any other proceeding on Mr. Green's behalf.
8. Mr. Smolka deposited the \$3,000 credit card check in his trust account #2000002974637 with First Union National Bank on October 6, 2000; by October 19, 2000, the balance of Mr. Smolka's trust account was \$16.03
9. On November 24, 2000, \$17,000 was deposited into Mr. Smolka's trust account as a result of the loan Ms. Green secured.
10. On November 27, 2000, Mr. Smolka's trust account balance was \$5,617.93; on November 29, the balance was \$2,028.45.

B. Charges of Misconduct

The foregoing allegations give rise to the following charges of misconduct under the Rules of Professional Conduct; each Rule of Professional Conduct (RPC) allegedly violated is set out separately:

RULE 1.3 Diligence

(a) and (b) * * *

RULE 1.4 Communication

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

RULE 1.5 Fees

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

(b) * * *

RULE 1.15 Safekeeping Property

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

(b) * * *

RULE 8.1 Bar Admission And Disciplinary Matters

* * *(a) and (d) * * *

RULE 8.4 Misconduct

* * *

(b) * * *

The cases were heard serially. After the receipt of evidence in each case, the Board retired to consider its findings of misconduct as to that case, considering only the evidence admitted in that case. With respect to all of the cases, the Bar moved into evidence its exhibits, including the deposition transcripts of complainants Joseph Babcock and Delores E. Turner-Sherman and also presented the testimony of complainants Debbie Gaffin and Catherine Green.

With respect to Docket No. 01-033-1945 (Complainant, Joseph D. Babcock), the Board after the presentation of the evidence adjourned and deliberated, following which it (1) found that the Bar had failed to prove with clear and convincing evidence violations of DR 1-101(B), DR 9-102(A)(1) and (2),

and DR 9-102(B)(3) of the Disciplinary Rules and Rule 1.8, 1.15(a) and (b), Rule 8.1(a) and (d); (2) found that the Bar had proved with clear and convincing evidence violations of DR 1-102(A)(4), DR 2-105(A), DR 6-101(B) and (C), DR 9-102(B)(4), Rule 1.15(c)(4); and (3) in light of these findings, declined to rule with respect to allegations that the Respondent violated Rules 1.3, 1.4, 1.5 and 8.4, which became effective on January 1, 2000, and are duplicative of violations alleged and found to have been violated by the Respondent prior to January 2000. In that regard the Board specifically found that there was evidence to prove clearly and convincingly that the conduct in violation of the corresponding but superceded Disciplinary Rules continued and was ongoing after the effective date of the Rules of Professional Conduct, but the Board exercised its discretion to decline making additional findings under the new rules. It was the Board's express opinion that neither making additional findings of misconduct under the new rules nor declining to do so would make any difference as to the sanction imposed.

With respect to respect to VSB Docket No. 01-033-2106 (Complainant, Debbie Gaffin), the Board found that the Bar had proven by clear and convincing evidence that Respondent has violated Rules 1.3(a) and (b), 1.4(a), 1.5(a) and 8.4(b); and had failed to prove by clear and convincing evidence violations of Rules 1.4(b) and (c), 1.5(b), and 8.1(a) and (d).

With respect to the Bar's allegations of Trust Account Overdraft Notification, VSB Docket No. 02-033-0295, the Bar withdrew its allegations of a violation of Rule 1.15(b) and (c) and the Board found that the Bar had failed to prove by clear and convincing evidence violation of the remaining rule violations alleged.

With respect to VSB Docket No. 02-033-0829 (Complainant, Delores E. Turner-Sherman), the Bar withdrew its alleged violation of Rule 1.15(b) and the Board found that the Bar failed to prove by clear and convincing evidence the alleged violations of Rules 1.3(b), 1.4(b) and (c), 1.5(b), and 8.1(a) and (d); and found that the Bar had proven by clear and convincing evidence violations of Rules 1.3(a), 1.4(a), 1.5(a), 1.15(a), 3.4(d), and 8.4(b).

With respect to the Bar's allegations of Trust Account Overdraft Notice in VSB Docket No. 02-033-0962, the Board considered the evidence presented with respect to those allegations, and found that the Bar had failed to prove by clear and convincing evidence violations of the rules alleged.

