VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF:

ROBERT DEAN EISEN

VSB DOCKET NUMBERS: 01-022-0845;
01-022-1356;
01-022-2414;
02-022-1800;
02-022-3844;
and 02-022-4096.

ORDER OF REVOCATION

On January 22, 2004, a hearing was convened before a duly appointed panel of the Board, consisting of Roscoe B. Stephenson, Chair, Robert E. Eicher, Joseph R. Lassiter, W. Jefferson O'Flaherty (lay member), and Janipher W. Robinson. The Clerk of the Disciplinary System sent all notices required by law.

The Virginia State Bar was represented by Richard E. Slaney, Assistant Bar Counsel.

The Respondent, Robert Dean Eisen, appeared in person and with his counsel, James A. Evans.

Tracy J. Stroh, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, having been duly sworn, reported the hearing.

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

These matters came before the Board pursuant two certifications of the Second, Section II District Subcommittee as follows: (i) VSB Docket Numbers: 01-022-0845, 01-022-1356, and 01-

022-2414, certified on June 7, 2002; and (ii) VSB Docket Numbers: 02-022-1800, 02-022-3844, and 02-022-4096, certified on December 17, 2002.

Bar Exhibits 1 through 36 were admitted in evidence, without objection, in VSB Docket Nos. 01-022-0845, 01-022-1356, and 01-022-2414. Bar Exhibits 1 through 28 were admitted in evidence, without objection, in VSB Docket Nos. 02-022-1800, 02-022-3844, and 02-022-4096. Respondent Ex. 1 (collectively) was admitted in evidence, without objection. Testimony ore tenus was received from witnesses called by the Bar, *viz.*, Tazewell Hubbard, Esq., William P. Robinson, Jr., Esq., and Bar investigators Eugene Reagan and Ronald Pohrivchak. The Respondent testified on his own behalf.

FINDINGS OF FACT

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

Docket Number 01-022-0845

2. In mid and late 1990's, Mr. Eisen represented Raymond Caldeyro (Caldeyro) in a personal injury matter.

3. In 1997, Advanced Funding Corp. (Advanced Funding) loaned Caldéyro funds against the personal injury claim being handled by Mr. Eisen. Mr. Eisen signed a document acknowledging the loan in August, 1997.

4. In April, 2000, Mr. Eisen settled Caldeyro's claim for $4,500.00, which was deposited into Mr. Eisen's Trust Account (account number 8737-4358 at First Virginia Bank) (hereinafter the Trust Account and the Bank respectively) on April 5, 2000.

5. An unexecuted Settlement Statement produced by Mr. Eisen shows deductions of

$1,800.00 in attorney's fees and $546.00 in costs, for a net recovery of $2,154.00. Although the Settlement Statement shows that the $2,154.00 was to be paid to Advanced Funding, Mr. Eisen never paid Advanced Funding. Additionally, the subsidiary ledger maintained by Mr. Eisen for the Caldeyro case only shows $129.00 in costs. When interviewed by Ron Pohrivchak on October 19, 2001, Mr. Eisen could not explain the discrepancy between the subsidiary ledger and the Settlement Statement, why there were no check numbers listed in regard to the costs paid and why the expenses shown on the Settlement Statement were not shown on his disbursement journal. Mr. Eisen was also asked to produce documentation to back up the expenses listed on the Settlement Statement. Mr. Eisen indicated he would research these issues and advise Mr. Pohrivchak of his findings. Mr. Eisen has not provided any additional information or documentation on these issues.

6. After April 5, 2000, Mr. Eisen should have had at least $2,145.00 in his Trust Account for the benefit of Caldeyro and/or Advanced Funding. A review of the Trust Account bank statements for April, 2000, however, shows the balance in the Trust Account fell to $10.40 as of April 28, 2000.

7. When interviewed by Mr. Pohrivchak on March 16, 2001, Mr. Eisen acknowledged the competing interests of Caldeyro and Advanced Funding in the net proceeds from the settlement of Caldeyro's claim. Mr. Eisen indicated he would file an interpleader action regarding the net proceeds by April, 2001. No interpleader action had been filed as of May 15, 2001, and no interpleader action was filed subsequently.

