V I R G I N I A :

BEFORE THE DISCIPLINARY BOARD OF THE VIRGINIA STATE BAR

IN THE MATTER OF	)	VSB DOCKET NO. 00-010-1692
	)	
VINCENT NAPOLEON GODWIN	)	VSB DOCKET NO. 01-010-0068

OPINION AND ORDER OF SUSPENSION

These matters were certified to the Virginia State Bar Disciplinary Board (the "Board") by the First District Subcommittee and came on to be heard on December 12, 2003, by a duly convened panel of the Board, consisting of Roscoe B. Stephenson, III, Chair, W. Jefferson O'Flaherty, lay member, Richard J. Colten, Virginia W. Powell, and Robert E. Eicher. The Clerk of the Disciplinary System timely sent all notices required by law.

The respondent, Vincent Napoleon Godwin ("Respondent") was present and represented himself. The Virginia State Bar (the "Bar") was represented by Assistant Bar Counsel Edward L. Davis. The proceedings were recorded by Tracy J. Stroh, a registered court reporter, Chandler & Halasz, Post Office Box 9349, Richmond, Virginia 23227, (804) 780-1222, having been duly sworn by the Chair.

The Chair inquired of the members of the panel of the Board whether any of them had a personal or financial interest or bias that would preclude their hearing the matter fairly and impartially. Each member and the Chair answered the inquiry in the negative.

I. VSB Docket No. 00-010-1692 (Wilbert Hall)

Bar Exhibits 1 through 8 were admitted in evidence without objection. The Board also received from counsel for the Bar a Certification as to Stipulations without objection from the Respondent. The Respondent did not offer any exhibits.

Oral testimony was received from witnesses called by the Bar, *viz*., Wilbert Hall, Eugene L. Reagan, who is an investigator for the Bar, and the Respondent. The Respondent testified on his own behalf.

Upon consideration of the evidence and argument, the Board finds that the following facts were proved by clear and convincing evidence, to wit:

1. At all times relevant to this matter, the Respondent was licensed to practice law in the Commonwealth of Virginia.

2. On April 26, 1999, the Respondent approached Wilbert Hall ("Mr. Hall"), a long-time family friend, about a loan from Mr. Hall because the Respondent was behind in the payment of some bills. Mr. Hall, who had made loans to the Respondent on prior occasions, agreed to make the loan the Respondent requested.

3. On April 27, 1999, Mr. Hall delivered his check payable to the Respondent in the amount of $7,500. The Respondent endorsed the check in blank and returned it to Mr. Hall, whereupon Mr. Hall gave the Respondent what Mr. Hall claims to have been a loan of $7,500, and the Respondent claims to have been a loan of $5,000. The Respondent gave Mr. Hall the Respondent's promissory note, dated April 27, 1999, payable to Mr. Hall on or before June 1, 1999, in the amount of $7,500. The Board notes that whether the loan made was $5,000 or $7,500 is of no consequence with respect to the charges of misconduct against the Respondent.

4. The Respondent did not repay the loan to Mr. Hall on June 1, 1999. Instead, the Respondent offered Mr. Hall a $2,500 bonus if Mr. Hall would extend the time for repayment. Mr. Hall agreed, and on July 6, 1999, the Respondent delivered his promissory note to Mr. Hall in the amount of $10,000, payable to Mr. Hall on or before September 1, 1999.

5. The Respondent defaulted in payment on September 1, 1999, but thereafter promised payment to Mr. Hall. On September 20, 1999, Mr. Hall obtained a warrant in debt against the Respondent in the amount of $7,500, returnable to court on October 20, 1999. The Respondent met Mr. Hall at the courthouse steps on the return date and said he needed two more weeks to pay. Mr. Hall agreed and had the court continue the case until November 3, 1999.

6. On November 2, 1999, the Respondent delivered a check payable to Mr. Hall in the amount of $10,000, which the Respondent postdated to November 12, 1999, telling Mr. Hall that it would take ten days for the money to be in the bank. Mr. Hall then continued the case to December 8, 1999. The Respondent's check for $10,000, number 2007, was drawn on his law office Escrow Account at First Union National Bank.

7. The Respondent knew when he delivered the $10,000 check drawn on his Escrow Account that there were not sufficient funds on deposit to cover the check. Mr. Hall deposited the Respondent's check on November 24, 1999, and it was returned on November 30, 1999, for not sufficient funds.

8. Subsequent to November 30, 1999, Mr. Hall called the Respondent about his returned check. The Respondent told Mr. Hall that the Respondent was having trouble getting money transferred in Canada to cover his check.

9. Mr. Hall appeared in court on December 8, 1999, and took judgment against the Respondent for $7,500 pursuant to the warrant in debt.

10. The Respondent failed to appear in response to Mr. Hall's summons to answer debtor's interrogatories on March 15, 2000.

11. Mr. Hall informed the Respondent of Mr. Hall's intention to file a complaint with the Bar regarding the returned check drawn on the Respondent's Escrow Account. The

Respondent replied that Mr. Hall should not file a complaint because the Respondent had used other checks drawn on his Escrow Account, the complaint would result in a "bag of worms" for his law license, Mr. Hall would have no way to get his money if the Respondent could not practice law.

