VIRGINIA:

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

VIRGINIA STATE BAR, *ex rel.*
FIFTH DISTRICT– SECTION II COMMITTEE,

Complainant/Petitioner,

v. **Case Number 2005-2470**

JEFFREY BOURKE RICE, ESQUIRE,

Respondent.

MEMORANDUM ORDER

ON THE 19th day of October, 2005, this matter came before the Three-Judge Court empanelled on June 23, 2005 by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to §54.1-3935 of the 1950 Code of Virginia, as amended, consisting of the Honorable Benjamin N.A. Kendrick, Judge of the Seventeenth Judicial Circuit and Chief Judge of this Three-Judge Court, the Honorable H. Selwyn Smith, Retired Judge of the Thirty-first Judicial Circuit, and Honorable Joseph E. Spruill, Jr., Retired Judge of the Fifteenth Judicial Circuit of Virginia.

Noel D. Sengel, Senior Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, Jeffrey Bourke Rice, Esquire, appeared *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, which directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be revoked or suspended. Prior to the presentation

of its evidence, the Bar moved the court to dismiss without prejudice VSB No. 04-052-2059 because the complaining witness was unable to appear, which motion was granted.

THEREAFTER, the Bar presented its evidence in the remaining three matters, followed by the Respondent's presentation of his evidence in those matters. At the conclusion of all of the evidence, the Court heard argument, retired to deliberate, and returned to issue its rulings and findings in open court.

The Court unanimously found by clear and convincing evidence as follows:

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

As to VSB Docket Number 04-052-0575

2. From 1997 through 2001, the Respondent failed to pay his Business Professional and Occupational License (BPOL) taxes to the City of Fairfax, Virginia. On February 26, 2002, the Complainant, Kyle E. Skopic, Esq., attorney for the City of Fairfax, sent the Respondent a letter demanding that the Respondent pay his delinquent BPOL taxes. The Respondent failed to respond and on March 29, 2002, Ms. Skopic filed a warrant-in-debt against the Respondent on behalf of the Treasurer of the City of Fairfax, demanding payment. A judgment against the Respondent was entered on May 2, 2002.

3. On August 13, 2002, Ms. Skopic filed a Summons to Answer Interrogatories against the Respondent, returnable to September 10, 2002. The Respondent received personal service of the Summons on August 28, 2002.

4. On or about September 9, 2002, the Respondent left a voice mail message for Ms. Skopic, informing her that he was unable to appear in court on September 10, 2002, and requesting that she continue the interrogatories. Ms. Skopic appeared in court on September 10,

2002 and continued the interrogatories to October 8, 2002. She called the Respondent and advised him of the new date and memorialized the phone conversation in a letter. Ms. Skopic also filed a Notice with the Court, setting forth the new date as October 8, 2002. The Respondent received personal service of this Notice on September 30, 2002.

5. On October 8, 2002, the Respondent did not appear in court. A Rule to Show Cause was authorized by the Court and on October 9, 2002, Ms. Skopic filed a Show Cause Summons, returnable on November 7, 2002. The Respondent received personal service of this Summons on October 22, 2002.

6. On November 7, 2002, the Respondent again did not appear in court. The Court authorized a capias and on November 8, 2002, Ms. Skopic filed it. On December 2, 2002, the Respondent was arrested and released by the Magistrate on a $1,000.00 personal recognizance bond.

7. The capias against the Respondent had a return date of January 9, 2003. On that date, the Respondent again failed to appear in court, and on January 13, 2003, Ms. Skopic filed another capias, returnable on February 5, 2003.

8. On January 21, 2003, the Respondent called Ms. Skopic and claimed that he had forgotten the return date of the first capias. Ms. Skopic informed him that there was a second capias outstanding. The Respondent was arrested that day on the second capias. He was released after a bonding company paid a secured bond of $2,000.00.

9. On February 5, 2003, the Respondent and Ms. Skopic appeared in court on the second capias and the underlying interrogatories. During the interrogatories, the Respondent gave Ms. Skopic a check in the amount of $1,000.00 as partial payment of his overdue tax bill. The account holder on the check was "Jeffrey B. Rice, Debtor in Possession." Ms. Skopic asked

the Respondent if he was in bankruptcy and, if so, whether or not her acceptance of his payment would violate any provisions of his pending bankruptcy. The Respondent, while still under oath taken for the interrogatories, assured her that his bankruptcy had been dismissed. The judge continued sentencing on the capias until February 19, 2003. The interrogatories were dismissed as satisfied.