Docket No. 01-022-1356

8. In November of 2000, the bank sent correspondence to the Bar indicating Mr. Eisen's Trust Account was overdrawn, although the bank had honored and paid the item which

caused the overdraft.

9. On November 30, 2000 and December 13, 2000, the Bar wrote Mr. Eisen and requested an explanation of the overdraft in his Trust Account. Mr. Eisen did not respond to either letter, and a complaint file was opened. Mr. Eisen also failed to respond to a January 4, 2001 letter from the Bar indicating a formal complaint file had been opened and requesting a response.

10. The check which caused Mr. Eisen to overdraw the Trust Account was check number 1360 in the amount of $3,654.00, payable to Mr. Eisen's client, John Hall, and representing Mr. Hall's share of the proceeds from a GEICO settlement check deposited into the Trust Account on October 26, 2000. On November 6, 2000, at the time check number 1360 was paid by the bank, the Trust Account was short $117.83. Additionally, at this time Mr. Eisen should still have had $2,154.00 in the Trust Account for the benefit of Caldeyro and/or Advance Funding.

11. A review of the activity in the Trust Account showed numerous irregularities, including:

a. On the disbursement journal there is noted a $6,000.00 loan from the Trust Account to an office account in January of 2000.

b. A subsidiary ledger card for "R. Sachs", Mr. Eisen's now deceased mother-in-law, which shows a $15,000.00 deposit to the Trust Account and various payments to Mr. Eisen and Jeanette Eisen, his mother. Mr. Eisen could not offer Pohrivchak an explanation, asked that the Bar not interview his mother about these funds and indicated he would research the matter and respond in writing. No such response has been received.

c. Checks of $4,000.00 and $5,000.00 were deposited into the Trust Account with the notation "S. Stein loan". Mr. Eisen told Pohrivchak these were reimbursements for repairs Mr. Eisen made to investment property owned by Mr. Eisen and Stein. It is unclear why such payments should be labeled as a loan or placed in the Trust Account.

Docket Number 01-022-2414

12. In 1998, Mr. Eisen represented Sandra Witham (Witham) in a matter regarding her ex-husband, Matthew Stavish (Stavish). The parties had agreed for Stavish to relinquish parental rights over their child, Alexandra. Stavish was represented by Tazewell Hubbard (Hubbard).

13. Stavish agreed to pay Witham's attorney's fees of $500.00, and did so in October 1998.

14. On June 2, 1999, Hubbard sent Mr. Eisen an Agreement terminating Stavish's parental rights in regard to Alexandra, which was fully executed by Stavish. Mr. Eisen sent the Agreement to Witham, who signed it and returned it to Mr. Eisen within days. Mr. Eisen, however, did not send the Agreement to Hubbard or otherwise act to effectuate the Agreement.

15. Hubbard began writing to Mr. Eisen concerning the status of the Agreement. Mr. Eisen, however, did not respond to Hubbard's letters of June 18, August 9, and November 22 (forwarded by Certified Mail).

16. On March 5, 2000, Witham wrote Mr. Eisen, indicating she had confirmed with Mr. Eisen's secretary that the signed Agreement was still in Mr. Eisen's file.

17. On March 15, 2000, Hubbard sent further correspondence to Mr. Eisen by Certified Mail. This letter indicated Witham attempted to contact Hubbard directly as Mr. Eisen

had not returned telephone messages she had previously left for him.

18. On March 31, 2000, Mr. Eisen sent Hubbard the Agreement which had been executed by the parties in 1999. Thereafter, a disagreement arose between the attorneys as to which one was to prepare the Petition to be filed in court terminating Stavish's parental rights. In a letter dated June 1, 2000, Hubbard agreed to prepare and file such a Petition, and on August 28, 2000, Hubbard sent Mr. Eisen such a Petition, which required Witham's signature.

19. Hubbard then corresponded with Mr. Eisen on September 22, November 9, and December 17, 2000, but never received a reply or any communication from Mr. Eisen as to the status of the Petition.

