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
Circuit Court				
Sa'ad El-Amin	Richmond	4 Year Suspension	October 1, 1999	18
Garland Stuart Spangler	Pearisburg	Public Reprimand	July 28, 1999	21
David Thomas Steckler	Fredericksburg	1 Year Suspension	July 16, 1999	25
Disciplinary Board				
Carolyn Currie Eaglin	Bowie, MD	Interim Suspension	July 25, 1999	27
Janeé Deann Joslin	Virginia Beach	Suspension w/ Terms	August 1, 1999	27
Alan Edward Koczela	Arlington	Revocation	August 27, 1999	29
Ava Maureen Sawyer	Reston	Revocation	September 24, 1999	
District Committee				
Eli S. Chovitz	Norfolk	Public Reprimand	September 3, 1999	31
Charles Jefferson McCall	Midlothian	Public Reprimand w/Terms	September 17, 1999	32
Lawrence Raymond Morton	Woodbridge	Public Reprimand	June 30, 1999	33
Steven Morton Oser	Windsor	Public Reprimand	September 17, 1999	34

Surrenders with Disciplinary Charges Pending

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

Respondent's Name	Address of Record (City/County)	Jurisdiction	Effective Date
William Cloud Hicklin, IV	Richmond	Disciplinary Board	September 9, 1999
John Thomas Phillips, II	Leesburg	Disciplinary Board	August 11, 1999
Robert Victor Semon	Yorktown	Disciplinary Board	September 30, 1999
Philip Clyde Sessoms, Jr.	Springfield	Disciplinary Board	October 20, 1999
John Robert Spring, Jr.	Ashburn	Disciplinary Board	July 15, 1999
Karen Louise Williams	Spotsylvania	Disciplinary Board	August 27, 1999
John Marshall Wright, Jr.	Richmond	Disciplinary Board	September 22, 1999

Circuit Court

IN THE CIRCUIT COURT OF THE
CITY OF RICHMOND
(MANCHESTER COURTHOUSE)
June 29, 1998

VIRGINIA STATE BAR EX REL
THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE
Complainant
v.
SA'AD EL-AMIN
Respondent
Case No. MC4992

ORDER OF SUSPENSION

This cause came on for hearing on May 19 and 20, 1998, upon the Rule to Show Cause of this Court and pursuant to Rules of Court, Part Six, Section IV, Paragraph 13(C)(5)(a)(ii), Va. Code Sections 54.1-3935 and 8.01-261(17).

Respondent Sa'ad El-Amin appeared in person with his counsel, Craig S. Cooley. Deputy Bar Counsel Harry M. Hirsch appeared on behalf of the Virginia State Bar.

PART A

VSB Docket No. 95-032-1011 (Williams)

Upon the evidence presented and arguments of counsel, the Court finds that the Virginia State Bar has proved by clear and convincing evidence violations of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

DR 1-102.(A)(4) * * *
DR 2-108.(D) * * *
DR 6-101.(B) and (C) * * *
DR 9-102.(B)(4) * * *

It is the finding of this Court that the Virginia State Bar did not prove the remaining alleged violations of Disciplinary Rules in the Williams matter by the required clear and convincing evidentiary standard and said allegations are dismissed.

VSB Docket No. 95-032-1204 (Fant) (Corcoran)

Upon the evidence presented and the arguments of counsel, the Court finds that the Virginia State Bar has failed to prove any violations of the Virginia Code of Professional Responsibility with respect to the allegations asserted relating to Corcoran and said allegations are dismissed.

The Court finds that the Virginia State Bar has proved by clear and convincing evidence violations of the following Disciplinary Rules of the Virginia Code of Professional Responsibility with respect to Fant:

DR 1-102.(A)(3) * * *
DR 9-102.(A)(2) * * *
DR 9-102.(B)(3) and (4) * * *

The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence the remaining alleged violations of the Virginia Code of Professional Responsibility with respect to Fant and said allegations are dismissed.

VSB Docket No. 95-032-1596 (Robinson)

Upon the motion of the Virginia State Bar to continue the Robinson matter, in which motion the Respondent did not join, the Court severs the Robinson matter from the other cases within the Certification and continues the Robinson case generally. The Virginia State Bar is directed to obtain corroborating evidence of the unavailability of Ms. Robinson for these proceedings.

Part B

VSB Docket Nos. 93-032-2204 (VSB/Anonymous)
95-032-0957 (VSB)

Upon the evidence presented and arguments of counsel, the Court finds that these matters deal partially with allegations concerning representation of Vernon El-Amin by the Respondent. The Court finds with respect to the Vernon El-Amin allegations that the Virginia State Bar has proved violations of the following Disciplinary Rules of the Virginia Code of Professional Responsibility by clear and convincing evidence:

DR 1-102.(A)(3) and (4) * * *
DR 7-101.(A)(3) * * *
DR 9-102.(A)(2) * * *
DR 9-102.(B)(2) and (3) * * *
[DR 9-102 provisions effective 1990 through 1992]

The Court finds that the Virginia State Bar failed to prove by clear and convincing evidence any of the remaining alleged violations of the Virginia Code of Professional Responsibility.

The Respondent's motion to strike the allegations in Part B of the Subcommittee Determinations (Certification) based upon the doctrine of laches is denied. The Supreme Court has stated, "certain equitable defenses, such as laches, do not apply to state or local governments when acting in a governmental capacity." City of Manassas v. Board of Supervisors, 250 Va. 126 (1995), at 132, quoting and citing other cases. In Falls v. Virginia State Bar, 240 Va. 416 (1990), at 418, the Supreme Court said the State Bar, as an administrative arm of the Court, Virginia Code Section 54.1-3910, is a state agency, citing Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). Because it is a state agency in the performance of a governmental function, the estoppel does not apply to the State Bar. As to the governmental nature of the State Bar's activities, see also Part 3 of Chief Justice Burger's opinion in Goldfarb. See Sink v. Commonwealth, 13 Va.App. 544 (1992), at 547.

The Respondent moved to delay the determination of sanctions and for a directive to the State Bar to provide to the Court and the Respondent a statistical analysis of prior State Bar disciplinary cases. The statistical analysis would show the dispositions, sanctions imposed, and sex and race of the respondents, to serve as a record herein upon which the Supreme Court would be able to determine the proportionality and appropriateness of any sanctions imposed herein. The motion should have been filed before the trial in these proceedings commenced. To postpone the determination of sanctions herein would prejudice the people of the Commonwealth of Virginia who have a right, once the Court has made a finding that an attorney has engaged in misconduct, to know what the sanction with respect to that misconduct will be. In Delk v. Virginia State Bar, 233 Va 187 (1987), at 193, the majority responded to Delk's argument that by comparison with other cases, his case merited a less severe sanction by quoting from Maddy v. District Committee, 205 Va. 652 (1964), at 658:

> In arriving at the punishment to be imposed [in disciplinary proceedings], precedents are of little aid, and each case must be largely governed by its particular facts, and the matter rests in the sound discretion of the court. The question is not what punishment may the offense warrant, but what does it require as a penalty to the offender, as a deterrent to others, and as an indication to laymen that the courts will maintain the ethics of the profession.

This Court, like every court in every case, is constrained by the evidence and the statutory guidelines. The motion is denied.

The Respondent objected to the recitation on the record of the Respondent's prior disciplinary record to the extent it includes matters of private discipline and asked that either the courtroom be emptied or that the Court review the matters of private discipline in camera.

This proceeding is, by its very nature, public. The public has a right to know what the Court knows and what it received in reaching its decision. The objection is overruled.

The State Bar presented evidence in aggravation. The Respondent presented evidence in mitigation.

In the view of this Court, the conduct of the Respondent was outrageous and egregious. His conduct reflects adversely on his fitness to practice law and reflects adversely on the integrity of the entire system. The findings of this Court reflect a considered judgment that the Respondent has inflicted deliberate hurt upon clients and that he has done so for his own financial benefit.

It is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be SUSPENDED for a period of FOUR (4) YEARS effective midnight, June 30, 1998.

