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DISCIPLINARY PROCEEDINGS

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<b>Respondent's Name</b>	<b>Address of Record (City/County)</b>	<b>Action</b>	<b>Effective Date</b>	<b>Page</b>
<b><u>Circuit Court</u></b>				
Charles V. Bashara	Norfolk, VA	Thirty Day Suspension w/ Terms	November 9, 2006	2
Walter Franklin Green, IV*	Harrisonburg, VA	Six Month Suspension	January 1, 2007	5
Michael Morchowder	Richmond, VA	Admonition	December 18, 2006	11
<b><u>Disciplinary Board</u></b>				
Claude Alexander Allen	Gaithersburg, MD	Ninety Day Suspension w/ Terms	November 17, 2006	13
Meek Daniel Clark	Richmond, VA	Suspension	January 26, 2007	n/a
Walter Franklin Green, IV	Harrisonburg, VA	Forty-five Day Suspension	July 1, 2007	n/a
Robert John Harris	Lovettsville, VA	Sixty Day Suspension	December 15, 2006	n/a
Robert Joseph Hill	Fairfax, VA	Sixty Day Suspension	February 5, 2007	n/a
Catherine Ann Lee	Mechanicsville, VA	Suspension	January 4, 2007	n/a
Andrew Mark Steinberg	Woodbridge, VA	Suspension	January 4, 2007	n/a
Dwayne Bernard Strothers	Suffolk, VA	Revocation	December 15, 2006	15
Alan S. Toppelberg	Alexandria, VA	Sixty Day Suspension w/ Thirty Days Suspended w/ Terms	December 15, 2006	17
John Joseph Vavala	Virginia Beach, VA	Consent to Revocation	December 15, 2006	n/a
<b><u>District Committees</u></b>				
James Drewry Hudkins Hill	Glen Allen, VA	Public Reprimand	January 16, 2007	19
<b><u>Disciplinary Board Reinstatement Recommendations</u></b>				
Charles Daugherty Fugate, II***	Bristol, VA	Recommend Reinstatement to VSC	November 17, 2006	21
James E. Ghee***	Farmville, VA	Recommend Denial of Reinstatement to VSC	October 27, 2006	24
<b><u>Cost Suspension</u></b>				
Joseph Louis Tantoh Tibui	Arlington, VA	Disciplinary Board	December 8, 2006	n/a
<b><u>Interim Suspensions—Failure to Comply w/Order</u></b>				
Marc James Small	Chester, VA	Disciplinary Board	January 4, 2007	n/a
<b><u>Interim Suspensions—Failure to Comply w/Subpoena</u></b>				
Michael John Denney	Warrenton, VA	Disciplinary Board	January 23, 2007	n/a
Stacy F. Garrett, III	Richmond, VA	Disciplinary Board	January 22, 2007 Lifted January 25, 2007	n/a

\*Respondent has noted an appeal with the Virginia Supreme Court.

\*\*Virginia Supreme Court granted stay of suspension pending appeal.

\*\*\*Virginia Supreme Court decision pending

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# CIRCUIT COURT

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VIRGINIA:  
BEFORE THE CIRCUIT COURT FOR THE CITY OF NORFOLK  
IN THE MATTER OF  
**CHARLES V. BASHARA**  
Case: VSB No. CL06-4823

## ORDER

THIS MATTER came to be heard on November 9, 2006, upon an Agreed Disposition between the Virginia State Bar and the Respondent, Charles V. Bashara, Esquire.

A Three-Judge Court impaneled by the Supreme Court of Virginia on October 5, 2006, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the Code of Virginia (1950) as Amended, consisting of the Honorable James E. Kulp, Retired Judge of the Fourteenth Judicial Circuit, the Honorable Von L. Pearsall, Jr., Retired Judge of the Third Judicial Circuit, and the Honorable Carl Edward Eason, Jr., Judge of the Fifth Judicial Circuit, designated Chief Judge, considered the matter by telephone conference. The Virginia State Bar appeared through its Assistant Bar Counsel, Edward L. Davis. The Respondent, Charles V. Bashara, participated in the telephone conference *pro se*.

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

### I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, Charles V. Bashara, was an attorney licensed to practice law in the Commonwealth of Virginia.
2. The complainant, Stefan D. Murza, D.C., a chiropractor, treated Charlie Artis for injuries sustained in a fall at a Wal-Mart store on January 30, 2003.
3. Dr. Murza would say that on March 11, 2003, following 24 visits, he released his patient from treatment with a total bill of \$1,990.
4. The same date, Mr. Artis executed an assignment directing his attorney to pay Dr. Murza's bill directly from any judgment or settlement.
5. Dr. Murza would say that in reliance of the terms of the assignment, he refrained from billing his patient directly pending resolution of the personal injury case. Mr. Bashara would say that he requested payment in full.
6. On an unknown date, but while he was treating with Dr. Murza, Mr. Artis hired Mr. Bashara to pursue a personal injury claim for him relating to the Wal-Mart accident.
7. By letter, dated February 6, 2003, Mr. Bashara asked Dr. Murza for a copy of the medical report and the bill for his services, and he agreed to send his assignment with the patient. Mr. Bashara would say that the client had some preexisting injuries that he needed the doctor to separate from the injuries sustained in the fall at Wal-Mart.
8. Dr. Murza responded by sending a copy of his medical charts and a bill that was stamped, "NOTICE OF LIEN FROM VA CODE Section 8.01-66.2," but no report.
9. On July 15, 2003, Mr. Bashara won a \$6,000 judgment for his client against Wal-Mart in the General District Court for the City of Norfolk.
10. Wal-Mart appealed the judgment to the circuit court, where the parties settled the case for \$3,000.
11. On July 22, 2003, Wal-Mart's claims service issued a check for \$3,000 payable to Mr. Bashara and Mr. Artis.
12. On August 6, 2003, Mr. Artis executed a release and a personal injury settlement sheet prepared by Mr. Bashara that listed Dr. Murza's bill, but excluded it from payment. The statement bore the inscription, "not paid by this office/client responsible."

13. The same date, Mr. Bashara disbursed \$1,251.83, representing his 33% contingent fee and costs, and disbursed the remaining funds, \$1,748.17, to his client.
14. Mr. Bashara paid none of the settlement to Dr. Murza, the client having said that the bills and records submitted by Dr. Murza were full of inaccuracies, and no report having been furnished in accordance with the terms of the assignment.
15. Dr. Murza kept a log of telephonic inquiries to Mr. Bashara. One annotation, dated 6-6-03, states, "Representing him, Pending." The rest of the annotations are dated August 27, 2003 and later, through the year 2004, and into 2005, all indicating that the matter is pending or that Mr. Bashara will look into it, although the matter had been closed on August 6, 2003. Mr. Bashara would say that no one on his staff is authorized to give such information about clients to anyone on the telephone.
16. Dr. Murza also sent letters of inquiry to Mr. Bashara on January 19, 2005 and February 7, 2005 demanding payment in full, the second letter threatening a complaint to the bar and Better Business Bureau. Receiving no reply, he complained to the bar on February 28, 2005. Mr. Bashara would say that he felt no obligation to pay in light of the threats and the fact that he had not received the report requested by his letter, dated February 17, 2003.
17. Mr. Bashara admitted to the bar that he received Dr. Murza's bill, but explained that he had asked Dr. Murza for an opinion concerning whether the injuries resulted from the accident at Wal-Mart, and that Dr. Murza had failed to do so. His letter to Dr. Murza, dated March 17, 2003, asked Dr. Murza to provide a report addressing this issue.
18. Dr. Murza, on the other hand, said that he never received the letter, although he did receive Mr. Bashara's first letter, dated February 6, 2003, asking for an opinion. Dr. Murza said that he would have been happy to compromise his lien as low as \$500. Mr. Bashara would say he never received a direct report from Dr. Murza that he would compromise his lien as low as \$500.
19. On February 6, 2006, after the bar investigated the matter, Mr. Bashara, having learned that Dr. Murza was willing to compromise his lien to \$500, issued Dr. Murza a check in that amount drawn from his law firm's IOLTA account accordingly.

## II. RULE VIOLATIONS

The parties agree that the foregoing facts give rise to violations of the following Rules of Professional Conduct:

### **RULE 1.15 Safekeeping Property**

(c) 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.

## III. STIPULATION AS TO DISPOSITION

In accordance with the Agreed Disposition, it is the decision of this Court to **suspend the license of the Respondent, Charles V. Bashara, to practice law in the Commonwealth of Virginia for a period of thirty (30) days**, with execution of the law license suspension suspended for a period of one (1) year subject to the following terms and conditions:

1. The Respondent, Charles V. Bashara is placed on disciplinary probation for a period of one (1) year, said period to begin on November 9, 2006, the date that this Honorable Court approved the Agreed Disposition. Mr. Bashara will engage in no professional misconduct as defined by the Virginia Rules of Professional Conduct during such one-year probationary period. Any final determination of misconduct determined by any District Committee of the Virginia State Bar, the Disciplinary Board, or a three-judge court to have occurred during such period will be deemed a violation of the terms and conditions of this Agreed Disposition and will result in the imposition of the Thirty-Day Suspension of the Respondent's license to practice law in the Commonwealth of Virginia. The Thirty-Day Suspension will not be imposed while Mr. Bashara is appealing any adverse decision that might result in a probation violation.

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CIRCUIT COURT

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2. Within one (1) year of the date that this Honorable Court approved this Agreed Disposition, or by November 8, 2007, the Respondent will attend an additional **six (6) hours of Continuing Legal Education (CLE) on the subject of ethics** for no annual CLE credit, and **one (1) or more additional hours of CLE in a course that includes at least one block of instruction on the subject of settling personal injury cases** for no annual CLE credit. The Respondent will certify his attendance at said course or courses in writing to the Bar Counsel's Office at the Virginia State Bar by the date specified.

Upon satisfactory proof that the terms and conditions of this Agreed Disposition have been met, this matter shall be closed. Failure to comply with any of the foregoing terms and conditions will result in the imposition of the alternate sanction: the suspension of the Respondent's license to practice law for a period of thirty (30) days.

