

DEC 9 2004

**VIRGINIA :**

**BEFORE THE DISCIPLINARY BOARD OF THE  
VIRGINIA STATE BAR**

**IN THE MATTER OF LAWRENCE RAYMOND MORTON, ESQUIRE  
VSB Docket No. 04-053-0421**

**ORDER**

This matter came on to be heard on December 6, 2004, upon the Agreed Disposition of the Virginia State Bar and the Respondent, based upon the Certification of a Fifth District-Section III Subcommittee. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, Chair, Bruce T. Clark, Esquire, Russell W. Updike, Esquire, V. Max Beard, lay member, and David R. Schultz, Esquire. The court reporter attending the proceedings was Donna Chandler, Chandler & Halasz, Inc., P.O. Box 9349, Richmond, VA 23227, (804) 730-1222.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Lawrence Raymond Morton, Esquire, appearing *pro se*, presented an endorsed Agreed Disposition, dated November 30, 2004, reflecting the terms of the Agreed Disposition.

Having considered the Certification and the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant to the matters set forth herein, Lawrence Raymond Morton, Esquire (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. On or about September 27, 2002, the Prince William County, Virginia, Circuit Court appointed the Respondent to represent Jeffrey L. Gray (hereafter “Complainant”) on an appeal of a criminal conviction rendered by that Court. The Respondent had not represented the Complainant at trial.

3. The Virginia Court of Appeals issued an Order on December 3, 2002, stating that a transcript had not been timely filed, and directing the Complainant to show cause why the appeal should not be dismissed. *Inter alia*, the Order directed the Complainant to “state clearly any questions properly presented by this appeal . . . and preserved for appellate review . . . which can be considered without resort to this volume of transcript.”

4. In response to the aforesaid Order, the Respondent filed a pleading, styled “Appellant’s Response to Show Cause Notice to Dismiss” stating, *inter alia*:

Fifth, the question which Appellant will present in his Petition for Appeal is whether he had ineffective assistance of counsel at trial. Appellant’s defense was and is not that there was an absence of any of the objective elements of the crime of construction fraud (Virginia Code section 18.2-200.1), but that his illness in the months after receiving a deposit for a home remodeling job prevented him from conduction [*sic*] any business affairs. This would include not only being able to perform the remodeling job itself, but also being able to perform the administrative and financial portion of the business, which would include returning the deposit (or at least the unused portion of it) when requested. Appellant’s trial counsel did little, if anything, to develop this line of medical evidence. Appellant’s trial counsel did not offer any jury instruction to the effect that if illness was found to be of such severity as to constitute a temporary total disability, one may not be convicted for failing to perform an act when one was under a disability and could not do so.

5. On December 20, 2002, the Virginia Court of Appeals issued an Order dismissing

the appellate case, stating, *inter alia*:

\*\*\*In response to this Court's December 3, 2002, show-cause order, appellant has represented that he will raise on appeal the issue of whether he had ineffective assistance of counsel at trial.

However, claims of ineffective assistance of counsel may no longer be raised on direct appeal. Code § 19.2-317.1, which allowed direct appeal of such claims under certain circumstances, was repealed in 1990. [Citations omitted.] As the appellant has not represented that there are any other questions which can be determined without reference to a transcript or statement of facts regarding the April 10, 2002 trial, this case is hereby dismissed. [Citations omitted.]

6. During an interview with a Virginia State Bar investigator on February 5, 2004, the Respondent stated that he understood that a claim of ineffective assistance of counsel could only be raised via a *habeas corpus* petition, and not on direct appeal. The Respondent stated to the investigator that he was not aware of this until after he was notified by the Court in its aforesaid Order of December 20, 2002.

7. The Virginia State Bar opened a formal Complaint respecting the Respondent's representation of the Complainant. On September 2, 2003, Bar Counsel directed a letter of that date to Respondent, enclosing the Complaint, and stating, *inter alia*, in bold and underlined text, the following: "please review the complaint and provide this office with a written answer, including an original and one copy of your response and all attached exhibits, within twenty-one (21) days of the date of this letter." The Respondent failed to file a written response to the Complaint with the Bar as required by the said letter, either within twenty-one (21) days, or at any time thereafter.

The Board finds by clear and convincing evidence that such conduct on the part of

Lawrence Raymond Morton, Esquire, constitutes a violation of the following Rules of Professional Conduct:

**RULE 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**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[.]

Upon consideration whereof, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia shall be suspended for a period of sixty (60) days, to commence on the 2<sup>nd</sup> day April, 2006, as representing an appropriate sanction if this matter were to be heard. (The commencement date for the suspension provided for herein is the date upon which the Respondent is eligible for reinstatement of his license to practice law in Virginia following a two-year license suspension that was imposed for other disciplinary matters.); and it is further

ORDERED that if the Respondent is not handling any client matters on the effective date of 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.

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 costs against the Respondent.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, Lawrence Raymond Morton, at his address of record with the Virginia State Bar, 17850 Curtis Drive, Dumfries, VA 22026, and by first class, regular mail, to Seth M. Guggenheim, Assistant Bar Counsel, at Virginia State Bar, 100 N. Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED this 7<sup>th</sup> day of DECEMBER, 2004.

  
Peter A. Dingman, 2<sup>nd</sup> Vice-Chair  
Virginia State Bar Disciplinary Board