* * *

By separate order this day entered, the execution of this license suspension has been stayed pending the filing of a timely appeal and the determination of that appeal by the Supreme Court of Virginia. This is a final order.

ENTERED this 29th day of June, 1998
By Clifford R. Weckstein, Judge
Dixon L. Foster, Judge
J. Warren Stephens, Jr., Judge Designate

Seen and Agreed:
Harry M. Hirsch
Deputy Bar Counsel
VIRGINIA STATE BAR

Seen and Objected To:
Craig S. Cooley
Counsel for Sa'ad El-Amin

Respondent objects to the findings of the Court because the evidence was insufficient to support these findings.

IN THE CIRCUIT COURT
OF THE CITY OF RICHMOND
(MANCHESTER COURTHOUSE)
June 29, 1998

VIRGINIA STATE BAR EX REL
THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE,
Complainant,
v.
SA'AD EL-AMIN
Respondent
Case No. MC4992

ORDER OF SUSPENSION

Upon the motion of the respondent, Sa'ad El-Amin, by and through his counsel to stay and suspend the execution of the order of suspension entered by this Court pending the prosecution of respondent's appeal of the Order to the Supreme Court of Virginia, and deeming it proper to do so.

IT IS HEREBY ORDERED that the execution of the Order of Suspension entered by this Court suspending Respondent's license to practice law in the Commonwealth of Virginia for a period of Four (4) YEARS effective midnight, June 30, 1998 is hereby suspended and stayed during the period that Respondent has an active and timely appeal of this Order to the Supreme Court of Virginia.

* * *

ENTERED this 29th day of June, 1998
By Clifford R. Weckstein, Judge
Dixon L. Foster, Judge
J. Warren Stephens, Jr., Judge Designate

Seen and Agreed:
Craig S. Cooley
Counsel for Sa'ad El-Amin

Seen and not agreed/objected to as stated in Response in opposition:
Harry M. Hirsch
Deputy Bar Counsel
VIRGINIA STATE BAR

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 16th day of April, 1999.

SA'AD EL AMIN
Appellant
Record No. 981994
Circuit Court No. MC4992
v.
VIRGINIA STATE BAR EX REL
THIRD DISTRICT COMMITTEE, Appellee

Upon an appeal of right from a judgment rendered by the Circuit Court of the City of Richmond on the 29th day of June, 1998.

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

This order shall be certified to the said circuit court with instruction to enter an order fixing the effective date of the suspension and the date the appellant shall comply with the provisions of Part 6, §IV, Paragraph 13K(1) of the Disciplinary Rules.

A Copy,
Teste:
Clerk

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 13th day of July, 1999.

SA'AD EL-AMIN
Appellant
Record No. 981994
Circuit Court No. MC4992
v.
VIRGINIA STATE BAR EX REL
THIRD DISTRICT COMMITTEE, Appellee

On June 18, 1999 came the appellant, by counsel, and filed a motion for the court to defer issuance of its mandate in this case.

Thereupon came the appellee, by the Attorney General of Virginia, and filed a response in opposition to the motion.

Upon consideration whereof, the appellant's motion is denied.

Justice Hassell took no part in the consideration of this motion.

A Copy,
Teste:
Clerk

IN THE CIRCUIT COURT
OF THE CITY OF RICHMOND
(MANCHESTER DIVISION)

VIRGINIA STATE BAR EX REL
THIRD DISTRICT, SECTION TWO, SUBCOMMITTEE,
Complainant
v.
SA'AD EL-AMIN
Respondent
Case No. MC4992

ORDER OF SUSPENSION

This cause came on for consideration in accordance with an Order of the Supreme Court of Virginia dated April 16, 1999, instructing the Court to fix an effective date for the suspension of Sa'ad El-Amin's license to practice law in the Commonwealth of Virginia and have him comply with the provisions of Part 6, Section IV, Paragraph 13K.(1) of the Disciplinary Rules. It further appearing that by Order of the Supreme Court of Virginia dated July 13, 1999, denying the request of Sa'ad El-Amin to defer issuance of its mandate in this case, and it appearing appropriate so to do,

It is ORDERED that the license of Sa'ad El-Amin to practice law in the Commonwealth of Virginia be, and the same is, hereby SUSPENDED for a period of four (4) years effective Friday, October 1, 1999 at 5:00 p.m.

* * *

ENTERED this 30th day of August, 1999
By Clifford R. Weckstein, Chief Judge
Dixon L. Foster, Judge
J. Warren Stephens, Jr., Judge Designate

IN THE CIRCUIT COURT
OF THE COUNTY OF GILES

VIRGINIA STATE BAR EX REL
TENTH, SECTION I DISTRICT SUBCOMMITTEE
v.
GARLAND STUART SPANGLER
VSB Docket No. 98-101-0193

ORDER

This matter came on July 12, 1999, to be heard on the Agreed Disposition between the Virginia State Bar and the Respondent, Garland Stuart Spangler, based upon the Certification of the Tenth, Section I Subcommittee as contained in the Complaint filed in this matter and upon the Rule to Show Cause issued June 21, 1999 and returnable this day. Pursuant to the Complaint, in accord with Code of Virginia Section 54.1-3935 and by order of the Supreme Court of Virginia dated July 6, 1999, the Honorable Frank I. Richard-

son, Jr., the Honorable William C. Fugate, and the Honorable Jonathan M. Apgar, Chief Judge, were named as the Three-Judge panel designated to preside over this matter.

Richard E. Slaney, Assistant Bar Counsel, representing the Bar, and the Respondent, Garland Stuart Spangler, by his counsel, S. D. Roberts Moore, Esquire, and Karl Uotinen, Esquire, presented an endorsed Agreed Disposition and asked the Court to consider and adopt same.

Having reviewed the Complaint, the Rule to Show Cause and the Agreed Disposition, and after hearing comment of counsel, it is the decision of the Court to accept the Agreed Disposition, a copy of which is attached to this Order and incorporated herein by this reference.

By this Order, the Court ratifies, adopts and approves the Agreed Disposition tendered by the parties and hereby

ORDERS that a Public Reprimand be, and the same hereby is, imposed upon the Respondent effective upon the filing of this Order with the Clerk of Court; and

* * *

By Jonathan M. Apgar, Chief Judge
William C. Fugate, Judge
Frank I. Richardson, Jr., Judge

We ask for this:
Richard E. Slaney
Assistant Bar Counsel
* * *
S.D. Roberts Moore
Counsel for Respondent
* * *

■

IN THE CIRCUIT COURT
OF THE COUNTY OF GILES

VIRGINIA STATE BAR EX REL.
TENTH, SECTION I DISTRICT SUBCOMMITTEE,
Complainant
v.
GARLAND STUART SPANGLER
Respondent

AGREED DISPOSITION

Pursuant to Virginia State Bar Disciplinary Board Rule of Procedure IV(C), the Virginia State Bar, by Richard E. Slaney, Assistant Bar Counsel, and the Respondent, Garland Stuart Spangler, by his attorneys, S.D. Roberts Moore and Karl W. Uotinen, hereby enter into the following Agreed Disposition arising out of the above-referenced matter.

I. STIPULATIONS OF FACT

1. At all times material to this Agreed Disposition, the Respondent, Garland Stuart Spangler (Mr. Spangler) was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about January 1, 1996, Mr. Spangler assumed the duties of Commonwealth's Attorney for Giles County, Virginia. At that time, the position was only part time. Accordingly, Mr. Spangler maintained a civil practice in addition to his duties as Commonwealth's Attorney.

3. In early 1996, Mr. Spangler inherited a very large case load from his predecessor as Commonwealth's Attorney, James Hartley. From January through March of 1996, Mr. Spangler obtained over 300 convictions in General District Court alone, not counting Juvenile and Circuit Court cases. Mr. Spangler would frequently find himself with seven or eight Circuit Court trials scheduled for the same day.

CATHY OULD OSBURN

4. On March 11, 1997, Cathy Ould Osburn (Cathy) was operating a motor vehicle and was involved in a single vehicle accident. Her two children were passengers in the motor vehicle at the time of the collision.