With respect to VSB Docket No. 02-033-1948 (Complainant, Catherine Green), the Bar withdrew the alleged violation of Rule 1.15(b), and the Board found that the Bar had failed to prove by clear and convincing evidence alleged violations of Rules 1.4(c), and 8.1(a) and (d) and had proven by clear and convincing evidence that the Respondent had violated Rules 1.3(a) and (b), 1.4(a) and (b), 1.5(a) and (b), Rule 1.15(a), Rule 8.4(b).

Following all of the Board rulings set forth above, the Board deliberated concerning an appropriate sanction and determined, based on all the circumstances, including the repetitive, ongoing nature of the Respondent's conduct and his overall, continuing scheme to solicit and defraud clients, that the Respondent's license should be revoked.

Whereupon it is:

ORDERED that pursuant to Part 6, §IV, ¶13C.(3) of the Rules of the Virginia Supreme Court that the license of Respondent, Thomas Edward Smolka, to practice law in Virginia be, and the same hereby is, revoked effective June 27, 2002, as set forth in the Board's Order dated and entered June 27, 2002, attached hereto; it is

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

ENTER THIS ORDER THIS 12TH DAY OF AUGUST, 2002
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Roscoe B. Stephenson, III, Chair Designate



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
TERRY LEE VAN HORN
VSB Docket No. 03-000-0266

ORDER OF REVOCATION

This matter came before the Virginia State Bar Disciplinary Board for hearing on September 27, 2002, before a duly convened panel of the Board consisting of Dennis P. Gallagher, Lay Member, James L. Banks, Jr., William C. Boyce, Jr., Robert L. Freed, and Randy Ira Bellows (The "Chair"), presiding, pursuant to order dated August 2, 2002, requiring Terry Lee Van Horn (the "Respondent") to appear before this Board to show by clear and convincing evidence that he has not violated an Order that the Disciplinary Board issued on May 20, 2002, (the "Suspension Order").

Bar Counsel, Barbara Ann Williams, ("Bar Counsel") appeared as Counsel for the Virginia State Bar (the "VSB"). Respondent failed to appear after the clerk called his name three times in the hallway outside the courtroom, nor did any counsel appear on his behalf.¹ The court reporter for the proceeding, Donna T. Chandler, of Chandler and Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 730-1222, was duly sworn by the Chair. All legal notices of the date and place of this hearing were timely sent by the Clerk of the Disciplinary System in the manner prescribed by law. The Chair polled the Board members and determined that no member had a conflict of interest.

A. FINDINGS

Upon the witnesses testimony, the exhibits presented by Bar Counsel on behalf of the VSB and admitted into evidence as Exhibits 1 through 3 and 5 through 17, and upon argument by Bar Counsel, this Board finds clear and convincing evidence that:

1. At the request of Mr. Van Horn's counsel, and over Bar Counsel's objection, the panel of the Board that issued the

Suspension Order afforded the Respondent an extra month to wind up his law practice and that, instead of becoming effective on the hearing date of April 26, 2002, the Respondent's three-year Suspension of his license to practice law in the Commonwealth of Virginia took effect on May 27, 2002, (the "Effective Date"). After the Effective Date, the Respondent continued to represent clients, including but not limited to a matter undertaken after the Effective Date in which the Respondent represented a seller in a real estate closing; misrepresented to the seller's father that Respondent was not practicing law by preparing legal documents; prepared legal documents, including but not limited to a deed; transmitted the legal documents to the seller for her signature; deposited the proceeds check made payable to the seller in his trust account without the seller's permission or signature; and deducted without the seller's permission a legal fee of \$750.00 for handling the sale.

2. The Suspension Order imposed notice obligations upon the Respondent to give notice, by June 3, 2002, by certified mail, return receipt requested, of the suspension of his license to practice law in the Commonwealth of Virginia to any and all clients for whom he was then handling matters; and, to all opposing counsel and presiding judges in any pending litigation in which he was an attorney of record. The Respondent failed to notify any judges and failed to notify all of his clients and all of opposing counsel of his suspension by June 3, 2002. The notices that the Respondent did in fact send were not sent by the June 3, 2002, deadline.
3. The Suspension Order also required the Respondent to make appropriate arrangements by July 5, 2002, (the actual date was July 4, 2002, a National Holiday), for the disposition of matters that were then in his care in conformity with the wishes of his clients. Not only were all of these arrangements not made, but:
 - a. The Bar's witnesses consistently testified that it was difficult or impossible to communicate with the Respondent. While one witness testified that there was still a plaque on Mr. Van Horn's office door proclaiming "Terry L. Van Horn, Attorney at Law," the door was locked, his office telephone number had been disconnected, there was no other published telephone listing for him, and his residence address was not generally known, thus making it impossible for his clients to obtain their files from him.
 - b. The Respondent has failed and continues to fail to return client files, despite his obligation under the Suspension Order to make appropriate arrangements for the disposition of all client matters by July 5, 2002.
 - c. The Respondent has failed to return unearned legal fees to his ex-clients.
4. The Suspension Order also required the Respondent by July 19, 2002, to furnish proof to the Bar that all such notices were timely given and all such arrangements were properly made. It was not until July 26, 2002, that the VSB Clerk's office finally received Mr. Van Horn's sworn and notarized Affidavit dated July 26, 2002. It stated, in part:

“ . . . I do not have any clients for whom I am currently working.” VSB Exhibit 3. The Respondent’s failures set out in paragraph 3, above, make Respondent’s July 26, 2002, sworn Affidavit false.

Thus, the Board found by clear and convincing evidence multiple violations of the Suspension Order as well as the requirements and obligations of a suspended attorney as set forth in the Rules of the Supreme Court, Part Six, Section IV, Paragraph 13.

B. SANCTION

Respondent’s egregious and flagrant violations of this Board’s Suspension Order can not be tolerated since such violations are likely to result in injury to, or loss of property of, one or more of his former clients or other persons. The Suspension Order states that “[a]ll issues concerning the adequacy of the notice and arrangements required herein shall be determined by the Board, which may impose a sanction of revocation or further suspension for failure to comply with the requirements of this Order. . . .”

Accordingly, it is hereby ORDERED that, pursuant to Part Six, Section IV, Paragraph 13(D)² of the Rules of the Supreme Court of Virginia, the license of Respondent to practice law in the Commonwealth of Virginia shall be, and is hereby, REVOKED effective September 27, 2002, (the “Revocation Effective Date”).

It is FINALLY ORDERED that the Clerk of the Disciplinary System shall assess costs pursuant to Part Six, Section IV, Paragraph 13(B)(8)(c) of the Rules of the Supreme Court of Virginia.

SO ORDERED, this 3rd day of October, 2002.
By: Randy Ira Bellows, First Vice Chair

ENDNOTES _____

- 1 Respondent’s counsel, Michael L. Rigsby, sought a continuance of the proceeding. In a telephone hearing conducted by Disciplinary Board Chairman John A. Dezio on September 3, 2002, that motion was denied.
- 2 All references are to the Consolidated Part Six, Section IV, Paragraph 13 Rules of the Supreme Court of Virginia effective September 18, 2002.



**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTER OF
PAUL CHARLES WALSH
VSB Docket 00-051-2118

ORDER

THIS MATTER came to be heard on August 23, 2002, before a duly convened panel of the Virginia State Bar Disciplinary Board, consisting of Karen A. Gould, Second Vice Chair, Theophilise L. Twitty, James L. Banks, Jr., Bruce T. Clark and V. Max Beard, Lay Member.

The Respondent, Paul Charles Walsh, appeared *pro se*. Noel D. Sengel, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

This matter came before the Board by certification of a subcommittee of the Fifth District. The matter was considered by the subcommittee on December 11, 2001.

All required legal notices were properly sent by the Virginia State Bar.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, responded in the negative.

FINDINGS OF FACT

Upon consideration of the testimony presented and the exhibits introduced, the Board makes the following findings of fact:

- 1. At all times relevant hereto, Paul Charles Walsh, Esquire (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
- 2. On June 16, 1999, the Respondent filed a Bill of Complaint for Divorce for his client Timothy Livengood, in *Livengood v. Livengood*, Chancery No. 161281, in the Circuit Court of Fairfax County, Virginia. He also made a payment for filing fees of \$64.00 by a check drawn a personal checking account. The check was returned to the Clerk’s Office marked “nonsufficient funds.”
- 3. On June 28, 1999, the Complainant, John T. Frey, Clerk of the Fairfax County Circuit Court, had a member of his staff write to Mr. Walsh requesting that he pay the filing fee as well as the \$25.00 statutory fee for checks returned to a Court Clerk’s office. This letter was sent by certified mail. The Respondent did not respond to the letter from the Clerk’s office.
- 4. The Complainant’s office wrote to the Respondent again by certified mail on September 21, 1999, requesting payment and between September 21, 1999 and February 16, 2000, made seven phone calls to the Respondent’s office attempting to contact him to resolve the matter of the unpaid fees.
- 5. When the Complainant filed his complaint with the Virginia State Bar on February 27, 2000, his office had still not received the Respondent’s payment of the filing fee and returned check fee.
- 6. On March 13, 2000, Senior Assistant Bar Counsel, Noel D. Sengel, referred this matter to the Fifth District Committee Section 1 for further investigation. A letter notifying the Respondent that the Bar had commenced action on the complaint it had received was mailed to the Respondent on that date. On March 24, 2000, the Complainant received a replacement check in the amount of \$89.00 for the filing fee and returned check fee.
- 7. In the course of his investigation, Bar Investigator James R. Dooley, Jr. discovered that the Respondent had been