The imposition of the alternate sanction will not require a hearing before the Virginia State Bar Disciplinary Board or a three-judge court on the underlying charges of misconduct stipulated to in this Agreed Disposition 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 the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court. Pursuant to Part 6, Sec. IV, Para. 13. B.8 (c) of the Rules, the Clerk of the Disciplinary System shall assess costs.

The court reporter who transcribed these proceedings is Leann Hettrick of Chandler and Halasz, Registered Professional Reporters, P. O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

ENTERED THIS 28th DAY OF November, 2006  
CIRCUIT COURT FOR THE CITY OF NORFOLK

Carl Edward Eason, Jr., Chief Judge  
Three-Judge Court

Von L. Pearsall, Retired Judge  
Three-Judge Court

James E. Kulp, Judge  
Three-Judge Court

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Editor's Note: Respondent has noted an appeal to Virginia Supreme Court.

VIRGINIA

IN THE CIRCUIT COURT OF ROCKINGHAM COUNTY

CASE NO. CL06-00507

**WALTER F. GREEN, IV**

VSB Docket Nos. 02-070-3523  
05-070-0206  
05-070-2448  
05-070-2450  
05-070-3011  
05-070-3625

### MEMORANDUM ORDER

This cause came on for hearing on September 14, 2006, and continued on November 14, 2006, before a duly appointed Three-Judge Court consisting of the HONORABLE THOMAS A. FORTKORT, retired, the HONORABLE DIANE McQ. STRICKLAND, retired, and the HONORABLE CLEO E. POWELL, Chief Judge Designate; upon the Rule to Show Cause of this Court; pursuant to Va. Code §§ 54.1-3935 and 8.01-261(17) and Rules of the Supreme Court, Part Six, § IV, Paragraph 13.

The Virginia State Bar was represented by ALFRED L. CARR, Assistant Bar Counsel, and SETH M. GUGGENHEIM, Assistant Bar Counsel. The Respondent, WALTER F. GREEN, IV appeared, *pro se*.

### Plea in Bar for Lack of Jurisdiction

Respondent argues that the Virginia State Bar was required to schedule his hearing no more than 120 days from his March 28, 2006 demand, pursuant to Part Six, § IV, Paragraph 13(H)(1)(a)(2)(b) of the Rules of the Supreme Court of Virginia, and that, therefore, this Court lacks jurisdiction. Specifically the rule states:

After the Respondent has been served with the Charge of Misconduct, the Respondent shall, within 21 days after service of the Charge of Misconduct, file an answer to the Charge of Misconduct and a demand with the Clerk of the Disciplinary System that the proceedings before the District Committee be terminated and that further proceedings be conducted pursuant to Va. Code § 54.1-3935; and simultaneously provide available dates for a hearing to be scheduled not less than 30 nor more than 120 days from the demand.

Respondent argues that the rule places a duty on the Bar to hold the hearing within the rule's 30 to 120 day time frame. As such, for the hearing to fall within the mandated time limit, Respondent argues it must have been held by July 26, 2006, 120 days from the March 28, 2006 demand. The hearing was in fact held on September 14, 2006, and continued on November 14, 2006.

This Court holds that the rule does not require the Bar to hold a hearing within the time frame as stated in Part Six, § IV, Paragraph 13(H)(1)(a)(2)(b) of the Rules of the Supreme Court. As the rule is designed to protect the public, who then come to lawyers for their services, the rule only imposes a duty on the Respondent to submit available dates within the four-month window of time, and does not impose a duty on the Bar. As such, this Court holds that it does have jurisdiction.

### Plea in Bar for Violation of the Statute of Limitations

Respondent argues that the Virginia State Bar is subject to a statute of limitations because it is an agency of the Commonwealth. He further argues that because the Virginia State Bar is not specifically exempted from the bar of the statute of limitations, the applicable statute of limitations is then Virginia Code Section 8.01-248, which states: "Every personal action accruing on or after July 1, 1995, for which no limitation is otherwise

prescribed, shall be brought within two years after the right to bring such action has accrued.” Va. Code § 8.01-248 (2006).

This Court holds that the statute of limitations does not run against the Commonwealth, or its agencies, and therefore, does not run against the Virginia State Bar. *See Delon Hampton & Assoc. v. Wash. Metro. Area Transit Auth.*, 943 F.2d 355 (4th Cir. 1991).

### **Plea in Bar for Failure to Possess a Valid Complaint**

Respondent argues that in order to proceed against an attorney, the Bar must receive a complaint and Bar Counsel must determine that the conduct questioned or alleged presents an issue under the Disciplinary Rules. Respondent is not aware of any written complaint received by the Bar that alleges misconduct in regards to Docket No. 05-070-2448 (Ron Haynes) and Docket No. 05-070-2450 (Ron Haynes), and, therefore, asks that they be dismissed. Respondent bases his argument solely on the definition of “complaint” as found in Part Six, Section IV, Paragraph 13(A) of the Rules of the Supreme Court, which states: “any written communication to the Bar alleging Misconduct or from which allegations of Misconduct reasonably may be inferred.”

This Court holds that the Rules of the Supreme Court provide that the Bar can proceed on a basis other than a complaint.

### **Plea in Bar for Res Judicata**

Respondent argues that the doctrine of Res Judicata precludes further litigation of Docket No. 05-070-0206 (Frank James), because all issues were litigated on March 4, 2005, and judgment was entered in Respondent’s favor.

This Court holds that the doctrine of Res Judicata does not apply to a Bar proceeding when a previous civil proceeding has been held.

### **Certification of Complaints**

#### Docket No. 02-070-3523 (Peter Schwartz)

1. Peter Schwartz was an associate for Respondent from January of 2000 to May of 2002.
2. Due to irreconcilable differences, Schwartz departed from the firm on May 7, 2002.
3. Upon the departure, some of the clients chose to continue to be represented by Schwartz.
4. Schwartz alleges that those clients paid advance fees to Respondent’s firm in excess of \$30,000, but that only \$5,675.00 was in the firm’s trust account, although all the cases were still open.
5. When Schwartz asked Respondent about the fees, the Respondent claimed the fees were flat fees which he deposited directly into the firm’s operating account upon receipt, and that they could not be refunded.
6. Schwartz removed the \$5,675.00 in advance fees from the trust account that could be traced to those clients who followed Schwartz when he left the firm.
7. Respondent filed a warrant in debt against Schwartz for the return of the \$5,675.00.
8. Schwartz’s clients then executed letters demanding the Respondent account for and return their advance fees.
9. Respondent did not comply with the requests, but did non-suit the warrant in debt on the day of the hearing.

#### Docket No. 05-070-0206 (Frank James)

1. On or about October 3, 2003, Frank James hired Respondent to represent him in a custody and visitation matter.

2. James paid Respondent an advance fee (stated as being \$4000 in one part of the bar's complaint, \$5000 in another part of the bar's complaint).
3. Respondent deposited the advance fee into his operating account, and not into his trust account.
4. James later reconciled with his wife.
5. James informed Respondent that he was terminating Respondent's services and demanded a full refund of the advanced fees paid to Respondent, alleging that Respondent had not performed any legal work on his behalf.
6. In a letter dated July 9, 2004, Respondent informed James that due to the flat fee retainer agreement, James was not entitled to a refund, and, furthermore, that he could not be terminated at that time because there was a return date at the end of July of 2004, and that representation had to continue until at least that date.
7. James alleges that Respondent did not explain to him the flat fee or advance fee arrangement.
8. In a letter dated October 8, 2004, Assistant Bar Counsel Linda Berry directed Respondent to respond to James' request for an accounting of the advance fees paid.
9. Respondent then mailed James an hourly breakdown of fees.
10. James alleges that the hourly breakdown contains false information.

Docket No. 05-070-2448 (Ron Haynes)

1. Respondent represented Haynes on two felony charges and a civil forfeiture.
2. Haynes plead guilty and was sentenced on June 7, 2002.
3. Respondent then filed an appeal on the guilty plea, in the wrong court.
4. The appeal was dismissed.
5. Respondent did not inform Haynes that the appeal had been dismissed.
6. Respondent's ledger card reflects a flat fee payment of \$6,000.00 on April 6, 2001.
7. Respondent paid himself the \$6,000.00 before little, if any, work had been done.

Docket No. 05-070-2450 (Ron Haynes)

1. Respondent represented Haynes on a number of criminal charges on October 8, 2002.
2. Haynes was found guilty, and Haynes then retained Respondent to appeal his convictions.
3. Respondent did not timely file the Notice of Appeal.
4. Respondent did not inform Haynes that the appeal was dismissed for failure to timely file.

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## CIRCUIT COURT

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5. Respondent's ledger card reflects a flat fee payment of \$7,500.00 on March 6, 2002, to handle the Circuit Court case, and a flat fee payment of \$15,000.00 on October 15, 2002, to handle the appeal.
6. Respondent paid himself both the \$7,500.00 and \$15,000.00 amounts before little, if any, work was done.

### Docket No. 05-070-3011 (Michael Foltz)

1. Michael Foltz was sentenced to a lengthy period of incarceration.
2. Foltz's mother, Linda Cabbage, hired Respondent to represent Foltz in filing a *habeas corpus* petition.
3. Respondent was paid \$2,500.00 in advance fees.
4. It is then alleged that Respondent did not perform any legal work on Foltz's behalf after accepting the fees.
5. Foltz demanded a refund by letter.
6. Respondent did not respond to the demand.
7. Respondent states that he had never spoken to Foltz or his mother, nor had Respondent agreed to file a *habeas corpus* petition, despite his ledger card reflecting the payment from Cabbage.
8. Respondent believes Schwartz, who was an associate of Respondent's at that time, must have been who Cabbage hired, though neither Cabbage nor Schwartz agree with Respondent's belief.

### Docket No. 05-070-3625 (Bonnie Zigler)

1. In August of 2004, Zigler hired Respondent to represent her elderly father in a divorce.
2. Respondent was paid a flat fee of \$5,000.00, which he placed into his operating account and then immediately removed before little, if any, work had been done.
3. Respondent did some work on the case over a four-month period, but not to Zigler's satisfaction.
4. In December of 2004, Zigler fired Respondent and hired Earl Burns, Esq. to handle her father's divorce.
5. Burns sent a letter to Respondent requesting an itemization of the work that Respondent had performed, and requested a refund of \$2,500.00.
6. Respondent provided neither an itemization nor a refund.