5. On March 11, 1997, the police officer responding to the accident, J. Kelly Frazier (Officer Frazier), charged Cathy with driving while intoxicated.

6. On either March 11 or 12, 1997, Officer Frazier met with Mr. Spangler and discussed Cathy's misdemeanor arrest. Some time after that meeting, Officer Frazier charged Cathy with felony abuse/neglect of her two children.

7. On March 13, 1997, Mr. Spangler was approached by Cathy's ex-husband, Carl Osburn (Carl), who requested that Mr. Spangler represent him in an attempt to gain sole temporary custody of the two children. The bases of the attempt to gain sole temporary custody were the injuries to the children caused by the accident, the actions of Cathy leading up to the automobile accident and the related criminal charges she faced and the impact of the entire situation on the safety and well-being of the children. Mr. Spangler would testify Carl told him the matter would be uncontested and that Cathy's family had agreed Carl should obtain sole temporary custody of the children. Mr. Spangler would also testify that his concern for the well-being of the children influenced his decision to undertake representation of Carl in this matter.

8. Mr. Spangler agreed to represent Carl in the custody matter and on March 14, 1997, Mr. Spangler filed a motion on Carl's behalf seeking sole temporary custody of the children. On that day, a Friday, at 4:25 p.m., Mr. Spangler faxed to Cathy's attorney, James Hartley (Mr. Hartley), a copy of the motion and a notice setting a hearing on the custody matter for the upcoming Monday, March 17, at 9:30 a.m.

9. On March 17, 1997 a hearing was held on Mr. Spangler's motion. The Juvenile and Domestic Relations Court awarded temporary custody to Carl. Mr. Hartley immediately filed an appeal of that ruling in the Giles County Circuit Court. The appeal was set to be heard on March 18, 1997, the next day.

10. On March 17, 1997, Mr. Spangler asked Officer Frazier to accompany him to the appeal hearing and testify. On March 18, 1997 at the suggestion of Officer Frazier, Mr. Spangler and Officer Frazier rode together in a police car for the 26-mile trip to the appeal hearing, which was held at the courthouse in Pulaski. Officer Frazier attended the appeal hearing without having been subpoenaed, was called as a witness by Mr. Spangler and testified on behalf of Carl.

11. A Judge of the Giles County Circuit Court reversed the ruling of the Juvenile and Domestic Relations Court and returned temporary custody to Cathy, with several restrictions.

12. On the evening of March 18, 1997, Mr. Spangler made arrangements to withdraw from representing Carl and have Brian Scheid, Esq., take over the case.

13. Mr. Spangler withdrew from representing Carl by order entered March 21, 1997.

14. Subsequent to March 21, 1997, Mr. Spangler obtained an order appointing a special prosecutor to replace him and prosecute the criminal charges pending against Cathy.

15. Having knowledge of criminal charges pending against Cathy, being duty bound to prosecute the felony charge, and having information regarding the police investigation, Mr. Spangler should not have undertaken the representation of Carl in the custody dispute, a closely related matter.

ALLEN NEELY

16. Allen Neely (Mr. Neely) was indicted in Giles County on the charge of possessing crack cocaine. Mr. Hartley represented Mr. Neely.

17. On February 11, 1997, Mr. Neely pled guilty to a reduced charge and received a two day jail sentence. The sentence was suspended on conditions, including good behavior and random drug testing.

18. On April 14, 1997, Mr. Spangler sent a letter to Judge Mink asking that a rule to show cause issue against Mr. Neely for his failure to obey the Court's order. The letter asked that Mr. Neely be given an unspecified jail sentence, and a further sentence of twelve months if he failed to comply with any conditions imposed as a result of the show cause hearing.

19. Although Mr. Spangler copied the probation officer and two police officers with the April 14, 1997 letter, he did not send a copy to either Mr. Neely or Mr. Hartley.

BENJAMIN SCOTT ELLIOT

20. Benjamin Scott Elliot (Mr. Elliot) was indicted in Giles County for first degree murder, and was also charged with use of a firearm in the commission of a felony. Attorneys Max Jenkins and Robert Jenkins represented Mr. Scott on those charges.

21. Mr. Elliot was previously convicted of domestic assault in Wythe County. This conviction was reflected on Mr. Elliot's NCIC record.

22. On January 15, 1998, Mr. Spangler sent a letter to Max Jenkins confirming delivery of various reports, records and discovery materials. Item 22 of that letter indicates Mr. Spangler delivered to Max Jenkins the "Criminal Record of Benjamin Scott Elliot."

23. Mr. Elliot's trial was held January 22 and 23. The jury found Mr. Elliot guilty of second degree murder and use of a firearm in the commission of murder. Mr. Spangler, however, never gave proper notice of his intention to introduce evidence of the prior assault conviction at the penalty phase, and never provided Max or Robert Jenkins with a certified copy of the judgement of conviction regarding the assault. As a result, Mr. Spangler was unable to put Mr. Elliot's prior conviction before the jury during the sentencing phase of the trial, and the jury never learned Mr. Elliot had a prior assault conviction.

24. When questioned by the Bar regarding Mr. Elliot's case, Mr. Spangler indicated he was aware of the assault conviction but did not introduce it.

CORY KAST

25. On January 14, 1997, Cory Kast (Mr. Kast) was indicted in Giles County for rape, breaking and entering with intent to commit a felony and malicious wounding. Attorney Frederick M. Kellerman, Jr. (Mr. Kellerman) was appointed by the Court to represent Mr. Kast on these charges.

26. On January 29, 1997, Mr. Kast was arraigned on the charges listed above. Mr. Kast was already incarcerated on other charges and convictions. Throughout the pendency of his case, Mr. Kast remained incarcerated.

27. Due to the nature of the crime, DNA evidence was collected from the victim by means of vaginal/cervical swabs. DNA was also isolated from a blood sample obtained from Mr. Kast. According to a Certificate of Analysis dated April 25, 1997, and filed with the Court May 5, 1997, the DNA on the swabs was consistent with the DNA isolated from Mr. Kast's blood sample.

28. Mr. Kellerman prepared a motion seeking appointment of a DNA expert; however, he did not file it.

29. Mr. Spangler never gave Mr. Kellerman notice of his intent to offer as evidence the results of the DNA analysis.

30. Mr. Kast had an extensive and serious criminal record, including a conviction for armed robbery and other crimes. The sentences on Mr. Kast's prior convictions, some of which Mr. Spangler prosecuted, required him to serve more than 50 years in the penitentiary.

31. Notwithstanding Mr. Kast's prior convictions, Mr. Spangler never gave notice of his intent to introduce evidence of those prior convictions at sentencing should Mr. Kast be convicted of the charges pending in Giles County.

32. Trial on the pending charges was set for July 29, 1997. At some point before the trial date Mr. Kellerman realized more than five months had passed since the arraignment, and since Mr. Kast had been incarcerated the entire time, dismissal of the pending charges under Code of Virginia Section 19.2-243 (commonly called the speedy trial statute) was mandated.

33. On July 28, 1997, Mr. Kellerman brought the speedy trial problem to the attention of Mr. Spangler and the Court.

34. On the day of trial, July 29, 1997, Mr. Spangler moved to nolle prosequi the charges against Mr. Kast. Over Mr. Kellerman's objection, the Court granted Mr. Spangler's motion.

TAMMY SNIDER BRYANT

35. On February 12, 1995, Tammy Snider Bryant (Ms. Bryant) was arrested and charged with possession of cocaine. She was indicted on that charge on July 11, 1997 by a Giles County grand jury. On July 12, 1997, Mr. Kellerman was appointed to represent her.

36. Ms. Bryant was incarcerated from the date of her indictment and remained incarcerated throughout the pendency of her case.

37. Ms. Bryant had previous convictions in Giles County for possession of marijuana with intent to distribute, feloniously possessing Percocet and a violation of probation.

38. Mr. Kellerman would testify that he agreed to various continuances of the case, but on February 1, 1996, he objected to a continuance request made by Mr. Spangler. The Court granted Mr. Spangler's continuance request over Mr. Kellerman's objection.