administratively suspended on October 14, 1999. Notice of such suspension was mailed to the Respondent at his office address (which was his official address of record) on October 15, 1999. By check dated July 28, 2000, the Respondent sent in a dues payment, plus late fees, totaling \$400.00 to the Membership Department of the Virginia State Bar. On August 7, 2000, the Membership Department sent a letter to the Respondent notifying him that he had met his fee obligations and that his license to practice law in the Commonwealth had been reinstated. However, the Respondent's fee payment was returned to the State Bar's office by the Respondent's bank with a notice from the bank marked "non-sufficient funds" and, on August 14, 2000, the Respondent was notified by certified mail addressed to his office address that he was administratively suspended again for non-payment of Bar dues. It was not until February 22, 2001 that the Respondent's license was reinstated to practice law in Virginia.

8. According to the court file on *Livengood v. Livengood*, Chancery No. 161281, Respondent continued to represent Timothy Livengood in this divorce during the time the Respondent was administratively suspended from October 14, 1999 until February 22, 2001.
9. The Respondent asserted that he never saw the first certified notice sent to him by the circuit court and was unaware his initial check to the Circuit Court had been returned. While acknowledging that his bank regularly sends him statements concerning his account, he asserted that he never received notification from the bank that it had dishonored his check. He further asserted that upon receipt of the second notice on September 21, 1999, he had instructed a staff member to make the check good, but that he failed to follow up on the matter to confirm whether she had carried out his instructions. In addition, Respondent denied having received or having been told about any of the seven phone calls placed to his office by the circuit court, six of which were placed after the time he states he had instructed the payment to be made. He further asserted that he does not recall having received any notices concerning the suspension of his license for nonpayment of dues and admitted that during the entire time his license was so suspended, he continued to practice without interruption.

Having reviewed the clear record of repeated communications which were addressed to the Respondent both at his home and office, the Board finds it impossible to believe that the Respondent was unaware of the returned check and that he was unaware his license to practice was suspended. The Board finds by clear and convincing evidence that the Respondent has not been candid with the Board regarding his knowledge of the returned check and being suspended and, in fact, has lied to the Board about the state of his knowledge.

The Board finds the actions of the Respondent constitutes misconduct in violation of the following Disciplinary Rules of the revised Virginia Code of Professional Responsibility:

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

IMPOSITION OF SANCTIONS

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions, and having considered the Respondent's prior disciplinary record ORDERS pursuant to Part 6, §IV, ¶13C(3) of the Rules of the Virginia Supreme Court that the license of the Respondent, Paul Charles Walsh, to practice law in Virginia be, and the same hereby is revoked effective August 23, 2002; it is

* * *

ENTERED this Order this 28th day of August, 2002.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 BY KAREN A. GOULD, Second Vice Chairman



**BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD**

IN THE MATTER OF
PAUL DENNIS ZIEGLER, JR.
 VSB Docket # 01-010-2534

OPINION AND ORDER OF A PUBLIC REPRIMAND

This matter came to be heard on May 17, 2002, in the matter of Paul Dennis Ziegler, Jr., VSB Docket No. 01-010-2534 before a panel of the Virginia State Bar Disciplinary Board convened in the United States Court of Appeals for the Fourth Circuit, Tweed Courtroom, Tenth and Main Streets, Fourth Floor, Richmond, Virginia 23219 and composed of Randy I. Bellows, Second Vice Chair, presiding, James L. Banks, Jr., Werner H. Quasebarth, Anthony J. Trenga and H. Taylor Williams, IV. The Virginia State Bar appeared through Assistant Bar Counsel, Edward L. Davis. The Respondent, Paul Dennis Ziegler, Jr., appeared through his counsel, Stephen J. Burgess. The matter was presented to the Disciplinary Board by way of a Certification of the First District Subcommittee. Based on the stipulations and evidence presented, the Board issued a public reprimand and in support of that public reprimand issues the following opinion and findings.