### **Facts Found**

Upon the evidence presented and arguments of counsel, the Court finds by clear and convincing evidence the following facts:

1. Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant hereto.
2. The complaint in Docket No. 02-070-3523 (Peter Schwartz) was certified by a subcommittee on November 19, 2003, and therefore the Virginia State Bar did not act promptly as required by Part Six, § IV, Paragraph 13(G)(4) of the Rules of the Supreme Court, thereby prejudicing the Respondent with the delay.

3. The complaints in Docket Nos. 05-070-2448 (Ron Haynes), 05-070-2450 (Ron Haynes), and 05-070-3625 (Bonnie Zigler) were certified on February 24, 2006, and not February 24, 2005, as erroneously stated in the Bar's complaint.

### **Violations Found**

Upon the evidence presented and arguments of counsel, the Court finds that the Virginia State Bar has proved by clear and convincing evidence the facts necessary to find violations of the following provisions of the Virginia Rules of Professional Conduct.

#### Docket No. 05-070-2448 (Ron Haynes)

##### 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.

#### Docket No. 05-070-2450 (Ron Haynes)

##### 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 1.3 Diligence

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

#### Docket No. 05-070-3011 (Michael Foltz)

##### 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.

##### RULE 1.4 Communication

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

##### RULE 1.15 Safekeeping Property

(b) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

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## CIRCUIT COURT

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Docket No. 05-070-3625 (Bonnie Zigler)

### 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.

### RULE 8.4 Misconduct

- (b) It is professional misconduct for a lawyer to commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.

It is the finding of this Court that the Virginia State Bar failed to prove by the required evidentiary standard of clear and convincing evidence any of the remaining alleged violations of the Virginia Rules of Professional Conduct and said alleged violations are dismissed.

Evidence was presented and arguments by counsel were made on the issue of an appropriate sanction. The prior record of the Respondent was presented by the Bar. The Bar also presented relevant provisions of the most recent ABA Standards for Imposing Lawyer Sanctions. The Respondent presented one character witness, Gordon Poindexter.

Accordingly, IT IS ORDERED, that the Respondent's license to practice law in the Commonwealth of Virginia is SUSPENDED, effective January 1, 2007, for a period of SIX (6) MONTHS.

IT IS FURTHER ORDERED, pursuant to Rules of Court, Part Six, § IV, Paragraph 13(M), that the Respondent shall forthwith give notice, by certified mail, of his Suspension 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 clients. The Respondent shall give notice within 14 days of the effective date of the Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Suspension. The Respondent shall also furnish proof to the Virginia State Bar within 60 days of the effective date of the Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

IT IS FURTHER ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to Rules of Court, Part Six, § IV, Paragraph 13(B)(8)(c).

IT IS FURTHER ORDERED that certified copies of this order shall be mailed by the Clerk of the Circuit Court to the counsel of record.

IT IS FURTHER ORDERED that the Clerk of the Circuit Court shall send a certified copy of this order to the Clerk of the Disciplinary System, at Suite 1500, 707 East Main Street, Richmond, VA 23219.

IT IS FURTHER ORDERED that upon the end of all proceedings in this matter, the Clerk of the Disciplinary System shall maintain the complete file of this matter in accordance with the file retention policies and requirements of the Bar.

ENTERED December 29, 2006

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VIRGINIA:  
BEFORE THE CIRCUIT COURT FOR THE CITY OF NORFOLK  
IN THE MATTER OF  
**MICHAEL MORCHOWER**  
Case: VSB No. CL06-3627-1

**DETERMINATION OF THREE JUDGE PANEL  
(ADMONITION WITHOUT TERMS)**

The Complaint against Respondent was certified to the Virginia State Bar Disciplinary Board alleging violations of the Virginia Rules of Professional Conduct ("RPC") 1.6(a), 1.8(b), 1.9(c) and 3.6 by a subcommittee of the Third District Committee, Section I on April 6, 2006. Respondent filed an answer to the Certification and requested that the matter be heard by a three-judge panel pursuant to his right under Va. Code Ann. § 54.1-3935. In response to that request, the Virginia Supreme Court designated the Honorable Pamela S. Baskervill, Chief Judge Designate, the Honorable Walter J. Ford, and the Honorable H. Thomas Padrick, Jr. to hear the case. The case was initially set to be heard on September 20, 2006, but was continued to November 3, 2006, upon a joint motion due to the unavailability of witness Learned Barry. Prior to trial, the Bar advised Respondent that it did not intend to pursue charges in the Certification pursuant to RPC 3.6.

On October 31, 2006, by agreement, the Honorable Pamela S. Baskervill heard argument on (1) the Motion in Limine of the Bar to exclude proffered expert testimony and certain exhibits, and (2) Respondent's motion for leave to amend his answer to the Certification. The Court granted the Bar's motion to exclude the expert testimony and denied the motion to exclude the exhibits. The motion to amend the answer to the Certification was granted, and the Court received a signed Amended Answer to the Certification in open court at trial of this matter. The Court reserved all objections to its rulings.

On November 3, 2006, this matter was tried before a three judge panel pursuant to Virginia Code § 54.1-3935 and Part 6, Section IV, Paragraph 13 of the Rules of the Virginia Supreme Court. Presiding were the Honorable Pamela S. Baskervill, Chief Judge Designate, the Honorable Walter J. Ford, and the Honorable H. Thomas Padrick, Jr. The Virginia State Bar was represented by Assistant Bar Counsel Paulo E. Franco, Jr. and Assistant Bar Counsel Paul D. Georgiadis. The Respondent was present and represented by Murray J. Janus, Esquire and Russell V. Palmore, Jr., Esquire.

At the conclusion of the Bar's case in chief, the Respondent moved to strike the bar's case. The Court denied said motion. The Respondent then put on its case in chief and rested, and thereafter the parties each made closing argument. Prior to the Court concluding its deliberation on misconduct, the parties announced to the Court that they had reached a resolution of the matter by way of an agreed disposition of an admonition without terms. The parties disclosed their accord for an agreed upon disposition in open court.

Pursuant to an Agreed Disposition of the parties, Virginia Code Annotated § 54.1-3935 and Part 6, Section IV, Paragraph 13 of the Rules of the Virginia Supreme Court, the Respondent, Michael Morchower, is hereby served with the following Public Admonition, without terms:

**I. FINDINGS OF FACT**

1. At all times material to these allegations, the Respondent, Michael Morchower, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about October 20, 2005, Janet Pelasara retained Respondent to represent her interests in connection with the investigation and prosecution Office of the Richmond Commonwealth's Attorney as it investigated and prosecuted the homicide of Pelasara's daughter, Taylor Behl, as well as assisting Pelasara with the media.
3. On or about October 26, 2005, Respondent met with a Deputy Commonwealth's Attorney who agreed to meet with Respondent because he represented the victim's mother.
4. During said meeting, the Deputy Commonwealth's Attorney disclosed to Respondent specific information about the Deputy's analysis of the Commonwealth's strengths and weaknesses in its case against suspect Ben Fawley.
5. Prior information about the case that was in the public domain and that Respondent had learned had been confined to facts of the police investigation and independent legal analysis, and had not included the prosecution's own analysis.
6. On or about October 31, 2005, Ms. Pelasara terminated Respondent's representation.

7. On November 1 and 2 of 2005, Respondent sent letters and emails to various media advising that he had been monitoring the anticipated prosecution of Mr. Fawley on Ms. Pelasara's behalf, that he was no longer serving in that capacity, and that he would be available for independent analysis of Mr. Fawley's prosecution.
8. As a result of said communication, Respondent was contacted by and gave an interview to the *Washington Times*. In the interview, Respondent disclosed information received in his October 26, 2005 meeting with the Deputy Commonwealth's Attorney.
9. On November 3, 2005, the *Washington Times* published an article containing comments from said interview.
10. At no time had Respondent requested Ms. Pelasara's consent to disclose said information nor did Pelasara ever grant such consent to do so.
11. On November 3, 2005, Ms. Pelasara through other counsel telephoned and wrote Respondent and requested that Respondent not speak to the media regarding the case.
12. After Ms. Pelasara filed the instant complaint with the Virginia State Bar, Respondent agreed on December 14, 2005, that he would not grant any media interviews or discuss anything pertaining to the Taylor Behl murder investigation with anyone.

## II. NATURE OF MISCONDUCT

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

### **RULE 1.6 Confidentiality of Information**

- (a) A lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

### **RULE 1.8 Conflict of Interest: Prohibited Transactions**

- (b) A lawyer shall not use information relating to representation of a client for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation, except as permitted or required by Rule 1.6 or Rule 3.3.

The Virginia State Bar and the Respondent have stipulated that while the Subcommittee certified violations of Rules 1.9(c) and 3.6(a), the foregoing agreed findings of fact would not result in findings of violations of said Rule.

## III. ADMONITION WITHOUT TERMS

Accordingly, the Court hereby imposes an **ADMONITION WITHOUT TERMS** on Respondent Michael Morchower, and he is so admonished.

The Clerk of the Disciplinary System shall assess costs.

The proceedings of October 31, 2006 and November 3, 2006 were transcribed by Donna Chandler of Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227.

In accordance with the stipulation of counsel for the Bar and for the Respondent, the parties hereby waive endorsement of all three members of the three-judge panel and accept endorsement by the Chief Judge Designate on behalf of the three-judge panel.

Wherefore, having considered and disposed of all of the issues before it, the Court doth order and decree this matter is dismissed and hereby stricken from the Court's docket.

Let the Clerk of the Court send a copy *teste* to all Counsel of Record.