39. Ms. Bryant's case was continued to the April 9, 1996 docket call.

40. Some time in early or mid April, 1996, Mr. Kellerman realized Ms. Bryant's speedy trial period had passed. Mr. Kellerman approached Mr. Spangler about signing a dismissal order based on the speedy trial violation, and Mr. Spangler requested Mr. Kellerman to sign a nolle prosequi order instead.

41. Mr. Kellerman agreed to sign the nolle prosequi order, which was entered by the Court on April 18, 1996.

II. DISCIPLINARY RULES

Assistant Bar Counsel and the Respondent agree the above factual stipulation could give rise to a finding of a violation of the following Disciplinary Rules:
DR6-101.(A)(1) and (2) * * *
DR7-109.(B)(2) * * *
DR9-101.(B) * * *

III. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and the Respondent tender to this Court for its approval the agreed disposition of a Public Reprimand.

We Ask For This:
S.D. Roberts Moore
Karl W. Uotinen
* * *
Richard E. Slaney
Assistant Bar Counsel
* * *

IN THE CIRCUIT COURT
OF THE CITY OF FREDERICKSBURG

VIRGINIA STATE BAR EX REL.
SIXTH DISTRICT COMMITTEE,
Complainant,
v.
DAVID THOMAS STECKLER
Respondent
Case No. CL99-53

ORDER

This cause came to be heard on June 16, 1999 upon the Certification, Complaint and Affidavit of the Sixth District Subcommittee in accordance with the provisions of Virginia Code Section 54.1-3935, the Rule to Show Cause of this Court, and the designation of the panel of Judges by the Chief Justice of the Supreme Court of Virginia.

The Respondent, David Thomas Steckler, appeared in person, represented by Michael L. Rigsby, Esquire. Assistant Bar Counsel, Dorothy M. Pater, appeared and represented the Virginia State Bar.

Upon the evidence presented and arguments of counsel, the Court makes the following FINDINGS by clear and convincing evidence:

1. At all times relevant hereto, the Respondent, David Thomas Steckler (hereinafter "Mr. Steckler"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On March 17, 1994, Alto Development, Inc., a/k/a Alto Developers, Inc. (hereinafter, "Alto") and Wood-Dale Builders, Inc. a/k/a Wood-Dale Builders Corporation (hereinafter "Wood-Dale"), which are builders and developers, entered into a real estate contract to sell 57 lots in a subdivision known as Brookwood in Spotsylvania County, Virginia to a company called DuVon, Inc. (hereinafter "DuVon").

3. The Complainant, John Cochrane (hereinafter "Mr. Cochrane"), owns Alto and Wood-Dale and one Stephen Zvon owned DuVon. The March 17, 1994 contract stipulated that the 57 lots were to be purchased in groups of at least 6 and there was to be a series of settlement dates commencing May 16, 1994.

4. Said contract provided that a $20,000 non-refundable, initial deposit was to be paid by DuVon and delivered to Mr. Steckler, who would act as the escrow agent. On or about April 15, 1994, Mr. Zvon submitted a $20,000 check to Mr. Steckler's law firm, Steckler & Overton, to cover DuVon's $20,000 non-refundable, initial deposit for the Alto/Wood-Dale to DuVon transaction.

5. On May 5, 1994, while the Alto/Wood-Dale to DuVon transaction was pending, a company called Stone River Enterprises, L.C. (hereinafter "Stone River"), which was owned by Mr. Zvon, closed on a purchase of real property in Stafford, Virginia. The seller in this transaction was AmeriBanc Financial Corporation and Mr. Steckler was the settlement agent for the May 5, 1994 closing. In order to proceed to closing, Stone River was required to come up with $38,761.67 in closing costs.

6. In an effort to assist Stone River with the closing costs, Mr. Steckler instructed his secretary, Leann S. Heflin, to take the non-refundable $20,000 deposit that he had maintained in escrow for the Alto/Wood-Dale to DuVon transaction and apply the $20,000 toward Stone River's closing costs. Stone River thereafter gave Mr. Steckler the remaining $18,761.67 it owed in closing costs. Mr. Steckler received significant fees for handling Stone River's May 5, 1994 closing.

7. On May 11, 1994, a company called Brookwood Enterprises (hereinafter "Brookwood"), which was also owned by Mr. Zvon, entered into a "mirror" contract with another company, Presidential Development, Inc. (hereinafter "Presidential") in which Brookwood agreed to convey the 57 lots, which were the subject of the Alto/Wood-Dale to DuVon transaction, to Presidential for a higher price. The May 11, 1994 contract between Brookwood and Presidential also required Presidential, as the purchaser, to deliver a non-refundable, initial deposit of $20,000 to Mr. Steckler, who would act as the escrow agent.

8. Mr. Steckler was counting on receiving the $20,000 deposit from Presidential (which he would have been required to maintain in escrow), so that he could use

these funds to replace the $20,000 deposit he had received from the Alt/Wood-Dale to DuVon transaction and had misappropriated. However, Presidential subsequently failed to deliver a $20,000 deposit and defaulted on the May 11, 1994 contract.

9. On June 12, 1995, Mr. Cochrane, on behalf of Alto and Wood-Dale, wrote a letter to Mr. Steckler concerning a proposal for an addendum to the March 17, 1994 contract between Alto/Wood-Dale and DuVon. In Mr. Cochrane's letter, he referred to "the Twenty Thousand Dollars ($20,000) currently held by your offices." After Mr. Steckler received Mr. Cochrane's letter, he failed to correct Mr. Cochrane's incorrect assumption that DuVon's $20,000 deposit was still being maintained in escrow by Mr. Steckler.

10. On or about September 7, 1995, a meeting between Mr. Cochrane, Mr. Zvon and Mr. Steckler was held at Mr. Steckler's office. At that time, Mr. Cochrane and Mr. Zvon signed an addendum to the Alto/Wood-Dale to DuVon contract, which had been drafted by Mr. Steckler. Said addendum falsely stated, "The $20,000 currently held by Steckler & Overton will remain there until the last lots are taken down or default on the contract occurs."

11. On August 5, 1996, Mr. Cochrane and Mr. Zvon executed a "Second Amendment to Real Estate Contract" (hereinafter "Amendment"), which provided for an additional, non-refundable deposit of $10,000 to be paid directly to Alto and Wood-Dale and held by them. The Amendment, which had been drafted by Mr. Cochrane's counsel at the law firm of Rice & Stallknecht, P.C., recited that the $10,000 deposit was "in addition to the deposit of Twenty Thousand and 00/100 Dollars being held by David T. Steckler, Escrow Agent." The Amendment further provided that, under certain circumstances, if DuVon failed to "make final settlement on or before March 3, 1997, both the Deposit and the Additional Deposit shall be the exclusive property of the Seller without any claim against it by Purchaser."

12. After Mr. Steckler received a copy of the Amendment, he failed to disclose to Mr. Cochrane and his counsel that DuVon's $20,000 deposit was no longer being held in escrow by Mr. Steckler.

13. DuVon failed to make final settlement on or before March 3, 1997. On March 3, 1997, Mr. Cochrane asked Mr. Steckler, as the escrow agent, to prepare a cashier's check for DuVon's non-refundable $20,000 deposit to be picked up by Mr. Cochrane on March 4, 1997. Mr. Steckler failed to respond to this initial communication by Mr. Cochrane. On March 4, 1997, Mr. Cochrane, by counsel, wrote Mr. Steckler and advised him that DuVon was in breach of the contract and demanded that Mr. Steckler release the $20,000 deposit to the seller. Thereafter, Mr. Steckler failed to release any monies to Mr. Cochrane, despite Mr. Cochrane's subsequent inquiries, by counsel, on March 10, 1997 and March 13, 1997 about said $20,000 deposit.

14. Mr. Cochrane did not know that Mr. Steckler had misappropriated DuVon's non-refundable $20,000 deposit prior to March, 1997.