20. In late 2001, or early 2002, Witham retained another attorney to assist her.

21. Upon information, it is believed Stavish has been denied credit on several occasions due to the delay in termination of his parental rights, and Mr. Eisen failed to respond to inquiries by fax and telephone from a loan officer in early 2001 seeking to determine the status of the matter.

22. In April, 2001, Stavish filed his complaint with the Bar. The complaint was sent to Mr. Eisen by letter dated April 18, 2001. Mr. Eisen never responded to the complaint.

23. Pohrivchak, the Bar Investigator assigned to the case, experienced extreme difficulty in meeting with Mr. Eisen regarding the complaint. When they did meet on October 19, 2001, Mr. Eisen requested additional time to research the causes of the delay in the matter. Mr. Eisen did not provide additional information.

Docket Number 02-022-1800 (Gale B. Reid)

24. In mid-1999, Mr. Eisen and Complainant Gale B. Reid (Reid) discussed the Supreme Court's decision in *Commonwealth v. Baker*, 258 Va. 1 (1999), and its potential

applicability to a case involving Reid's son, Tiron Hutchins (Hutchins). A habeas corpus petition was envisioned alleging one or both of Hutchins' parents were not properly notified of a criminal proceeding against Hutchins.

25. Mr. Eisen quoted a $5,000.00 fee and indicated he needed at least $2,500.00 before he would begin work on the matter. Reid or members of her family paid Mr. Eisen the following amounts:

$1,500.00	on July 15, 1999;
$900.00	on July 16, 1999;
$400.00	on July 30, 1999;
$350.00	on August 1, 1999;
$350.00	on August 6, 1999;
$500.00	on August 30, 1999;
$400.00	on September 10, 1999;
$355.00	on October 29, 1999; and
$455.00	on November 12, 1999.

Mr. Eisen failed to deposit any of the funds into his trust account.

26. Mr. Eisen did little, if any, work on the case for Reid's son. At some point during 2000, Mr. Eisen told Reid that he had filed a pleading on her son's behalf. No pleading had been actually filed. Thereafter, Reid was unable to speak to or otherwise communicate with Mr. Eisen.

27. Subsequently, in September, 2001, the Virginia Supreme Court decided several cases which severely limited the effect of the *Baker* case and eliminated the grounds for the habeas corpus petition in Hutchins' case. Thereafter, Reid learned from various sources Mr. Eisen had not filed anything on her son's behalf.

28. Reid then approached another attorney, Alan Zaleski (Zaleski), to discuss what could be done to assist her son. Zaleski indicated he would assist Reid upon payment of a fee, and would approach Mr. Eisen about refunding a portion or all of the fee paid to him.

29. Mr. Eisen, through Zaleski, indicated he would refund a substantial portion of the

fee he had received, but no refund was made.

30. Reid filed a complaint against Mr. Eisen with the Bar in November, 2001. Mr. Eisen failed to respond to two letters from the Bar's Intake Department, and failed to respond to the complaint letter sent to him on January 2, 2002.

Docket Number 02-022-3844 (Lester L. Morris)

31. Complainant Lester L. Morris (Morris) was convicted of several crimes and sentenced on October 24, 2001.

32. Morris was dissatisfied with the services of his counsel at that time, and on the day he was sentenced, spoke to Mr. Eisen about representing him on appeal and in post-trial motions. Mr. Eisen indicated that he would review the matter for $1,500.00 and would undertake the appeal representation for an additional $5,000.00.

33. In late October, 2001, Mr. Eisen received $1.500.00 on Morris' behalf. Eventually, an additional $5,000.00 was paid to Mr. Eisen for Morris. None of these funds were deposited into Mr. Eisen's trust account.

34. Mr. Eisen did little or no work on Morris' case, and never entered an appearance on behalf of Morris. Then, Morris' trial counsel was appointed by the trial court to prosecute Morris' appeal. Said counsel undertook the appeal.

35. Mr. Eisen failed to communicate with Morris or members of Morris' family.

36. By letter dated February 27, 2002, Morris fired Mr. Eisen, requested a refund and return of his file materials. Despite repeated requests, Mr. Eisen never refunded any of the money he had received on Morris' behalf, and never returned Morris' file materials.