Enter 12/18/06

The Hon. Pamela S. Baskervill  
Chief Judge Designate

VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD  
IN THE MATTER OF  
**CLAUDE ALEXANDER ALLEN**  
VSB Docket Number 07-000-0372

### ORDER OF SUSPENSION, WITH TERMS

This matter came on December 8, 2006, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, relative to the matter contained in the Rule to Show Cause and Order of Suspension and Hearing issued by this Board on the 17th day of November, 2006. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Robert E. Eicher, 2nd Vice Chair, V. Max Beard, lay member, William E. Glover, Esquire, Rhysa Griffith South, Esquire, and Glenn M. Hodge, Esquire.

Seth M. Guggenheim, Esquire, representing the Bar, and the Respondent, Claude Alexander Allen, Esquire, by and through his attorneys, Gregory B. Craig, Esquire (appearing *pro hac vice*), and Beth A. Stewart, Esquire, presented an endorsed Agreed Disposition, dated December 7, 2006, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Donna Chandler, of Chandler & Halaaz, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Agreed Disposition, it is the decision of the Board by majority vote 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 hereto, Claude Alexander Allen, Esquire, (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On August 4, 2006, the Respondent personally appeared in the Circuit Court of Montgomery County, Maryland, and entered a plea of guilty to a misdemeanor charge brought upon a criminal information, alleging that on or about December 24, 2005, the Respondent stole a Kodak printer valued at less than \$500.00 from the Target Corporation.
3. Following the Respondent's guilty plea, the Circuit Court entered an Order on August 4, 2006, imposing a disposition of "probation before judgment" under Maryland law. Under such a disposition, the Respondent will be discharged from probation upon his fulfillment of the terms thereof, and no judgment of conviction of a crime shall be entered against him.
4. The Respondent's court-ordered probation is supervised, and its duration is two years. *Inter alia*, the terms of Respondent's probation are that he make restitution to the Target Corporation, pay a fine and court costs, and perform forty (40) hours of community service by the time his supervised probation is scheduled to end.

In approving the Agreed Disposition, the Board gave due consideration to evidence furnished by and on behalf of the Respondent, to representations made by the Respondent and his counsel, and to representations made by Bar Counsel. The Board finds as applicable mitigating factors contained in the *Standards for Imposing Lawyer Sanctions*, published by the American Bar Association, as follows:

- a. absence of a prior disciplinary record;
- b. personal [and] emotional problems;
- c. full and free disclosure to disciplinary board [and] cooperative attitude toward proceedings; character [and] reputation; imposition of other penalties or sanctions; and
- d. character [and] reputation;
- e. imposition of other penalties or sanctions; and
- f. remorse.

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## DISCIPLINARY BOARD

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The Board also gave due regard to the findings of Thomas C. Goldman, M.D., who conducted a forensic psychiatric examination of the Respondent on April 10 and 24, and on May 31, 2006, and reported, *inter alia*, that the Respondent's behavior was "clearly in response to acute situational stress and [is] not expected to be a chronic problem" and that "[t]here is excellent reason to believe that a course of individual psychotherapy could be quite useful in guarding against any possibility of recurrence in the future."

The Board finds by clear and convincing evidence that the Respondent has pled guilty to a crime as defined in the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.A., and is thus subject to the imposition of discipline by the Virginia State Bar Disciplinary Board pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.5.c.

Upon consideration whereof, it is ORDERED as follows:

1. The Respondent's license to practice law in the Commonwealth of Virginia be, and it hereby is, suspended for a period of ninety (90) days, effective *nunc pro tunc* November 17, 2006, the date upon which this Board entered an order in the referenced matter suspending the Respondent's license due to his guilty plea referred to above.
2. The Respondent shall comply fully with each and every term of the "Probation/Supervision Order" entered by the Circuit Court of Montgomery County, Maryland, on August 4, 2006, in *State of Maryland vs. Claude Allen*, Case No. 105714-C.
3. At the conclusion of the Respondent's supervised probation, as referred to above, the Respondent shall promptly furnish the Virginia State Bar c/o Seth M. Guggenheim, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, with documents certified by the Clerk of the Circuit Court of Montgomery County, Maryland, establishing that Respondent has successfully fulfilled all of his obligations imposed by the "Probation/Supervision Order" referred to above and that the said Court has discharged him from probation as a final disposition of the criminal charge to which he had entered the guilty plea, as aforesaid.
4. Should the Respondent fail to comply with the terms set forth in the immediately preceding Paragraphs 2 and 3, he shall receive a three (3) year suspension of his license to practice law in the Commonwealth of Virginia, *in addition to* the ninety (90) day suspension referred to above, as an alternative disposition of this matter.
5. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a "show cause" proceeding pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.I.2.g. will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein.
6. The provisions of Part 6, Section IV, Paragraph 13.M. of the Rules of the Supreme Court of Virginia are inapplicable to this matter because the Respondent is not engaged in the practice of law as of the time of entry of this Order, and he was not so engaged at the time this Board entered the suspension order in this matter on November 17, 2006.
7. Pursuant to Part 6, Section IV, Paragraph 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; and

It is further ORDERED that a copy *teste* of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at his address of record with the Virginia State Bar, and by first class, regular mail, to counsel for the parties appearing in this matter.

ENTERED this 8th day of December, 2006.

Robert E. Eicher

2nd Vice Chair

Virginia State Bar Disciplinary Board

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VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF  
**DWAYNE BERNARD STROTHERS**  
VSB DOCKET NO. 07-000-1016

### **ORDER OF REVOCATION**

This matter came before the Virginia State Bar Disciplinary Board on December 15, 2006, pursuant to a Notice of Noncompliance issued in accordance with the Rules of the Supreme Court of Virginia Part Six, Section IV, Paragraph 13.M. The hearing was held before a duly convened panel of the Board consisting of David R. Schultz, William C. Boyce, Jr., John W. Richardson, Dr. Theodore Smith, Lay member, and James L. Banks, Jr., 1st Vice Chair.

All required notices were sent by the Clerk of the Disciplinary System. The Virginia State Bar was represented by Richard E. Slaney, Assistant Bar Counsel. Neither the Respondent nor any counsel action on his behalf appeared. Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, VA 23227, (804) 730-1222, having been duly sworn, reported the hearing.

The Chair opened the hearing by calling the case both in the hearing room and in the adjacent hall. The Respondent did not answer or appear. The panel was then polled as to whether any member had any conflict of interest or other reason why the member should not participate in the hearing. Each member, including the Chair, answered in the negative.

#### **The Prior Proceedings**

This matter arises out of a Notice of Noncompliance and Request for Revocation of Respondent's License to Practice Law for Failure to Comply with Paragraph 13.M filed with the Board by Bar Counsel on November 15, 2006, based upon Respondent's failure to comply with several orders of this Board and the aforesaid provisions of Part Six, Section IV, Paragraph 13.M of the Rules of Court. More particularly the Bar in its Notice of Noncompliance, alleged as follows:

#### **The First Order**

1. On May 3, 2006, the Board entered a Memorandum Order (the First Order) suspending Strothers' license to practice law in the Commonwealth of Virginia for two years, effective June 12, 2006. The First Order represented acceptance by the Board of an Agreed Disposition between Strothers and the Bar.
2. The Clerk's Office sent the First Order to Strothers' then address of record by certified mail, return receipt requested on May 4, 2006. Both the First Order and the cover letter from the Clerk referenced Strothers' duty to comply with Paragraph 13(M). This certified mailing was returned to the Clerk as "unclaimed." A copy of that mailing to Strothers, including the cover letter, the First Order, sample notice of affidavit forms and the mailing receipt and envelope are attached collectively as Exhibit A.
3. The Clerk then re-mailed the Exhibit A by regular mail to Strothers' new and current address of record on June 2, 2006. A copy of that cover letter is attached as Exhibit B.
4. On August 22, 2006, the Clerk also sent a reminder letter to Strothers, a copy of which is attached as Exhibit C.

#### **The Second Order**

5. On August 23, 2006, the Board entered an Order of Administrative Suspension (the Second Order) suspending Strothers' license for failure to pay costs associated with the First Order.

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## DISCIPLINARY BOARD

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6. The Clerk's Office sent the Second Order to Strothers' address of record by certified mail, return receipt requested on August 23, 2006. Both the Second Order and the cover letter from the Clerk referenced Strothers' duty to comply with Paragraph 13(M). A copy of that mailing to Strothers, including the cover letter, the Second Order and sample notice and affidavit forms are attached collectively as Exhibit D. This certified mailing was also returned to the Clerk as "unclaimed."
7. The Clerk then re-mailed Exhibit D by regular mail to Strothers' current address of record by regular mail on September 14, 2006. A copy of that letter is attached as Exhibit E.

### **No Proof of Compliance with Either Order**

8. In October, the Bar asked the Clerk whether she received any materials from Strothers purporting to demonstrate compliance with Paragraph 13(M). The Clerk responded that nothing had been received. An affidavit from the Clerk attesting to the fact Strothers filed nothing demonstrating compliance with Paragraph 13(M) in regard to either Order is attached as Exhibit F.

### **Proof of Non-Compliance**

9. Since his suspension on June 12th, the Bar received additional complaints about Strothers from clients. In at least two of those cases, the clients were not contacted by Strothers, nor did he provide them with their file or make arrangements for the handling of their cases. See affidavit of Juliana Freeman, attached as Exhibit G, and affidavit of Joseph Booth, attached as Exhibit H.
10. An affidavit from the Membership Department of the Bar confirming Strothers current address of record as P.O. 3540, Suffolk, VA 23439 is attached as Exhibit I.

### **Evidence Presented to the Board**

In addition to the Exhibits set forth in Bar Counsel's Notice of Noncompliance (A-I), Bar Counsel introduced an additional Exhibit J, which consisted of an affidavit from one of Respondent's clients stating he had not received notice from Respondent of his license suspension. The Board, after receiving into evidence Exhibits A-J and hearing arguments of Bar Counsel, adjourned to determine whether Respondent had failed to comply with Rule 13(M).

### **Findings**

The Board finds that the Bar has furnished uncontroverted clear and convincing evidence to substantiate the allegations set forth in its Notice of Noncompliance and the Board further finds that the Respondent has failed to show cause as to why his license to practice law should not be revoked.