10. The Respondent's check in the amount of $1,000.00 for payment of his delinquent taxes was returned for insufficient funds. Ms. Skopic notified the Respondent and, at his request, redeposited the check, which then cleared.

11. On February 19, 2003, the Court ordered the Respondent to pay Ms. Skopic $400.00 in attorney's fees, and continued the case until April 30, 2003 for dismissal if the Respondent paid the remainder of the overdue taxes. On April 29, 2003, the Respondent paid the balance of the taxes and the judgment was marked satisfied. On April 30, 2003, despite the fact that the Respondent again failed to appear, the Court dismissed the capias against him.

12. Subsequently, Ms. Skopic checked the website of the United States Bankruptcy Court, Eastern District of Virginia, Alexandria Division, and found that, in fact, the Respondent's bankruptcy, Docket Number 01-10552RGM, was still pending. A Notice of Rescheduled Meeting of Creditors had been entered on February 4, 2003, the day before the Respondent had, under oath, informed Ms. Skopic that his bankruptcy had been dismissed.

The Court finds that such conduct constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of fact or law.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

As to VSB Docket Number 04-052-3042:

13. In 2003, the Respondent as retained counsel represented Steve Kraig Bratcher on grand larceny and embezzlement charges in the Circuit Court of Loudoun County. Mr. Bratcher was convicted and sentenced to incarceration. Pursuant to Mr. Bratcher's request, the Respondent filed a Notice of Appeal in December of 2003.

14. The Respondent did not file the transcript of Mr. Bratcher's trial or a statement of facts with the Court of Appeals of Virginia. On March 15, 2004, the Court of Appeals ordered the Respondent, by March 30, 2004, to show cause why Mr. Bratcher's appeal should not be dismissed by stating any questions which could be considered without resort to a transcript or statement of facts. The Respondent failed to respond to this Show Cause, and the Court of Appeals dismissed Mr. Bratcher's appeal on April 6, 2004.

15. The Respondent states that the friend of Mr. Bratcher who was supposed to pay the Respondent's fee never paid the fee and therefore, the Respondent did not go forward with Mr. Bratcher's appeal. However, the Respondent never informed Mr. Bratcher that he was not going forward with the appeal, and never filed a motion with the Court to withdraw from the case. Mr. Bratcher could have sought court-appointed counsel had he known that the Respondent had abandoned his appeal.

The Court believes that such conduct constitutes misconduct in violation of the following Rules of Professional Conduct.

RULE 1.3 Diligence

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.16 Declining Or Terminating Representation

(c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable rules of court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

As to VSB Docket Number 05-052-1543

16. In late 2002, the Complainant, Danielle C. Douglas, hired the Respondent to represent her six-year-old daughter in a personal injury claim stemming from a school bus accident, which occurred on November 18, 2002 and in which Ms. Douglas's daughter sustained a broken nose. Ms. Douglas faxed all the documents regarding her daughter's injury to the Respondent at his request, and the Respondent informed her that he would resolve the matter shortly. Months passed and Ms. Douglas did not hear from the Respondent. Upon occasion, Ms. Douglas called the Respondent to check on the status of her daughter's case. Ms. Douglas was frequently unable to reach the Respondent by telephone and usually had to leave messages on his answering machine which he rarely returned.

17. In June of 2004, the Respondent called Ms. Douglas and informed her that he had settled her case for $2,000.00, and had received a check for reimbursement of her daughter's medical expenses in the amount of $562.00. The Respondent asked Ms. Douglas to come to his office to sign both checks. The settlement check was payable to the Respondent and Ms. Douglas jointly. The medical reimbursement check was payable to Ms. Douglas only. Ms. Douglas went to the Respondent's office and signed the checks and a settlement and release form. The Respondent gave Ms. Douglas the medical reimbursement check and informed her that he would mail to her the portion of the settlement check for her daughter after he paid himself his one-third fee, to which they had orally agreed. There was no written fee agreement in the case. Ms. Douglas never received the check from the Respondent in the mail.