It is the unanimous finding of the Court that the Virginia State Bar has proved violations of the following Disciplinary Rules of the Virginia Code of Professional Responsibility:

DR 1-102.(A)(3) and (4) * * *
DR 7-102.(A)(5) and (7) * * *

The Court finds that the Bar has failed to prove by clear and convincing evidence that the Respondent violated Disciplinary Rule 9-102(B)(4).

It is therefore ADJUDGED, ORDERED and DECREED that the license of the Respondent, David Thomas Steckler, be and is hereby suspended for a period of one (1) year, effective July 16, 1999; and

* * *

ENTERED this 18th day of August, 1999
By William H. Shaw, III, Chief Judge
William L. Winston, Retired Judge
William G. Plummer, Retired Judge

Seen and Agreed:
Dorothy M. Pater
Assistant Bar Counsel

Seen and Objected to:
Michael L. Rigsby
Counsel for David Thomas Steckler

Disciplinary Board

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
CAROLYN CURRIE EAGLIN
VSB Docket No. 99-000-3195

SHOW CAUSE ORDER AND
ORDER OF SUSPENSION AND HEARING

It appearing to the Board that Carolyn Currie Eaglin, was licensed to practice law within the Commonwealth of Virginia on September 4, 1981; and

It further appearing that Carolyn Currie Eaglin, has been suspended from the practice of law for a period of sixty (60) days effective July 25, 1999 and ending September 22, 1999, in the Court of Appeals of Maryland on June 21, 1999; and

It further appearing that such disciplinary action in the Court of Appeals of Maryland has become final;

It is ORDERED, pursuant to Rules of Court, Part Six, §IV, ¶13(G), that the license of Carolyn Currie Eaglin, to practice law within the Commonwealth of Virginia be, and the same is, hereby suspended, upon entry of this order.

It is further ORDERED that Carolyn Currie Eaglin, appear before the Virginia State Bar Disciplinary Board in the United States Fourth Circuit Court of Appeals, Tenth and Main Streets, Second Floor, Green Courtroom, Richmond, Virginia, at 9:00 a.m., on August 27, 1999, to show cause why her license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

* * *

It is further ORDERED that a copy of the Order of the Court of Appeals of Maryland in Case No. CAE 99-3049, the Joint Petition for Suspension by Consent, and the Petition for Disciplinary Action, be attached to this Rule to Show Cause and made a part hereof.

* * *

ENTERED this 30th day of July, 1999
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Carl A. Eason, Chair
[Editor's Note: Attachments are available upon request.]

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
JANEÉ DEANN JOSLIN
VSB Docket No. 98-010-0202

ORDER OF SUSPENSION

This matter came to be heard on July 16, 1999 upon an Agreed disposition between the Virginia State Bar, the Respondent, Janeé Dean Joslin, and the Respondent's counsel, Rhetta M. Daniel, Esquire.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Dennis P. Gallagher, lay member; D. Stan Barnhill, Esq.; Deborah A. J. Wilson, Esq.; Theophlise L. Twitty, Esq.; and Michael A. Glasser, Esq. Acting Chair, presiding, considered the matter by telephone conference. The Respondent, Janeé Deann Joslin, appeared with her counsel, Rhetta M. Daniel. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

Upon due deliberation, it is the decision of the Virginia State Bar Disciplinary Board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar, the Respondent and her counsel are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Janeé Deann Joslin (hereinafter Respondent or Ms. Joslin), was an attorney licensed to practice law in the Commonwealth of Virginia. From July 15, 1993, through and continuing to date, Ms. Joslin has been employed full-time as an Assistant Commonwealth's Attorney for the City of Virginia Beach. During this period, Ms. Joslin has not engaged in the private practice of law. During the course of her employment as a full-time Assistant Commonwealth's Attorney, the Respondent's clients have been the Commonwealth of Virginia and the City of Virginia Beach. The Complainant who was also a witness in the prosecution of the criminal case was not a client of Ms. Joslin's.

2. In 1993-1994, during the course of her duties as an Assistant Commonwealth's Attorney for the City of Virginia Beach, Ms. Joslin successfully prosecuted a criminal case involving multiple charges of child sexual abuse occurring between 1975 and 1977. The complaining witness in the criminal case, who is also the Complainant in the matter now pending before the Virginia State Bar Disciplinary Board, was approximately twelve to fourteen years old at the time of the criminal

offenses in 1975-1977. The defendant in the criminal case was the boyfriend of the Complainant's mother and the Complainant's coach in junior high school. The Complainant did not report any of the alleged criminal offenses to any law enforcement authorities until 1993 while she was receiving counseling relating to her repressed memories. After said report, a police investigation ensued in 1993, and the defendant in the criminal case confessed to the charges of sexual abuse. In May, 1994, the defendant pled guilty in the Circuit Courts of the City of Chesapeake and in Virginia Beach. The defendant was sentenced in both jurisdictions, and the criminal cases were concluded in Chesapeake on August 2, 1994 and in Virginia Beach on August 15, 1994. At the time of the sentencing in August, 1994, the Complainant was approximately 31 years old.

3. During the autumn of 1993, Ms. Joslin met the Complainant for the first time in the Office of the Commonwealth's Attorney in the City of Virginia Beach. During the preparation for the prosecution of the criminal cases, Ms. Joslin became aware of the Complainant's factual background.

4. During the course of the successful prosecution of the criminal cases by Ms. Joslin, she and the Complainant became friends. Their friendship continued until about a year after the case had been concluded. In the complaint filed with the Virginia State Bar, the Complainant alleges that she had a sexual relationship with Ms. Joslin while the criminal case was pending because the Complainant believed that Ms. Joslin represented her only hope for having the criminal case prosecuted. Ms. Joslin denies the Complainant's allegations.

5. The Respondent, however, agrees that the Virginia State Bar could meet its burden of proof.

MITIGATION

1. Ms. Joslin was licensed to practice law in Kansas in 1988. Immediately following receiving her license to practice law, Ms. Joslin entered the United States Navy JAGC. She has been practicing approximately eleven (11) years.

2. Ms. Joslin had never had another complaint filed against her during her eleven year career as an attorney in the United States Navy and as an Assistant Commonwealth's Attorney for the City of Virginia Beach.

3. From July 15, 1993 to date, Ms. Joslin has continued to successfully prosecute all types of criminal cases for the Office of the Commonwealth's Attorney for the City of Virginia Beach.

4. In October, 1996, Ms. Joslin was demoted from a Level 2 to a Level 1 Assistant Commonwealth's Attorney and her compensation was reduced as a result of her relationship with the Complainant.

5. In June 1997, the Complaint in this matter now pending before the Virginia State Bar Disciplinary Board was filed with the Virginia State Bar simultaneously with the Complainant filing a civil suit against Ms. Joslin in the Circuit Court of the City of Norfolk, Virginia.

6. In 1998, Ms. Joslin agreed to and paid a substantial monetary settlement in the civil suit filed by the Complainant in the Circuit Court of the City of Norfolk.

7. In 1998, Ms. Joslin was promoted to her former Level 2 Assistant Commonwealth's Attorney position in the Office of the Commonwealth's Attorney in the City of Virginia Beach and her compensation was restored to the former level.

II. NATURE OF MISCONDUCT

The stipulated facts give rise to violations of the following Disciplinary Rules:

DR 1-102.(A)(3) * * * (In accordance with the stipulation, the conduct alleged was a wrongful act only.)

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

DR 5-101.(A) * * *

III. DISPOSITION

The Respondent's license to practice law in the Commonwealth of Virginia is hereby suspended for a period of five (5) years, with four (4) of the said five years suspended for a period of five (5) years (a net active suspension of her license to practice law for one year commencing on August 1, 1999), subject to the following terms and conditions:

1. The Respondent will resign her position as Assistant Commonwealth's Attorney for the City of Virginia Beach effective August 1, 1999.