### **Sanction**

Because of the Respondent's total disregard of the Board's prior orders and non-compliance with the Rules of Court over an extended period of time and his prior disciplinary record which was introduced after the Board's finding of noncompliance, the Board believes the appropriate sanction to protect the public and the integrity of the Bar is the revocation of the Respondent's license, and it is so ORDERED that the license of Dwayne Bernard Strothers to practice law in the Commonwealth of Virginia is hereby REVOKED, effective December 15, 2006.

It is further ORDERED that, pursuant to Part Six, Section IV, Paragraph 13(M) of the Rules of the Supreme Court of Virginia, 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 any matters, to all Judges and the Clerk of the Court before which Respondent may have any pending cases and to opposing counsel in all such cases. Respondent shall also make appropriate arrangements for the disposition of matters not in his care, in conformity with the wishes of his clients.

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.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to respondent at his address of record with the Virginia State Bar, being P.O. Box 3540, Suffolk, VA 23439, by certified mail, return receipt requested, and by regular mail to Richard E. Slaney, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 21st day of December 2006  
VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks, Jr., 1st Vice Chair

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VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN RE:  
**ALAN S. TOPPELBERG**  
VSB. DOCKET Nos. 07-000-1375

**ORDER**

This matter came before the Virginia State Bar Disciplinary Board pursuant to Part Six, Section IV, Paragraph 13.I.7, of the Rules of the Supreme Court of Virginia, "Proceedings Upon Disbarment, Revocation, or Suspension in Another Jurisdiction."

On November 17, 2006, the Disciplinary Board issued a Rule to Show Cause to Alan S. Toppelberg in which it was alleged that Mr. Toppelberg's license to practice law in the District of Columbia had been suspended for a period of sixty (60) days, with thirty (30) days stayed, effective October 21, 2006, and in which Mr. Toppelberg was required to show cause why the Board should not impose the same discipline. The hearing was held on December 15, 2006, in Courtroom A of the Virginia Workers' Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220, at 9:00 a.m.

The Disciplinary Board Panel consisted of James L. Banks, Jr., 1st Vice Chair, William C. Boyce, Jr., John W. Richardson, David R. Schultz, and Theodore Smith (lay member). The Bar was represented by Bar Counsel George W. Chabalewski, and the Respondent did not appear and was not represented by counsel. The proceedings were recorded by Donna T. Chandler, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

Chair Banks convened the hearing and polled the Panel as to whether any conflicts or biases existed which would prevent them from hearing the matter fairly and objectively. All members answered in the negative, including the Chair.

It being apparent that Mr. Toppelberg was not present, Chair Banks asked the Clerk to call Mr. Toppelberg's name three times in the hall. The Clerk did so with no response.

Mr. Chabalewski then informed the Board that he had spoken with Mr. Toppelberg and that Mr. Toppelberg had stipulated to the accuracy of the allegations in the Rule to Show Cause and that he did not plan to attend the hearing.

Evidence was then presented by the State Bar consisting of a certified copy of an Order of the District of Columbia Court of Appeals in which the Court suspended Mr. Toppelberg's license to practice law for sixty days and held in abeyance thirty days of the suspension in lieu of one year of supervised probation. The State Bar also introduced the report and recommendation of the Board of Professional Responsibility of the District of Columbia Court of Appeals.

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## DISCIPLINARY BOARD

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### **The Board finds as follows:**

1. All notices required by the Rules of the Supreme Court were issued and properly served. Mr. Toppelberg's license to practice law was suspended by the District of Columbia Court of Appeals effective thirty days from the Court's Order, which is dated September 21, 2006. Thirty days of the suspension was held in abeyance in lieu of one year of supervised probation, during which Mr. Toppelberg was required to consult with the Practice Management Advisory Service, implement its recommendations, and submit a compliance report to the D.C. Board and Bar Counsel.
2. The Court's ruling was final.
3. Mr. Toppelberg presented no evidence which would establish that: (i) the record of the proceeding in the other jurisdiction would clearly show that such proceeding was so lacking in notice or opportunity to be heard as to constitute a denial of due process; (ii) the imposition by the Board of the same discipline, upon the same proof, would result in a grave injustice; or (iii) the same conduct would not be grounds for disciplinary action or for the same discipline in Virginia.

Accordingly, the Board hereby suspends Respondent's license to practice law in the Commonwealth of Virginia for a period of sixty (60) days with thirty (30) days held in abeyance under the same conditions as enumerated in the Order of the District of Columbia Court of Appeals, effective December 15, 2006.

The Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13.M of the Rules of the Supreme Court of Virginia and notify all appropriate persons about the suspension of his license if he is handling any client matters at the time. If the Respondent is not handling any client matters on the effective date of his license 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 Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

### **COSTS**

Pursuant to Part 6, Section IV, Paragraph 13.B.8(c) of the Rules, the clerk of the Disciplinary System shall assess costs.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the respondent at his address of record with the Virginia State Bar, being Alan S. Toppelberg, 6236 Mary Meindi Court, Alexandria, Virginia 22312, by certified mail, return receipt requested, and by regular mail to George W. Chabalewski, Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED this 4th day of January, 2006.

VIRGINIA STATE BAR DISCIPLINARY BOARD

James L. Banks, Jr., 1st Vice Chair

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VIRGINIA:  
BEFORE THE SIXTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**JAMES DREWRY HUDKINS HILL**, ESQUIRE  
VSB Docket No. 06-060-0465

**AGREED DISPOSITION**

Pursuant to Part Six, § IV, ¶ 13(G)(1)(d) of the Rules of Virginia Supreme Court, the Virginia State Bar, by Assistant Bar Counsel Marian L. Beckett, and the Respondent, James Drewry Hudkins Hill, Esq., hereby enter into an Agreed Disposition arising out of the above-referenced matter. Both parties affirm that the proposed Subcommittee Determination of a Public Reprimand, a true copy of which is attached hereto and incorporated herein by reference, reflects the stipulated facts, violations, and disposition for the above-referenced matter.

Respondent understands that should the Subcommittee accept this agreed disposition by unanimous vote, the Subcommittee Determination will be signed by the Chair or Chair Designate and thereafter mailed without the necessity of any hearing or further notice to the parties. Further, it is understood and agreed by the parties hereto that should the Subcommittee refuse the agreed disposition neither party shall be bound by the stipulations or findings contained herein and this matter shall be forthwith scheduled for a hearing by the full Committee.

SEEN AND AGREED TO:  
THE VIRGINIA STATE BAR

Marian L. Beckett  
Assistant Bar Counsel

James Drewry Hudkins Hill  
Respondent

**SUBCOMMITTEE ACTION**

Pursuant to Part Six, § IV, ¶ 13(G)(1)(d) of the Rules of Virginia Supreme Court, the duly convened subcommittee of the Sixth District Committee of the Virginia State Bar hereby accepts the Agreed Disposition in this matter.

VIRGINIA:  
BEFORE THE SIXTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

IN THE MATTER OF  
**JAMES DREWRY HUDKINS HILL**, ESQUIRE  
VSB Docket No. 06-060-0465

**SUBCOMMITTEE DETERMINATION  
PUBLIC REPRIMAND**

On the 12th day of December, 2006, a meeting in this matter was held before a duly convened subcommittee of the Sixth District Committee consisting of Jean Dahnk, Esquire, Kay Forrest, and Richard Stuart, Esquire, presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(d) of the Rules of Virginia Supreme Court, a subcommittee of the Sixth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Agreed Disposition, a Public Reprimand:

**I. FINDINGS OF FACT**

1. At all times relevant hereto the Respondent, James Drewry Hudkins Hill, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

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## DISTRICT COMMITTEES

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2. In the case of the estate of Laura Horton, the executor named in the will failed to fulfill her responsibilities. The Respondent was then court appointed as the administrator c.t.a.
3. On December 4, 2003, the Respondent qualified as the administrator of the estate, posted the required bond, and submitted a timely inventory to the Complainant, Mervin C. Withers, Esquire, Commissioner of Accounts of the County of Northumberland.
4. Thereafter the Respondent failed to submit timely reports regarding the estate. The settlement of accounts was due in April of 2004. Commissioner Withers sent notices of delinquency to the Respondent in April and September of 2004 and in February and May of 2005. The Respondent failed to respond to these notices.
5. The Respondent was subsequently held in contempt by the Circuit Court of Northumberland County. He was also denied fees for his work on the estate and ordered to pay approximately \$700.00 in fees and penalties out-of-pocket rather than charging them against the estate.
6. The first and second (which was the final) accountings were submitted on September 15, 2005, and approved by the Commissioner in November of 2005. The matter is now closed.
7. The Respondent ceased practicing law on December 31, 2004, and changed his membership from active to associate status the following month. He now operates a title and settlement company, but his activities do not constitute the practice of law.

### II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

#### **RULE 1.3 Diligence**

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (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 1.16 Declining Or Terminating Representation**

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
  - (1) the representation will result in violation of the Rules of Professional Conduct or other law;

### III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to impose a Public Reprimand on the Respondent, James Drewry Hudkins Hill, Esq., and he is so reprimanded.

### IV. COSTS

Pursuant to Part Six, § IV, ¶ 13(B)(8)(c)(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SIXTH DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

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VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD  
IN RE:  
**CHARLES DAUGHERTY FUGATE, II**  
VSB DOCKET NO. 06-000-2393

### ORDER AND RECOMMENDATION

This matter came before the Virginia State Bar Disciplinary Board, pursuant to notice, on November 17, 2006 upon a referral to the Disciplinary Board from the Virginia Supreme Court. The purpose of the referral from the Virginia Supreme Court was to consider the petition for reinstatement of the license of Charles Daugherty Fugate, II, and to make a recommendation to the Virginia Supreme Court as to whether that petition should be granted or denied.