12. The Bar's investigator's testimony, coupled with bank records of the Respondent's Escrow Account, showed three other checks that the Respondent drew against his Escrow Account for personal expenses, one for compensation due an employee and two for the Respondent's rent.

Upon consideration of the foregoing, the Board, in closed session, unanimously found by clear and convincing evidence that the Respondent's conduct constitutes a violation of the following:

DR 1-102. Misconduct.

(A) A lawyer shall not:

(3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.

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 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.

II. VSB Docket No. 01-010-0068 (Geraldine Jones)

Bar Exhibits 1 through 3 were admitted in evidence without objection. The Respondent did not offer any exhibits.

Oral testimony was received from witnesses called by the Bar, *viz*., Geraldine Jones, Eugene L. Reagan, who is an investigator for the Bar, and the Respondent. The Respondent testified on his own behalf.

Upon consideration of the evidence and argument, the Board finds that the following facts were proved by clear and convincing evidence, to wit:

1. At all times relevant to this matter, the Respondent was licensed to practice law in the Commonwealth of Virginia.

2. Geraldine Jones ("Mrs. Jones") met with the Respondent at his office on July 7, 1998, about filing an individual bankruptcy proceeding for her and her husband. The meeting lasted approximately fifteen minutes. The Respondent gave her an information sheet to fill out and return. The Respondent stated his fee as $600, and Mrs. Jones paid him $200 on account.

3. Mrs. Jones and her husband had second thoughts about a bankruptcy. She did not meet with the Respondent again until December 30, 1999, when he told her that she needed to update the information sheet for him to move the bankruptcy filing along. Mrs. Jones paid $225 to the Respondent on December 30, 1999, which he either deposited in his operating account or placed in his desk drawer, instead of in his trust account.

4. Mrs. Green returned to the Respondent's office to meet with him in April of 2000 and pay the balance of $175 due. The Respondent told her to come back in a couple of weeks. Mrs. Jones returned to the Respondent's office a couple of weeks later and found the office locked and the Respondent's name removed from the door. The Respondent had not informed Mrs. Jones of a change in his location or address.

5. The Respondent never prepared or filed a bankruptcy petition for Mrs. Jones and her husband and had no file to turn over to her. Mrs. Jones hired another bankruptcy lawyer.

6. Between July of 1998 and April of 2000 the Respondent had no communication with Mrs. Jones excepting her visit to his office on December 30, 1999.

7. The Respondent's Escrow Account at First Union National Bank was closed on January 31, 2000, and was then overdrawn. The last deposit had been on November 1, 1999. On July 24, 2000, the Respondent told Mrs. Jones that he would refund $425.00 to her; he has not done so.

Upon consideration of the foregoing, the Board, in closed session, unanimously found by clear and convincing evidence that the Respondent's conduct constitutes a violation of the following:

DR 1-102. Misconduct.

(A) A lawyer shall not:

(3) Commit a crime or other deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law.

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 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:

(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.

As to misconduct that took place after January 1, 2000, the Board found that the following Rules of Professional Conduct were violated:

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 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 services 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 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, after announcing its findings of misconduct, called for evidence in mitigation or in aggravation. Counsel for the Bar stated that the Respondent had no prior disciplinary record, that the Respondent resides in Massachusetts, and that the Respondent does not engage in the practice of law.

The Respondent testified that the $10,000 check he gave Mr. Hall should not have been drawn on his Escrow Account, that his doing so occurred because the check books for his Escrow Account and Operating Account were similar, and that he took the Escrow Account check book from his desk hurriedly and did not pay attention to which check book he was using. The Respondent said he knew that he did not have $10,000 in the bank when he delivered the check, and that he did not expect Mr. Hall would deposit the check.

With respect to the other three checks drawn on his Escrow Account, the Respondent said that the check book was at hand, and that it was expedient to use it because the payments had to be made. The Respondent admitted that he was wrong and made a serious mistake in drawing checks on his Escrow Account for personal expenses.

The Respondent said he knew that he should have refunded Ms. Jones' $425 to her. He also said that he should have notified her he was closing his law practice. In the Hall matter and the Jones matter, the Respondent said that his conduct was completely out of character because of extreme stress he was undergoing in his family life during the relevant time period. The Bar's investigator testified that the Respondent appeared to be under stress when he interviewed the Respondent.

The Respondent said that he opened his law office in 1991, and that until the Hall matter and the Jones matter, he had never drawn a check on his Escrow Account for personal expenses, never had a check returned for insufficient funds, and never withheld money from deposit in his Escrow Account when he had not performed the services for which the money was paid him. The Respondent said that he moved to Massachusetts in June of 2000 and resides there and has not practiced law since at least June of 2000.

III. Imposition of Sanction

Upon consideration of the foregoing, the Board found, and it is so ORDERED, that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of three (3) years effective December 12, 2003.

It is further ORDERED that as directed in the Board's December 12, 2003 Summary Order in this matter, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of his suspension, 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 the Clerk of the Disciplinary System shall mail an attested copy of this order to Respondent Vincent Napoleon Godwin at his address of record with the Virginia State Bar, 22253 Deep Bottom Drive, Carrollton, Virginia 23314, by certified mail, return receipt requested, and by regular mail to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

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

ENTERED this ____ day of January, 2004.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By_____
Roscoe B. Stephenson, III, Chair

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