18. Thereafter, Ms. Douglas called the Respondent weekly to inquiry about the check. The Respondent told her repeatedly that he would mail the check to her. Approximately six weeks after she signed the settlement and release form, Ms. Douglas again reached the

Respondent by telephone and informed him she was coming by his office to pick up the check rather than waiting for him to fulfill his promise to mail it. She picked up the check at the Respondent's office. The check was dated July 23, 2004, made out for the amount of $1,146.00, and drawn on the Respondent's office operating account. The check should have been drawn on the Respondent's trust account and made out for the amount of $1,333.33, representing two-thirds of the settlement check. In addition to taking one-third of the settlement as a fee, the Respondent had taken one-third of the medical reimbursement funds as well, though collecting them was a mere ministerial act. The Respondent did not present Ms. Douglas with a disbursement sheet showing how the funds were to be disbursed or how his fee had been calculated at that time or any other.

19. Ms. Douglas deposited the check from the Respondent's operating account into her account and on August 4, 2004, the check was returned for insufficient funds. Ms. Douglas deposited the check a second time and it cleared on September 13, 2004. In the meantime, however, Ms. Douglas's checking and saving accounts were frozen and she was unable to use her accounts because of the deficits caused by the Respondent's dishonored check. In addition, she incurred bank charges because of the dishonored check.

20. Ms. Douglas filed her complaint with the Bar on October 8, 2004. On October 25, 2004, the Bar issued a subpoena requiring the Respondent to appear in the Bar's office on November 16, 2004 with copies of his file in Ms. Douglas's case and his relevant bank records. The Respondent received personal service of the subpoena on October 28, 2004. The Respondent sent the copies of the file but no bank records as required. Beginning on November 22, 2004 and continuing until January 31, 2005, the Bar Investigator and Bar Counsel contacted the Respondent repeatedly to obtain copies of the relevant bank records. The Respondent

repeatedly promised to send the records. On January 31, 2005, the Respondent finally produced the relevant bank records which had been subpoenaed for November 22, 2004.

21. When questioned about this matter by the Bar Investigator, the Respondent admitted that he placed Ms. Douglas's settlement check in his operating account, not his trust account. The Respondent's operating account records showed that on numerous occasions, the Respondent's bank balance feel well below the $1,333.33 that the Respondent owed Ms. Douglas.

The Court finds that such conduct constitutes misconduct in violation of the following Rules of Professional Conduct.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or

(2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by

the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall:

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

RULE 8.1 Bar Admission And Disciplinary Matters

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

(c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6; or

(d) obstruct a lawful investigation by an admissions or disciplinary authority.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;

FOLLOWING the Court's announcement of its findings of fact and of misconduct, the Court received evidence as to the Respondent's prior record and as to the *ABA Standards for Imposing Lawyer Discipline* and heard argument from both the Bar and Respondent as to the appropriate sanction to be imposed. After due deliberation, based upon the Respondent's lengthy prior record and the nature of the misconduct proved, the Court by unanimous decision

ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be revoked; and it is further

ORDERED that the terms and provisions of the Summary Order entered by this Court at the conclusion of the hearing conducted on October 19, 2005, be, and the same hereby are, merged herein; and it is further

ORDERED that pursuant to Part Six, § IV, ¶ 13(B)(8)(c) of the *Rules of the Virginia Supreme Court*, the Clerk of the Disciplinary System shall assess costs against the Respondent; and it is further

ORDERED that in compliance with Rule 1:13 of the *Rules of the Virginia Supreme Court* shall be dispensed with by this Court as allowed by Rule 1:13 in this Court's discretion; and it is further

ORDERED that four (4) copies of this Order be certified by the Clerk of this Court, and be thereafter mailed by said Clerk to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

AND THIS ORDER IS FINAL.

ENTERED this 21st day of December, 2005.

Benjamin N.A. Kendrick,
Chief Judge of the Three-Judge Court

H. Selwyn Smith,
Judge, Retired

Joseph E. Spruill, Jr.
Judge, Retired

A COPY TESTE:
JOHN T. FREY, CLERK
BY: _____
Deputy Clerk
Date: 1-23-06
Original retained in the office of the Clerk of the Circuit Court of Fairfax County, Virginia