#### Hearing Procedure and Evidence

The Disciplinary Board panel was composed of Peter A. Dingman, Chair, David R. Schultz, William C. Boyce, William E. Glover, and W. Jefferson O'Flaherty, lay member. The Petitioner was present and *pro se*. The Petitioner was also assisted in the matter by Roy Jessee. The Bar was represented by Richard E. Slaney, Assistant Bar Counsel. The Chair of the panel convened the hearing at 9:00 a.m. The matter was reported by Donna Chandler, of Chandler & Halasz, Registered Court Reporters, Post Office Box 9349, Richmond, Virginia, 23227, (804) 730-1222.. The Chair swore the court reporter and introduced the panel. The Chairman canvassed the panel to determine if any member of the panel had a bias or conflict. Each member of the panel identified himself and stated that he had no bias or conflict.

The Chair then summarized the procedure to be followed in the hearing of the matter. Both the Petitioner and the Bar Counsel stated that they understood the procedure and were satisfied with the Chair's explanation.

The Petitioner moved the admission of two exhibits, comprising all of the documents previously provided to (and read by) the panel, and that motion was granted without objection by Bar Counsel. Exhibit 1 consists of a November 6, 2006 letter and enclosures from Barbara Lanier, Clerk of the Disciplinary System, to the members of the panel conveying copies of various documents more fully detailed in her letter, including the record of the prior disciplinary case (VSB Docket No. 00-000-1475) and related proceeding (Record No. 022259) in the Virginia Supreme Court which resulted in the revocation of Petitioner's license together with the pleadings and papers related to the current proceeding.

Prior to the Board hearing, on or about October 11, 2006, the Virginia State Bar issued a press release to various media companies (print, broadcast and radio) and sent notices to persons and institutions likely to have an interest announcing the pendency of Fugate's petition for reinstatement. The Board received letters in support of Fugate's petition and one letter in opposition. Those letters were disclosed to the Petitioner and provided to the Bar and the Board. Those letters not included in Exhibit 1 comprise Exhibit 2. The Bar had previously received numerous letters prior to the initial sanctions hearing on May 17, 2002. Each of those letters was included in Exhibit 1 and admitted as evidence in this proceeding.

The Petitioner then inquired of the Chair as to whether the Petitioner should be sworn prior to opening argument. The Chair responded that the Petitioner, as well as any other witness, would be sworn prior to testifying, but no oath was required for purposes of opening statement.

The Bar then moved for a rule on witnesses. The Petitioner identified four witnesses other than himself who he intended to call in the proceeding. One of those four witnesses was not present; the other three were called before the Court and sworn. The three witnesses so sworn were then admonished not to discuss the matter between them while they were excluded from the courtroom and were sent out of the courtroom. The Petitioner also agreed to ensure that the witness who was not present would not enter the courtroom during the testimony of any other witness.

The Petitioner then gave an opening statement. The Bar responded in opening statement stating that the Bar took, at the outset of the hearing, no position on the request for reinstatement and did not intend to present evidence in opposition to the petition.

The Petitioner testified as his first witness. Following his testimony, he responded to the questions of Bar Counsel and the Board. The Petitioner did not restate all of the facts recited in the petition and Bill of Particulars, but did discuss the changes he had experienced in his life since

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## REINSTATEMENT RECOMMENDATIONS

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his guilty plea and incarceration on the felony charges, and his subsequent release and employment in risk management for a grocery store chain. The Petitioner detailed his activities to stay abreast of the law, including a continuing subscription to *Virginia Lawyer*, *Virginia Lawyer Register*, and *Lawyer's Weekly*. He detailed his CLE classes and his examination and passage of the MPRE. He recited that his civil rights have been restored and detailed his community service and volunteer activities during the six years since his suspension and revocation.

The Petitioner then called Lloyd C. (Sonny) Martin as his witness. Mr. Martin is the president of a bank in Pennington Gap, and has known Charles Fugate since Fugate was a child. Martin testified that Fugate's reputation in his community for honesty and trustworthiness was very good. He further testified that the community in which his bank was located and in which he lived was, he believed, hopeful that the Bar would reinstate Fugate's license.

The next witness was Sheriff Gary Parson, Sheriff of Lee County. He testified that he was aware of the nature of the criminal charges of which Mr. Fugate had been convicted. He, in fact, stated that his office had instigated the original investigation which ultimately led (through further investigation by the FBI) to the charges against Mr. Fugate. Sheriff Parson testified that he believed that Petitioner was honest and trustworthy, and further believed that the community in which he served as Sheriff was hopeful that the Bar would grant the request for reinstatement of Fugate's license.

The next witness called by the Petitioner was Jerry Kilgore. Mr. Kilgore, a former prosecutor in Lee County, as well as the former Secretary of Public Safety and former Attorney General of Virginia, testified that he had known Mr. Fugate and his family since childhood; that he was well aware of Mr. Fugate's reputation in the community and further that he was certain that the community favored the return of Mr. Fugate to the practice of law.

Finally, the Petitioner called Steven Smith, Chief Executive Officer of the grocery store chain which employs the Petitioner. Smith testified that he did not know the Petitioner prior to his criminal conviction, but hired the Petitioner on a part-time basis after the Petitioner was released from prison and was living in a halfway house. Smith described the Petitioner's promotion to a position of trust within the company, and expressed his confidence in the Petitioner and the Petitioner's honesty and trustworthiness. Smith also extolled the Petitioner's character and relationships with other people within the company and its customers and vendors.

At the close of the Petitioner's evidence, the Bar made no motion and presented no evidence. The panel then heard closing statements from the Petitioner and the Bar. Following the closing statements, the panel deliberated to determine what recommendation should be made upon the petition.

### Discussion

Paragraph 13(I)(8), Part VI, Section IV, Rules of the Supreme Court of Virginia, provide that an attorney whose license has been revoked may petition for reinstatement, setting forth in his petition the reasons why he should be reinstated. Whether or not the petition is to be granted is for the Supreme Court to decide after receiving the recommendation of this Board. The rules do not provide any mandatory waiting period and the language of the rules and prior decisions of this body dictate that the Board evaluate each case on its own merits. Factors which may be considered in reinstatement cases are clearly set out "*in the matter of Albert L. Hiss*", Docket No. 83-26, Opinion of the Board dated May 24, 1984 and they are:

1. The severity of the Petitioner's conduct including but not limited to the nature and circumstances of the Misconduct.
2. The Petitioner's character, maturity and experience at the time of his or her Disbarment.
3. The time elapsed since the Petitioner's Disbarment.
4. Restitution to clients and/or the Bar.
5. The Petitioner's activities since Disbarment including but not limited to his or her conduct and attitude during that period of time.
6. The Petitioner's present reputation and standing in the community.
7. The Petitioner's familiarity with the Rules of Professional Conduct and his current proficiency in the law.
8. The sufficiency of the punishment undergone by the Petitioner.
9. The Petitioner's sincerity, frankness and truthfulness in presenting and discussing factors relating to his or her Disbarment and Reinstatement.
10. The impact upon public confidence in the administration of justice if the Petitioner's License to practice law is restored.

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## REINSTATEMENT RECOMMENDATIONS

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In this case, the panel determined that the evidence submitted by the Petitioner addressed each of the ten factors of *Hiss*.

The severity of the Petitioner's conduct which led to his disbarment was grave. He betrayed both the trust vested in him as a lawyer and as an officer of the hospital, upon whose Board of Directors he served. He pled guilty to, and was convicted of felony charges in Federal Court and served prison time as a result of that misconduct.

The Petitioner's character, maturity and experience at the time of his disbarment was also considered by the panel. The Petitioner cooperated with Federal investigators in connection with their investigation of others involved in the same set of operative events. Nearly six years have elapsed since his disbarment and restitution has been made as required by his plea agreement.

Much of the evidence submitted by the Petitioner in his papers and in Court addressed his activities since his disbarment and his present reputation and standing in the community. The Petitioner has worked diligently to restore his reputation serving as a volunteer, participating in church activities, and in his children's school activities. With one exception, all of the letters written to the Bar in connection with his current application supported the Petitioner's request for reinstatement. Among the materials received and reviewed by the Board were letters of support from two Commonwealth's Attorney's, a Senior United States District Judge, the Clerk of the Circuit Court and scores of lawyers practicing in Petitioner's home area. Three voluntary Bar Associations (Wise County, Lee County and the City of Norton) endorsed Petitioner's request. All of the witnesses testified that the Petitioner's reputation and standing in the community were excellent.

The Board was persuaded that the Petitioner remained familiar with the rules of professional conduct and that he had maintained his proficiency in the law. Further, the Board believes that the punishment undergone by the Petitioner was sufficient and had addressed the concerns of both the community and the Bar.

Further, the Petitioner's sincerity, frankness and truthfulness as he discussed the matters that lead to his convictions and the revocation of his license left the panel with the unanimous opinion that the Petitioner understood and regretted his actions, made no excuses for his past conduct, and would be unlikely to repeat the misconduct.

The witnesses, including a community banker, the CEO of a local grocery store chain, the Sheriff of Lee County and the former Attorney General for the Commonwealth of Virginia, discussed the impact upon public confidence in the administration of justice if the Petitioner's license to practice law was restored. Those witnesses, and the persons who wrote letters to the Bar, expressed an overwhelming sense that the community would support and, in fact, participate with the return of Mr. Fugate to the practice of law.

For all of these reasons, the panel unanimously found that the Petitioner had established by clear and convincing evidence that each of the ten factors in *Hiss* has been satisfactorily addressed, that the testimony and exhibits received in evidence demonstrate that his license to practice law in the Commonwealth of Virginia should be reinstated, that, upon complying with the further requirements of the Court (including, without limitation, successfully completing the Virginia State Bar Exam) Petitioner ought to be again permitted to take the oath and be admitted to the bar of the Supreme Court of Virginia; and it is, therefore,

The respectful recommendation of the Disciplinary Board of the Virginia State Bar that the Virginia Supreme Court grant the petition and provide for the reinstatement of the license of Charles Daugherty Fugate, II.