2. By October 1, 1999, the Respondent will commence psychiatric or psychological counseling at her own expense with the goal of ensuring that she never

engage in a personal relationship of the nature described in the factual stipulations recited above with a client, witness, or other interested party in a case she is involved in. The counselor chosen will be subject to the approval of the Virginia State Bar. The Respondent will execute all appropriate releases of confidential information to the Virginia State Bar and ensure that her counselor furnish a quarterly report of her performance and progress in the counseling to the Virginia State Bar, beginning January 1, 2000, and every three months thereafter. The Respondent will continue with the said counseling until her release is deemed appropriate by the counselor.

The Respondent's failure to comply with any of the foregoing agreed terms within the time periods mentioned will result in the imposition of the alternate sanction; the imposition of the additional four (4) year suspension of her license to practice law, for a total period of five (5) years that her license to practice law in the Commonwealth of Virginia will be suspended.

The imposition of this alternate sanction will not require any hearing on the underlying charges of misconduct if the Virginia State Bar discovers that the Respondent has violated any of the foregoing terms and conditions. Instead, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction should not be imposed. The sole factual issue will be whether the Respondent has violated any one or more of the terms of this order without legal justification or excuse. Such Show Cause hearing shall be conducted pursuant to Disciplinary board Rule of Procedure IV(D)(11). The imposition of the alternate sanction shall be in addition to any other sanction imposed for misconduct during the five-year period.

* * *

ENTERED this 19th day of July, 1999
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Michael A. Glasser, Acting Chair

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

In the Matter of
ALAN EDWARD KOCZELA
VSB Docket Nos. 99-051-1441; 99-051-1750; 99-051-1751; 99-051-1752; 99-051-1753; 99-051-1927; 99-051-2568; 99-051-2644; 99-051-2747; 99-051-2809; 00-051-0049 and 99-051-0069

ORDER

This matter came to be heard on August 27, 1999, before a panel of the Disciplinary Board consisting of Carl A. Eason, Chair; John A. Dezio; Karen A. Gould; Roscoe B. Stephenson, III; and D. Stan Barnhill. The State Bar was represented by Noel D. Sengel, Esq. The respondent, Alan Edward Koczela ("Koczela"), after receiving due notice, failed to appear either in person or by counsel.

This matter came before the Board on charges of misconduct asserted by the State Bar in a Petition for Expedited Hearing and Summary Suspension filed pursuant to Part 6, §IV, ¶13(C)(5((b) of the Rules of the Supreme Court of Virginia. The Board entered the requested Order of Expedited Hearing and Summary Suspension effective August 6, 1999, setting the hearing date for August 27, 1999, to determine whether the misconduct alleged in the Petition had occurred. Copies of the Order and Petition were sent to Koczela at his official address of record by certified mail and the receipt, confirming delivery on August 10, 1999, has been returned to the State Bar. Koczela thereafter filed no response to the Petition or demand for alternative prosecution of the matter pursuant to Virginia Code §54.1-3935.

I. FINDINGS OF FACT

The Board makes the following findings of fact on the basis of clear and convincing evidence.

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

2. In January of 1997, Koczela, in response to an advertisement in the *Washington Post*, began working with American Financial Services (AFS), a debt counseling service with its main office in Las Vegas, Nevada. Pursuant to his agreement with AFS, Koczela was to collect payments from AFS clients for payment to the clients' creditors. When necessary, Koczela would also represent AFS clients in filing personal bankruptcies. The creditors were informed that Koczela represented the debtor clients. AFS would charge the clients an administrative fee of $5.95 for each check written. AFS would receive 80% and Koczela 20% of this fee. Koczela would write a check to AFS to pay creditors based on a statement he would receive from AFS, and thereafter issue checks to AFS and himself for their respective fees. Koczela would charge clients separately for attorneys' fees and expenses incurred in bankruptcy representation.

3. In December of 1998 and January of 1999, AFS and eight debtor clients notified the State Bar that Koczela

had stopped making disbursements for the months of October and November 1998, despite the fact that the clients had been forwarding their money to Koczela per their agreements with AFS and Koczela. AFS and the debtor clients also informed the State Bar that Koczela would not return their phone calls or otherwise account for the money.

4. In response to a State Bar subpoena, Koczela met with a State Bar investigator on January 8, 1999, and produced certain financial records which were disorganized and difficult to interpret. During the course of the interview, Koczela stated to the State Bar investigator that he had never had an attorney trust account. The funds received from the debtor clients were deposited into an account in Koczela's name at NationsBank. Koczela further stated that while he had made some of the deposits to the NationsBank account, an AFS employee in Chesapeake, Virginia, made most of the deposits. Finally, Koczela stated that he had a personal account at Chevy Chase Bank. Koczela promised to provide the Bar with his ledger cards and a further explanation as to his bookkeeping methods and his financial arrangements with AFS.

5. The State Bar subpoenaed the bank records for both accounts. Koczela failed to provide any further information or records. State Bar investigators were unable to determine from their review of Koczela's and the banks' records what, if any, amounts of money were missing and whether the problem, if any, lay with Koczela or AFS's employee in Chesapeake.

6. The State Bar therefore hired an accounting firm, Keller Bruner & Company, P.C. ("KBC"), with forensic accounting expertise to review the records. Thereafter, KBC provided the State Bar a report which concluded that Koczela had failed to report bounced checks to AFS and otherwise took no other corrective action regarding the bounced checks. As a result, the NationsBank account became out of balance by $8,130 by October of 1998 because of bank charges and debits. KBC also concluded that Koczela made withdrawals from the NationsBank account in excess of what he was entitled to receive as his fee in the amount of $5,734.30. These excess withdrawals do not appear to be inadvertent or based on mathematical error. During the time in which Koczela was making withdrawals in excess of 20%, he was correctly calculating AFS's 80% share of the proceeds.

7. Koczela stopped making any payments to AFS to permit it to pay creditors in October of 1998. Clients began to receive notices soon thereafter from their creditors that their bills were not being paid.

8. Koczela failed to deposit unearned payments he received for providing bankruptcy representation in an appropriate trust account. On at least two occasions, Koczela failed to file bankruptcy petitions for clients after receiving their payments for the service.

9. The Bar received additional related complaints from other debtor creditors in the spring of 1999.

10. AFS terminated Koczela in December of 1998. In January of 1999, Koczela began working as an "independent contractor" with the Arlington, Virginia, law firm of Kooritzky & Associates (the "Kooritzky firm"). Clients assigned to Koczela would sign an agreement acknowledging that Koczela was not an employee of the firm and that the fee paid would be split between the Kooritzky firm and Koczela.

11. On July 13, 1999, Samuel G. Kooritzky of the Kooritzky firm reported to the Bar that Koczela had been terminated and had thereafter absconded with approximately 60-70 pending client files, and that neither the firm nor many of the clients could locate Koczela. Kooritzky further reported that clients with urgent matters were calling the firm complaining that they could not contact Koczela. Finally, Kooritzky reported that certain client funds were missing, that Koczela had taken a cell phone and pager belonging to the firm when he left, and that Kooritzky had notified the police regarding the theft. At the hearing on August 27, 1999, however, the State Bar produced no evidence to support the contention that Koczela had taken client funds while employed by the Kooritzky firm.

12. The State Bar thereafter issued a subpoena to Koczela's last known residence address on August 3, 1999. A State Bar investigator also spoke with the person residing at Koczela's residence, Koczela's current or former girlfriend. The girlfriend stated that the subpoenaed files were not located within the house, that she had not seen the files, and that she did not know where Koczela was currently living. She added that Koczela occasionally contacted her by phone or made personal visits to the address. She promised to ask Koczela to contact the Bar if she heard from him.

13. Sometime in mid-August of 1999, Koczela's girlfriend returned to Kooritzky's law firm about 20% of the client files Koczela had removed. The files were extremely disorganized. A number of the clients Koczela had been assigned while working out of the Kooritzky law firm have been prejudiced in terms of missed court dates as a result of Koczela's abandonment of their cases.