Docket Number 02-022-4096 (Dennis Rogers)

37. On January 2, 2001, the Complainant, Dennis Rogers (Rogers), paid Mr. Eisen

$2,100.00 by three money orders for representation of Rogers' brother, Edward Rogers, to assist Edward Rogers in obtaining post-conviction relief. The money orders were cashed the next day, but these funds were never deposited into Mr. Eisen's trust account.

38. Thereafter, Mr. Eisen performed little or no work on Edward Rogers' behalf. Mr. Eisen did not file a petition or motion. No post-conviction relief was sought by Mr. Eisen for Edward Rogers. On information, the post-conviction relief sought by Rogers is no longer available.

39. Dennis Rogers, Edward Rogers, and other family members experienced extreme difficulty communicating with Mr. Eisen.

40. Later, Dennis Rogers' wife, Carline Rogers, spoke with Mr. Eisen by telephone. Mr. Eisen promised a partial refund and an accounting of the work he performed to justify any portion of the fee not refunded. No accounting was provided, and no refund was received.

Upon receipt of all evidence presented as to the charges of misconduct, the Board heard argument, and then retired to deliberate what violations, if any, were shown by clear and convincing evidence. Following its deliberation the Board reconvened in open session and announced that it had unanimously found by clear and convincing evidence the following violations:

Docket Number 01-022-0845

In the case of Raymond Caldeyro, the Respondent committed violations of the following rules, *to wit:* Rule 1.3(a), Rule 1.15(c)(3), Rule 1.15(c)(4), Rule 1.15(e), Rule 8.1(c), and Rule 8.4(b).

RULE 1.3 Diligence

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

RULE 1.15 Safekeeping Property

(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.

(e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer", shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1:15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

(1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:

(i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(ii) a cash disbursement journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(iii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(iv) reconciliations and supporting records required under this Rule;

(v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary

relationship.

(2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

(i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;

(ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above

(iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

RULE 8.1 Bar Admission And Disciplinary Matters

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or 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;

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 to practice law;

The Board did not find violations of the other rules charged under that docket number, *to wit:* Rule 1.15(a), Rule 1.15(c)(1), Rule 1.15(c)(2), Rule 1.15(f), and Rule 8.1(d).

Docket Number 01-22-1356

In the case of Raymond Caldeyro and the Trust Account, the Respondent committed violations of the following rules, *to wit:* Rule 1.15(a), Rule 1.15(c)(3), *quoted above*, Rule

1.15(c)(4), *quoted above*, Rule 1.15(d), Rule 1.15(e), *quoted above*, and Rule 8.1(c) *quoted above.*

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 . . .

(d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

(1) funds may be maintained in a common escrow account subject to the provisions of Rule 1.15(a) and (c) in the following cases:

(i) funds that will likely be disbursed or distributed within thirty (30) days of deposit or receipt;

(ii) funds of $5,000.00 or less with respect to each trust or other fiduciary relationship;

(iii) funds held temporarily for the purposes of paying insurance premiums or held for appropriate administration of trusts otherwise funded solely by life insurance policies; or

(iv) trusts established pursuant to deeds of trust to which the provisions of Code of Virginia Section 55-58 through 55-67 are applicable;

(2) funds, securities, or other properties may be maintained in a common account:

(i) where a common account is authorized by a will or trust instrument;

(ii) where authorized by applicable state or federal laws or regulations or by order of a supervising court of competent jurisdiction; or

(iii) where (a) a computerized or manual accounting system is established with record-keeping, accounting, clerical and administrative procedures to compute and credit or change to each fiduciary interest its pro-rata share of common account income, expenses, receipts and disbursements and investment activities (requiring monthly balancing and reconciliation of such common accounts), (b) the fiduciary at all times shows upon its records the interests of each separate fiduciary interest in each fund, security or other property held in the common account, the totals of which assets reconcile with the totals of the common account, (c) all the assets

comprising the common account are titled or held in the name of the common account, and (d) no funds or property of the lawyer or law firm or funds or property held by the lawyer or the law firm other than as a fiduciary are held in the common account. For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

The Board did not find violations of the other rules charged under that docket number, *to wit:* Rule 1.15(c)(1), Rule 1.15(c)(2), Rule 1.15(f), and Rule 8.1(d).