The Bar alleged the following facts:

1. At all times relevant hereto, the Respondent, Paul Dennis Ziegler, Jr. (hereinafter "Ziegler" or "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On October 23, 2000, the Respondent stole a wristwatch valued at \$49.95 from the Andrews Air Force Exchange, Andrews Air Force Base, Maryland, by placing the watch in his shorts pocket, walking to the checkout counter where he paid for another item, and exiting the exchange without paying for the watch. A loss prevention officer observed him in the Exchange, and followed him outside of the Exchange, where he found him at the food court tinkering with the watch. The loss prevention officer continued to observe the Respondent at the food court for about four minutes, and then apprehended him.

3. The Respondent, an officer in the U.S. Navy Judge Advocate General's Corps at the time, was charged with larceny, in violation of Article 121, Uniform Code of Military Justice. In lieu of trial by court-martial, his command offered him Non-Judicial punishment under Article 15 of the Uniform Code of Military Justice, an administrative procedure. The Respondent consented to this procedure, and the presiding officer found the evidence sufficient to sustain the charge of larceny. He imposed a punitive letter of reprimand as punishment. The Respondent did not appeal the decision.

Based on these allegations, the Bar alleged a violation of Rule 8.4(b) and (c) of the Virginia Code of Professional Responsibility, as revised. Those provisions provide as follows:

RULE 8.4 Misconduct

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

By stipulation, and without objection, the Bar's and Respondent's Exhibits were admitted into evidence, including a store security videotape of the Respondent engaging in the conduct at issue, the admission of which was stipulated to by the parties. The Bar called the Respondent, Paul Dennis Ziegler, Jr. as its only witness.

The Respondent is a Lieutenant in the Judge Advocates Corp. of the United States Navy. He testified that on the day in question he entered the Base Exchange ("BX") to look at wrist-watches. After looking at a number of watches, he put one on his wrist and then later put it in his right pocket as he continued to look at others. Eventually, he proceeded to the cashier where he paid for headphones that he had also selected, but not the watch. From the cashier, he walked into the adjacent food court where he purchased some food and beverage and while standing in line realized for the first time that he had placed the watch in his pocket and had not paid for it. Although he testified that he intended to return to the BX to pay for the watch, he proceeded to a table in the food court, took the watch out of his left pocket and began adjusting it. After some observation, security guards approached him and escorted him back into the BX.

The Respondent chose an Article 15 "Captain's Mast," as a result of which the presiding officer found the evidence sufficient to sustain the charge of larceny and issued a letter of reprimand as a punishment. As a result of this punishment, the Respondent has concluded that his career as a Naval officer is effectively over since it is unlikely that he would be promoted in the future. Recognizing his prospects, the Respondent has tendered his letter of resignation to the Navy, which, once effective, will result in an honorable discharge from the Navy.

After the Bar rested its case, the Respondent moved to strike the alleged violations of Rule 8.4(b) and (c). After argument and deliberation, the Board granted Respondent's motion to strike the Bar's allegation of a violation of Rule 8.4(c), but denied his motion as to the alleged violation of Rule 8.4(b).

Respondent called three witnesses, Jerome S. Blackman, M.D., a Board certified psychiatrist, Commander Robert J. Orr, III, JAGC, USN, and Lieutenant Commander Monte DeBoer, JAGC, USN. Dr. Blackman testified that he had seen the Respondent twice, once on July 19, 2001, and again on April 8,

2002. Based on his evaluation, Dr. Blackman opined that Respondent had no criminal intent, but rather because of certain life experiences it is likely that his conduct was motivated at some level by a desire to get caught and to be punished and in that sense it was not inadvertent, although it was not with the specific intent to commit a theft. Commander Orr and Lt. Commander DeBoer testified consistently to Respondent's good character and reputation and that Respondent was an outstanding lawyer and Naval officer, whose work was exemplary in all respects and that the alleged conduct was completely out of character. Also presented and prepared to testify were Rear Admiral Lowell E. Jacoby, USN, Captain Stephen Barker, USN, Commander Mike Palmer, JAGC, USNR, Anita Polen, Esq., and Chaplain Michael Zolfoletto, Chaplain, USN; and the parties stipulated that were these persons called they would testify that they had worked with the Respondent, that he had done competent work and they would work with him again.