NATURE OF MISCONDUCT

The Board finds by clear and convincing evidence that the following Disciplinary Rules have been violated:

1. D.R.1-102(A)(3) and (4) * * *
2. D.R.6-101(B) * * *
3. D.R.6-101(C) * * *
4. D.R.7-101(A)(1), (2) and (3) * * *
5. D.R.9-102(A) * * *
6. D.R.9-102(B) * * *
7. D.R.9-103(A) and (B) * * *

DISPOSITION

After review of the foregoing findings of misconduct, it is ORDERED that the license to practice law in the Courts of this Commonwealth heretofore issued to Alan Edward Koczela be, and the same hereby is, revoked effective August 27, 1999, and that the name of Alan Edward Koczela be stricken from the roll of attorneys of this Commonwealth.

* * *

ENTERED this 28th day of September, 1999
VIRGINIA STATE BAR DISCIPLINARY BOARD
By Carl A. Eason, Chair

District Committee

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

In the Matter of
ELI S. CHOVITZ
VSB DOCKET NO. 98-021-0768

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On August 12, 1999, a hearing in this matter was held before a duly convened Second District Committee panel consisting of Robert W. Carter, Sharon S. Goodwyn, Michael F. Fasanaro, Jr., Edmund A. Langhorne, Michael A. Robusto, Jon F. Sedel, Norman A. Thomas and Joseph R. Lassiter, Jr., presiding.

Respondent appeared on his own behalf. Richard C. Vorhis, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

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

I. FINDINGS OF FACT

(1) At all times relevant hereto, the Respondent, Eli S. Chovitz (hereinafter Respondent or Chovitz), has been an attorney licensed to practice law in the Commonwealth of Virginia.

(2) Mr. Michael K. Bynum, Jr. (hereinafter Bynum or Complainant) was convicted of 2nd degree murder and sentenced to confinement in the state penitentiary for 40 years with 25 years thereof suspended. The sentencing order was entered on February 5, 1997.

(3) On January 30, 1997, the presiding judge appointed Respondent to represent Bynum on appeal of the aforementioned criminal conviction.

(4) On March 7, 1997, Respondent filed a document purporting to be a notice of appeal on behalf of Mr. Bynum.

(5) Thereafter, Respondent neglected the matter and failed to file anything further including, but not limited to, any petition for appeal (Anders or otherwise) or motion to withdraw.

(6) In the course of the investigation of this case, Respondent stated to Virginia State Bar Investigator Eugene L. Reagan that on March 4, 1997, he read the transcript of the trial and on that same day went to the Norfolk Jail to meet with Bynum; that, consistent with his usual practice, he took contemporaneous notes of the in-person meeting, and Respondent produced a memo reflecting the date of March 4, 1997. Respondent stated that during this March 4, 1997 meeting, Bynum instructed him not to pursue the appeal.

(7) This information provided by Respondent to investigator Reagan was incorrect in that Bynum had been transferred away from the Norfolk Jail on March 3, 1997. The records kept by the Norfolk City Jail do not show any visit to Mr. Bynum or any other inmate by Respondent during the period from January 30, 1997 through March 4, 1997. Furthermore, Respondent filed the notice of appeal on March 7, 1997 after Bynum allegedly instructed Respondent to drop the appeal.

(8) Bynum wrote Respondent on two separate occasions after March 4, 1997, in an attempt to find out the status of his appeal and Respondent never communicated back to Bynum.

(9) The Committee finds that Bynum never instructed Respondent to drop the appeal and accordingly, Respondent's statements to Investigator Reagan were materially false.

II. NATURE OF MISCONDUCT

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

DR 1-102.(A)(4) * * *
DR 2-108.(C) and (D) * * *
DR 6-101.(B), (C) and (D) * * *
DR 7-101.(A)(1) and (3) * * *

The Committee dismissed Disciplinary Rules 7-101(A)(2), 7-102(A)(5) and 7-102(A)(6).

III. PUBLIC REPRIMAND

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

* * *

SECOND DISTRICT COMMITTEE, SECTION I
OF THE VIRGINIA STATE BAR
By Joseph R. Lassiter, Jr., Chair
Certified September 3, 1999

BEFORE THE THIRD DISTRICT COMMITTEE,
SECTION III
OF THE VIRGINIA STATE BAR

In the Matter of
CHARLES JEFFERSON McCALL
VSB DOCKET NO. 94-033-1883

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On September 8, 1999, a show cause hearing in this matter was held before a duly convened Third District Committee, Section III, panel consisting of Edwin A. Bischoff, Cynthia A.S. Cecil, Michael N. Herring, C. Stephen Setliff, George C. Hutter, Lay Member, Laurence H. Levy, Lay Member, and Thomas O. Bondurant, Jr., Chair, presiding.

Respondent submitted a response to the show cause order stating as follows:

> Although there have been a number of factors contributing to McCall's failure to be diligent enough often enough in seeking to obtain from his bank records needed to complete his reporting and filing obligations under the Subcommittee Determination of a Private Reprimand With Terms, McCall recognizes that such factors would not likely be deemed sufficient to excuse his not yet having obtained the records and completed such reporting and filing obligations. Not desiring to inconvenience the Subcommittee [sic] by insisting on an evidentiary hearing of such issue, McCall hereby stipulates for the purposes of this proceeding that factors contributing to such delay would be insufficient to excuse such delay and that imposition of the alternate disposition of a Public Reprimand without conducting a hearing would be within the Subcommittee's [sic] discretion and authority.

Neither the respondent nor his counsel, James R. Wrenn, Jr., appeared in person at the hearing. Barbara Ann Williams, Bar Counsel, appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, §IV, ¶13(B)(7) of the Rules of the Supreme Court, the Third District Committee, Section III, of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand.

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Charles J. McCall (McCall), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Until on or about March 31, 1994, McCall was court-appointed guardian for certain residents of an adult home facility known as Monument Manor in the City of Richmond, Virginia. The names of some of McCall's wards included Mary V. Taylor, Helen Grimmett, Aria Kinsley, Helen Ward and Minnie Left.

3. During McCall's service as guardian for his wards, McCall received funds paid to him on behalf of his wards for the care and maintenance of each respective ward. As guardian McCall also received bills for services and goods from the providers of the care and maintenance of each of said wards.

4. On or about July of 1992, McCall established a guardianship account at Signet Bank, #533-0416782 [6782]. Upon setting up the account, McCall thought that the bank was going to deposit into #6782 all of the payments received on behalf of the wards, and consequently, McCall began writing checks out of the account. However, all of the payments received on behalf of the wards were not deposited into the account.

5. McCall failed to file timely accountings for the Ward, Left and Grimmett guardianships with the commis-

sioner of accounts, despite notices from the commissioner of accounts. But McCall paid himself guardian fees from the same guardianship during their pendency.

6. McCall failed to maintain appropriate trust account records and procedures with respect to the funds of the wards which were paid to him.

7. The above-described matter was set for hearing.

8. On February 6, 1998, a Third District, Section Three, Subcommittee consisting of Alan R. Kern, Lay Member; Janipher W. Robinson, Esquire and Andrew R. Wood, Esquire, presiding Chair, convened to consider an agreed disposition in the above-described matter.

8. The subcommittee accepted the proposed agreed disposition and, on February 10, 1998, issued Private Reprimand with Terms, based upon its findings that Mr. McCall had violated DRS 6-101(B), 9-102(B)(3), and 9-103(A) and (B).

9. The Private Reprimand with Terms provided that the respondent had to meet the following terms and conditions by June 1, 1998:

TERMS RELATING TO TRUST ACCOUNTS

1. Respondent shall, at his own expense, obtain the services of a licensed Virginia certified public accountant for the purposes of examining the Respondent's trust account(s) records from January 1, 1997 to date.

2. The licensed Virginia certified public accountant shall, after examining the Respondent's trust account(s) records, render a written report to the Virginia State Bar in care of Deputy Bar Counsel. Said report shall state that the Respondent's trust account(s) records comply with the current provisions of Disciplinary Rules 9-102 and 9-103 of the Virginia Code of Professional Responsibility (CPR) or in the alternative, that the Respondent's trust account(s) records do not comply with the provisions of Disciplinary Rules 9-102 and 9-103 of the CPR.