As required in Paragraph 13.B.8.(c) of the Rules of Court, Part VI, Section IV, the Board finds the costs in the proceeding to be as follows:

Copying	\$602.10
Court Reporter Fees	\$ 89.00
Transcript and hearing fee	\$478.50
Mailing of Notice and Postage	\$718.33
Administrative Fee	\$750.00
Bristol Courier Newspaper and Press Release	\$251.40
Certifieds	<u>\$ 13.92</u>
Total	\$2,903.25

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## REINSTATEMENT RECOMMENDATIONS

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It is requested and ordered that the Clerk of the Disciplinary System forward this Order of Recommendation to the Virginia Supreme Court for its consideration and disposition; and

Further requested and ordered that the Clerk forward certified copies of this Order of Recommendation to Charles Daugherty Fugate, II, by certified mail, return receipt requested, at his address of record with the Virginia State Bar, 20233 Colony Lane, Bristol, Virginia 24202 and to Richard E. Slaney, assistant Bar Counsel, by hand delivery to 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

Entered this 7th day of December, 2006.

Peter A. Dingman, Chair

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VIRGINIA:  
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD  
IN THE MATTER OF  
**JAMES E. GHEE**  
VSB DOCKET NO.: 06-000-0836

### ORDER OF RECOMMENDATION

This matter came on to be heard on October 27, 2006 before a panel of the Virginia State Bar Disciplinary Board (the "Board") consisting of Robert E. Eicher, 2nd Vice-Chair, (the "Chair") Joseph R. Lassiter, Jr., William H. Monroe, Jr., Russell W. Updike, and V. Max Beard, lay member. The Virginia State Bar ("VSB" or the "Bar") was represented by Harry M. Hirsch. Charlotte Peoples Hodges represented the petitioner, James E. Ghee ("Ghee").

The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative. Tracy J. Stroh, RPR, with Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, (804-730-1222) after being duly sworn, reported the hearing and transcribed the proceedings.

All notices required by the Rules of the Virginia Supreme Court were sent by the Clerk of the Disciplinary System.

Ghee petitions for reinstatement of his Bar license, which was revoked by the Board on October 19, 1995, following Ghee's surrender of his license. Ghee offered into evidence seven exhibits, which were admitted without objection, and presented five witnesses, including himself. The Bar opposed the petition for reinstatement, and offered into evidence six exhibits, all but one of which were admitted without objection. The sixth was offered subject to verification by witnesses, and was later admitted into evidence. The parties offered into the record a Stipulation, which was admitted. The parties stipulated that Ghee has met all of the objective criteria for reinstatement found in Part 6, Section IV, Paragraph 13.I.8.b., including passing the Multi-State Exam with a score of 85 or higher, reimbursing sums paid by the Client Protection Fund, paying the cost of prior proceedings, and completing the necessary mandatory continuing legal education. A petitioner for reinstatement is also required to prove by clear and convincing evidence that he is a person of honest demeanor and good moral character and possesses the requisite fitness to practice law. Part 6, Section V, Paragraph 13.h., provides that in making its recommendation to the Virginia Supreme Court, the Board may consider but is not bound by the factors spelled out *In the matter of Alfred Lee Hiss*, VSB Docket No. 83-26 (Sup. Ct. July 2, 1984), commonly referred to as the *Hiss* factors.

By their nature, reinstatement hearings raise difficult questions. Lord Mansfield noted over two hundred years ago that disbarment is not punishment. *Ex parte Brounsall*, 98 Eng. Rep. 138 (1778). Commentary to the ABA Standards, Para. 2-10, states that since the purpose of lawyer discipline is not punishment, readmission may be appropriate; the presumption, however, is against reinstatement. The burden of proof for reinstatement is clear and convincing evidence. Attorney discipline is always forward-looking. In short, (1) Virginia does not subscribe to permanent disbarment, (2) disbarment is not discipline, and (3) the applicant for readmission bears a heavy burden of proving by clear and convincing evidence that he is presently fit to practice law and that the public's interests are safeguarded and the public's confidence in the administration of justice is preserved. *In re Edmunds*, Order of Recommendation, VSB No. 95-000-1155 (1995).

The Board, after consideration of all of the documentary evidence, the testimony of the witnesses, the ten *Hiss* factors, and argument of counsel, decided by majority vote not to recommend that Ghee's petition for reinstatement be approved. The Board's reasons for this decision are found in the following discussion of the ten *Hiss* factors.

***Hiss* Factor No. 1.** The Severity of the Petitioner's Misconduct Including, but not Limited to, the Nature and Circumstances of the Misconduct.

In 1995 Ghee was indicted by Nottoway County for one count of felony embezzlement of \$38,517.10 from an estate trust account which he opened after qualifying as administrator of the John Jasper Redd estate ("Redd Estate"). Subsequently he entered into a plea agreement and pled guilty to eleven counts of misdemeanor embezzlement. Ghee was sentenced to twelve months in jail on ten counts, all suspended, and twelve months in jail with six months suspended on the remaining count, all sentences to run consecutively. Ghee reported to jail on May 20, 1996, and was subsequently assigned to work release, and thereafter to home electronic monitoring. He was released from supervised probation on November 28, 1996, and from unsupervised probation on May 15, 1998. See Stipulation.

A review of Ghee's prior disciplinary record and the misconduct that gave rise to his embezzlement convictions bears scrutiny.

Ghee received a private reprimand with terms by the Fifth District Committee, effective September 24, 1990. The private reprimand arose from Ghee's failure to adequately keep trust account records, being out of trust on at least one occasion during the months of March through May, 1989, and intermingling his personal funds in his trust account during that same period. Ghee successfully completed the terms by February 3, 1992, which included unannounced audits, a certification by a certified public accountant that his trust account records conformed with the regulations of the Virginia State Bar, and quarterly audited statements from his CPA for a period of two years that his trust accounts were in trust. See Bar Ex. 5, pg 3–8.

Ghee received two dismissals with terms from the Fifth District Committee effective June 25, 1992. One arose from a malpractice case where Ghee was retained as counsel, and did an inaccurate accounting and had record keeping violations. The other dismissal with terms involved refund of an unearned fee in a bankruptcy case from his operating account and included record keeping violations. The terms for these two cases included participation in a training session in the Safeguard system and meetings with a Virginia State Bar investigator to review Ghee's trust account records and reconciliations immediately after October 31, 1992, January 31, 1993, and July 31, 1993. See Bar Ex. 5, pgs. 15 and 22.

Ghee received a five year suspension with terms effective March 1, 1995, based upon a real estate closing which occurred on or about November 25, 1992, at which time Ghee received \$44,990.75 in settlement funds. On November 30, 1992, Ghee wrote checks in the amount of \$35,570.24 to Joan Walker, \$7,420.51 to Denise George and \$2,000.00 to himself. As of February 1, 1994, the \$7,420.51 check had still not cleared the trust account. From November 30, 1992 until February 1, 1994, the trust account balance fell below that amount on 32 separate occasions. On eight separate occasions during that period, the trust account had a negative balance. As of February 2, 1994, the trust account was out of trust \$5,035.37. Once again it was found that Ghee had failed to maintain the required books, failed to identify to the appropriate case \$30,000 paid to him, and failed to contemporaneously record information as to the source of funds deposited to the trust account. In several instances Ghee failed to prevent or promptly detect and correct the deposit of fiduciary funds to his operating account. Finally, Ghee had written checks for costs against the trust account when there were no client funds to cover those costs. Ghee entered into an Agreed Disposition whereby his license to practice law was suspended effective March 1, 1995, for a period of five years, with half of that suspension suspended upon various conditions. Bar Ex. 5, pgs 23–29.

Thus, when Ghee surrendered his license on October 19, 1995, his license had already been suspended for a period of two and one-half years. Furthermore, the eleven embezzlements for which he pled guilty occurred on 3/26/93 (\$2,000), 5/20/93 (\$2,000), 6/4/93 (\$2,000), 6/25/93 (\$5,000), 7/8/93 (\$4,500), 7/16/93 (\$4,500), 7/23/93 (\$2,500), 9/29/93 (sic) (\$3,500), 8/2/93 (\$4,500), 10/22/93 (\$8,000), and 11/16/94 (\$10,000). The dates are taken from Ghee's amended indictment (Ex. G to Petitioner's Bill of Particulars), and from an investigator's reconstruction of the estate account activity in question, contained in VSB Ex. 6. (Copies of these documents are appended to the original copy of this Order for ease of reference.) The dates in question make it clear that Ghee's defalcations were premeditated. The first eight defalcations from the Redd Estate fiduciary account occurred during the period when his attorney fiduciary account was still being reviewed periodically by a bar investigator as a result of his June 25, 1992, discipline, which effectively prevented Ghee from making unauthorized withdrawals from his attorney fiduciary

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## REINSTATEMENT RECOMMENDATIONS

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account. (Tr. P. 138). During this same period, Ghee engaged in the misconduct that gave rise to his five year suspension with terms, which resulted from his trust account being out of trust on numerous occasions up until February 2, 1994. The suspension order cited Ghee's "cooperative attitude toward these proceedings". Unfortunately Ghee's cooperative attitude did not include advising the Bar of the ten defalcations that had already occurred from the Redd Estate account prior to endorsement of the Agreed Disposition. Ghee initially deposited \$39,511.35 to the Redd estate account on March 25, 1993, and by his ten unauthorized withdrawals, he reduced the account to \$804.25 on October 22, 1993. Ghee testified that he replaced \$20,000 in the account from the proceeds of a personal injury settlement on November 8, 1994, and that he was unable to resist withdrawing \$10,000 of those funds from the account eight days later on November 16, 1994.

Subsequent gifts or loans from friends reduced the ultimate loss, and the surety took judgment against Ghee in the amount of \$28,117.12. Ghee satisfied the bonding company's judgment against him for the discounted sum of \$19,461.92.

Ghee's trust account problems occurred over an extended period of time from 1988 to 1995. The defalcations were deliberate and repeated. The nature and circumstances of Ghee's criminal acts can only be described as severe.

***Hiss Factor No. 2.***     The Petitioner's Character, Maturity and Experience at the Time of his Disbarment.

Ghee was an experienced attorney at the time of his defalcations. He graduated from law school in 1973, was an Earl Warren Legal Fellow of the NAACP Legal Defense and Education Fund with the Hill, Tucker and Marsh firm in Richmond, Virginia, from 1973–1975, and was in solo private practice in Farmville from 1975 until his suspension and disbarment in 1995. He was and is a national director of the NAACP, and a member of its executive committee. This was not a case of a young attorney getting into trouble, nor a case of an elderly attorney who was becoming incapacitated.