Docket Number 01-022-2414

In the case of Matthew Stavish/Sandra Witham, the Respondent committed violations of the following rules, *to wit:* Rule 1.3(a), *quoted above*, Rule 1.3(b), Rule 1.4(a), and Rule 8.1(d).

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.

RULE 8.1 Bar Admission And Disciplinary Matters

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

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

The Board did not find violations of the other rules charged under that docket number, *to wit:* Rule 1.4(c) and Rule 8.1(c).

Docket Number 02-022-1800

In the case of Gale B. Reid, the Respondent committed violations of the following rules,

to wit: DR 6-101(B), DR 6-101(C), DR 7-101(A)(1), DR 7-101(A)(2), DR 9-102(A), DR 9-102(B)(3), DR 9-102(B)(4), Rule 1.3(a), *quoted above*, Rule 1.3(b), *quoted above*, Rule 1.4(a)[1], *quoted above*, Rule 1.15(c)(4), *quoted above*, Rule 1.16(d), and Rule 8.1(c), *quoted above*.

DR 6-101 Competence and Promptness

(B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.

(C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

DR 7-101 Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B).

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(2) Fail to carry out a contract of employment entered into with a client for professional services, but he may withdraw as permitted under DR 2-108, DR 5-102, and DR 5-105.

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

(A) All funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, residing in this State or from a transaction arising in this State, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable trust accounts and, as to client funds, maintained at a financial institution in a state in which the lawyer maintains a law office, 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.

(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

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[1] The undersigned points out that the Certification erroneously enumerates this rule as "Rule 1.4(d)." Certification, page 4. At the hearing, and in reference to the Certification, the Board announced finding a violation of "Rule 1.4(d)." However, the violation is in fact a violation of Rule 1.4(a), the substance of that rule being set out verbatim in the Certification, but erroneously enumerated. The Rules of Professional Conduct contain no rule enumerated "Rule 1.4(d)."

lawyer or law firm must be withdrawn promptly after they are 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.

(B) 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 his client regarding them.

(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 1.16 Declining Or Terminating Representation

(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).

The Board did not find violations of the other rules charged under that docket number, *to wit:* DR 7-101(A)(3), DR 9-102(B)(2), and Rule 1.3(c). The allegation of a violation of Rule 8.4(c) was withdrawn by the Bar, and no violation was, therefore, found pursuant to that rule.

Docket Number 02-022-3844

In the case of Lester D. Morris, the Respondent committed violations of the following rules, *to wit:* Rule 1.3(a), Rule 1.3(b), Rule 1.4(a), Rule 1.15(a), Rule 1.15(c)(3), Rule 1.15(c)(4), and Rule 1.16(d), *all rules previously quoted above.*

The Board did not find violations of the other rules charged under that docket number, *to wit:* Rule 1.15(c)(2) and Rule 1.16(e).

Docket Number 02-022-4096

In the case of Dennis Rogers/Edward Rogers, the Respondent committed violations of the

following rules, *to wit:* Rule 1.3(a), Rule 1.3(b), Rule 1.4(a), Rule 1.15(a), Rule 1.15(c)(3), Rule 1.15(c)(4), and Rule 1.16(d), *all rules previously quoted above.*

The Board did not find violations of the other rules charged under that docket number, *to wit:* Rule 1.3(c) and Rule 1.15(c)(2).

CONSIDERATION OF SANCTION

After announcing its findings of misconduct the Board called for evidence in mitigation or in aggravation.

The Virginia State Bar introduced Bar Exhibit 1-A, which was received in evidence without objection, showing a prior disciplinary record of (1) a private reprimand from the Board in 1985 relating to controlled substances; and (2) a Second District Committee Dismissal with Terms relating to real estate settlement procedures.

The Respondent introduced Respondent's Exhibits 2 and 3, which were received in evidence, without objection. The Respondent also presented his testimony and that of his wife.