3. If it is determined that the Respondent's trust account(s) records do not comply with Disciplinary Rules 9-102 of the CPR (i.e., are not in compliance), the licensed Virginia certified public accountant shall state in his/her report the specific ways in which Respondent's trust account(s) records are not in compliance.

4. If it is determined that Respondent's trust account(s) records are not in compliance, Respondent shall take steps to bring said records into compliance.

5. Respondent shall be responsible for making certain that the licensed Virginia certified public accountant performs the services required herein.

TERMS RELATING TO FIDUCIARY ACCOUNTINGS

6. If Respondent is a fiduciary on any matters which require filings with a commissioner of accounts, Respondent shall, to the extent necessary, bring himself into compliance as to said filings and certify same to Deputy Bar Counsel in writing.

10. Respondent, by his own admission, has not complied with the terms of the Private Reprimand.

II. NATURE OF MISCONDUCT

The Respondent has violated the following Rules of the Virginia Code of Professional Responsibility:

DR 6-101.(B) * * *
DR 9-102.(B)(3) * * *
DR 9-103.(A)(1), (2), (3) and (4) * * *
DR 9-103.(B)(1)(f) * * *
DR 9-103(B)(4)(a), (b), (5)(a), (b), (c) and (6) * * *

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the committee to impose the alternate disposition of a public reprimand, and the Respondent is hereby so reprimanded.

* * *

THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By Thomas O. Bondurant, Jr.
Committee Chair
Certified September 17, 1999

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

In the Matter of
LAWRENCE RAYMOND MORTON
VSB Docket No. 95-053-1488

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On June 22, 1999, a hearing in this matter was held before a duly convened Fifth District Committee, Section III, panel consisting of Russell N. Wells, Esquire; Stephen Alexander MacIsaac, Esquire; Joseph F. Curran, Esquire;

Gregory Allen Porter, Esquire; and Betty M. Sandler, Esquire, presiding. The Respondent, Lawrence Raymond Morton, Esquire, appeared *pro se*. Noel D. Sengel, Senior Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

Previously, on November 20, 1995, a subcommittee imposed a Private Reprimand with Terms in accordance with the agreement between the Respondent and Bar Counsel. Pursuant to Council Rule of Disciplinary Procedure IV(C), this hearing was held to require the Respondent to show cause why the alternative disposition should not be imposed for failure to comply with the terms imposed by the aforesaid disposition. Upon evidence and argument presented, the Fifth District Committee, Section III, finds that the Respondent was duly noticed of this hearing by a certified mailing, return receipt requested, to his last address of record with the Virginia State Bar, and that all of the terms of the Disposition dated November 20, 1995, were not fulfilled. Accordingly, the Committee hereby issues the following Public Reprimand.

I. FINDINGS OF FACT

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

2. On November 12, 1994, Donald R. Townsend (hereinafter the Complainant) received notice that his worker's compensation case was scheduled for hearing before the Commission on February 7, 1995. On November 16, 1994, the Complainant employed the Respondent to represent him in the case. At that time, the Complainant signed a written retainer agreement and various release forms, and gave the Respondent all the documents in his possession relating to his case.

3. Beginning in January of 1995, the Complainant called the Respondent's office repeatedly to convey a settlement offer he had received and to determine what he needed to do to prepare for the hearing. The Respondent did not speak with the Complainant or return any of the Complainant's telephone calls. The Respondent failed to appear for the Complainant's hearing on February 7, 1995. The Complainant successfully represented himself before the Commission.

II. NATURE OF MISCONDUCT

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

DR 6-101(B) and (C) * * *
DR 7-101(A)(1), (2) and (3) * * *

III. PUBLIC REPRIMAND

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

* * *

FIFTH DISTRICT COMMITTEE, SECTION III
OF THE VIRGINIA STATE BAR
By Betty M. Sandler, Chair
Certified June 30, 1999

BEFORE THE FIRST DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

In the Matter of
STEVEN MORTON OSER
VSB DOCKET NO. 97-010-0279

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND)

On September 9, 1999, the Committee convened to conduct a Show-Cause hearing in this matter. The hearing was held before a duly convened First District Committee panel consisting of John D. Eure, Jr., Esquire, William H. Riddick, III, Esquire, Steven F. Shames, Esquire, Robert B. Wilson, V, Esquire, Tyrone J. Melvin, Sr., Lay Member, and H. Taylor Williams, IV, Esquire, presiding. The Respondent, Steven Morton Oser, appeared in person, *pro se*. Edward L. Davis, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar.

The matter came before the Committee in order for the Respondent to Show Cause why the alternate disposition of a Public Reprimand should not be imposed. The alternate disposition derived from a Private Reprimand with Terms served upon the Respondent by the Committee on August 8, 1997. The Respondent did not appeal that disposition.

It was the unanimous decision of the panel that the Respondent's explanations for his failure to comply with the terms of the aforesaid disposition were insufficient, and

that he did not meet his burden of proof. Accordingly, pursuant to Part Six, Section IV, Paragraph 13(B)(7) of the Rules of the Supreme Court, the First District Committee of the Virginia State Bar hereby serves upon the Respondent the following alternate disposition of a Public Reprimand.

I. FINDINGS OF FACT

1. During all times relevant hereto, the Respondent, Steven Morton Oser (hereinafter Respondent or Mr. Oser), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On July 27, 1995, after trial by jury, Complainant Elisher Ray Parks was found guilty of murder in the second degree. The Circuit Court for the City of Hampton sentenced Mr. Parks to confinement in the state penitentiary for a period of 15 years. Mr. Oser served as Mr. Parks' court-appointed trial defense counsel. The court also appointed Mr. Oser as Mr. Parks' appellate counsel. On August 18, 1995, Mr. Oser filed a Notice of Appeal.

3. On October 18, 1995, the Court of Appeals received the record from the Circuit Court of the City of Hampton. On December 1, 1995, the Court of Appeals dismissed the case because the Petition of Appeal was not filed within the time permitted by Rule 5A:12(a). On December 7, 1995, Mr. Oser petitioned the Court of Appeals for a rehearing, which was denied on January 11, 1996. Thereafter, Mr. Oser took no further action in the matter, other than to advise the Complainant's mother several months later that her son should seek a habeas corpus action due to Mr. Oser's mistake. He remained counsel of record.

4. Although Mr. Parks was aware of the initial denial of his appeal, neither the court nor Mr. Oser advised him of the final denial of the appeal. Mr. Parks wrote to Mr. Oser on January 10, February 10, April 5, May 22 and June 7, 1996; however, Mr. Oser did not respond to his letters. Mr. Parks was requesting a status of the Petition for Appeal, as well as copies of his case file. It was not until June 4, 1996, that Mr. Parks learned about the final denial of his appeal, when he received a letter from the Court of Appeals in response to a letter he sent to the court.

5. According to Mr. Oser, he gave the Petition for Appeal to his secretary with instructions to timely file it. Afterwards, he asked his secretary whether she had reviewed the rules for filing such a document, and she assured him that she had, and that she was sending the petition on time. Mr. Oser did nothing further to monitor the filing of the Petition for Appeal. Since that time, he has hired a new paralegal to eliminate the problems occasioned in the present case.

6. According to Mr. Oser, he had no direct contact with Mr. Parks after the final denial of the appeal until approximately June 1996, although, as stated above, he advised the Complainant's mother about this error, and that Mr. Parks should consult with institutional counsel about a habeas corpus action. Mr. Parks' mother, however, was incapable of adequately relaying this advice to her son. Mr. Parks continued to inquire about the status of his appeal in his 1996 letters to Mr. Oser, and to ask for copies of his file. As of the date of the disciplinary hearing, July 31, 1997, however, Mr. Oser still had not furnished copies of the documents requested by Mr. Parks.

II. NATURE OF MISCONDUCT

The Committee adapts the prior disposition, finding that the Virginia State Bar has proven violations of the following Disciplinary Rules by clear and convincing evidence:

DR 2-108.(C) * * *
DR 6-101.(B) and (C) * * *

III. PUBLIC REPRIMAND

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

* * *

FIRST DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By H. Taylor Williams, IV
Chair Designate
Certified September 17, 1999

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