***Hiss Factor No. 3.***     The Time Elapsed Since the Petitioner's Disbarment.

It has been 11 years since Ghee surrendered his license and it was then revoked. Ghee has not previously applied for reinstatement.

***Hiss Factor No. 4.***     Restitution to Clients and/or the Bar.

Ghee has made restitution to the Bar and to all of his clients that were harmed as a result of his acts. He paid the surety an agreed sum to satisfy the surety's judgment against him only four months after the judgment was entered against him. He did not seek relief from his debts via the bankruptcy court. Ghee's efforts to make restitution are commendable.

***Hiss Factor No. 5.***     The Petitioner's Activities Since Disbarment Including, but not Limited to, his Conduct and Attitude During that Period.

From all evidence, Ghee has undertaken to lead an exemplary life since his disbarment and he appears to have succeeded in this effort. Ghee has been very active in his church and with the NAACP. He has been the recipient of many honors and awards, including Outstanding Virginian Award at the annual conference of the A.M.E. Church (1995), Man of the Year for his district of the A.M.E. Church, and was honored by the NAACP in 2003 for lifetime achievement.

Since his disbarment, Ghee has worked as a paralegal at the Williams, Luck and Williams law firm in Martinsville, Virginia. According to Robert A. Williams, the partner for whom he primarily works, his performance has been exemplary.

***Hiss Factor No. 6.***     The Petitioner's Present Reputation and Standing in the Community.

Ghee is obviously held in high esteem and thought of with love and affection in his community. The letters of support for the reinstatement of his license to practice law are almost too numerous to count. They come from all walks of life, and include national figures well known to all. Julian Bond, currently a professor at the University of Virginia and American University and formerly chairman of the board of directors of the NAACP, testified by deposition. He described Ghee's fine character, his role on the executive committee as one who easily reads trends and directions, his knowledge of the institutional history of the organization, ability to evaluate candidates for board committees, and his ability to go quickly to the heart of a matter. In addition to the many fine recommendations from national, state and community leaders, the Board must also take note of the numerous letters, often unsolicited, from ordinary citizens who took the time to share personal knowledge and relate the high

esteem in which they hold Ghee. Only two letters in opposition to Ghee's reinstatement were received by the Bar, one of a general nature from an attorney who does not know Ghee personally, and one from a lay person. Many attorneys, including prosecutors, wrote letters in support of Ghee's reinstatement.

**Hiss Factor No. 7. The Petitioner's Familiarity with the Virginia Code of Professional Responsibility and his Current Proficiency in the Law.**

Ghee has fulfilled all of the requirements for Continuing Legal Education since his disbarment in 1995. He twice passed the Ethics exam required for reinstatement with a score of 94, well in excess of the requirement. Robert Williams of the Williams law firm unequivocally testified as to Ghee's current proficiency in the law in the area in which he has been focusing as a paralegal. Furthermore, Williams indicated that they will hire Ghee as an attorney if his license is reinstated. Bonds' testimony further corroborated Ghee's continuing proficiency and judgment.

**Hiss Factor No. 8. The Sufficiency of the Punishment Undergone by the Petitioner.**

Ghee's punishment would appear to be an appropriate one. Counsel for Ghee spoke of his long fall from grace. The loss of his Bar license, the shame and humiliation resulting from the criminal convictions and having to live under this cloud, unquestionably were a severe punishment. Although his actual days incarcerated were limited, they were undoubtedly sufficient. The Commonwealth's Attorney stated, in the stipulation that was admitted into evidence, that the reduction of Ghee's charges from a felony to 11 misdemeanor counts was done not to lighten the punishment or because Ghee was an attorney, but solely to permit him to retain his right to vote, the significance of which is quite understandable. Ghee has undergone more than sufficient punishment.

**Hiss Factor No. 9. The Petitioner's Sincerity, Frankness and Truthfulness in Presenting and Discussing Factors Relating to Disbarment and Reinstatement.**

The Board is troubled by Ghee's apparent failure to recognize the true extent of his criminal activity, and by Ghee's testimony and the testimony of several of his character witnesses who suggest that he should not be entrusted with the responsibility for handling client funds.

Ghee's testimony, that of his witnesses, and many of his letters of recommendation characterize his theft from the Redd Estate account as a one time aberration, considered by them to be inexplicable and totally out of character. In truth, as noted above under Hiss Factor No. 1, Ghee's repeated defalcations from the Redd Estate account were not a one time occurrence. There were eleven separate defalcations over a two year period, and continued so long as there was money to take. Furthermore, Ghee testified that he had never previously taken client funds from his trust account. No less than four prior disciplinary proceedings for trust account violations belie that assertion.

Ghee and several of his witnesses were asked why he took the money. The only explanations offered were that at that time, Ghee was married to a wife who had expensive tastes and that she quit her employment to start her own business (Tr. P. 41), that he was heavily involved in preparation for an anniversary celebration of the landmark decision in *Brown v Board of Education* to the sacrifice of his law practice (Tr. P. 124), that creditors were calling him about payments of debts (Tr. P. 124), that clients were not paying their fees, that he had already borrowed money from friends and could not go back to them (Tr. P. 125), and that out of pride (which he now sees as wrong), he did what he needed to keep afloat. The explanations indicate that Ghee has not fully taken upon himself the blame for his actions.

Ghee called five witnesses on his own behalf, including himself. All of them testified at least to some extent that if Ghee got his license back, he should be monitored. Ghee himself testified that if his license were reinstated, he would practice only as an associate with a law firm, and would not have access to trust account funds. (Tr. P. 214). Ghee testified that he is a "horrible bookkeeper." (Tr. P. 124). Ghee testified that he would not practice law as a sole practitioner, or handle a trust account without supervision. (Tr. P. 139-140). Williams, who currently employs Ghee as a paralegal, testified that if his firm employed Ghee as an associate attorney, Ghee would not have access to the trust account (Tr. P. 37), which is understandable for a non-equity attorney. James H. Lyle, an entrepreneur called as a character witness by Ghee, testified that he knew of Ghee's financial problems and had lent money to Ghee to permit him to make up shortfalls in his attorney trust account (Tr. P. 81-86), to the extent that Ghee's bank would call Lyle to see if he would agree to make good on shortfalls in Ghee's account. (Tr. P. 86-87, 98-99, 110-112). Lyle agreed that Ghee might be better off if he didn't handle money when he got his license back. (Tr. P. 104-105). E. M. Wright, Jr., Esquire, testified that Ghee should be monitored if he got his license back. Unfortunately, a license to practice law cannot be partially reinstated. If reinstated, it must be

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## REINSTATEMENT RECOMMENDATIONS

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done so without terms. The attorney is free to practice in any area of law, and the Board cannot bar him from handling client funds. When Ghee and his own witnesses express reservations about his ability to handle client funds, it is difficult for the Board to reach a conclusion that he should be reinstated.

**Hiss Factor No. 10. The Impact Upon Confidence in the Administration of Justice if the Petitioner's License to Practice Law was Restored.**

This factor is always difficult. In the abstract, most members of the general public have severe difficulty understanding why the license of any attorney who stole money would ever be reinstated. On the other hand, the cases and commentators dealing with reinstatement have made it clear that disbarment is not punishment, and that one who has been disbarred can be rehabilitated and should be permitted to have his or her license reinstated, even in cases involving theft. The response from Ghee's own community is overwhelmingly in favor of reinstatement.

After correctly noting that reinstatement cases must be considered on a case by case basis and are not easily decided on precedent, counsel for petitioner argues that the case of *In re James T. Edmunds*, VSB Docket No. 95-000-1155 (1995) is instructive when considering Ghee's case. The Board finds that Ghee's petition has more in common with *In re William McMillan Powers*, VSB Docket No. 05-000-3014 (2005). In the Powers case, the Board recommended reinstatement, but noted that, at a prior reinstatement hearing in 1999, Powers had failed to convince the Board that he had accepted responsibility for his conduct, and may in fact have blamed others for it. The Board cannot find that Ghee appreciates the severity and magnitude of, and has accepted responsibility for, the misconduct resulting in the revocation of his license to practice law in 1995. The lapse of time alone does not commend reinstatement. Ghee testified that he intended to replace the money when he misappropriated it from the Redd Estate. The Board notes that he deposited \$20,000 from his personal funds into the Redd Estate on November 8, 1994, and eight days later wrongfully took \$10,000. (VSB Ex. 11) The Board notes, too, that Ghee sent the heirs of the Redd Estate a Final Accounting as of November 1, 1994, setting forth the amount each heir was to receive. (VSB Ex. 9) Ghee's Final Accounting was fraudulent. It did not show the thousands of dollars he had misappropriated that otherwise would have been distributed to the heirs.

Upon consideration of the foregoing, the Board by majority vote recommends to the Supreme Court of Virginia that the petition for reinstatement not be approved.

As required by Part 6, Section IV, Paragraph 13.8.c.(5), the Board finds that the costs of this proceeding are as follows:

Copying Invoices:	\$ 331.19
Court Reporter Fees:	\$1,354.50
Mailing Fees:	\$ 58.43
Mailing Notice:	\$ 440.62
Legal Notices:	\$ 94.39
Administrative Fee:	\$ <u>750.00</u>
Total Costs:	\$3,029.13

It is ORDERED that the Clerk of the Disciplinary System forward this order of Recommendation and the record to the Virginia Supreme Court for its consideration and disposition. It is further ORDERED that the Clerk of the Disciplinary System forward an attested copy of this Order of Recommendation by certified mail return receipt requested, to Charlotte Peoples Hodges, Counsel for the Petitioner, P.O. Box 4302, Midlothian, Virginia 23112-4302 and shall deliver the same by hand to Harry M. Hirsch, Deputy Bar Counsel, Virginia State Bar, Eighth and Main Building, 707 East Main Street, Richmond, Virginia 23219-2803.

Entered this 6th day of December, 2006.

Virginia State Bar Disciplinary Board  
By: Robert E. Eicher  
2nd Vice Chair

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