Based on all the evidence and after substantial deliberation, with substantial weight given to the conduct of the Respondent as evidenced in the videotape, the Board concluded that the Bar had proven by clear and convincing evidence that the Respondent had committed a crime or a deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b). The Respondent has no prior disciplinary record and after hearing argument from both the Bar and the Respondent, the Board concluded that an appropriate sanction under all the circumstances was a public reprimand.

Whereupon it is:

ORDERED pursuant to Part 6, Section IV, Paragraph 13(C)(6)(c)(iii) of the Rules of the Virginia Supreme Court that Paul Dennis Ziegler, Jr. receive, and hereby does receive, a public reprimand, which shall be published forthwith, as appropriate; it is

* * *

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

ENTER THIS ORDER THIS 21ST DAY OF JUNE, 2002
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Randy I. Bellows, Second Vice Chair



DISTRICT SUBCOMMITTEE

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

IN THE MATTER OF
HENRY OTIS BROWN
VSB Docket No. 01-031-2272

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND)**

On September 10, 2002, a meeting in this matter was held before a duly convened Third District Subcommittee consisting

of H. Martin Robertson, Esquire, Melvin E. Rosen, Jr., Lay Member and Marcus D. Minton, Esquire, presiding.

Pursuant to Part 6, §IV, ¶13(B)(5)(c)(ii)(d) of the Rules of the Supreme Court, the Third District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

1. The respondent, Henry Otis Brown, was admitted to the practice of law in the Commonwealth of Virginia on May 2, 1980.
2. At all times relevant to this proceeding, Mr. Brown was an attorney in good standing to practice law in the Commonwealth of Virginia.
3. On January 26, 1999, Alonzo Fitzgerald was convicted of malicious wounding and threatening bodily harm in the Circuit Court of the City of Petersburg.
4. Mr. Fitzgerald was sentenced to serve eight years with seven years suspended.
5. Mr. Brown served as Mr. Fitzgerald's court appointed counsel at trial and on appeal.
6. The Court of Appeals denied the appeal that Mr. Brown filed on Mr. Fitzgerald's behalf by order entered on May 17, 2000.
7. A three judge panel of the Court of Appeals reviewed the decision and denied the appeal on September 27, 2000, "for the reasons previously stated in the order entered by this Court on May 17, 2000."
8. Mr. Brown did not advise Mr. Fitzgerald that the three judge panel of the Court of Appeals had dismissed his appeal.
9. Without informing Mr. Fitzgerald, Mr. Brown noted an appeal to the Supreme Court of Virginia on October 13, 2000, but failed to perfect the appeal.
10. The Supreme Court of Virginia dismissed the appeal on December 20, 2000.
11. Mr. Brown did not advise Mr. Fitzgerald that the Supreme Court of Virginia had dismissed his appeal.
12. Mr. Fitzgerald wrote Mr. Brown on October 13, 2000, November 15, 2000, and December 18, 2000, inquiring about the status of the three judge panel review and advising Mr. Brown where he was currently incarcerated.

13. After Mr. Brown failed to respond to these letters, Mr. Fitzgerald submitted a bar complaint against him on December 4, 2000.
14. Intake Counsel contacted Mr. Brown by letter dated January 16, 2001, and requested Mr. Brown to advise Mr. Fitzgerald of the status of the appeal.
15. Mr. Brown wrote Mr. Fitzgerald at Mecklenburg Correctional Center on January 26, 2001, and enclosed a copy of the Court of Appeals' orders; Mr. Brown did not enclose a copy of the Supreme Court of Virginia's order dismissing Mr. Fitzgerald's appeal.
16. Mecklenburg Correctional Center returned Mr. Brown's January 26th letter and enclosures to Mr. Brown because the packet exceeded the approved weight for first class mail to inmates.
17. Mr. Brown resent the letter and enclosures to Mr. Fitzgerald at Mecklenburg Correctional Center on April 27, 2001, but Mecklenburg Correctional Center returned the packet because Mr. Fitzgerald was no longer housed there and the forwarding time for his mail had expired.
18. Mr. Brown did not attempt to determine where Mr. Fitzgerald had been transferred so that he could resend the packet.

II. NATURE OF MISCONDUCT

Bar Counsel and the Respondent agree that the stipulated findings of fact give rise to findings of the following Disciplinary Rule Violation(s):

RULE 1.3 Diligence

(a) ***

RULE 1.4 Communication

(a) and (c) ***

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand and the Respondent is hereby so reprimanded. The Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Marcus D. Minton
Subcommittee Chair