The gist of the Respondent's testimony was that he has a long history of depression; and that a chemical deficiency in his body resulted in a dependency on opiates, and, in turn, hospitalization and treatment for depression and drug abuse. He testified that, because of medication prescribed by a Florida physician, which he began in March or April of 2003, he is doing well toward a full recovery. His local physicians' letters, dated March 14, 2003, and October 8, 2003, speak to an excellent prognosis.

The Respondent's explanation for the misconduct was that his depression, coupled with his opiate dependency, left him inattentive, unfocused, and unable to cope except for "big" cases that stimulated him. His hospital progress notes on November 18, 2002, refer to his "higher

functioning when he has a big case - a big fee an [sic] lower functioning when business is slow." The misconduct did not occur with "big case" clients, yet the loyalty and diligence required of lawyers, as well as compliance with the disciplinary rules, do not vary from client to client.

However, the Respondent failed to produce any evidence from a physician or other expert establishing a cause and effect, or causal nexus, between his depression and the acts and omissions of his misconduct. Whether the Respondent's misconduct is tempered by depression, as he claims, is left to speculation in lieu of competent medical evidence. The Respondent failed to produce a letter from any physician after Dr. Goldman's conclusory letter of October 8, 2003, and failed to produce any letter from the Florida physician whose protocol the Respondent is following. This failure of Respondent's proof is fatal to his defense. The Respondent bears the affirmative burden of proof "[w]henever the existence of a Disability is alleged . . . in mitigation of Charges of Misconduct". Paragraph 13.I.6.a., Part Six, Section IV of the Rules of the Supreme Court of Virginia. The Board cannot base its findings on speculation. In the final analysis, the proof before us demonstrates that the Respondent engaged in an egregious pattern of misconduct over a considerable length of time resulting in harm to many clients. Respondent has failed to prove mitigation based on his conditions leading to his prior disability.

The Respondent testified to his doing "the right thing" in surrendering his law license for suspension in a disability hearing in the Circuit Court of the City of Norfolk, which was later restored. The Board notes that the Respondent did so only days before this Board was to convene a hearing on the disciplinary charges against him. In any event, this largely speaks to the issues of his disability suspension and later reinstatement, and not to the issues now before the Board.

The Respondent stated that he deeply regrets the harm he caused his clients, and that he

intends to refund all moneys wrongfully taken from clients. But he made it equally clear that he has made no attempt to reconcile or audit his trust account to determine what is missing, and thereby ought to be refunded.

We are left with only one conclusion. The Respondent's misconduct was egregious and unmitigated. It was fraught with dishonesty and neglect. His trust account was a misnomer. He repeatedly took money from clients for services he did not render. He used money that was not his. His conduct prejudiced clients. His conduct mocked a fiduciary relationship with his clients. He did so knowingly.

Upon receipt of all evidence presented in mitigation or aggravation of the findings of misconduct, the Board heard argument, and then retired to deliberate what sanction should be imposed. Following its deliberation the Board reconvened in open session and announced that it had unanimously found that the Respondent's license to practice law in the Commonwealth of Virginia should be revoked. Accordingly, it is ORDERED that the license of the Respondent, Robert Dean Eisen, to practice law in the Commonwealth of Virginia be and hereby is REVOKED effective January 22, 2004.

IT IS FURTHER ORDERED pursuant to Part Six, Section IV, Paragraph 13 (M) of the Rules of the Supreme Court of Virginia, the Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective

date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective date of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

IT IS FURTHER ORDERED that if the Respondent is not handling any client matters on the effective date of his revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

IT IS FURTHER ORDERED that an attested and true copy of this ORDER be mailed, return receipt requested, to Respondent Robert Dean Eisen, at ~~125 St. Paul's Boulevard, Suite~~ 2612 Ship's Watch Court, Virginia Beach, 23451 ~~503, Norfolk~~, Virginia ~~23510,~~ his address of record with the Virginia State Bar, and also mailed to Respondent's counsel, James A. Evans, 2101 Parks Avenue, Suite 800, Virginia Beach, Virginia 23451-4160, and delivered by hand to Richard E. Slaney, Assistant Bar Counsel.

ENTERED, this 5th day of March, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: Roscoe B. Stephenson III
ROSCOE B. STEPHENSON, III, Chair